

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**OHIO POWER COMPANY'S
MEMORANDUM CONTRA OCC'S APPLICATION FOR HEARING**

Steven T. Nourse
Matthew S. McKenzie
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Tel: (614) 716-1608
Fax: (614) 716-2950
stnourse@aep.com
msmckenzie@aep.com

Counsel for Ohio Power Company

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**OHIO POWER COMPANY'S
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AEP Ohio submits this Memorandum Contra the Application for Rehearing ("AFR") filed by the Office of the Ohio Consumers' Counsel ("OCC") in this matter. As discussed below, each of OCC's purported Assignments of Error ("AOE") is meritless, and OCC's requested relief on rehearing should be denied.

I. The Stipulation was the product of serious bargaining. (OCC AOE 1)

OCC contends that the Opinion and Order violates Ohio Revised Code ("R.C.") Section 4903.09 because the Commission allegedly "fail[ed] to explain" why the Stipulation in this proceeding was "the product of serious bargaining" under the first prong of the Commission's three-part test for contested settlements. OCC AFR at 4-7. This argument is meritless. The Opinion and Order fully supported its conclusion that the Stipulation was "the product of serious bargaining." Opinion and Order at 7-8. Specifically, the Opinion and Order cited testimony of AEP Ohio witness Andrea Moore that "the stipulation was the product of meetings and negotiations involving experienced counsel, as well as technical experts from the parties in the case." Opinion and Order at 6; *id.* at 7 (citing AEP Ohio Ex. 1 at 4; Tr. at 215-216). And the Opinion and Order specifically noted that the evidence showed that *all* "the parties in the case" were part of the negotiations, including OCC. *Id.* at 6; *see also id.* at 7 ("The record demonstrates that all of the parties who had intervened before the stipulation was filed were included in settlement discussions and were provided opportunities to represent their interests in the stipulation."); *id.* at 8 ("[T]here is no evidence in the record that any class of customers was excluded from the settlement negotiations.").

Contrary to OCC's claims, furthermore, the Opinion and Order provided ample support for its finding that "the signatory parties represent a wide variety of diverse interests." Opinion and Order at 7. As the Commission explained, OCC does not have a monopoly on the consideration of residential interests. *See* Opinion and Order at 7-8. Staff seriously considers the impact of proposed tariffs on residential customers, a fact OCC's only witness in this case admitted. Tr. at 216 (OCC witness Williams admits that Staff "has balanced interests between customers of all classes and the utility companies"). In any event, the Commission has previously made clear that the "three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component, as presented by OCC," and thus the Commission has "reject[ed]" previous attempts by OCC "to revise the test to evaluate stipulations based on the diversity of signatory parties." *In re Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement*, Case Nos. 14-1693-EL-RDR et seq., Opinion and Order (Mar. 31, 2016) at 52.

OCC's arguments regarding the first prong of the test (*see* OCC AFR at 4-7) boil down to the same misguided argument OCC has previously made in this proceeding and in numerous other proceedings: That no stipulation involving residential customers is valid unless OCC signs it. *See* OCC AFR at 6 (any stipulation is "inherently reasonable" where "an entire customer class" has "refused to sign the settlement"). But as the Opinion and Order explains, the Commission has "repeatedly determined that [it] will not require any party, including OCC or OPAE, to agree to a stipulation, in order to meet the first part of the three-part test." Opinion and Order at 7 (citing numerous cases). OCC offers no new arguments to call this long line of precedent into question. The Commission properly found that the Stipulation in this proceeding

was “the product of serious bargaining” under the first prong of the Commission’s three-part test. OCC does not – and should not – have an effective “veto” under this first prong.

