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.	: : :	Case No. 14-1158-EL-ATA

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

Ryan P. O'Rourke
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
ryan.orourke@puc.state.oh.us

On behalf of the Staff of
The Public Utilities Commission of Ohio

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BEFORE
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In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-Out Service Tariff.	: : :	Case No. 14-1158-EL-ATA

POST-HEARING BRIEF
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DISCUSSION

After reading OCC's and OPAE's (or "Opposing Parties") briefs, one could be forgiven for mistaking this proceeding for the Commission's earlier rulemaking proceeding which established the rules of the road for advanced meter[1] opt-out service. In arguing for nothing less than outright denial of the proposed Stipulation, the Opposing Parties rehash many of the same arguments the Commission addressed — and declined to embrace — in that proceeding. Their proposals barely pay lip service to the fact that the Commission's rules authorize exactly what the Stipulation reached between AEP Ohio and Staff (or "Signatory Parties") proposes: cost-based tariffs applicable solely to customers electing to receive advanced meter opt-out service.

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[1] For the purpose of this brief, the term "advanced meter" denotes both AMI and AMR meters unless noted otherwise.

The Opposing Parties say customers should not be charged for exercising their choice to retain a traditional meter, but the rules explicitly authorize this exact type of charge. They call for recognition of cost savings even though the Commission declined to go along with that proposal in the earlier rulemaking proceeding. OCC wants customers to have some indefinite amount of time (months? years?) for customers to get accustomed to advanced meters, yet the rule requires electric distribution utilities to make advanced meter opt-out service tariff filings within 30 calendar days of the rule's effective date. Because customers already pay for meter reading services through base rates, the Opposing Parties contend it is wrong to charge customers for advanced meter opt-out service. But the Commission was undoubtedly aware of this when it approved the rule, and it justified the rationale for the rule on the grounds that opt-out customers decrease the effectiveness of the smart grid and thus raise costs on all other customers.

It seems that the problem for the Opposing Parties stems as much from the policies embodied in the Commission's rules as it does from the proposed Stipulation. But it is too late in the day to relitigate the policy debates from the Commission's rulemaking proceeding. The Commission has spoken and its rules authorize just what the Stipulation proposes. And even if the Opposing Parties proposals did not flatly contradict the Commission's express directives, they adduced no countervailing evidence to show why the figures proposed in the Stipulation are wrong, nor did they submit a counterproposal showing what those costs should be. Their arguments, which amount to little more than "not in this way, not at this time," do not seriously reckon with the Commission's rules nor with the record evidence.

A. The Opposing Parties are wrong to claim that the Stipulation should be disapproved simply because they did not join it. The Commission has repeatedly explained that unanimous stipulations are not required for approval. Further, the interests of residential customers have been accounted for and serious bargaining occurred.

Undeterred by a line of cases holding otherwise, the Opposing Parties resurrect the discredited contention that the Stipulation is not the product of serious bargaining among capable, knowledgeable, parties representing diverse interests because no party representing residential customers is a signatory.[2] The Commission has repeatedly rejected this same argument in the past, explaining that no party wields a veto power over the negotiation process and that unanimous settlements are not required for approval.[3] Tellingly, the Opposing Parties cite no authority establishing a per se rule requiring invalidation of a stipulation if it is not joined by a residential-customer representative. Put simply, the Commission can approve the proposed Stipulation without the Opposing Parties' signatures. It should do so here.

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2 OCC Br. at 4-5; OPAE Br. at 2.

3 *See, e.g., In re Ohio Power Co.*, Case No. 12-3255-EL-RDR (Opinion and Order at 11) (Apr. 2, 2014) ("The Commission has repeatedly determined that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test."); *In re Application of Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT (Opinion and Order at 10) (Feb. 19, 2014) (same); *In re Application of Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC (Opinion and Order at 32) (Apr. 9, 2008) ("No one possesses a veto over stipulations * * * ."); *Dominion Retail v. Dayton Power & Light, Co.*, Case No. 03-2405-EL-CSS (Opinion and Order at 18) (Feb. 2, 2005) ("The Commission will not require OCC's approval of stipulations.").

Notwithstanding the Opposing Parties' contrary claims, the interests of residential customers have been accounted for in this proceeding by the presence of Staff. As part of its review of AEP Ohio's application, Staff balanced the interests of all customer classes, of which residential customers are a part. Even OCC witness Williams agrees with this characterization, describing Staff as "balanc[ing] the interests between various customer classes and utility companies."[4] The notion that residential-customer interests are unaccounted for in the proposed Stipulation is therefore simply incorrect.

