

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio
Power Company for Approval of an
Advanced Meter Opt-Out Service Tariff

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Case No. 14-1158-EL-ATA

**OHIO POWER COMPANY'S
INITIAL POST-HEARING BRIEF**

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OHIO POWER COMPANY'S INITIAL POST-HEARING BRIEF

In recent revisions to Rule 4901:1-10-05 of the Ohio Administrative Code (“OAC”), the Commission required utilities to “provide customers with the option to remove an installed advanced meter and replace it with a traditional meter, and the option to decline installation of an advanced meter and retain a traditional meter, including a cost-based, tariffed opt-out service.” OAC 4901:1-10-05(J)(1). The Commission directed utilities to “file a proposed tariff for opt-out service within thirty calendar days of the effective date of this rule.” OAC 4901:1-10-05(J)(5)(a).

In this proceeding, Ohio Power Company (“AEP Ohio” or the “Company”) has responded to the Commission’s mandate and has proposed a cost-based tariff for advanced meter opt-out service. *See* AEP Ohio Ex. 2, Application of Ohio Power Company, Case No. 14-1158-EL-ATA (“Application”). After this proceeding was commenced, AEP Ohio entered into a Stipulation with the Staff of the Public Utilities Commission of Ohio (“Staff”), in which AEP Ohio agreed to several amendments to its proposed tariff. *See* Joint Ex. 1, Stipulation & Recommendation (“Stipulation”); *see also* AEP Ohio Ex. 1, Direct Testimony of Andrea E. Moore 2:11-5:4 (Moore Testimony). Intervenors Ohio Consumers’ Counsel (“OCC”) and Ohio Partners for Affordable Energy (“OPAE”) oppose the Stipulation.

A hearing on this matter was held before the Attorney Examiner on May 7, 2015. AEP Ohio presented the testimony of one witness, Ms. Andrea E. Moore, and OCC presented the testimony of one witness, Mr. James D. Williams.

AEP Ohio now submits this post-hearing brief urging the Commission to adopt the Stipulation and approve the Advanced Meter Opt-Out Tariff as set forth in that Stipulation.

STANDARD OF REVIEW

Under the Commission's rules, "[a]ny two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding." OAC 4901-1-30(A). "Although not binding on the Commission, the terms of such agreements are accorded substantial weight." *In re Application of Columbus Southern Power and Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 11-351-EL-AIR et seq., Opinion and Order 8 (Dec. 14, 2011) (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 125 (1978)).

When a stipulation has been entered in a case, the "ultimate issue" for the Commission's consideration is whether the "agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted." *Id.* The Commission considers three factors:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

Id. "The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities." *Id.* (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561 (1994); *Consumers' Counsel*, 64 Ohio St. 3d at 126).

ARGUMENT

The Stipulation in this proceeding satisfies each part of the Commission's three-part test. It should be adopted.

I. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Stipulation fulfills the first part of the Commission's three-part test because it is the product of serious bargaining among capable, knowledgeable parties. After proposing its opt-out tariff as reflected in the Application in this proceeding, AEP Ohio conducted detailed, serious negotiations not only with Staff but also with OCC, which at that time was the only other party to have filed a motion for intervention in this case.¹ *See* Moore Testimony 4:1-8; *see also* Transcript of May 7, 2015 Hearing ("Tr.") 215:6-12 (OCC witness Williams confirms that OCC participated in negotiations and that the negotiations involved bargaining). It goes without saying that Staff and OCC are "capable, knowledgeable" parties; both are frequent participants in Commission proceedings, and both were represented by competent counsel in the settlement negotiations. The negotiations were "serious," moreover, as shown by the fact that AEP Ohio accepted, as part of the Stipulation, a substantial decrease in the amount of the recurring charge for its opt-out tariff service (a reduction from \$31.80 to \$24). *Compare* Application Ex. B-2, Original Sheet No. 103-12, *with* Stipulation Ex. B-2, Original Sheet No. 103-12. Accordingly, the settlement here was "a product of serious bargaining among capable, knowledgeable parties."

OCC challenges the Stipulation on the ground that the "Stipulation lacks any signatories representing the customers who would pay the charges that the PUCO Staff and AEP Ohio propose." OCC Ex. 4, Direct Testimony of James D. Williams ("Williams Testimony") 6:11-13.

¹ OPAE filed its motion for intervention only *after* the Stipulation was signed and filed in this proceeding. Of course, AEP Ohio's application and all other proceedings here were a matter of public record, and OPAE had every opportunity to intervene at an earlier time and participate in the negotiations. OPAE's failure to do so is not grounds to reject the Stipulation.

