**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio  Power Company for New Tariffs  Related to Data Centers and Mobile Data  Centers. | )  )  )  ) | Case No. 24-508-EL-ATA |

**CONSUMER PROTECTION COMMENTS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

AEP tells us that it is facing an “unprecedented” demand from data centers and cryptocurrency (*e.g.* Bitcoin) miners for electric service throughout its service territory and central Ohio.[[1]](#footnote-1) ‘To address the needs of these “power-hungry”[[2]](#footnote-2) customers, AEP proposes tariffs to create new service classifications and terms and conditions for data centers and cryptocurrency/mobile data centers.

OCC appreciates AEP’s efforts to prepare for the increase in growth and demand from data center customers. AEP’s proposed tariffs are a step in the right direction. But more can be done to protect consumers from being unfairly burdened by the demands of data centers and crypto miners. Measures can and should be implemented now to hold residential customers harmless so that they are not subsidizing upgrades to AEP’s transmission and distribution system that are caused by data centers. In other words, we are urging the PUCO and AEP to take a closer look at AEP’s transmission and distribution rates and assure that those rates are updated to reflect the current cost to serve each customer class, including the data center customer class designated by AEP.

We detail below our initial recommendations to protect consumers, in keeping with law’s that mandate utility service must be, in all respects, “just and reasonable” for all consumers. [[3]](#footnote-3) OCC expects its position to more fully develop in the months ahead as it continues to assess AEP’s filed testimony and conduct discovery.

# iI. Background

## A. AEP’s Proposed Tariffs

To address what will be required to serve new energy-intensive data center customers, AEP is proposing new tariffs. On May 13, 2024, AEP filed an application to create two new classifications of customers and to implement two new tariffs that would apply to data centers (monthly demand of more than 25 MW) and cryptocurrency/mobile data centers (monthly demand of 1 MW or greater). Both tariffs would require, among other things, that the new classes of customers do the following:

1. Enter into electric service agreements for a term of 10 years;
2. Participate in the PJM Emergency Demand Response program or AEP-declared emergency event and be subject to disconnection;
3. Pay all base rates and rider rates that other General Service customers pay;
4. Be subjected to a minimum demand charge (90% of their contract capacity for data centers; 95% of their contract capacity for mobile data centers);
5. Be subjected to an exit fee equal to three years of minimum charges; and
6. For customers with credit ratings less than A– from S&P Global Inc. and A3 from Moody’s Corporation, provide a parent guarantee or collateral in the form of a letter of credit or cash equal to 50% of the customer’s minimum demand charges.

## B. The surge in contracted demand and potential uncontracted demand.

AEP proposes new tariffs to address two possible scenarios regarding future energy demand from data center customers in its service territory.

* **Service data centers currently under contracts:** AEP would serve the capacity needs of the data center customers AEP has already signed to Letters of Agreements or Electric Service Agreements. In this scenario, the load AEP would supply would more than double in central Ohio by 2030.[[4]](#footnote-4) Significant transmission investments will be required for AEP to continue to provide safe and reliable electricity to existing customers and customers with signed agreements for service commencing in the near future.[[5]](#footnote-5) AEP has begun this process by including in its load forecast to PJM Interconnection, LLC (PJM) demand for which it has signed agreements.[[6]](#footnote-6)
* **Service data centers that request large future electricity needs:** The greater extreme is if AEP were to plan to serve the capacity needs of non-contracted data centers in addition to the data centers currently under contract. Investments for contracted demand are a fraction of what investments would be required to accommodate the more than 30,000 MW of requested load that has not been included in any PJM forecasts.[[7]](#footnote-7) Furthermore, 120 miles of 765 kV line might be required to deliver that load, which would take approximately 7-10 years to build and could cost hundreds of millions of dollars.[[8]](#footnote-8) This is an exponential growth in load and investment fueled entirely by future, uncommitted data centers.

If AEP were to provide solely for current, contracted data center demand, AEP claims that it could meet the contracted demand through the transmission planning processes that it has already begun. However, for AEP to serve the anticipated exponential growth in demand from new data centers, an additional 30,000 MW of load is predicted and hundreds of millions of dollars in transmission investment will likely be required.[[9]](#footnote-9)

To study the implications of serving the new data center load, AEP paused taking new service requests in central Ohio from data center customers and stopped executing new electric service agreements. That was a good thing.

As a result of its studies, AEP concluded that an updated set of terms and conditions for retail service to data center customers is needed before moving forward with capacity expansion plans. AEP wants to utilize separate tariffs to set the terms of service for data centers. The new proposed tariffs are meant to protect AEP and its other customers from the risk of paying for infrastructure and load meant to meet data center demand.[[10]](#footnote-10)

# III. COMMENTS TO PROTECT RESIDENTIAL CONSUMERS

## A. Adjustments to AEP’s Proposal

OCC recommends modifying AEP’s proposed tariffs to shield residential consumers from the financial burden of exponential distribution and transmission

improvements driven by data center expansion. OCC proposes the following adjustments to AEP’s proposed tariff provisions:[[11]](#footnote-11)

