BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of a Decoupling Mechanism	)))	Case No. 20-1099-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-1100-EL-AAM

REPLY COMMENTS OF AEP OHIO IN SUPPORT OF ITS APPLICATION FOR A NEW DECOUPLING MECHANISM

Ohio Power Company (AEP Ohio) filed an Application on May 28, 2020 proposing to establish a new decoupling mechanism under R.C. 4928.471. On May 29, the Attorney Examiner issued a procedural schedule with the initial comments due on June 12 and reply comments due on June 22. The Ohio Manufacturers' Association Energy Group (OMAEG) was the sole commenter and raises objections to the Company's Application. AEP Ohio hereby submits reply comments in response to OMAEG and in support of the Company's Application. To the extent Staff files comments regarding the Application at a later date, the Company reserves the right to respond at that time.

A. AEP Ohio's Application is consistent with the controlling statute, R.C. 4928.471, and the Company has sustained its burden of proof.

OMAEG's first proposition is that AEP Ohio's request conflicts with the language of R.C. 4928.471 and the Company consequently failed to sustain its burden of proof. (OMAEG comments at 5-6.) In support of its position in Part A of its comments, OMAEG asserts that the Company's Application "was not timely filed; it seeks to retroactively increase customers' costs;

it seeks a supplemental mechanism; it does not ensure that the mechanism is just and reasonable and designed to recover 2018 annual revenues; and it does not ensure that double recovery does not occur." These cursory and overlapping claims will each be demonstrated to be misguided and/or inaccurate.

OMAEG argues that the Application is untimely because it was filed "for the first time in mid-2020" and the statutory phrase refers to a filing "for the 2019 calendar year and each calendar year thereafter." This selective quotation of the statutory provision and illogical result is not justified by the plain language of the statute. The entire sentence relied upon by OMAEG reads as follows:

> Except as provided in division (E) of this section, not earlier than thirty days after the effective date of this section, *an electric distribution utility may file an application to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter*.

R.C. 4928.471(A) (emphasis added). Thus, the statute merely provides a *permissive* filing opportunity no earlier than thirty days after the effective date of this section. The provision does not say that an application must be filed by December 31, 2019 as OMAEG suggests without a statutory basis. The only language about the timing of a decoupling application merely says "not earlier than thirty days after the effective date of this section" which the Company's Application clearly satisfies.

OMAEG's related claim is that "AEP's request to implement a supplemental decoupling mechanism for the first time in mid-2020 is unjust and unreasonable, effectively increasing customers' costs retroactively." (OMAEG comments at 5-6.) To the extent that OMAEG is suggesting that a filing for 2020 decoupling must be filed and/or approved prior to January 1, 2020, that argument lacks a basis in the statute and directly conflicts with the only decision the Commission has issued under the statute. As a logical and mechanical matter, the time to

implement a decoupling adjustment is after the period being reconciled ends, not during or before. Concluding that the mechanism must be implemented before the period ends is not practical and conflicts with the context of HB 6. For example, R.C. 4928.471 did not even become effective until October 2019 (near the end of that calendar year to be reconciled) and yet the General Assembly provided for an initial decoupling opportunity related to 2019; this undisputed sequence fundamentally undermines OMAEG's suggestion of unlawful retroactive application of the statute by AEP Ohio's proposal. Of course, the Commission's approval of a mechanism under R.C. 4928.471 for the FirstEnergy utilities was approved earlier this year and prospectively implemented a tariffed mechanism for 2019 starting in February, 2020. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Decoupling Mechanism, Case Nos. 19-2080-EL-ATA, et al*. ("*FE Decoupling Case*"), Order at ¶¶ 25-26 (January 15, 2020) (citations omitted). Similarly, AEP Ohio is requesting a 2019 mechanism to begin in 2020 and there remains plenty of time in 2020 to implement the mechanism in a timely manner.