The argument is meritless. Contrary to OCC's claim, the Stipulation *does* include a signatory that considered the impact of the Stipulation on AEP Ohio's customers: Staff. The Commission's Staff provided an independent, expert assessment of the proposed charges – an assessment that involved substantial consideration of the costs and benefits to residential customers. Even OCC witness Williams admitted that Staff, in its independent role, “has balanced interests between customers of all classes and the utility companies.” Tr. 216:8-9. Residential customers, therefore, were amply represented by a signatory of the Stipulation.

OCC's contrary argument boils down to a claim that unless OCC (or a comparable consumer organization) signs a stipulation, the stipulation must fail the first part of the Commission's three-part test. But nothing in the rules or the Commission's precedents gives OCC an absolute veto on stipulations. The Commission requires that a settlement be “a product of serious bargaining among capable, knowledgeable parties” – it does not require that every party sign. Where, as here, OCC declines to enter into a Stipulation that (as discussed below) presents a just and reasonable outcome for residential customers, the Commission should approve the Stipulation notwithstanding OCC's refusal to sign. That is especially appropriate where, as here, the Commission's Staff has undertaken an independent review of the proposed charges and has found them reasonable.

II. The Stipulation benefits ratepayers and the public interest and does not violate any important regulatory principle or practice.

Under the second part of the three-part test, the Stipulation, taken as a whole, provides significant benefits to ratepayers and also benefits the public interest. As for the third part of the three-part test, the only “regulatory principle or practice” that OCC claims the Stipulation violates is the “just and reasonable” standard. *See Williams Testimony 11:12-16-7.* Because

those two parts of the test overlap significantly in this proceeding, the Company addresses them together.

A. The Advanced Meter Opt-Out Tariff reflected in the Stipulation benefits ratepayers and the public interest and is just and reasonable.

The Advanced Meter Opt-Out Tariff proposed in this proceeding is just and reasonable and fulfills the Commission's directives concerning advanced meter opt-out service. In directing utilities to propose a tariff for opt-out service, *see* OAC 4901:1-10-05(J)(5), the Commission made clear that tariff charges should be based on the costs of such service and that those costs should be borne solely by the opt-out customers. The Commission's rules for opt-out service provide unmistakably: "Costs incurred by an electric utility to provide advanced meter opt-out service *shall be borne only by customers who elect to receive advanced meter opt-out service.*" OAC 4901:1-10-05(J)(5)(e) (emphasis added). Accordingly, the rules provide that a utility may establish two types of tariff charges for customers who elect opt-out service: first, a "a one-time fee" that will "recover the costs of removing an existing advanced meter, and the subsequent installation of a traditional meter," and second, a "recurring fee" that will "recover costs associated with providing meter reading and billing services associated with the use of a traditional meter." OAC 4901:1-10-05(J)(5)(c)-(d).

The tariff as initially proposed by AEP Ohio in this proceeding fulfilled each of the Commission's directives in OAC 4901:1-10-05(J)(5). The tariff proposed two fees – a \$43 one-time fee and a \$31.80 recurring fee – that were based on the cost of providing opt-out service. AEP Ohio explained the basis of its proposed charges in Exhibit E to its Application, which presented a line-item breakdown of the costs. Those cost figures were based on cost estimates that AEP Ohio initially performed for a manual meter reading charge that the Commission approved in AEP Ohio's last distribution base rate case. *See* Tr. 17:16-18, 24:20-22, 105:21-

108:7; *In re Application of Columbus Southern Power and Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 11-351-EL-AIR et seq. In the Company's last distribution base rate case, AEP Ohio's meter reading personnel relied on their considerable, real-life experience in performing manual meter readings to estimate both the average travel time per manual meter reading trip (thirty minutes) and the average time spent at each meter (fifteen minutes). *See* Application Ex. E; Tr. 24:20-25:3, 36:17-23, 37:2-10. Those times were then multiplied by the labor rate for an AEP Ohio meter-reading electrician (\$28.76 per hour plus fringe benefits at 65% of that rate) and the hourly cost of the vehicle needed to travel to the meter (\$9.24 per hour). *See* Application Ex. E. The result was a \$43.00 charge for performing a manual meter reading. That charge was proposed as part of AEP Ohio's distribution base rate application; it was then incorporated in the stipulated settlement of that case; and thus, when the Commission approved the settlement, that charge became part of AEP Ohio's tariffs and is currently in force. *See* Tr. 17:16-18, 24:20-22, 105:21-108:7; *In re Application of Columbus Southern Power and Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 11-351-EL-AIR et seq., Opinion and Order (Dec. 14, 2011) (approving stipulation).

