

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Office of the Ohio Consumers' Counsel,)	
)	
Complainant,)	
)	
v.)	
)	Case No. 16-0782-EL-CSS
Ohio Power Company,)	
)	
Respondent.)	

**MEMORANDUM CONTRA OHIO POWER COMPANY'S MOTION FOR
TARIFF AMENDMENT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On April 12, 2016, the Office of the Ohio Consumers' Counsel ("OCC") filed a complaint against Ohio Power Company ("AEP Ohio") to protect submetered residential consumers in its service territory. The complaint would protect Ohioans who have been billed unreasonably high rates and denied the significant consumer protections and market-based pricing that other Ohioans receive.¹ Simultaneously with its complaint, OCC filed a motion for a moratorium on all new AEP Ohio sales to submeterers who resell service to submetered residential consumers.²

On April 27, 2016, AEP Ohio filed an answer to the OCC complaint, a memorandum contra the OCC's motion for a moratorium, and its own motion to amend

¹ See *In the Matter of the Complaint and Request for Relief for Consumers by the Office of the Ohio Consumers' Counsel*, Case No. 16-0782-EL-CSS (Apr. 12, 2016).

² See *Motion for a Moratorium to Stop AEP Ohio From Providing New Service to Those who Resell Service to Submetered Residential Consumers by the Office of the Ohio Consumers' Counsel*, Case No 16-0782-EL-CSS (Apr. 12, 2016).

its tariffs (the motion at issue here).³ In its pleadings, AEP Ohio agreed with OCC that “the practice of ‘submetering’ has proliferated in recent years and has caused substantial harm to customers in AEP Ohio’s territory.” AEP Ohio further stated that its “tariff does not currently prohibit submetering,” and “the [PUCO] should revise AEP Ohio’s tariff to clarify what is permissible and to limit the harm caused by submetering.”⁴ OCC also agrees with AEP Ohio that submetering denies residential customers the ability to shop for competitive generation supply, denies customers critical consumer protections of rate regulation, subjects customers to higher and unknown rates, denies customers other consumer protections embedded in the PUCO’s rules and Ohio law, and could raise reliability concerns.⁵

As a means to prevent further harm to consumers from submeterers, AEP Ohio proposed to amend its tariff to limit submetering. Specifically, AEP Ohio requested that the PUCO approve its tariff modifications so that AEP Ohio will “not provide electric service to any submetered premises where a landlord, condominium association, ‘submetering company,’ or any other entity is assessing a markup or separate charge to individual tenants or occupants.”⁶ AEP Ohio explained that its tariff modification would prohibit electrical service from being provided to any premise served by AEP Ohio where any markup or additional charge is assessed to all end-use customers for electric service.⁷

³ See *Answer of Ohio Power Company*, Case No. 16-0782-EL CSS (Apr. 27, 2016) (AEP Ohio Answer); *Ohio Power Company’s Memorandum Contra OCC’s Motion for a Moratorium*, Case No. 16-0782-EL-CSS (Apr. 27, 2016) (AEP Ohio Memo Contra Moratorium); *Ohio Power Company’s Motion for Tariff Amendment and Memorandum in Support*, Case No. 16-0782-EL-CSS (Apr. 27, 2016) (AEP Ohio Motion to Amend).

⁴ AEP Ohio Motion to Amend at 1, 3.

⁵ *Id.* at 4.

⁶ *Id.* at 1.

⁷ *Id.* at 7-8.

OCC appreciates the proposal by AEP Ohio that it not provide electric service to apartment communities, condominium complexes, and other types of housing that submeter to residential customers.⁸ But AEP Ohio's proposed tariff modifications may need clarification. AEP Ohio's proposal appears to be a blanket prohibition of reselling electric service,⁹ applying to anyone who assesses a charge or markup to AEP Ohio's charges to all submetered customers, including non-residential customers.

AEP may desire to alter its tariff to address non-residential issues in addition to residential issues. But such an alteration goes beyond the scope of OCC's complaint, which is to ban submetering to *residential* customers, for the reasons stated. This submetering practice has caused substantial harm to customers in AEP Ohio's territory."¹⁰ AEP Ohio's proposed expansion raises additional issues not raised in OCC's complaint to protect residential consumers. These non-residential issues will unduly prolong and delay needed relief that could be granted immediately to protect residential customers.

