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

MOTION FOR LEAVE OF OHIO POWER COMPANY TO FILE ADDITIONAL REPLY COMMENTS INSTANTER

Ohio Power Company (AEP Ohio) moves, under O.A.C. 4901-1-12, that the Commission permit the Company to file Additional Reply Comments, in order to briefly address new issues raised in Staff's report filed on July 6, 2020. In order to save time and facilitate the Commission's 60-day statutory deadline for deciding this case in the event this motion is granted, the Company is submitting its Additional Reply Comments *instanter*. The reasons supporting AEP Ohio's request are set forth in greater detail in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On May 28, 2020, AEP Ohio filed an application to implement a decoupling mechanism pursuant to R.C. 4928.471. Specifically, the Company proposes to establish a Conservation Rider, effective with the first billing cycle of August 2020, for commercial customers taking service under the Company's GS-2, GS-3, and GS-4 tariffs, excluding Electric Heating General. On May 29, the Attorney Examiner established a comment cycle with initial comments due by June 12 and reply comments due June 22. On May 29 the Ohio Manufacturers' Association Energy Group (OMAEG) timely filed comments. On June 22, AEP Ohio filed reply comments to address the OMAEG comments. Subsequently, the Staff filed a report that included not only factual/investigative findings but also set forth novel statutory interpretations that critique the Company's Application.

The Company should be permitted to submit additional reply comments in response to Staff for the following reasons: (a) Staff filed its report after the established comment cycle and included additional commentary and legal arguments, (b) the Company bears the burden of proof in this proceeding and should be afforded due process to be heard regarding all comments about its Application, (c) the Company could be prejudiced if the Commission relies on Staff's commentary without giving the Company an opportunity to be heard, (d) no party is prejudiced by the Company submitting additional reply comments to address the Staff commentary, and (e) additional reply comments will assist the Commission in fully considering the issues presented within the 60-day statutory deadline for deciding this case.

Accordingly, the Company is attaching its proposed Additional Reply Comments in order to facilitate expedited consideration of the additional reply comments and assist the Commission is meeting its 60-day statutory deadline for deciding this case.

Respectfully submitted,

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ADDITIONAL REPLY COMMENTS

In their report, Staff generally raises four points. The Company will briefly address each of those points. In short, none of Staff's concerns provides a statutory basis to reject the Company's proposal or should otherwise cause the Commission to reject the Company's Application.

1. **Staff's proposed rate design change is not required but is reasonable and would be accepted by the Company without objection.**

Staff first points out that the existing PTBAR reflects a rate design that incorporates separate rates for the OP and CSP rate zones, whereas the proposed incremental HB 6 decoupling mechanism proposal reflects a uniform rate. (Staff Report at 2-3.) Staff goes on to argue that the uniform charge is inconsistent with cost causality between the rate zones. (*Id*.) Staff's statement in this regard implicitly presumes a close matching of the source of lost revenue with the mechanics of the recovery mechanism. In reality, any disaggregation of lost revenue would show disparities among customer classes or within customer groupings when it comes to Company-wide recovery of the lost revenue (or even by rate zone or customer class). Rate design is not a perfect science and revenue realization rarely lines up perfectly with cost

causation. More to the point here, there is nothing in R.C. 4928.471 that requires a separate rate by rate zone or any other type of granular rate design such as customer class or tariff schedule. And since the HB 6 decoupling mechanism is explicitly temporary and straightforward mechanism by design, a perfect result is unlikely but the result generated by a uniform rate would nonetheless be reasonable. Another relevant point is that the PTBAR encompasses non-demand metered customers and the incremental HB 6 decoupling mechanism would encompass demand-metered customers – that factor alone could be sufficient to distinguish using a different rate design in the two mechanisms.

All of that being said, however, rate design is well within the Commission's expertise and discretion. So, if the Commission adopts a separate rate zone rate design to better parallel the rate design of the PTBAR (as recommended by Staff), that result would also be a reasonable outcome and the Company would not object to it.

2. Staff's note about potential double recovery does not prevent approval of the Application or present a need for modification of it.

Next, Staff notes that "care must be taken to ensure double recovery does not occur for any lost demand revenue collected a result of the Commission's Order in the COVID-19 Case." (Staff Report at 3.) The only potential overlap, which is theoretical and unlikely given that the threshold is a higher pre-COVID level (versus the lower uncollectible level reflected in base rates), is for uncollectible costs booked to the COVID-19 deferral that could otherwise be covered by the decoupling mechanism as lost distribution revenue. But as the Staff notes in its recommendation section of its report, "R.C. 4928.471(D) prohibits such double recovery, and the Company has no intention for double recovery to occur." (Staff Report at 3-4) (internal citations omitted).

Regardless, the Company stated its intention in the *COVID-19 Plan* (Case Nos. 20-602-EL-UNC et al.) "to work with Staff to ensure that all deferred expenses were incremental to base rates so that double recovery does not occur." *COVID-19 Plan*, Finding and Order at ¶ 53.) And the Commission went on to condition its approval of the accounting deferral on a confirmation of no double recovery. *Id*. at ¶ 61 (emphasis added.) Moreover, the Company pledged as part of its Application in the current case that "there are no double recovery issues" and reiterated in its June 22 comments that:

> 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.

AEP Ohio Reply Comments (June 22, 2020) at 8. In sum, there is no current issue regarding double recovery but the Commission and Staff (and the Company) will ensure that there is no future issue of double recovery.

3. Staff's suggestion that the Company chose what customers to include in the decoupling mechanism is not accurate and does not present a basis to deny or modify the Application.