Then, in this proceeding, AEP Ohio began with the Commission-approved manual meter reading charge from the last distribution base rate case and modified it to account for the specific context of residential opt-out service. Specifically, based on the experience of AEP Ohio meter reading personnel, traditional-meter customers in an advanced meter territory have their meter read, on average, 8.875 times per year. *See* Tr. 49:2-7, 49:21-50:4. Although AEP Ohio strives to read traditional meters every month, in reality, numerous factors (for example, severe weather or obstacles on customers' property) mean that AEP Ohio cannot read an opt-out meter every month. Thus, AEP Ohio adjusted the recurring monthly fee to account for this reality – i.e., AEP

Ohio multiplied \$43 by 8.875/12 to arrive at the proposed recurring fee of \$31.80. However, AEP Ohio kept the one-time fee for changing-out an advanced meter at \$43 because this fee, by its nature, is nonrecurring and thus does not need to be adjusted by the average annual number of actual meter readings.

After AEP Ohio proposed the tariff in its Application, AEP Ohio then accepted substantial amendments to its proposal as part of the Stipulation with Staff. Most importantly, in negotiations with Staff, AEP Ohio agreed to lower the recurring monthly charge from \$31.80 to \$24. Thus, AEP Ohio accepted a significantly *below*-cost tariff charge. *See* Moore Testimony 4:1-8.

Taken as a whole, the tariff as proposed in the Stipulation is just and reasonable and benefits the public interest. Most importantly, the tariff accords with each of the Commission's directives in OAC 4901:1-10-05(J)(5): the tariff charges are based on a reasonable estimate of AEP Ohio's costs of providing opt-out service, and the charges are designed so that the cost "shall be borne only by customers who elect to receive advanced meter opt-out service." OAC 4901:1-10-05(J)(5)(e). As a result, the Stipulation benefits rate payers and the public interest by adhering to the cost-causation principles the Commission relied on in promulgating OAC 4901:1-10-05(J) and by establishing important incentives to encourage the adoption of advanced meter technology.

Finally, even if there were any reason to doubt the reasonableness of AEP Ohio's cost estimates (there is none), such doubts should be wholly assuaged by the fact that AEP Ohio agreed to accept a considerably lower, *below*-cost tariff charge as part of the Stipulation in this case. Thus, whereas the cost-based tariff as proposed met the just and reasonable standard, the

tariff as reflected in the Stipulation significantly exceeds that standard and should be approved by the Commission.

B. OCC presents no grounds to second-guess the amount of the proposed charges for opt-out service.

OCC offers several criticisms of the amount of the charges proposed in the Stipulation. But each of these arguments rings hollow because OCC has failed to provide any notion – even a rough estimate – of what OCC believes the costs of providing opt-out service should be. OCC’s only witness, James D. Williams, merely suspects that the proposed charges are too high, but he admits that he has no experience in reading meters, *see* Tr. 148:11-19, 155:4-7; he has done no studies or any other analyses to substantiate his vague feeling that the estimated costs are too high, *see* Tr. 142:18-143:2, 144:24-145:3, 146:23-147:1; and he has made no effort whatsoever to say what, in his view, AEP Ohio’s actual costs of providing opt-out service will be, *see* Tr. 134:24-135:4 (Mr. Williams agrees that he “ha[s]n’t proposed any specific dollar figure [he] believe[s] would be appropriate to charge AEP Ohio customers for opt-out service”).

Instead, when Mr. Williams criticizes the specific elements of the cost-based charge, his claims are founded on nothing beyond his personal, unsubstantiated opinion. For instance, Mr. Williams questions the average thirty-minute travel time set forth in Application Exhibit E for performing a manual meter reading. *See* Tr. 140:19-141:4. But this skepticism, Mr. Williams explains, is based solely on his conjecture that travel times to opt-out customers in AEP Ohio’s current gridSMART territory in northeast Columbus should be less than thirty minutes. *See* Tr. 141:2-4 (Mr. Williams: “[T]o drive to each one of those individual [opt-out AMI] customers, 12 customers, in northeast Columbus *would sound excessive to me.*” (emphasis added)). Yet Mr. Williams acknowledges that he has not “done any analysis of how long it takes to get from an AEP Ohio facility to a gridSMART territory customer,” Tr. 146:18-22; he has not analyzed

traffic or parking issues in the gridSMART territory, Tr. 146:23-147:6; and in fact he has no idea where current opt-out customers are specifically located within the gridSMART territory, Tr. 147:20-13. Thus, when pressed on cross-examination, Mr. Williams acknowledged that he has no basis for questioning the thirty-minute travel time in Application Exhibit E. *See* Tr. 151:15-17 (“Q. You have no basis to question the 30-minute time figure for residential meters? A. No, I don’t.”).