To round out Part A of its objections, OMAEG raises two superficial arguments that the Company's Application: [1] "seeks a 'supplemental' mechanism, which is not authorized by the law, and [2] does not demonstrate that the supplemental mechanism is just and reasonable and designed to recover 2018 annual revenues." (OMAEG comments at 6.) Both of these points are unsupported and invalid. Each will be briefly addressed.

First, the "supplemental" nature of AEP Ohio's decoupling proposal is both reasonable and lawful. The scope of the decoupling mechanism proposed in its Application is just enough to equate AEP Ohio's decoupling with the scope of R.C. 4928.471 – no more and no less – when combined with the Company's existing Pilot Throughput Balancing Adjustment Rider (PTBAR).

Had the Company proposed anything broader in scope that overlaps with the PTBAR, it would have created a conflict with R.C. 4928.471(D)'s double recovery prohibition instead of proactively avoiding one. As stated in its Application, AEP Ohio's supplemental decoupling proposal is designed to establish a supplemental decoupling mechanism under R.C. 4928.471 in addition to, and distinct from, the PTBAR – without altering or otherwise overlapping with the existing PTBAR. (Application at ¶ 6.) The HB 6 decoupling mechanism proposed by the Company only applies to other commercial customers, since the PTBAR already covers residential and small commercial (*i.e.*, GS-1) customers. The phrase "other commercial customers" in this Application refers to AEP Ohio customers that are classified as commercial customers and taking service under GS-2, GS-3 or GS-4 tariffs, except EHG customers (Electric Heating General). (*Id*. at ¶ 7.) The Company's "supplemental" proposal avoids any overlap or duplication as between the PTBAR and the HB 6 mechanism. When combined with the existing PTBAR, the net result is that "base distribution rates for residential and commercial customers shall be decoupled" consistent with R.C. 4928.471(A) and the temporary remedy fills a gap until the Company's next base rate case becomes effective as contemplated by R.C. 4928.471(C).

Second, contrary to OMAEG's unsubstantiated claim, the Company's Application does demonstrate that the supplemental mechanism is designed to recover 2018 annual revenues as required by R.C. 4928.471(B). Exhibit A submitted with the Application shows that the 2018 base distribution revenue (based on rates established in the Company's last base rate proceeding, Case No. 11-351-EL-AIR) is $3.1 million more than the Company's corresponding base distribution revenues realized in 2019. Implementing the proposed Conservation Rider, when combined with existing based distribution rates, is designed to recover 2018 revenues for AEP Ohio. OMAEG offers nothing but an unsupported allegation in claiming that the Application is

not designed to recovery 2018 revenues and Exhibit A to the Application plainly satisfies the Company's burden on that point.

In construing a statute, the Commission's paramount concern is legislative intent and first looks to the plain language in the statute and the purpose to be accomplished. If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary. *WorldCom, Inc. v. City of Toledo*, Case Nos. 02-3207-AU-PWC, 02-3210-EL-PWC, Opinion and Order (May 14, 2003), *citing State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Ed*., 74 Ohio St. 543, 660 N.E.2d 463 (1996). Indeed, the Commission has already reviewed R.C. 4928.471 in a proceeding involving the FirstEnergy utilities – also contested by OMAEG – and found that "there is very little, if any, ambiguity in regard to the ultimate objectives of the General Assembly's passage of this legislation, including the language allowing electric distribution utilities to file an application for a decoupling mechanism." *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a Decoupling Mechanism*, Case Nos. 19-2080-EL-ATA et al., January 15, 2020 Finding and Order at ¶ 27.

In sum, while OMAEG remains opposed to the decoupling option available to EDUs, the Commission is obligated to implement the statute as written and the objections in Part A of OMAEG's comments should be overruled.