OCC's claim that the Stipulation fails for lack of serious bargaining fares no better. For starters, OCC's claim that the Stipulation contains just two substantive provisions[5] is untrue because it overlooks the provision in the Stipulation that requires at least 85% advanced-meter deployment along a meter-reading route before the tariff provision kick in.[6] The Staff requested this provision to ensure that designated meter reading routes were saturated with advanced meters before the routes were designated as advanced-meter reading routes. This is to ensure that random installation of advanced meters due to a meter replacement of a faulty meter would not cause a customer to incur a meter reading charge if their neighbor with a traditional meter was still being read manually.

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4 Tr. at 216.

5 OCC Br. at 5.

6 Joint Ex. 1 at Original Sheet No. 103-12 of Stip. Ex. B-2.

According to OCC, the Stipulation's data-sharing clause requiring AEP Ohio to provide information to Staff on advanced meter opt-out service is "illusory"[7] because R.C. 4905.06 and 4905.15 already authorize this type of sharing arrangement. To be sure, these statutes confer broad authority on the Commission (and derivatively its Staff) to examine a public utility's operations. But these statutes do not prescribe the type of information that a utility is required to keep. Is it possible that AEP Ohio was going to track some of the information contemplated by the Stipulation anyway? Perhaps. But maybe not on a monthly basis, and maybe not on the level of granularity that Staff would like. In any event, there is value in certainty and predictability. And the Stipulation removes any guesswork about how the data is kept by eliminating the potential for future haggling between the Company and Staff through a binding data-sharing commitment. OCC may scoff at this, but it is a feature that is important to Staff, and one that will ensure that Staff stays informed of how advanced meter opt-out service plays out in the coming months and years.

B. The proposed charges are cost-based.

The Opposing Parties contend that the proposed charges are not cost-based.[8] The record belies this assertion. The spreadsheet attached to AEP Ohio's application sets out

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7 OCC Br. at 5.

8 OCC Br. at 6; OPAE Br. at 4.

line-item by line-item the various cost components that make up the one-time and recurring fees.[9] At the hearing, AEP Ohio witness Andrea Moore expounded on the basis for these fees. She explained that the cost components for these fees originated in AEP Ohio's last distribution rate case that was approved by the Commission.[10] She told how the Company's meter group developed the average travel time and the average time to read the meter based on its first-hand knowledge out in the field.[11] And she explained that, based on the meter group's experience, meters are read on average 8.875 times per year.[12] All of this then gets applied against the Company's costs for labor[13] and vehicles to produce a cost-based recurring fee and one-time fee.[14] As shown by the record, the notion that the recurring fee is not cost-based is demonstrably false.

The disconnect between what the record actually shows and what OCC alleges it shows is underscored by the testimony of its own witness. Whereas OCC's brief cites the absence of a cost-based justification, its own witness James Williams conceded that: he does not question the average travel time per trip;[15] he has no idea about how long it

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9 AEP Ohio Ex. 2 at Ex. E to the Application.

10 Tr. at 17, 24.

11 Tr. at 36-37, 44.

12 Tr. at 49.

13 OCC suggests that using independent contractors to read meters distorts the labor rate. OCC Br. at 15. But OCC did not submit any discovery on this topic. Tr. at 153.

14 Tr. at 43.

15 Tr. at 151.

takes to switch out a meter;[16] he has no expertise in reading meters;[17] he does not question the labor costs;[18] and he does not question the vehicle costs. If anything, the only justification missing here is the one for OCC's argument attacking the Company's' well-supported foundation for the cost-based components.

The fact that the inputs for the recurring and one-time fees originated in the Company's last distribution rate case does not negate the cost-based character of the two charges.[19] It is true that the cost inputs in that proceeding were developed for commercial interval meters[20] whereas this proceeding deals with advanced meters. But there is nothing wrong with using those inputs here, especially where in some respects the costs associated with reading commercial interval meters are exactly the same as reading advanced meters, and in other respects the cost differentials between the two are negligible. Moreover, the Commission approved the $43 charge when it adopted the proposed stipulation in the Company's base rate proceeding.[21] Thus the Opposing Parties' notion that the application is somehow founded upon invalid inputs is groundless.

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16 Tr. at 152.