As Mr. Williams acknowledges, moreover, AEP Ohio’s proposed opt-out tariff would apply to *all* customers in AEP Ohio’s territory – not only customers who opt out of AMI meters in the current gridSMART territory, but also customers who opt out of AMR meters in advanced meter routes throughout the rest of AEP Ohio’s territory. *See* Tr. 141:5-10; Tr. 163:8-11; *see also In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 25 (Oct. 16, 2013) (“These opt-out provisions apply to the entire state of Ohio . . .”). Currently, the number of AMR meters, which have been installed throughout AEP Ohio’s territory, far exceeds the number of AMI meters, which are currently limited to the gridSMART territory. *See* Tr. 56:24-25; 63:9-18; 156:21-157:15 (AEP Ohio has installed 487,000 AMR meters, with 70 AMR opt-outs, versus roughly 132,000 AMI meters, with 12 AMI opt-outs). AEP Ohio’s territory, furthermore, includes a wide variety of residential areas – not just urban areas like northeast Columbus, but also suburban and rural areas where homes are spaced far apart. *See* Tr. 142:12-15; 158:5-11. The travel times to perform manual meter readings, therefore, are likely to vary considerably throughout AEP Ohio’s territory.

Yet Mr. Williams does not propose – and the Commission’s rules would not allow – different charges for urban, suburban, and rural customers. Such divided charges would be needlessly complex, difficult to calculate, and contrary to Commission policy. *See In re Review*

of Chapter 4901:1-10, Case No. 12-2050-EL-ORD, Finding & Order ¶ 31 (Oct. 16, 2013) (“Riders for advanced meter deployment provide benefits to every customer, including opt-out customers, and *the Commission will not direct that those riders be divided and applied differently to customers.*” (emphasis added)).

Instead, the rules require a single Advanced Meter Opt-Out Tariff for all customers, *see* OAC 4901:1-10-05(J)(5), and responding to that mandate, AEP Ohio proposed an opt-out charge based on the *average* time to perform manual meter readings throughout its territory. *See* Application Ex. E (“*Average* travel time per trip” (emphasis added)). OCC offers no reason to question that average. *See* Tr. 144:24-145:3 (Q. And we’ve talked about this being an average time between rural and urban areas. You haven’t done any analysis to average out that travel time, have you? [Mr. Williams]: I have not.”). Rather, AEP Ohio’s average travel time figure was based on the real-life experience of AEP Ohio’s meter reading personnel for reading meters across the Company’s service territory, and it was a reasonable response to the Commission’s rules requiring a single tariffed charge for all customers.

Likewise, OCC witness Williams criticizes the fifteen-minute time set forth in Application Exhibit E as the average time for reading a meter, but again his criticism is based on an unduly narrow conception of the residences in AEP Ohio’s territory. Mr. Williams concedes that he has no experience with reading meters – he has never served as a meter reader, nor has he ever supervised meter readers. Tr. 148:11-19, 155:4-7. Instead, his criticism of the fifteen-minute “at meter” time period in Application Exhibit E is based solely on his own experience reading his own meter. Tr. 154:22-155:3. But that limited, anecdotal evidence fails to account for the wide variety of meter reading circumstances that AEP Ohio faces in its territory – including, for example, residences where the meter is obstructed, difficult to locate, or located far

from a safe parking location. *See* Tr. 158:16-159:12 (Mr. Williams acknowledges that he has no knowledge or opinions concerning “how long it takes for a meter reader to overcome obstacles” or “how long it takes to locate a meter”); *see also* Tr. 47:6-16 (AEP Ohio witness Moore describes the obstacles that AEP Ohio meter readers can face). Nor does Mr. Williams have an opinion about the proper time for AEP Ohio meter readers to upload and download meter information to and from their handheld data systems. *See* Tr. 47:6-16 (AEP Ohio witness Moore explains this step in the meter-reading process); Tr. 155:17-19 (Mr. Williams agrees that he “do[es]n’t know how long it takes to upload and download data from the handheld device”). The fifteen-minute time “at meter” in Application Exhibit E is a reasonable estimate of the *average* required time; Mr. Williams offers no reason to second-guess the considerable field experience of AEP Ohio meter-reading personnel. *See* Tr. 160:6-8 (“[Q.] [O]n line 4 [of Application Exhibit E] average time at meter 15 minutes, you are not proposing a specific figure for what that [fifteen-minute at meter] time should be, correct? A. No, I am not.”).