II. This proceeding provides customers a new “tariff for opt-out service” under O.A.C. 4901:1-10-05(J)(5)(a). (OCC AOE 2)

Next, OCC confusingly contends that the Commission somehow erred in concluding that this proceeding established a “new service” because, in OCC’s view, “residential customers have had the ability to opt out of smart meter service” since the Commission issued its advanced meter opt-out rules in Case No. 12-2050-EL-ORD (adopting O.A.C. 4901:1-10-05(J)). But this argument is belied by the very rules OCC attempts to rely on. The Commission’s opt-out rules specifically directed utilities such as AEP Ohio to “file a proposed tariff for opt-out service within thirty calendar days of the effective date of this rule.” O.A.C. 4901:1-10-05(J)(5)(a). Thus, this proceeding, which is AEP Ohio’s effort to comply with that directive, seeks a *new* tariffed service – i.e., “opt-out service.”

Indeed, OCC has it backwards when it references “smart meter service,” because there is no such thing. AEP Ohio installs advanced meters as part of its service under its existing tariffs; there is no separate tariff for “smart meter service.” Instead, the Commission directed AEP Ohio to propose a separate “tariff for opt-out service,” O.A.C. 4901:1-10-05(J)(5)(a), and that is what this proceeding is about. The Commission was correct in determining that this “tariff for opt-out service” is a “new tariff,” Opinion and Order at 14, and OCC’s arguments in this regard are meritless.

III. The Commission correctly concluded that the Stipulation, including the \$24 recurring fee, benefits customers and the public interest. (OCC AOE 3)

OCC next argues that the “evidence in this proceeding” does not support the Commission’s conclusion that the approved \$43 one-time fee and \$24 recurring fee are “cost-based” and “provide[] customers a benefit.” OCC AFR at 7-8. In making that claim, OCC

merely repeats the same arguments it made in its post-hearing brief and the Commission rejected in its Opinion and Order. Those arguments are meritless and provide no new basis for the Commission to reconsider its findings.

OCC first claims that “AEP Ohio failed in its burden to prove that its initially proposed monthly meter reading charge of \$31.80 was cost based.” OCC AFR at 8. But as the Commission correctly concluded, “[t]he record demonstrates that the average monthly cost of reading meters and providing advanced meter opt-out service is not less than \$31.80.” Opinion and Order at 10. That finding was based on substantial record evidence. As the Opinion and Order describes, *see id.* at 3 – and, remarkably, as even OCC explains in its application for rehearing, *see* OCC AFR at 13 – AEP Ohio explained the basis for its proposed charges in Exhibit E to its Application, which presented a line-item breakdown of the costs. Those 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. Then, AEP Ohio adjusted the cost estimates for the likely annual rate of reading opt-out residential meters. This detailed basis for the cost-based fee was clearly spelled out in the application and was further explained in the hearing testimony of AEP Ohio witness Moore. *See, e.g.*, Tr. 9:21-10, 17:16-18, 23:9-25:19, 38:11-40:5, 106:1-11:13. As the Commission correctly found, this was more than enough evidence to satisfy AEP Ohio’s burden of proof as to the cost-based foundation of the proposed fees. *See* Opinion and Order at 10.

Next OCC criticizes the \$24 recurring proposed in the Stipulation and approved by the Commission as “just a number agreed upon by the PUCO Staff and AEP Ohio.” OCC AFR at 8. But as the Commission correctly found, “the stipulation represents *a compromise* to lower the

recurring monthly charge from \$31.80 to \$24.” Opinion and Order at 8 (emphasis added). There is nothing wrong with parties to a stipulation proposing a charge as “a compromise.” Critically, moreover, the negotiated reduction from the cost-based \$31.80 charge to the stipulated \$24 charge only *benefits* opt-out customers. *See* Opinion and Order at 10 (“This reduction in the charge from the cost of providing the service benefits ratepayers and is in the public interest.”).

OCC then argues that the \$24 fee “does not benefit customers and is not in the public interest because there is no guarantee that AEP Ohio will even perform a monthly meter read.” OCC AFR at 8. But as relevant here, AEP Ohio’s proposed recurring fee of \$31.80 specifically takes into account AEP Ohio’s estimated frequency of 8.875 meter readings per year for opt-out customers. *See* Opinion and Order at 3 (citing AEP Ohio Ex. 2 at Exhibit E). OCC has never provided any grounds for second-guessing that number, nor has OCC ever provided any competing number. OCC’s argument concerning meter reading frequency is meritless.

IV. OCC’s proposal to throw out this proceeding and conduct a completely new opt-out tariff case in the gridSMART Phase 2 docket is baseless. (OCC AOE 4)

OCC contends that the Commission should suspend the opt-out charges authorized in the Opinion and Order in order to conduct a completely new hearing on the proper amount of cost-based opt-out fees as part of AEP Ohio’s gridSMART Phase 2 case. *See* OCC AFR at 9-10. For numerous reasons, this proposal is flawed.

Most importantly, the Commission has *already* conducted a complete examination of the proper charges for AEP Ohio’s opt-out service *in this proceeding*. OCC’s request asks the Commission to set aside the work of the parties and the Commission in this case, but as discussed herein, all of OCC’s criticisms of the Opinion and Order are without merit, and the Commission correctly concluded that the evidence presented in this proceeding fully justifies the charges proposed in the Stipulation. *See, e.g.*, Opinion and Order at 10. There are no grounds to

effectively “re-do” this proceeding in the gridSMART docket, and that would be exceedingly wasteful of the Commission’s and all parties’ resources.

Moreover, as explained in AEP Ohio’s Application for Rehearing, *see* AEP Ohio AFR at 3-5, it is critical that the opt-out fees be in place as soon as possible when the gridSMART Phase 2 AMI deployment begins. Cost-based advanced meter opt-out charges establish important incentives for customers to accept advanced meter technology. Such incentives further the Commission’s policy of encouraging the deployment of cost-saving, technologically advanced distribution infrastructure and help ensure that customers will not refuse advanced meters based on arbitrary reasoning. Under OCC’s proposal, however, such incentives could be significantly delayed, thus potentially threatening the effectiveness of AEP Ohio’s gridSMART Phase 2 AMI deployment.

OCC’s delay proposal could also exacerbate the likely customer confusion identified in AEP Ohio’s Application for Rehearing. *See* AEP Ohio AFR at 5-6. If customers in the gridSMART Phase 2 territory were able to decline advanced meters without any charges, the sudden appearance of opt-out charges after the completion of OCC’s lengthy delay proposal would likely will surprise and confuse customers. Customers will not understand why the first months (or years) of opt-out service are “free” but then fees kick in after that. Through no fault of its own, AEP Ohio could be accused of a bait-and-switch tactic by allowing free opt outs and then beginning to charge for the opt-out service several months later.

Furthermore, OCC’s delay proposal is directly at odds with the Commission’s opt-out rules. As noted above, the Commission’s rules contemplate a speedy process for utilities to propose opt-out service tariffs, requiring utilities “file a proposed tariff for opt-out service within thirty calendar days of the effective date of this rule.” O.A.C. 4901:1-10-05(J)(5)(a). The

Commission should adhere to that straightforward procedure under which AEP Ohio's opt-out tariff was approved in this case.

As its last argument for its delay proposal, OCC contends that the proposed charges in this case are flawed because they are based on a fee that was established for manual readings of commercial meters in AEP Ohio's last distribution base rate case. OCC AFR at 9-10. But OCC made this argument in its post hearing briefs, and as AEP Ohio explained at length in its post-hearing briefs, *see* AEP Ohio Br. 8-9; AEP Ohio Reply Br. 11-12, the commercial meter reading fee was adjusted to account for the frequency of residential meter reading and otherwise provided a more-than-sufficient basis for the proposed fees here. The Commission rejected OCC's meritless argument once, and OCC offers no new grounds for the Commission to revisit that decision.