17 Tr. at 148.

18 Tr. at 152.

19 OCC Br. at 13-17; OPAE Br. at 5-6.

20 Tr. at 25.

21 Tr. at 110-11.

Start with labor and vehicle rates. Those two inputs will not vary based on the type of meter that is being read. Whether it be a commercial interval or an advanced meter, the applicable labor and vehicle rates are the same. Given this, it makes eminent sense to use those same labor and vehicle rates in this proceeding. OCC witness Williams did not point to any evidence showing a difference in labor rates.[22] And he could not express an opinion on whether there is a difference in vehicle rates.[23]

The 15 minute average increment of time to read a commercial interval meter based on the Company's field experience is equally applicable here too. Does this mean that it will take 15 minutes to read every opt-out customer's meter? Of course not. Some will be shorter and some will be longer depending on ease (or lack thereof) of ingress and egress. But that's the whole point, the average smooths these fluctuations out and is the only feasible way for this to be done. Even Mr. Williams could not propose an alternative to this figure.[24] This is because he does not have any expertise in reading meters, designer meter-reading routes, or managing a team of meter readers.[25] He concedes that the Company is the entity that possesses the expertise on these topics.[26]

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22 Tr. at 153.

23 Tr. at 154.

24 Tr. at 160.

25 Tr. at 148.

26 *Id.*

The travel time to read a commercial interval meter versus an advanced meter is not meaningfully different either. At the outset, even Mr. Williams concedes he does not know if there is a difference in travel times between industrial customers and residential customers.[27] Moreover, AMR meters are spread throughout the Company's territory just like commercial interval meters,[28] so it certainly makes sense that an average travel time of 30 minutes[29] is a reliable guidepost here. And the fact that AMI meters are clustered in Northeast Columbus,[30] not scattered about, does not require a different result. Several reasons support this.

First, 487,000 AMR meters have been installed versus 132,000 AMI meter-installations.[31] Thus, due to the vastly larger volume of AMR meter deployment, any variances due to the travel times for AMI meters would not materially offset the 30 minute average. Second, to the extent the Opposing Parties seek an individualized rider to

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27 Tr. at 152.

28 Tr. 61, 111-112.

29 Tr. at 39.

30 Tr. at 57.

31 Tr. at 63, 156.

account for any alleged difference between AMI and AMR meter travel times, the Commission has emphatically rejected that approach.[32] Third, the Commission's rules authorize a single tariff, not multiple tariffs applicable on the basis of a customer's residence.[33] Finally, individualized tariffs would be unworkable in practice, and burdensome for the Company to administer and Staff to monitor. Using an average travel time avoids these difficulties and is the only viable means of structuring a uniform tariff. In sum, neither the Commission nor common sense require that opt-out fees be crafted on an individualized basis with the type of meticulous exactitude that the Opposing Parties seem to gesturing towards. A cost-based fee structure based on averages that are supported by field experience is a sensible way to develop the advanced meter opt-out service tariff.

Proceeding from the mistaken premise that the initially-proposed recurring fee of $31.08 is not cost-based (as explained above, it *is* cost-based), OCC criticizes the reduction of this fee to $24 as proposed in the Stipulation because it is not justified on the basis of cost.[34] This is an odd criticism for OCC to make. Given its predilection for seeking lower rates for customers, one would think OCC would find this reduction to the recurring fee a laudatory aspect of the proposed Stipulation. Evidently not. But putting that

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32 *See Metering Rules Proceeding*, Case No. 12-2050-EL-ORD (Opinion and Order at 17) (Oct. 16, 2013) ("[we] will not direct that those riders be divided and applied differently to customers.").

33 *See* Ohio Adm. Code 4901:1-10-05(a).

34 OCC Br. at 16.

aside, the Commission does not require stipulations to set out every detail from the negotiations. A rule like that would chill negotiations and run afoul of the "public policy in favor of the negotiated settlement of matters that would otherwise have to be litigated * * * ."[35] As the language from the proposed Stipulation acknowledges, it "is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated."[36] And it is this "reasonable compromise" that produced a financial benefit to customers in the form of a lesser recurring fee. Tearing up the proposed Stipulation on the grounds advanced by OCC argument would thwart settlement talks in future cases. This is in no one's interest.

C. The Stipulation embodies a package of features that warrants adoption.

OCC's initial argument in support of the notion that the Stipulation does not, as a package[37], benefit the public interest is a non-starter.[38] In direct contradiction to the Commission's rule, OCC claims that "customers should not be charged for opting-out of

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35 *AAAA Enters., Inc. v. River Place Community Urban Redevelop. Corp.*, 50 Ohio St.3d 157, 162, 553 N.E.2d 597 (1990).