OCC and Mr. Williams also generally criticize AEP Ohio’s proposed cost-based charge because it was based on the Commission-approved manual meter reading charge from the last distribution base rate case. The charge in that base rate case, OCC argues, was for manually reading *commercial interval meters* and thus cannot be used as the basis for charges for manually reading residential meters in this case. *See, e.g.*, Tr. 25:4-25. The argument is meritless. Although the charge from the distribution base rate case did involve commercial meters, the difference, if any, between the cost of manually reading commercial meters and the cost of manually reading residential meters is not significant. Indeed, as OCC witness Williams acknowledges, many of the components of the cost-based fee are the same for both commercial and residential meters. For instance, the hourly rates for labor and vehicle use on Application

Exhibit E are the same whether the meter is residential or commercial. *See* Tr. 152:4-9, 154:1-15 (Mr. Williams has “no opinion” as to whether the hourly labor and vehicle rates would be the same for commercial and residential meters). The average travel time, moreover, is likely to be similar between the two types of meters, because commercial customers are, like residential customers, located throughout AEP Ohio’s territory. *See* Tr. 150:22-25 (“Q. You have no way yourself to tell the difference in travel time between an industrial customer and a residential customer, correct? [Mr. Williams]: No.”). And Mr. Williams provided no specific basis to conclude that the average “time at meter” would vary significantly between commercial and residential customers. In short, the charge in the distribution base rate case reflected the cost “To Perform a Manual Meter Read.” Tr. 107:13-20. Manual meter reading is precisely what is involved in providing the “recurring” component of advanced meter opt-out service, *see* OAC 4901:1-10-05(J)(5)(d), and the “manual meter read” charge – which was approved by the Commission – served as a proper starting point for the opt-out charges proposed in this proceeding.

Finally, OCC insinuates that AEP Ohio should have supported the proposed charges with detailed analyses or cost-of-service studies showing the actual cost of providing advanced meter opt-out service. *See, e.g.*, Tr. 17:13-20. But that is not reasonable. The rigorous analyses or studies that OCC advocates are expensive and require considerable time and effort. Whereas such analyses or studies may be appropriate in complex ratemaking cases where millions of dollars are at stake, the current proceeding involves a tariffed service that will likely be limited to a small number of AEP Ohio customers. *See* Tr. 156:21-157:15 (currently 82 AEP Ohio customers have opted out of advanced meters). It would not make sense for AEP Ohio to incur significant expenses – expenses that would contribute to an increased cost of service, and thus

eventually higher rates for all ratepayers – in order to provide highly detailed cost justifications for a tariffed service that may affect no more than a hundred customers. The proposed charges are based on the direct experience of expert personnel and the analogous charges that the Commission approved in the last distribution base rate case. *See* Tr. 144:10-17 (OCC witness Williams agrees that the cost estimates were “based on substantial day-to-day experience of AEP Ohio’s meter team” who were “going out on a daily basis to read the meters that we’re talking about in this proceeding”). That approach was reasonable and sufficient.

C. The Commission should deny OCC’s request to “waive” opt-out charges.

As discussed above, OCC fails to offer its own proposal for the appropriate cost of providing opt-out service. Tr. 134:24-135:4. Instead, OCC witness Williams argues that the Commission should “waive[]” opt-out charges for AEP Ohio customers – that is, he argues that there should be no charges at all. Williams Testimony 5:1 (OCC Ex. 4); Tr. 134:11-23. That argument has been expressly rejected by the Commission and, in any event, is meritless.

1. OCC’s waiver proposal is directly at odds with Commission precedent.

The Commission has already decided that the costs of advanced meter opt-out service should not be “waived” but, rather, must be borne solely by opt-out customers. In promulgating the rules governing advanced meter opt-out service, the Commission expressly rejected proposals of OCC and OPAE that sought to mitigate or reduce charges assessed to opt-out customers. *See, e.g., In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 28 (Oct. 16, 2013) (rejecting OCC’s argument that “the costs imposed on customers for opt-out service should be offset by all avoided costs”); *id.* ¶ 31 (rejecting OPAE’s “general[] oppos[ition] to provisions of opt-out service that place a cost burden on customers,” as well as OPAE’s specific proposal that opt-out customers be permitted to avoid advanced meter cost

recovery riders). Instead, the Commission required AEP Ohio and other utilities to propose a “*cost-based*, tariffed opt-out service.” OAC 4901:1-10-05(J)(1) (emphasis added). The Commission permitted utilities to assess two charges – a “one-time fee” and a “recurring fee” – both of which were expressly designed to recover the “costs” of providing opt-out service. OAC 4901:1-10-05(J)(c)-(d). And lest there be any doubt that a cost-based opt-out charge is mandatory, the Commission provided: “Costs incurred by an electric utility to provide advanced meter opt-out service *shall be borne only by customers who elect to receive advanced meter opt-out service.*” OAC 4901:1-10-05(J)(5)(e) (emphasis added).