B. The Company's filings in other cases do not overlap with, or undermine, the Application in this case.

In Part B of its comments, OMAEG engages in general criticism of the Company for attempting to resolve significant issues presented by the pandemic in a way that reasonably manages the financial impact on the Company and balances the interests of customers, with reference to the COVID-19 emergency plan filing (Case Nos. 20-602-EL-UNC *et al*.) and the

base rate case filing (Case Nos. 20-585-EL-AIR *et al*.). (OMAEG comments at 6-8.) OMAEG also inaccurately described the Commission's approval of the Company's COVID-19 plan (Case Nos. 20-602-EL-UNC et al.) by vaguely suggesting that the accounting deferral granted by the Commission could somehow overlap with the supplemental decoupling mechanism in this case. In this regard, OMAEG loosely refers to the COVID-19 accounting deferral as "deferring *lost revenues* for later recovery while at the same time it is proposing a decoupling mechanism to capture any *lost revenue* that the Company did not receive in 2019, and subsequently will not receive in 2020 during the pandemic." (OMAEG comments at 7 (emphasis added).) Although OMAEG insinuates that the two lost revenues referred to overlap, they in fact do not. OMAEG concludes by stating that the Commission should "consider the totality of the impact that AEP's applications will have on customers and find that AEP's Application for a supplemental decoupling mechanism is unjust and unreasonable and fails to cure the potential for double recovery as prohibited by R.C. 4928.471(D)." (*Id.* at 7.)

Contrary to OMAEG's attempt to disparage the Company's filing in this case and other filings, the Application is consistent with the legal and regulatory framework and in line with mechanisms and relief afforded to other public utilities in Ohio, including other electric distribution utilities. Regardless, such "sour grapes" complaints do not form a legal or factual basis to deny the statutory decoupling option made available to electric distribution utilities by the General Assembly. The only argument made by OMAEG in Section B that merits further response – for clarity – is the claim that the lost revenue related to the COVID-19 accounting deferral granted by the Commission in case Nos. 20-602-EL-UNC et al, overlaps with the lost revenue that would be recovered under the supplemental decoupling mechanism proposed in this case. In reality, the two mechanisms are distinct and do not overlap or result in double recovery.

The lost distribution revenues to be recovered under the supplemental decoupling mechanism relate to variances in base distribution revenues that are either higher or lower than the 2018 baseline. As a threshold matter, the mechanism does not necessarily result in recovery of lost distribution revenues and can either result in a charge or a credit in a given period. More importantly, while OMAEG broadly refers to the COVID-19 accounting deferral as lost revenue, it is actually more narrow and focused and does not overlap with lost distribution revenue.

As the Commission noted in approving AEP Ohio's COVID-19 plan that the proposed deferral only covers two categories of cost:

> AEP Ohio, therefore, proposes to implement a rate mechanism to track, defer, and recover uncollectible costs that exceed the current pre-emergency level (approximately $25.2 million), which is already higher than what is reflected in its base rates (approximately $22.1 million). Additionally, AEP Ohio states that it will track and defer any incremental operational costs incurred to protect the health and safety of its employees and customers with regard to COVID-19.

(COVID-19 Plan, Finding and Order at ¶ 52.) Neither of these items is reflected in 2018 base distribution revenues and cannot overlap with the decoupling proposed in this case. The incremental uncollectible expense to be deferred, if any, will only be an amount that is above the pre-emergency levels which itself is already substantially higher than the uncollectible expense reflected in base rates. And the incremental operational costs relating to COVID-19 activities is necessarily distinct and separate from any cost reflected in base rates.

Nonetheless, in approving AEP Ohio's COVID-19 plan, the Commission noted that the Company proactively "agreed to work with Staff to ensure that all deferred expenses were incremental to base rates so that double recovery does not occur." (*Id.* at ¶ 53.) The Commission went on to provide as follows in approving the accounting deferral:

> Finally, we emphasize that recovery is not guaranteed until the deferred amounts have been reviewed and addressed in an appropriate future proceeding, in which the question of recovery of the deferred amounts, including, but not limited to,

> issues such as prudence, proper computation, proper recording, reasonableness, and *any potential double-recovery*, will be fully considered by the Commission.