36 Joint Ex. 1 at 4.

37 OCC repeatedly drapes the word "package" in scare quotes. Staff uses the word in its unadorned form.

38 OCC Br. at 10.

the advanced meter installation requirement."[39] But now is not the time to relitigate the debate about whether it is wise policy to charge customers for electing to receive advanced meter opt-out service. The Commission's rulemaking proceeding resolved that debate. As adopted, Ohio Adm. Code 4901:1-10-05(J)(5)(c) and (d) authorize cost recovery — in the form of a one-time and a recurring fee — from customers electing to receive advanced meter opt-out service. These directives are unambiguous. It is not an efficient use of the Commission's or the parties' resources to relitigate the course taken in the rulemaking proceeding by following OCC's previously-rejected approach.

The notion that the Stipulation does not even contain a package at all is even more untenable. According to OCC, because the data-sharing agreement is "illusory," there is really only one feature in the Stipulation: the cost recovery mechanism.[40] As explained above, OCC is wrong for two reasons. First, the data-sharing agreement between Staff and AEP Ohio is a valuable feature because it resolves beyond doubt the type and frequency of information that must be kept concerning advanced-meter opt-out service. While R.C. 4905.06 and R.C. 4905.15 grant the Commission and its Staff broad access to a public utility's operations, these statutes do not prescribe the type of information that must be kept. The Stipulation does. And in so doing, benefits Staff's supervisory mission by giving it a greater handle over the development of advanced meter opt-out service. Second, OCC ignores the Stipulation's provision requiring 85% advanced meter

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39 OCC Br. at 8.

40 OCC Br. at 9-10.

deployment. In short, the Stipulation embodies three features: (1) the reduction in the recurring fee; (2) the data-sharing agreement; and (3) the 85% deployment provision. Collectively, these features constitute a package.

OCC's complaint that the tariff language does not guarantee a monthly meter read is overblown.[41] For starters, its brief presents an incomplete picture of what the tariff actually provides. While the tariff does not guarantee a monthly meter read, it goes on to provide that the Company "will attempt to read the meter at regular monthly intervals."[42] Ms. Moore reaffirmed this commitment at the hearing.[43] This commitment from the Company is conspicuously absent from OCC's brief.

The Opposing Parties next err by decrying the possibility that customers could be charged for meter reading in months when the meter is not read.[44] The flaw with this argument is that it ignores the fact that the recurring fee is calculated on a pro rata basis. The Company was well aware that meters are not read every month. Exigencies beyond the Company's control — in particular, extreme weather events — sometimes prevent a monthly read. To account for this, the Company calculated the recurring fee based on field experience that meters are read on average 8.875 times per year.[45] This average was

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41 OCC Br. at 11-12.

42 Joint Ex. 1 at Original Sheet No. 103-12 of Stip. Ex. B-2.

43 Tr. at 126-127.

44 OCC Br. at 12; OPAE Br. at 9.

45 Tr. at 49.

then built in to the calculation of the recurring fee to come up with a customer's pro rata share of meter reading costs. In other words, opt-out customers are getting charged as if their meters are being read 8.875 times per year, which is exactly what the data shows based upon filed experience. This is plainly reasonable.

D. The Opposing Parties recommendations regurgitate the same losing proposals that the Commission rejected in the rulemaking proceeding.

Perhaps the Opposing Parties thought the Commission was kidding when it adopted rules applicable to advanced meter opt-out service. How else to explain their recommendations which flatly contradict the Commission's express directives? It cannot be due to any ambiguity in the meaning of the rules, indeed they never make that argument. Plainly, they do not like the policies embodied in the Commission's rules. But that policy debate is over. And relitigating these settled policy debates is neither an efficient use of the Commission's or the parties' resources. Their recommendations should be summarily rejected.

For its part, OCC says customers should not be charged to keep the traditional meter that has been on their homes for a substantial period of time.[46] This is a non-starter. The Commission's rules authorize exactly this type of charge, in the form of a recurring fee applicable to customers wishing to retain their traditional meter.[47] And

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46 OCC's Br. at 17.

47 See Ohio Adm. Code 4901:1-10-05(J)(5)(d).

OCC's appeal to what it views as the Company's insignificant revenue stream flowing from this charge does not make its proposal any more persuasive. The rule authorizes the charge regardless of the revenue stream's magnitude.

Next, the Opposing Parties say the one-time and recurring charges should not be imposed because the Company has not identified any cost savings arising from gridSMART deployment.[48] But they do not dispute this concept was raised in the rule-making proceeding.[49] And they cannot seriously dispute that the Commission defeated it: "[we] deny OCC's request to decrease opt-out service costs by the avoided costs because by choosing opt-out service, those customers actually decrease the effectiveness of the smart grid and thus raise costs on the rest of customers."[50] Having lost once already, the Opposing Parties should give up the ghost and respect the Commission's policy judgments. There is no need to plow this same ground again.