Those binding Commission rules cannot be reconciled with Mr. Williams’s argument that opt-out charges for AEP Ohio customers should be “waived.” The Commission has mandated that any costs of providing opt-out service “*shall be borne only*” by opt-out customers. OAC 4901:1-10-05(J)(5)(e) (emphasis added). “Waiving” opt-out fees, as Mr. Williams proposes, would violate that clear principle. If Mr. Williams had his way, AEP Ohio would incur costs for providing opt-out service, but it would not recover those costs from opt-out customers. Instead, the costs would contribute to an increase in AEP Ohio’s overall cost of service, and that would have the effect of spreading opt-out service costs among *all* customers. The Commission has clearly rejected OCC’s position, and OCC’s attempt to reargue its position in this proceeding is improper.

2. OCC’s waiver proposal cannot be accomplished through “special tariff provisions.”

In the face of the Commission’s clear mandate that opt-out costs be borne solely by opt-out customers, Mr. Williams attempts to support his “waiver” proposal by citing a provision of the Commission’s opt-out rules that permits utilities to propose “special tariff provisions” when such provisions are needed to address “circumstances not addressed in this rule.” OAC 4901:1-

10-05(J)(5)(b)(i). But the plain language of the rule upon which Mr. Williams relies forecloses his argument. The Commission intended “special tariff provisions” to fill in gaps or address situations not covered by the rule, and thus the rule makes clear that a utility proposing a “special tariff provision” must “make its best efforts to *maintain consistency with the rules herein.*” *Id.* (emphasis added). Mr. Williams’s “waiver” proposal is not “consistent[.]” with – but rather would circumvent – several other provisions of “the rules herein,” including the rule directing the utility to propose a “*cost-based*” opt-out service and the rule requiring that the “[c]osts incurred by an electric utility to provide advanced meter opt-out service *shall be borne only by customers who elect to receive advanced meter opt-out service.*” OAC 4901:1-10-05(J)(1), (J)(5)(e) (emphasis added). Mr. Williams’s “waiver” proposal, therefore, is not a proper “special tariff provision”; rather, it is an attempt to completely rewrite the rules.

Furthermore, even if Mr. Williams’s proposal for “special tariff provisions” were not foreclosed by the plain language of the rule, the special circumstance he cites to justify his proposal is baseless. Mr. Williams argues: “*Because AEP Ohio’s advanced meter deployment is a pilot program*, the PUCO should consider this to be a special circumstance where separate charges on customer to opt-out of the advanced meter should be waived at this time.” Williams Testimony 4-5 (emphasis added). The holes in that logic are numerous.

First, the proposed opt-out charges are not limited to AEP Ohio’s gridSMART Phase I area (the “pilot program” to which Mr. Williams refers). Instead, as the Commission has recognized, and as Mr. Williams acknowledged on cross examination, the opt-out fees will apply throughout AEP Ohio’s territory to both AMI and AMR meters. *See In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 25 (Oct. 16, 2013) (“These opt-out provisions apply to the entire state of Ohio”); Tr. 141:5-10; Tr. 163:8-11. In fact, there are

currently *more* opt-out customers with AMR meters outside the gridSMART Phase 1 territory than there are customers with AMI meters within the gridSMART Phase 1 territory. *See* Tr. 56:24-25; 63:9-18; 156:21-157:15 (AEP Ohio has installed 487,000 AMR meters, with 70 AMR opt-outs, versus roughly 132,000 AMI meters, with 12 AMI opt-outs). And as Mr. Williams acknowledges, the AMR deployment is “not a pilot.” Tr. 163:20-164:2. Thus, even if the gridSMART program were a pilot, the vast majority of the advanced meters at issue here are outside that pilot program.

Second, in any event, the gridSMART program is no longer truly a “pilot” program. Although it began as a pilot, as Mr. Williams acknowledges, the gridSMART advanced meter deployment occurred nearly five years ago. AEP Ohio is now seeking Commission approval of a plan to expand AMI meter deployment in another part of its territory. Advanced meter deployment is proceeding apace; it is no longer truly a “pilot” program.