AEP Ohio raises concerns regarding OCC's proposed modifications and the "focus[] on 'resale and redistribution' of electric service."¹¹ AEP Ohio's concerns are misplaced. Resale and redistribution of electric service are terms used throughout AEP Ohio's existing Standard Service Tariff language and AEP Ohio's proposed Standard

⁸ *Reply to Ohio Power Company's Memorandum Contra Motion for a Moratorium to Stop AEP Ohio From Providing New Service to those who Resell Service to Submetered Residential Consumers by the Office of the Ohio Consumers' Counsel*, Case No. 16-0782-EL-CSS (May 4, 2016).

⁹ As that term is defined and used in Section 17 of AEP Ohio's tariffs. See Section 17 of AEP Ohio's Open Access Distribution Service Tariff, P.U.C.O. No. 20, 2nd Revised Sheet No. 103-13D and Section 17 of AEP Ohio's Standard Service Tariff, P.U.C.O. No. 20, 1st Revised Sheet No. 103-13.

¹⁰ AEP Ohio Motion to Amend at 1, 3.

¹¹ *Id.* at 9.

Service Tariff language, as well as language referenced from the other utilities' PUCO-approved tariffs.¹²

OCC's proposed language explains who provides the electric service and the customer's utilization of that electric service. Given that AEP Ohio's Open Access Distribution Service Tariff does not specifically reference or prohibit the resale of energy, OCC's proposed revisions also created similarities and consistencies between the two tariffs. Nonetheless, as explained by AEP Ohio, the revised tariff language submitted by AEP Ohio and OCC are similar in substance.¹³ OCC agrees that there are many ways to revise the tariffs with the same result. That result is to protect residential consumers by banning all submetering, existing and future, that subjects residential consumers to the abusive practices outlined in OCC's complaint. Accordingly, the PUCO should adopt OCC's proposed tariff modifications attached to its complaint or the PUCO should adopt AEP Ohio's proposed tariff amendments as modified by OCC.¹⁴

AEP Ohio proposes to implement its tariff modifications immediately and stop all sales to submeterers. It is essential to assure continuity of service for residential consumers and to address other concerns raised by OCC, including a transition period for

¹² *Joint Reply Comments on Protecting Ohioans from Excessive Charges from Utility Submeterers by the Office of the Ohio Consumers' Counsel and the Ohio Poverty Law Center*, Case No. 15-1594-AU-COI, at 6 (Feb. 5, 2016).

¹³ AEP Ohio Motion to Amend at 9.

¹⁴ See Attachment A. OCC's proposed revisions to AEP's proposed amendments are included in Attachment A. OCC notes, however, that it may propose additional tariff changes as this process continues.

existing submetered premises and potential utility charges.¹⁵ The banning of existing abusive submetering practices should be implemented in a way to protect residential consumers during the implementation of the ban.

OCC appreciates that AEP Ohio has responded constructively to OCC's complaint by making a recommendation for the PUCO to protect residential consumers. AEP Ohio would restrict the resale of electric utility services through its tariffs (and changes to its tariffs). The PUCO should prohibit AEP Ohio from providing electric service to any submetered premise where the submetering entity is assessing residential consumers with a charge or markup above otherwise applicable utility charges. All Ohioans should receive the benefits and protections that they deserve and Ohio law requires for their electric utility services. The PUCO should adopt OCC's proposed tariffs or AEP Ohio's proposed tariffs with OCC's changes (as attached hereto) to protect Ohioans in AEP Ohio's service territory.

Respectfully submitted,

BRUCE J. WESTON (0016973)
OHIO CONSUMERS' COUNSEL

Kyle L. Kern, Counsel of Record (0084199)
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
Telephone (Kern Direct): 614-466-9585
kyle.kern@occ.ohio.gov
(Will accept service via email)

¹⁵ See *In the Matter of the Complaint and Request for Relief for Consumers by the Office of the Ohio Consumers' Counsel* at ¶ 43 (prayer for relief that there be a six month period to transition out of existing submetering contracts), Case No. 16-0782-EL-CSS (Apr. 12, 2016). OCC reserves the right to oppose any unjust and unreasonable charges proposed by AEP Ohio in any subsequent proceeding associated with AEP Ohio's purported need "to install new infrastructure or take over infrastructure that was installed by landlords or submetering companies." AEP Ohio Motion to Amend at footnote 1.