As the Opinion and Order correctly concluded, the record *in this proceeding* fully supported the opt-out fees proposed in the Stipulation. *See* Opinion and Order at 10. There is no reason to throw out that record and start over, as OCC proposes.

V. Contrary to OCC's assertions, AEP Ohio's customers do have options other than opt-out service.

OCC notes that the Commission's December 18, 2013 Entry on Rehearing in Case No. 12-2050-EL-ORD (at 3) expressed the Commission's "belie[f] that the EDUs should work with customers on a case by case basis" and "recognize advanced meter opt-out service as one of many solutions to customer concerns regarding their meters." OCC AFR 11. OCC claims that the Opinion and Order "does not address this requirement and violates the 12-2050 Rulemaking by not requiring the utilities to provide other options that enable customers to avoid having a smart meter placed on their homes." *Id.*

Even if the Commission's statement of "belie[f]" in the December 18, 2013 Entry on Rehearing in Case No. 12-2050-EL-ORD was something that the Opinion and Order in this case could "violate" (a contention that is deeply misguided), OCC completely overlooks the fact that the tariff approved by the Opinion and Order *does* incorporate other options for customers with concerns about advanced meters: Namely, the tariff contains a separate provision under which AEP Ohio will "give the customer the option to relocate the current [i.e., advanced] meter location" so that the customer will "still have an AMI or AMR meter installed, but at a location acceptable to the customer and the company." *See* OCC Ex. 2 (Stipulation) at Stipulated Exhibit B-2 (Original Sheet 103-12). That is precisely the kind of alternative solution that the December 18, 2013 Entry on Rehearing contemplated.

Moreover, as AEP Ohio witness Moore explained, AEP Ohio "customer service representatives do, in fact, contact customers that have opted out of the AMR and the AMI meters and try to resolve their concerns." Tr. 121:13-17. Thus, AEP Ohio fulfills the Commission's directive in the December 18, 2013 Entry on Rehearing to "work with customers on a case by case basis."

Finally, OCC again raises the concept of customers reading their own meters and mailing in meter readings to AEP Ohio as an "alternative" to advanced meter opt-out service. OCC AFR at 11-12. But OCC made this argument before, and the Commission properly rejected it. As AEP Ohio explained in its post-hearing reply brief (at 16-17), AEP Ohio's "mail-in" meter reading program is limited to customers with meter access issues (e.g., a porch built around the meter). Such mail-in meter readings, moreover, can be inaccurate and thus generate customer complaints when the meters are reconciled. In any event, OCC's mail-in concept is an archaic proposal that is the exact opposite of the kind of technological progress the Commission is

hoping to encourage through its opt-out rules. The mail-in proposal is not a reasonable alternative to opt-out service.

VI. OCC's criticisms of the record evidence have been rejected and, in any event, are meritless. (OCC AOE 6)

In its final assignment of error, OCC repeats the litany of criticisms of the record evidence it asserted in its post-hearing briefs. OCC raises no new arguments in this regard on rehearing, and AEP Ohio has already addressed each of OCC's contentions in detail in its post-hearing briefs. *See* AEP Ohio Br. 4-17; AEP Ohio Reply Br. 4-12. To summarize:

- OCC claims that the manual meter reading rate for commercial meters in AEP Ohio's last distribution base rate case is an inappropriate starting point here because "residential AMI meters are concentrated in northeast Columbus." OCC AFR at 14. But AEP Ohio's opt-out tariff also applies to *AMR* meters, which are currently located throughout AEP Ohio's territory, and would further apply to AEP Ohio's proposed gridSMART Phase 2 territory, which is much larger than northeast Columbus. *See* AEP Ohio Br. 8-9; AEP Ohio Reply Br. 11-12; Tr. 56:24-25; 63:9-18; 156:21-157:15. Thus, the territory-wide manual meter reading rate was appropriate to use here because it reflected a *single, average* cost for providing opt-out service to all customers in AEP Ohio's territory.
- OCC criticizes the estimate of 30 minutes per meter travel time on AEP Ohio Ex. 2, Exhibit E. OCC AFR at 14. But this estimate was based on the considerable real-world experience of AEP Ohio's meter reading personnel, and OCC's only witness acknowledged that he had no basis for questioning the figure. *See* AEP Ohio Br. 10-11; AEP Ohio Reply Br. 11-12; Tr. 151:15-17 ("Q. You have no basis to question the 30-minute time figure for residential meters? [OCC witness Williams]: No, I don't.").

- OCC criticizes the estimate of 15 minutes for “average time at meter” on AEP Ohio Ex. 2, Exhibit E. But again, this is based on the experience of AEP Ohio’s meter reading personnel and is a reasonable estimate of the *average* required time, taking into account a variety of potential scenarios. *See* Tr. 47:6-16 (AEP Ohio witness Moore describes the obstacles that AEP Ohio meter readers can face). Once again, OCC’s only witness was unable to offer any grounds for second-guessing the expertise of AEP Ohio’s 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.”); *see also* Tr. 158:16-159:12 (OCC witness 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”).
- OCC claims that AEP Ohio failed to justify its estimated time to remove an advanced meter and install a traditional meter because this estimate was based on supposed “anecdotal estimates,” not “actual records.” OCC AFR at 14-15. Once again, however, AEP Ohio’s evidence was based on the considerable experience and expertise of AEP Ohio’s meter reading personnel. *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”). This was more than enough to satisfy AEP Ohio’s burden of proof, and the evidence OCC put forward to rebut AEP Ohio’s expert estimates was not credible given the lack of experience of OCC’s only witness in reading meters. *See generally*

AEP Ohio Br. 10-11 (providing record citations showing the OCC's witness's lack of expertise in meter reading).

- OCC claims that AEP Ohio's cost estimates should have been adjusted for the cost of contractor labor. OCC AFR at 15-16. But AEP Ohio's estimates were based on the premise that AEP Ohio employees would be performing manual meter readings for opt-out customers. Moreover, as the Commission expressly noted, neither OCC nor any other party "provided a reasonable alternative on the proper amount that customers should be charged for manual meter reading to provide advanced meter opt-out service." Opinion and Order at 12. In light of OCC's failure to come forward with its own proposed charges, all of its criticisms of the Stipulation's proposed cost-based charges ring hollow.
- Finally, OCC again criticizes the reliance on the manual meter reading charge from AEP Ohio's last distribution base rate case because, OCC claims, that case was resolved through a "black box" settlement and thus the manual meter reading charge allegedly "was never specifically approved by the PUCO." OCC AFR at 10, 15-16. But this argument creates a false dichotomy between charges that are "approved" by the Commission and charges that are "specifically approved." No such dichotomy exists, and there are no "levels" of approval in Commission proceedings. When the Commission approves a charge, even where there is a so-called "black box" settlement, the charge is definitively approved. Thus, the manual meter reading fee in AEP Ohio's last distribution base case was fully approved and provided an appropriate starting point for the charges here.

In sum, OCC raises no new arguments on rehearing, and offers no reason for the Commission to deviate from its well-reasoned conclusion that the advanced meter opt-out fees proposed in the Stipulation are fully supported by the record.

CONCLUSION

For the foregoing reasons, OCC's application for rehearing should be denied.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse

Matthew S. McKenzie

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Tel: (614) 716-1608

Fax: (614) 716-2950

stnourse@aep.com

msmckenzie@aep.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Memorandum Contra was sent by, or on behalf of, the undersigned counsel to the following parties of record this 6th day of June, 2016, via electronic transmission.

/s/ Steven T. Nourse
Steven T. Nourse

Email Service List:

cmooney@ohiopartners.org
terry.etter@occ.ohio.gov
dstinson@bricker.com
john.jones@ohioattorneygeneral.gov
natalia.messenger@ohioattorneygeneral.gov

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