Third, even if advanced meter deployment were a pilot program, that would not provide a valid special circumstance justifying departure from the cost-based charges required by OAC 4901:1-10-05(J). The Commission expressly required *all* utilities to file cost-based opt-out tariffs, even a utility such as FirstEnergy that has “very few installed smart meters in [its] territory.” *In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 25 (Oct. 16, 2013). If utilities with “very few” advanced meters are required to file opt-out tariffs, then it necessarily follows that utilities that have deployed advanced meters on a supposedly “pilot” basis must file a cost-based opt-out tariff as well.

Moreover, if advanced meter deployment were a pilot program, that would counsel in favor – not against – the application of cost-based charges, so that the utility, the ratepayers, and the Commission can truly test not only advanced meter deployment but also the tariff provisions

and charges that apply to advanced meter opt-out service. There is no reason to conduct a pilot program that omits a charge for opting out, since that is a crucial component of advanced meter service.

In sum, the rules do not allow a waiver of fees by means of “special tariff provisions,” OAC 4901:1-10-05(J)(5)(b)(i), and in any event, the “circumstances” OCC cites – Mr. Williams’s (erroneous) claim that advanced meter deployment is a “pilot program” – do not justify a waiver of fees. OCC’s proposal should be rejected.

3. OCC’s waiver proposal also fails on its merits: Waiving fees would violate the principle of cost causation and eliminate an important incentive for customers to adopt advanced meter technology.

Even if the Commission had not expressly rejected OCC’s “waiver” proposal (the Commission has rejected it, *see supra* Section II.C.1), and even if there were a basis in the rules for waiving fees (there is no such basis, *see supra* Section II.C.2), the proposal would fail on its merits. As the Commission has explained, “advanced meter deployment provide[s] benefits to every customer, including opt-out customers.” *In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 31 (Oct. 16, 2013). Both AMR and AMI meters save considerable meter reading costs, thus reducing AEP Ohio’s cost of service, and as the Commission has recognized in AEP Ohio’s gridSMART proceeding, AMI meters in particular have the potential to reduce the number, duration, and severity of service outages (among many other benefits). Thus, the cost-based charges for advanced meter opt-out service do not merely recover the utility’s costs of providing such service; they also provide a critical incentive that encourages customers to accept this new, cost-saving technology. OCC, however, does not support providing incentives to encourage customers to adopt advanced meters, *see* Tr. 186:21-22 (Mr. Williams: “I don’t believe there needs to be an incentive.”), and thus it is not surprising that OCC has proposed that the opt-out charges be “waived.” Waiving opt-out charges would

remove the only incentive currently in place to encourage the adoption of advanced meter technology. That outcome would contravene clear Commission policy.

Furthermore, although AEP Ohio does not question the Commission's decision to permit customers to refuse advanced meters by electing advanced meter opt-out service, it is notable that OCC's only witness in this proceeding had no opinion on whether there were any *valid* reasons for customers to refuse advanced meter deployment. *See* Tr. 187:17-21 (OCC witness Williams explains that "[p]rivacy, health, and cost" are the three most common reasons given by customers who refuse advanced meters); Tr. 190:189:14-16, 190:10-16 (Mr. Williams has no opinion on whether privacy is a valid reason for refusing advanced meters); Tr. 191:19 (Mr. Williams has no opinion on whether health is a valid reason for refusing advanced meters); Tr. 193:6-11 (Mr. Williams acknowledges that customers cannot reduce the cost of their service by opting out of advanced meters). Where even the state's principal consumer advocate offers nothing in support of the reasons given by customers for declining advanced meters, it is reasonable to provide a cost-based incentive so that customers will not refuse advanced meters based on arbitrary reasoning. Instead, the reasonable course is to allow customers, if they choose, to reject advanced meters, but only if they bear the cost of this choice. That principle is what the Commission mandated in its rules and the Stipulation in this case embodies.