Staff's third point is that it is "concerned that the company's proposal to decouple only some of its customer classes through this application could be inconsistent with the statute's directive that the proposed decoupling mechanism shall apply to the 'residential and commercial customers,' not just the classes or tariffs that the utility chooses to include in the mechanism." (Staff Report at 3.) The Company respectfully submits that this criticism is potentially misleading and legally incorrect. Ultimately, Staff's recommendation on this point is merely "to note for the Commission's consideration" (Staff Report at 4) – regardless, its assertion of potential inconsistency with the statute is not correct and should not be endorsed by the Commission.

The Company only proposed an incremental mechanism to avoid double recovery, which is also a requirement under the statute; the net result that all residential and commercial customers would be decoupled and that matches up with the statutory directive cited by Staff in this regard. 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. As explained below, this approach complies with the statute and does not conflict with it.

The reason Staff's statement that the Company's Application only includes those customers "that the utility chooses to include" is potentially misleading is because it wrongly implies that the Company arbitrarily or discriminatorily choose which customers to target with the proposed mechanism. Consistent with Division (A) of R.C. 4928.471, the Company's proposal is a mechanism that decouples residential and commercial customers to the base distribution revenue using a 2018 baseline. *See* R.C. 4928.471(A). But the Company also incorporated Division (D)'s prohibition of double recovery (*i.e.*, overlap with the existing PTBAR) by backing out all the customers that are already covered by the PTBAR. *See* R.C. 4928.471(D). Both provisions in the statute are equally important, must be read together and do not conflict when they can both be implemented. But in this regard, Staff's third criticism seems to focus on Division (A) without consideration of the double recovery prohibition of Division (D). AEP Ohio's Application reasonably proposed a mechanism that complies both with Division (A) in design and excludes those portions that would overlap (or double recover)

relative to the PTBAR in accordance with Division (D); the net result leaves only "other commercial" customers within the scope of the HB 6 decoupling mechanism. Similarly, industrial customer customers were reasonably and lawfully excluded from the proposed mechanism because they are beyond the scope of R.C. 4928.471.[1]

In sum, the limited scope of the incremental decoupling mechanism was not the result of Company targeting certain customer classes but merely a function of application of the statute to the Company's current circumstances. Contrary to the notion that this Application is unfairly targeting a certain set of customers, it is fair and reasonable to bring the remaining commercial customers into a comparable revenue decoupling program (HB 6 decoupling program) when all the other residential and small commercial customers are already participating in a revenue decoupling program (PTBAR). The fact that the proposed mechanism only includes "other commercial customers" is not a whim or arbitrary choice of the Company but is more accurately considered to merely be a function of reasonably applying all the requirements of the controlling statute.

4. Staff "notes for the Commission's consideration" that the PTBAR and HB decoupling mechanisms have different baselines and other differences in rider mechanics does not present a basis to deny or modify the Application.

The Staff's fourth and final point is that the PTBAR and HB 6 decoupling mechanisms have different baselines and rate designs. (Staff Report at 4.) Although this is factually accurate, it does not violate the statute or preclude the incremental decoupling mechanism proposed by AEP Ohio. This statute was not enacted for one EDU or one set of circumstances. It encompasses all Ohio EDUs, some of which had their most recent base rate cases at different

[1] To the extent that Staff's third concern also encompasses the Company's exclusion of the special tariffs for EHG and EHS/Schools and the Commission concurs, it could direct the Company to include those customers in its compliance tariffs in this case. In this regard, the Company would also caution that the rate design for decoupling those schedules needs to match the design for base rates (kW versus kWh, etc.).

times and have existing full or partial decoupling mechanisms. The General Assembly did not restrict the opportunity to obtain a temporary decoupling mechanism to only those EDUs that have filed base rate cases within a certain window of time, or limit the remedy to those EDUs that do not have any existing decoupling mechanism or to those EDUs that have mechanisms with similar baselines or rate designs. None of those limits are in the statute so none of them can be the basis for rejecting AEP Ohio's proposed mechanism. Similar to item 3 of the Staff Report, Staff's recommendation on this point is merely "to note for the Commission's consideration" (Staff Report at 4) – regardless, its assertion of potential inconsistency with the statute is not correct and should not be endorsed by the Commission.

Ultimately, the Commission should follow the straightforward statutory directives and allow AEP Ohio the opportunity to establish a decoupling mechanism. This may be in part over the Staff's objections, similar to the *FirstEnergy Decoupling Case* where the Commission recited the six factors of consideration for statutory interpretation and stated:

> An application of the six considerations demonstrating "the intention of the legislature" is conclusive that the General Assembly envisioned significant adjustments to Ohio's energy efficiency requirements when it passed H.B. 6 into law and it is our duty, as the administrative agency overseeing the implementation of energy efficiency standards, to comport with, and effectuate, the General Assembly's desired intent. After careful consideration of the both the language of the statute, the legislative history and surrounding circumstances of its enactment, and the responsive comments submitted by interested stakeholders, we note 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 (emphasis added). A straightforward application of the statute here yields approval of the Application.

CONCLUSION

Accordingly, the Commission should grant the relief requested in the Company's Application and adopt the proposed Conservation Rider effective with the August 2020 billing cycle.

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 *Motion For Leave* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 10th day of July 2020, via electronic transmission.

/s/ *Steven T. Nourse*
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Summary: Motion - Motion For Leave of Ohio Power Company to File Additional Reply Comments Instanter electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company