(*Id*. at ¶ 61 (emphasis added.)

Ultimately, both the COVID-19 order and the controlling statute here reflect a condition of no double recovery. So if there is a future determination that the two mechanisms overlap in some way, that overlap will be eliminated and no double recovery will occur; the Company understands and accepts that result. OMAEG's vague claim that there might be double recovery as between the COVID-19 deferral and the supplemental decoupling mechanism is unsupported and lacks any factual basis.

C. The Application does not create double recovery for the Company relating to its EE/PDR Portfolio Plan.

OMAEG's next double recovery claim is that the Company's EE/PDR rider recovers lost distribution revenues that will overlap with the proposed supplemental decoupling mechanism. (OMAEG comments at 8-9.) AEP Ohio's EE/PDR Rider does not contain a component for lost distribution revenues. So OMAEG's final double recovery claim is also factually incorrect and should be rejected.

In support of the notion that the Company's EE/PDR Rider currently collects lost distribution revenue, OMAEG cites the Company's Application in Case No. 14-873-EL-RDR. (OMAEG comments at 9.) The referenced filing was made over six years ago and referenced a plan that temporarily incorporated lost distribution revenues for 2010 (a decade ago as part of a prior ESP and a prior portfolio plan leading up to the Company's previous base rate case in 2011). In deciding that case, the Commission explicitly limited the lost distribution revenue recovery to be permitted only through January 1, 2011. *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for*

Expedited Consideration, Case No. 09-1089-EL-POR; *In the Matter of the Application of Ohio Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 09-1090-EL-POR, May 13, 2010 Opinion and Order at 26 ("Therefore, at this time, the Commission will temporarily grant AEP Ohio lost revenue recovery through January 1, 2011.") The Company has never proposed to revive the lost distribution revenue component of the EE/PDR Rider or as a component of its subsequent EE/PDR Portfolio Plans.

Thus, regardless of the stale and inapplicable reference supplied by OMAEG, AEP Ohio's current EE/PDR Rider and Portfolio Plan do not incorporate lost distribution revenues. Suffice it to say that OMAEG's reliance on the original post-SB 221 EE/PDR filing to suggest that the current EE/PDR reflects lost distribution revenue is misguided and inapplicable. The Commission found similar arguments in the FirstEnergy decoupling proceeding under R.C. 4928.471 to be "speculative" and found that the proposed decoupling mechanism would not result in double recovery. *FE Decoupling Case*, Finding and Order at ¶ 30. There is no double recovery of lost distribution revenues relating to the EE/PDR Rider as OMAEG claims.

D. There is no need to collect revenues under the Conservation Rider subject to refund.

OMAEG's final request is that tariff language be added to state that the revenues collected will be subject to refund if they have already been collected through other riders and to state that the Commission will follow R.C. 4928.471. (OMAEG comments at 9-10.) Such additional language is unnecessary, given that the tariff language proposed in the Company's Application already provides for reconciliation for audits ordered by the Commission and given that both the controlling statute here and the order in the COVID-19 case provides for future reviews that will ensure no double recovery. Because it would merely be redundant, however, the Company is not opposed to including such language if that is the Commission's preference.

CONCLUSION

For the foregoing reasons and those stated in the Application, the Commission should establish a supplemental decoupling mechanism for AEP Ohio through adoption of the Conservation Rider. The mechanism helps ensure that other commercial customers carry their fair share of lost distribution revenues (similar to what residential and small commercial customers already carry under the PTBAR) and brings AEP Ohio in line with other utilities – all in a manner that is consistent with the controlling statute, R.C. 4928.471.

Respectfully submitted,

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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 *Reply Comments* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 22nd day of June 2020, via electronic transmission.

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Summary: Comments Reply Comments of AEP Ohio in Support of Its Application for a New Decoupling Mechanism electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company