OCC's other attempts to justify its "waiver" proposal fail. OCC witness Williams claims that fees should be waived to allow customers time to learn about advanced meter technology. But once again, the Commission has expressly rejected that concept. In the proceeding to adopt OAC 4901:1-10-05(J)(5), "FirstEnergy opposed the opt-out provisions in their entirety because [FirstEnergy] believe[d] the rules [were] premature." *In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 25 (Oct. 16, 2013). But the Commission expressly

rejected FirstEnergy’s request to delay its opt-out rules, *see id.*, ordering utilities to file a cost-based opt-out tariff “within thirty calendar days of the effective date of this rule.” OAC 4901:1-10-05(J)(5)(1). The Commission determined that cost-based opt-out charges could exist in tandem with a utility’s efforts to “educat[e] or inform[] its customers on the technology capabilities of the meters or their advantages.” *In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 25 (Oct. 16, 2013); *see also* OAC 4901:1-10-05(J)(3)(b) (“The electric utility shall explain the facts concerning advanced meters and attempt to address any customer concerns prior to signing up a customer for advanced meter opt-out service.”).

Even if the Commission had not already rejected it, moreover, Mr. Williams’s “delay” rationale does not withstand scrutiny. As Mr. Williams acknowledged, customers in AEP Ohio’s gridSMART area have already had *five years* to learn about and become comfortable with advanced meter technology. *See* Tr. 182:13-183:2 (advanced meters installed by 2010 or, at the latest, 2011). But even that is not enough for Mr. Williams, who believes that gridSMART customers need “a few” *more years* to learn about advanced meter technology before any fees for opt-out service should be imposed. Tr. 184:4-8. That position is baseless. Mr. Williams makes no effort to explain why it would take a customer seven or eight years – the time spent by many in obtaining a doctoral degree – to learn about advanced meters. The facts surrounding advanced meters are straightforward, and as the Commission has already found, customers can learn about advanced meters through information provided concurrently with advanced meter deployment. *See In re Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD, Finding & Order ¶ 25 (Oct. 16, 2013); OAC 4901:1-10-05(J)(3)(b). Moreover, allowing customers to opt out without consequences for years during deployment of advanced meters would increase the costs of service, dramatically reduce the benefits of advanced meters, and frustrate Commission

policy. Mr. Williams’s proposal – which would require utilities to wait *years* before imposing opt-out charges – should be rejected.

D. OCC’s arguments about “single-issue ratemaking” are baseless.

As a final attack on the Stipulation, OCC argues that the Advanced Meter Opt-Out Tariff proposed in the Stipulation is an impermissible instance of “single-issue ratemaking”; OCC contends, instead, that the opt-out tariff should be addressed “in the context of a traditional rate case under ratemaking principles.” Williams Testimony 12:5-14. Once again, however, OCC is taking a position that has been squarely rejected by the Commission. As noted above, in promulgating OAC 4901:1-10-05(J), the Commission required utilities to file a cost-based opt-out tariff “within thirty calendar days of the effective date of this rule.” OAC 4901:1-10-05(J)(5)(1). That directive clearly contemplated that advanced meter opt-out charges would be proposed by the utility and assessed by the Commission in the context of a standalone case, not in a full rate case as OCC proposes.

Moreover, the discrete issue of charges for advanced meter opt-out service is particularly amenable to resolution in a standalone case such as this. As discussed above, AEP Ohio currently has fewer than 100 customers who have opted out of advanced meters, *see* Tr. 156:21-157:15, and hopefully the number of opt-out customers will diminish once the cost-based charges are assessed. Such a limited form of service does not trigger the need for a full-blown rate case. Such cases are extremely costly and time consuming, and requiring one here would be inappropriate.

Finally, it is important to note that because the Advanced Meter Opt-Out Tariff proposed in the Stipulation is a new service, this proceeding involves an application “not for an increase in any rate” under R.C. 4909.18. Thus, the Commission was not even required to hold a hearing

before accepting the proposed tariff. *See* R.C. 4909.18 (“If the commission determines that such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect. If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing”); *see also, e.g., City of Cleveland v. Pub. Utilities Comm’n of Ohio*, 67 Ohio St. 2d 446, 449 (1981) (“The current version of R.C. 4909.18 now vests the commission with discretion in this area, providing that the commission may either permit the filing of the tariffs or set the matter for hearing.”). This further undercuts OCC’s claim that the Commission should address the proposed opt-out tariff in the context of a “traditional rate case.” Williams Testimony 12:5-14. That the Commission even held a hearing here was more than it was required to do. There is no requirement that the Commission undertake a “traditional rate case” for this new opt-out service. To the contrary, delaying consideration of the proposed tariff until a “traditional rate case” would be at odds with the streamlined procedures for applications “not for an increase in rates” set forth in R.C. 4909.18.

CONCLUSION

For the foregoing reasons, the Stipulation should be adopted, and the proposed Advanced Meter Opt-Out Tariff should be approved.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Post-Hearing Brief was served by electronic mail upon counsel for all parties of record in this case on this 22nd day of June, 2015.

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