The Opposing Parties say customers should not be subjected to opt-out charges because they have not been educated about advanced meters.[51] This begs the question: aside from a few outliers, is there really a groundswell of customer confusion about how advanced meters work? Aside from a generic reference to alleged customer concerns,[52]

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48 OCC's Br. at 18; OPAE Br. at 11.

49 Tr. at 201-202.

50 *Metering Rules Proceeding*, Case No. 12-2050-EL-ORD (Finding and Order at 15) (Oct. 16, 2013).

51 OCC's Br. at 19.

52 OCC Ex. 4 at 9 (Williams Testimony).

OCC certainly did not adduce any concrete evidence to substantiate this. And when pressed on cross, Mr. Williams could not express an opinion about whether privacy or health concerns provide legitimate bases for refusing advanced meters.[53]

Another question from the Opposing Parties' proposal remains unanswered: how long should customers have to get accustomed to advanced meters? Weeks, months, years, even longer? Some AMI meters have been around since 2011,[54] but they do not say what an appropriate amount of time would be, thereby illustrating the unworkability of their approach. How about recalcitrant customers that refuse advanced meters even after receiving educational materials — should they still be exempt from the opt-out charges? The Opposing Parties give no answer. In short, the hopelessly inexact proposal put forth by them raises more questions than it answers and deserves no weight. The bottom line is that the Commission has already answered their worries by mandating that the Company "explain the facts" about advanced meters and "address any customer concerns * * * ."[55] This ought to be enough.

The Opposing Parties suggest that customers should have the option to read their own meter and submit that reading to the Company.[56] This is not a viable option because it overlooks the tendency for customers to misread their meters. Ms. Moore stated that

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53 Tr. at 190-191.

54 Tr. at 182-183.

55 Ohio Adm. Code 4901:1-10-05(J)(3)(a).

56 OCC Br. at 20; OPAE Br. at 7-8.

the Company experiences misreads when customers take up this responsibility, likely owing to the fact that customers lack the qualifications to reliably perform this job.[57] Misreads raise costs for the Company and delay accurate readings for the customer, a result that is in no one's interest. Meter reading should be done by those with the expertise and personnel to carry out the job: the Company. That is why the Commission's rules lay out a host of duties prescribing how and when the Company must read the meter.[58]

OPAE raises the specter of single-issue ratemaking to claim that the proposed Stipulation violates important regulatory principles, and suggests that the Commission should hold an "appropriate regulatory proceeding" to fully examine the costs associated with advanced meter opt-out service.[59] OPAE's concerns are easily answered. First, the Commission has adopted a rule authorizing the exact type of charges that the Stipulation proposes for recovery. If OPAE thinks the rule authorizing these charges violates important regulatory principles it should say so; tellingly, it doesn't. Second, convening a large-scale evidentiary proceeding to address the costs associated with providing advanced meter opt-out service to 82 customers (as things currently stand) is not an efficient use of the Commission's or the parties' resources. The proceeding held here afforded the Opposing Parties the opportunity to do discovery, depose witnesses, elicit

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57 Tr. at 80.

58 See Ohio Adm. Code 4901:1-10-05(I).

59 OPAE Br.at 10-11.

testimony on direct and cross, file written briefs, and (if need be) submit applications for rehearing. These procedural safeguards are more than ample to address OPAE's concerns.

CONCLUSION

For all the foregoing reasons, the Commission should reject the contentions advanced by the Opposing Parties and approve the proposed Stipulation.

Respectfully submitted,

Michael DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/ Ryan P. O'Rourke
Ryan P. O'Rourke
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
ryan.orourke@puc.state.oh.us

On behalf of the Staff of
The Public Utilities Commission of Ohio

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 7th day of July, 2015.

/s/ Ryan P. O'Rourke
Ryan P. O'Rourke
Assistant Attorney General

Parties of Record:

Steve T. Nourse
Matthew S. McKenzie
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
msmckenzie@aep.com

Dane Stinson
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
dstinson@bricker.com

Terry Etter
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215
terry.etter@occ.ohio.gov

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 W. Lima Street
Findlay, Ohio 45840
cmooney@ohiopartners.org

Summary: Brief Reply Brief submitted by Assistant Attorney General Ryan O'Rourke on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio