

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Power Company for an Increase in Electric )	Case No. 20-585-EL-AIR
Distribution Rates. )	
)	
In the Matter of the Application of Ohio )	
Power Company for Tariff Approval. )	Case No. 20-586-EL-ATA
)	
In the Matter of the Application of Ohio )	
Power Company for Approval to Change )	Case No. 20-587-EL-AAM
Accounting Methods. )	

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**JOINT MOTION TO STRIKE OBJECTIONS TO THE STAFF REPORT  
OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP  
AND THE KROGER CO.**

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Pursuant to R.C. 4909.19(C), Ohio Adm. Code 4901-1-12 and 4901-1-28(B), and the Public Utilities Commission of Ohio's (Commission) Entry issued on April 14, 2021,<sup>1</sup> the Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger) jointly move to strike certain objections to the Staff Report of Investigation (Staff Report) in the above-captioned proceeding raised by: (1) Environmental Law and Policy Center (ELPC); (2) Ohio Environmental Council (OEC); (3) Ohio Partners for Affordable Energy (OPAE); (4) Citizens' Utility Board of Ohio (CUB-Ohio); (5) Natural Resources Defense Council (NRDC); and (6) Armada Power, LLC (Armada). More specifically, OMAEG and Kroger move to strike ELPC's first, second, and third objections, OEC's first, second, and third objections, OPAE's seventh objection and seventh "major issue," CUB-Ohio's second objection, NRDC's first, second, and third objections, and Armada's second objection, and "major issues" C, D, and E. The foregoing

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<sup>1</sup> Entry at ¶ 22 (April 14, 2021).

objections and major issues should be stricken as they do not conform to the Commission's requirements that all objections be made with specificity and that the objections be validly made, that the objections relate to the pending distribution rate proceeding and investigation, and that the objections are consistent with Ohio law and Commission precedent.

The reasons for this Joint Motion are explained more fully in the accompanying Memorandum in Support. For the reasons specified therein, OMAEG and Kroger request that the Commission strike the objections and issues identified above in accordance with Ohio law and the Commission's rules, as doing so will allow for a fair framing of the issues at the hearing regarding Ohio Power Company's (AEP) application for an increase in its electric distribution rates filed June 8, 2020 (Application), consistent with Ohio Adm. Code 4901-1-28.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On April 29, 2020, AEP filed a notice of intent to file an application for an increase in its electric distribution rates with the Commission<sup>2</sup> and on June 8, 2020, AEP filed an application for an increase in its electric distribution rates.<sup>3</sup> On November 18, 2020, the Staff of the Commission (Staff) filed an initial Staff Report regarding AEP's application, but re-filed and replaced the Staff Report in its entirety on November 25, 2020 to correct errors. R.C. 4909.19 provides that the filing of objections to the Staff Report must be made "within thirty days after such filing and the mailing of copies thereof." On December 10, 2020, the Commission deemed the Staff Report filed as of the initial date, November 18, 2020.<sup>4</sup> Therefore, pursuant to the Commission's Entry interpreting R.C. 4909.19 and Ohio Adm. Code 4901-1-28, several parties filed their objections to the Staff Report on December 18, 2020.

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<sup>2</sup> Pre-filing Notice of AEP at 1 (April 29, 2020).

<sup>3</sup> Application at 4 (June 8, 2020).

<sup>4</sup> Entry at ¶ 12 (December 10, 2020).

On March 12, 2021, AEP and several other parties signed a Stipulation to resolve the issues in the above-captioned proceeding and submitted the Stipulation to the Commission for approval. Thereafter, the Commission established a procedural schedule to evaluate the Stipulation, with motions to strike objections to the Staff Report due by April 20, 2021.<sup>5</sup>

In accordance with the Commission’s directive, OMAEG and Kroger have identified objections to the Staff Report regarding Energy Efficiency and Demand Side Management (EE/DSM) that do not conform to Ohio law or Commission precedent, as well as objections that lack specificity as required by Ohio Adm. Code 4901-1-28(B). Moreover, many objections advocate that all electric distribution utilities (EDUs) should offer voluntary EE/DSM programs. Not only is there a lack of statutory or regulatory authority and support for such programs, but this proposal is unlawful, contrary to Commission precedent, and beyond the scope of a distribution rate case filed by one EDU. For these reasons and as explained further below, OMAEG and Kroger request that the Commission grant this Joint Motion to Strike Objections as delineated herein.

## **II. ARGUMENT**

### **A. The Commission Should Strike ELPC’s Third Objection for Lack of Specificity as Required by Ohio Adm. Code 4901-1-28(B).**

Ohio Adm. 4901-1-28(B) allows a party to a distribution rate case to strike objections to the Staff Report that lack specificity. The Commission has described Ohio Adm. Code 4901-1-28(B)’s specificity requirement as prohibiting “[a]ny objection which is not specific enough to convey what is actually being placed at issue....”<sup>6</sup> Some hypothetical examples of objections that are not specific enough to satisfy Ohio Adm. Code 4901-1-28(B) include: “the staff incorrectly

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<sup>5</sup> Entry at ¶ 22 (April 14, 2021).

<sup>6</sup> *In the Matter of the Application of Mohawk Utilities, Inc. for an Increase in Rates & Charges*, Case No. 91-2123-WW-AIR, 1992 WL 12721497, Entry at \*1 (June 2, 1992)

calculated the test year labor expense; the staff unreasonably determined rate case expense; the staff unreasonably eliminated advertising costs; and the comments of the Consumers' services portion of the report are unreasonable, inaccurate, and misleading.”<sup>7</sup>

Pursuant to Ohio Adm. Code 4901-1-28(B)'s specificity requirement, OMAEG and Kroger move to strike ELPC's third objection, which states: “The Staff Report should have recommendations to scale up and modify the DSM Plan to produce significant benefits for rate payers.”<sup>8</sup> On its face the objection should be stricken as the use of vague terms such as “scale up,” “modify,” and “significant” without more lacks specificity. It is unclear from ELPC's discussion of its third objection whether it is specifically placing at issue: (1) the amount of funding for an EE/DSM plan; (2) the quantity of EE/DSM programs that should be included in an EE/DSM plan; (3) the types of EE/DSM programs that should be offered ; or (4) any combination of the foregoing.

Moreover, the objection advocates for “a cost-effective plan ...[that] prioritizes the programs that reduce energy use the most at the lowest cost to customer.” Seemingly, ELPC is objecting to the lack of prioritizing or the inclusion of specific EE/DSM programs that it deems cost-effective, but then, in the same objection, ELPC also discusses a need for “greater investment” in EE, and notes that the EE/DSM plan includes split funding between EE and electric vehicle programming.<sup>9</sup> Without more specificity, it is unclear what ELPC is actually placing at issue in a distribution rate case.

Consequently, the Commission should strike ELPC's third objection for lack of specificity as required by Ohio Adm. Code 4901-1-28(B).

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<sup>7</sup> *Id.* (internal quotation marks omitted).

<sup>8</sup> ELPC's Objections at 4 (December 18, 2020).

<sup>9</sup> *Id.*

**B. The Commission Should Strike Certain Objections as They Contravene Ohio Law and Commission Precedent.**

The Commission should strike the following objections and “major issues” as they conflict with Ohio law and Commission precedent: ELPC’s first, second, and third objections; OEC’s first, second, and third objections; OPAE’s seventh objection and seventh “major issue,” CUB-Ohio’s second objection; NRDC’s first, second, and third objections; and Armada’s second objection, and “major issues” C, D, and E. The foregoing objections and issues lack statutory or regulatory authority insofar as they seek to establish “voluntary” EE/DSM programs for all EDUs in a distribution rate case of one EDU. Additionally, these objections and issues are contrary to recent Commission orders regarding the wind-down of EE/DSM programs and the rejection of proposals to assess mandatory “administrative fees” for EDUs’ provision of voluntary EE/DSM programs. Accordingly, OMAEG and Kroger respectfully request that the Commission grant this Joint Motion to Strike Objections.

The wind-down and subsequent termination of EE/DSM programs per Am. Sub. H.B. 6 (H.B. 6) signified the end of ratepayer subsidies for such programs. In fact, the Commission has explicitly stated “that, in light of H.B. 6, the future for EE programs in this state will be best served by reliance upon market-based approaches such as those available through PJM and competitive retail electric service providers.”<sup>10</sup> R.C. 4928.02(H) supports the Commission’s decision to rely on market-based approaches because it provides that it is the state’s policy to prohibit anticompetitive subsidies. Despite H.B. 6, the Commission’s related directives, and Ohio’s codified policy, the objections advocate for the mandatory recovery from customers of so-called “voluntary” EE/DSM programs through base distribution rates.

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<sup>10</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case Nos. 20-1013-EL-POR, et al., Entry (June 17, 2020) at ¶ 9.

Moreover, the objections advocate for a mandatory “administrative fee” paid for by all customers to incent all EDUs to offer “voluntary” EE/DSM programs. The Commission has already rejected a similar proposal because it “has no statutory basis” and such proposals “must be accompanied with a demonstration of need that cannot otherwise be met through market-based approaches.”<sup>11</sup> The objections failed to identify any legal authority for the proposals therein and have not met the Commission’s stated standard. Therefore, the Commission should strike these objections, as they conflict with established Ohio law and Commission precedent.

**C. The Commission Should Strike Certain Objections Because They Address Issues Beyond the Scope of a Distribution Rate Case.**

The Commission should also strike the following objections and “major issues” as they exceed the scope of a distribution rate case: ELPC’s first, second, and third objections; OEC’s first, second, and third objections; OPAE’s seventh objection and seventh “major issue,” CUB-Ohio’s second objection; NRDC’s first, second, and third objections; and Armada’s second objection, and “major issues” C, D, and E.

The Commission’s February 24, 2021 Finding and Order confirms that the above-captioned proceeding is not the proper forum to address the future of EE/DSM programs. In that Order, the Commission determined that the EDUs met the statewide collective EE benchmark and properly terminated the EE riders pursuant to H.B. 6.<sup>12</sup> In light of this determination, the Commission stated that it will in the future, in a yet to be determined statewide proceeding, solicit the views of stakeholders on whether cost-effective EE programs are appropriate to manage

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<sup>11</sup> *Id.* at ¶ 8.

<sup>12</sup> *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan For 2017 Through 2020*, Case Nos. 16-574-EL-POR, et al., Finding and Order at ¶ 1 (February 24, 2021).

electric generation costs in Ohio and the region.<sup>13</sup> The Commission further stated that it will hold a series of workshops on the scope and nature of future EE programs and how such programs fit into a competitive retail electric service market.<sup>14</sup>

Per the February 24, 2021 Order, stakeholders will have ample opportunities outside of this distribution rate proceeding for one EDU to advocate for their desired EE/DSM proposals and therefore will not be prejudiced by the granting of this Joint Motion. Moreover, the February 24, 2021 Order demonstrates that the Commission has adopted a comprehensive approach towards EE/DSM policy and will consider how such programs affect *Ohio* and *the region* as a whole on a statewide basis.<sup>15</sup> Instead, the objections advocate for a piecemeal approach where various EE/DSM programs are established for an individual EDU in its service territory rather than establishing EE/DSM programs on a statewide basis. Lastly, the February 24, 2021 Order coupled with other Commission decisions demonstrate that the Commission has embraced the competitive retail market as the preferred provider of EE/DSM programs. The objections are inapposite to the Commission's stated policy to the extent that they advocate for EE/DSM cost recovery through distribution rates of an individual EDU and/or nonbypassable rate mechanisms.

Therefore, the Commission should strike these objections as they exceed the scope of a distribution rate case for one EDU.

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<sup>13</sup> *Id.* at ¶ 13.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

### III. CONCLUSION

For the aforementioned reasons, the Commission should strike the objections and issues delineated herein in accordance with Ohio Adm. Code 4901-1-28(B).

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on April 20, 2021 upon the parties listed below.

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Summary: Motion Motion to Strike Objections to the Staff Report of The Ohio Manufacturers' Association Energy Group and the Kroger Co. electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group and The Kroger Co.