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
bojko@carpenterlipps.com
(Will accept service via email)

*Outside Counsel for the
Office of the Ohio Consumers' Counsel*

ATTACHMENT A

OHIO POWER COMPANY

2nd4th Revised Sheet No. 103-13

Cancels 1st Revised Original Sheet No. 103-13

P.U.C.O. NO. 20

TERMS AND CONDITIONS OF SERVICE

17. RESALE OF ENERGY

Electric service will not be supplied to any party contracting with the Company for electric service (hereinafter in this Section called "Customer") except for use exclusively by (i) the Customer at the premises specified in the service request on contract between the Company and the Customer under which service is supplied and (ii) the occupants and tenants of such premises. Electric service will not be supplied to any submetered premises where the Customer, the Customer's agent, or any other entity assesses any charge for electric service to residential occupants, residential tenants, or any other residential end-user, except where the Customer is a landlord that owns the property upon which electric service will be supplied, is not operating as a public utility, and passes on the Company's charges for providing the utility services without markup to occupants or tenants and such charges-costs are allocated based on each occupant's or tenant's actual usage.

Resale of energy will be permitted only by legitimate electric public utilities subject to the jurisdiction of the Public Utilities Commission of Ohio and only by written consent of the Company. In addition, resale of energy to submetered residential customers will be permitted for electric service and related billing as they apply to the resale or redistribution of electrical service from a landlord to a residential tenant where the landlord is not operating as a public utility, and the landlord owns the property upon which such resale or redistribution takes place, and the landlord does not assess any charge for electric service except as provided above.

Filed pursuant to Order dated February 25, 2015 in Case No. 13-2385-EL-SSO

Issued: April 24, 2015

Effective: June 1, 2015

Issued by
Pablo Vegas, President
AEP Ohio

P.U.C.O. NO. 20

TERMS AND CONDITIONS OF
OPEN ACCESS DISTRIBUTION SERVICE

17. RESALE OF ENERGY

Electric service will not be delivered to any party contracting with the Company for distribution service (hereinafter in this Section called "customer") except for use exclusively by (i) the customer at the premises specified in the service request or contract between the Company and the customer under which service is supplied and (ii) the occupants and tenants of such premises. Electric-Distribution service will not be supplied to any premises where the Customer, the Customer's agent, or any other entity assesses any charge for electric service to residential occupants, residential tenants, or any other residential end-user, except where the Customer is a landlord that owns the property upon which electric service will be supplied, is not operating as a public utility, and passes on the Company's charges and any generation supply charges (not to exceed the Company's current residential standard service offer generation rate) without markup to occupants or tenants and such charges-costs are allocated based on each occupant's or tenant's actual usage.

Resale of energy will be permitted only by legitimate electric public utilities subject to the jurisdiction of the Public Utilities Commission of Ohio and only by written consent of the Company. In addition, resale of energy to submetered residential customers will be permitted for electric service and related billing as they apply to the resale or redistribution of electrical service from a landlord to a residential tenant where the landlord is not operating as a public utility, the landlord owns the property upon which such resale or redistribution takes place, and the landlord does not assess any charge for electric service except as provided above.

Filed pursuant to Order dated February 25, 2015 in Case No. 13-2385-EL-SSO

Issued: April 24, 2015

Effective: June 1, 2015

Issued by
Pablo Vegas, President
AEP Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served by electronic mail to the persons listed below, on this 12th day of May 2016.

/s/ Kimberly W. Bojko
Kimberly W. Bojko
*Outside Counsel for the
Office of the Ohio Consumers' Counsel*

SERVICE LIST

William Wright
Ohio Attorney General's Office
Public Utilities Commission of Ohio
30 E. Broad St., 16th Fl.
Columbus, Ohio 43215
William.wright@ohioattorneygeneral.gov

Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
stnourse@aep.com

Frank P. Darr
McNees, Wallace & Nurick LLC
21 E. State Street 17th Floor
Columbus, OH 43215
fdarr@mwncmh.com

Counsel for Industrial Energy Users-Ohio

Mark T. Keaney
Calfee, Halter & Griswold LLP
1200 Huntington Center
41 South High Street
Columbus, OH 43215
mkeaney@calfee.com

Attorney for OAA/ICSC

Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216
mjsettineri@vorys.com

Counsel for Nationwide Energy Partners, LLC

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/12/2016 5:18:01 PM

in

Case No(s). 16-0782-EL-CSS

Summary: Memorandum Memorandum Contra Ohio Power Company's Motion for Tariff Amendment by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kimberly W. Bojko