

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                     )  
Ohio Power Company to Establish a                 )     Case No. 14-1158-EL-ATA  
Meter Opt Out Tariff.                                     )

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
REPLY BRIEF**

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Ohio Partners for Affordable Energy (“OPAE”) submits to the Public Utilities Commission of Ohio (“Commission”) this reply brief in the above-captioned proceeding considering the application of Ohio Power Company (“Ohio Power”) to establish a meter opt-out tariff for residential customers. Given that a Stipulation and Recommendation signed by Ohio Power and the Staff of the Commission was filed in this case, the question before the Commission is whether the Stipulation meets the Commission’s three-part test for the reasonableness of stipulations. The Commission should find that the Stipulation does not satisfy the three-part test and should be rejected. Herein, OPAE responds to the initial briefs filed by Ohio Power and the Staff in support of their Stipulation.

**I.       The Stipulation is not the product of serious bargaining by parties representing a diversity of interests.**

The first part of the Commission’s three-part test for the reasonableness of stipulations is whether the stipulation is the product of serious bargaining among capable, knowledgeable parties representing diverse interests. The Staff argues that its duty is to balance the interests of all customer classes and that residential customers are part of this balancing process. Staff Brief at 12. The Staff also

argues that no party wields a “veto power” over the stipulation process, that unanimous stipulations are not required, and that the Office of the Ohio Consumers’ Counsel’s (“OCC”) refusal to sign the stipulation does not mean that it should “automatically be disapproved.” Staff Brief at 12. Ohio Power makes the same argument that the Staff considered the impact of the Stipulation on all customers and that OCC is claiming that only its signature allows a stipulation to pass the first part of the Commission’s test. Ohio Power Brief at 4.

No one would bother to dispute that many stipulations have been approved without OCC’s signature and that OCC does not have “veto power” over stipulations it has not signed. However, in the same way, the Staff should not claim that its signature automatically means a diversity of interests is present. The Staff’s signature likewise does not mean that a stipulation meets the first part of the Commission’s test.

The issue in this case is the Stipulation filed in this case. The Stipulation filed in this case by the Staff and Ohio Power sets a new charge to be paid by only a handful of residential customers. The Commission Staff, if it was considering the interests of those few residential customers, should have noticed the harm this Stipulation brings to those residential customers who will pay the significant charges set out in the Stipulation and yet receive only the status quo as a result. The Staff and Ohio Power view the harm to those customers as a positive feature of the Stipulation. See Ohio Power Brief at 18-19; Staff Brief at 14-16. It is no wonder that OCC refused to sign a stipulation proposing a tariff offering meant to discourage customers from taking the offering.

The two signatory parties to the Stipulation, Ohio Power and the Staff, do not represent a diversity of interests. As their briefs demonstrate, they have the same interest. They both want to see residential customers who opt out of advanced meters pay extra money each month for nothing, absolutely nothing that the opt-out customer does not already pay for and does not already receive. Opt-out service means the customer does not have an advanced meter and pays not to have an advanced meter. The customer is already paying in current rates for the existing meter and for the existing meter to be read.

As the only representative of residential customers to participate in the settlement negotiations, OCC correctly refused to agree to the Stipulation. As the briefs of the Staff and Ohio Power make clear, the charges are meant to punish residential customers who opt out of advanced meters. Ohio Power Brief at 18-19; Staff Brief at 14-16. While no one knows what the opt-out service will cost, it is certain that the cost is so insignificant that Ohio Power and the Staff hardly care about the revenue the charges will bring. Their aim is to force advanced meters on all residential customers. *Id.* If they succeed in having their Stipulation approved, the additional charges will be harmful enough to individual residential customers that customers will be forced to accept an advanced meter. Customers will be forced not to take opt-out service. *Id.*

The Commission should find that the Stipulation is not the product of serious bargaining among parties with a diversity of interests. A diversity of interest cannot exist in this particular case where the Stipulation was the product of an agreement between two parties with identical interests to set charges to be

paid by a handful of residential customers who are to be punished for refusing to accept advanced meter technology. If the Staff and Ohio Power prevail in their identical argument that their identical position represents a diversity of interests, the first part of the Commission's three-part test for the reasonableness of stipulations is meaningless.

**II. The Stipulation does not benefit ratepayers or the public interest.**

The Staff argues that the Stipulation benefits ratepayers and the public interest because it results in charges that are lower than the charges Ohio Power originally filed in its application. The Staff claims that charges lower than the originally proposed charges are "a persuasive sign of a financial benefit that accrues to ratepayers." Staff Brief at 13. Ohio Power also argues that the stipulated charges are below its original proposal. Ohio Power Brief at 7.

If the mere agreement to charges less than originally proposed is indicative of a benefit to ratepayers, then ratepayers would be benefiting practically all the time from stipulations filed by practically any parties in practically any case involving charges. It is a mundane aspect of a utility application to ask for more than an expected settlement is likely to produce.

Ohio Power argues that the stipulated charges are "a reasonable estimate of AEP Ohio's costs of providing opt-out service". Ohio Power Brief at 7. Ohio Power claims that OCC witness James D. Williams' criticism of the "specific elements of the cost-based charge" is based on "nothing beyond his personal, unsubstantiated opinion." Ohio Power Brief at 8.

Ohio Power deliberately misunderstands Mr. Williams' criticism. The constant references in the Ohio Power and Staff briefs to "cost-based charges" do not make the charges cost-based in fact. The charges are not based on the cost to provide the opt-out service. The charges are based on the cost to provide some other service for some other customer class as proposed in Ohio Power's 2011 base rate application, the outcome of which was a stipulation and not an order based on an evidentiary hearing. Mr. Williams freely admits that he does not know what a cost-based charge for opt-out service would be. Tr. 140-147. His testimony is that no one knows, including Ohio Power and the Staff. No one will know until there is experience with providing the service for at least one year. No one will know what it costs and how many customers will opt out.

Ohio Power argues that it "would not make sense" for AEP Ohio to incur significant expenses in order to provide "highly detailed cost justifications for a tariffed service that may affect no more than a hundred customers." Ohio Power Brief at 12-13. Ohio Power should be aware that tariffed utility charges are normally based on "highly detailed cost justifications". Utility charges are based on test-year expenses and revenues in base rate proceedings. This is called cost-of-service regulation.

A tariff should contain a cost-based fee, but it can do so only if the costs for the service are known. The Staff argues that OCC and OPAE presented no counterproposal to the stipulated "cost-based features." Staff Brief at 9. OCC and OPAE have declined to make up numbers like Ohio Power and the Staff have done. The stipulated charges are not cost-based with respect to the opt-

out service being proposed. The charges are based on costs for another service for another customer class from the 2011 stipulated base rate case, estimates of alleged costs that Ohio Power might incur, estimates of the number of customers who might take the meter opt-out service, and guesses about where those customers might live and how much it might cost to travel to their residences. The proposed charges are not cost based.

Ohio Power also argues that the stipulated opt-out tariff is a new service so that this proceeding involves an application “not for an increase in any rate” under R.C. 4909.18. Ohio Power Brief at 20. Ohio Power believes that this “undercuts” Mr. Williams’ testimony that the opt-out tariff should be addressed in the context of a base rate case. Ohio Power Brief at 21. Ohio Power argues that delaying the opt-out service is contrary to streamlined procedures for an application not-for-an-increase-in-rates set forth in R.C. 4909.18. Ohio Power Brief at 21.

Contrary to Ohio Power’s assertion, this application is for a new service with a new charge attached to it. The application is considered under R.C. 4909.18 as a new service, but it is **not** an application **not** for an increase in rates. The application clearly increases the cost of Ohio Power’s service for those who opt out of an advanced meter. This is why the charges should be evaluated in the context of a base rate proceeding where the amount of the charges would be based on a demonstrated review of the utility’s revenues and expenses in a test year. This is a case of single-issue ratemaking because the application only considers additional costs Ohio Power claims to be going to incur without

considering any other factors, such as lower expenses that Ohio Power may have achieved in other areas of its service. Costs associated with providing the opt-out service, if any, might be off set by lower expenses in other areas. These issues can only be addressed in a base rate proceeding.

For this tariff especially, it is relevant to examine any costs that Ohio Power is already collecting from customers in base rates and through riders for meters and meter reading. When the Commission considers charges for opt-out service, for example, it should also consider costs that Ohio Power avoids when it does not need to install an advanced meter.

Moreover, advanced meters are supposed to save costs. Ohio Power has realized savings in meter reading and meter operations costs, but customers have not benefited from these savings and Ohio Power has not proposed to reduce customers' bills to reflect reduced operational costs resulting from advanced meters. OCC Ex. 4 at 12-13. If customers had seen savings from advanced meter installations through distribution rate reductions, there might be some basis to increase costs to customers who refuse the installations. Given that no savings have been realized by customers, it is ridiculous that the Staff and Ohio Power are claiming that opt-out customers are compromising the savings from the installations.

The Staff also touts the AEP Ohio data that the Staff will have access to under the Stipulation. Staff Brief at 13. Staff claims that the "information sharing feature of the Stipulation enables Staff to stay informed of and responsive to issues arising out of the implementation of the opt-out service." Staff Brief at 13. Staff claims it will be in a better position to coordinate with Ohio Power and

address issues associated with the meter opt-out service. Id. Given that the Staff and Ohio Power have the same interest in this case, it is difficult to see that the data sharing will have any benefit to customers. And it is not as though the Staff lacks access to any data it requires to evaluate the advanced meter deployment. The advantage of this data-sharing stipulated provision is ephemeral at best because the Staff does not need Ohio Power's agreement to demand and review this type of information.

An additional \$288 in charges per year imposed on customers who opt out of using an advanced meter does not benefit customers, nor is it in the public interest. The number of customers who opt out will be small and, while the additional charges will be punitive for those few opt-out customers, the revenue collected will be insignificant to Ohio Power. It does not benefit ratepayers or the public interest to allow Ohio Power to assess non-cost based, punitive charges on residential customers who seek to opt out of having an advanced meter.

### **III. The stipulation violates important regulatory principles and practices.**

The third part of the three-part test for the reasonableness of stipulations is whether the stipulation violates important regulatory principles and practices. The Staff claims that the Stipulation follows regulatory principles of cost causation because the tariff assigns the costs of the advanced meter opt-out to the customers responsible for causing the costs. Staff Brief at 15. However, because the Staff has no idea what the costs of opt-out service will be or if there are any costs above amounts already in distribution base rates and riders, any



argument that the stipulated charges conform to principles of cost causation cannot be taken seriously.

Ohio Power argues that the Commission should use a “cost-based incentive” so that customers will not refuse advanced meters. Ohio Power Brief at 18. Ohio Power belittles OCC witness Williams’ argument that some customers need more time to learn about and accept advanced meters. *Id.* at 19. Ohio Power claims that “the facts surrounding advanced meters are straightforward”. *Id.* Ohio Power also argues that the stipulated tariff establishes “important incentives to encourage the adoption of advanced meter technology.” *Id.* at 7. Likewise, the Staff claims that the stipulation advances the state’s energy policy at R.C. 4928.02(D) by encouraging the implementation of advanced metering infrastructure. Staff Brief at 15. Staff claims that the new infrastructure can only flourish if advanced meters gain widespread acceptance among customers. *Id.* at 16. Therefore, the Stipulation that imposes a “financial disincentive” for refusing an advanced meter advances the state policy. The Staff claims that the tariff removes impediments to advanced meter acceptance by charging fees only to those who opt out of an advanced meter. *Id.* at 16. The Staff claims that the Stipulation conforms to regulatory principles and practices by benefiting those who do not take the opt-out service. *Id.* at 14.

The “important incentives” to advance state policy here are gratuitous, unproven charges. The Staff and Ohio Power are arguing that it is a benefit of the Stipulation that it provides for an opt-out service that is so unattractive that customers will not opt out. They are claiming that it is a public policy benefit that

the Stipulation will force customers to accept advanced meters whether the customers want to or not. It is a benefit of the Stipulation that the Stipulation provides no benefit to customers who take the stipulated tariff offer. This is nonsense – a classic example of double-speak. Ohio Power and the Staff may be well informed about advanced meters, but public policy cannot ignore what concerns customers may have and cannot permit tariffs whose primary purpose is to harm customers with concerns about the technology.

In opposing a waiver of the fees based on special circumstances as proposed by OCC witness Williams, Ohio Power argues that its grid smart program is no longer a “pilot program.” Ohio Power Brief at 16. Ohio Power also argues that, even if it is a pilot program, a pilot program should use “cost-based charges.” Id. at 16. Ohio Power also argues that the Commission required a “cost-based tariffed opt-out service.” Id. at 14. Therefore, Ohio Power argues that a waiver of the opt-out fees is directly at odds with Commission precedent. Id. at 13.

The Commission may have required a cost-based tariff, but this is not a cost-based tariff. This is the reason why special circumstances allow for a waiver of the fees. The Commission’s rules permit fees but the rules also provide for special circumstances. Ohio Administrative Code Rule 4901:1-10-05(J)(5)(b)(i) refers to special tariff provisions related to circumstances that are not addressed by rules. Waiving the opt-out fee is consistent with the special provision section of the Commission’s rule which accommodates circumstances that warrant a different approach. Tr. at 175. The cost of the service is not known. Few

customers have expressed an interest in opting out. These factors are clearly the basis upon which the Commission may waive the charges based on special circumstances.

## **Conclusion**

The Stipulation and Recommendation fails the Commission's three-part test for the reasonableness of stipulations and should not be approved. While the Stipulation should be rejected, Ohio Power should be ordered to offer advanced meter opt-out service through an opt-out tariff without any charges to customers at this time.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Brief was served electronically upon the following parties identified below on this 7th day of July 2015.

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