1. ***New data centers must enter into electric service agreements for a term that allows AEP to recoup all costs from the data centers, which may be longer than 10 years***. OCC assumes that the 10-year term is proposed because AEP estimates it will recoup its costs in 10 years. If AEP estimates it will take more time to recoup its costs, then the proposed contract term should be adjusted accordingly.
2. ***New data centers should be subjected to a minimum demand charge that prevents other consumers from paying for unused capacity created for the data centers.***OCC conditionally supports AEP’s minimum demand charges (90% for data centers, 95% for mobile data centers) provided that other consumers are not paying for unused capacity created in response to the added data centers.
3. ***New data centers must be subjected to an exit fee equal to ten years of minimum charges***. OCC proposes increasing exit fees to 10 years of full demand charges so that other consumers are not at risk of paying for stranded investment associated with serving data centers. Investment made to serve data centers should be borne by the cost causers – the data centers -- not by other consumers.
4. ***For new data center customers with credit ratings less than A– from S&P Global Inc. and A3 from Moody’s Corporation, the data centers must provide a parent guarantee or collateral in the form of a letter of credit or cash equal to 100% of the customer’s minimum demand charges.*** OCC agrees with requiring financial guarantees from data centers with lower credit ratings. However, the letter of credit should cover 100% (not 50% as proposed) of the data center’s demand plus the cost of any major infrastructure needed to serve them (e.g., 120 miles of 765 kV line). This should help ensure that other consumers, including residential consumers, aren’t burdened by additional costs caused solely by data centers.

## B. Additional Recommendations

AEP’s current proposal fails to address how the costs of transmission and distribution upgrades, particularly those driven by data center expansion, will be paid for. By 2020, data centers’ load on the grid had already surpassed 100 MW.[[12]](#footnote-12) By April 2024, the data center load had ballooned to nearly 600 MW. With signed agreements in place, that number is expected to skyrocket to a staggering 5,000 MW by 2030 in central Ohio alone.[[13]](#footnote-13) According to AEP, this surge will more than double the region’s total electricity consumption, pushing it from 4,000 MW to 9,000 MW within a decade.[[14]](#footnote-14) As a result, AEP Ohio’s top five customers are all expected to be data centers by 2030.[[15]](#footnote-15)

The OCC recommends several safeguards to shield residential consumers from being unfairly allocated costs to serve the data centers:

* **There should be an updated cost allocation study to properly allocate costs to existing data centers and data centers who have signed agreements with AEP.**

AEP’s current distribution and transmission rates reflect an allocation of costs to each customer class based on AEP’s latest cost of service study. That cost of service study was filed in AEP’s last distribution rate case, 20-585-EL-AIR. AEP’s study relies on cost allocation data from 2019 (historical) that was applied to test year investment and expenses in 2020. At that time there was little if any data center load that was factored into the cost of service study. (There was no separate customer class for data centers as AEP proposes in this case, and data center growth had not exploded as it has in the last year or so).[[16]](#footnote-16) Given the significant growth in data center load as of April 2024, as evidenced by signed agreements for 4,4000 MWs, a new cost of service study is warranted and necessary to ensure a fair allocation of current, ongoing transmission and distribution expenses. This includes factoring in the costs to serve existing data centers and data centers with signed service agreements. In this way there is a check on transmission and distribution rates that are being charged to all other AEP consumers, facilitating the establishment of transmission and distribution rates based on the cost of serving each customer group/class.

* **There should be future cost allocation studies conducted for new data centers.**

Given the significant new load associated with data centers in AEP territory, any updated allocation study will quickly become outdated. An updated allocation study should, therefore, be performed every time there is significant load growth.

* **There should be a transmission line cost allocation study conducted and thoroughly vetted before transmission investment is made to serve new data centers.** [[17]](#footnote-17)

This study should consider historical usage patterns, projected future demand for all customer classes, and the specific benefits each class receives from the new infrastructure. In conducting the study, data centers should be treated as a separate class of customers, consistent with AEP’s filing to create a separate class for these consumers.

## IV. CONCLUSION

AEP has taken a step in the right direction in acknowledging that data centers should be treated as a separate class of customers, with specific rates and terms of service. But more is needed to protect the other consumers of AEP, including residential consumers. The proposed tariff provisions, as they stand, risk unfairly burdening residential consumers with the costs of infrastructure upgrades necessitated by data center expansion. We urge the PUCO to carefully consider the initial recommendations made by OCC outlined in these comments to ensure a fair and just outcome for all consumers.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ Robert Eubanks*

Robert Eubanks (0073386)

Counsel of Record

John Varanese (0044176)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone [Eubanks]: (614) 466-1292

Telephone [Varanese]: (614) 387-2965

[Robert.eubanks@occ.ohio.gov](mailto:Robert.eubanks@occ.ohio.gov)

[John.varanese@occ.ohio.gov](mailto:John.varanese@occ.ohio.gov)

(Will accept service via email)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Consumer Protection Comments were served on the persons listed below via electronic transmission, this 25th day of June 2024.

*/s/ Robert Eubanks*

Robert Eubanks

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
| Attorney General:  [Ashley.wnek@ohioago.gov](mailto:Ashley.wnek@ohioago.gov)  [Ambrosia.wilson@ohioago.gov](mailto:Ambrosia.wilson@ohioago.gov)  Attorney Examiner:  [David.hicks@puco.ohio.gov](mailto:David.hicks@puco.ohio.gov)  [Greta.see@puco.ohio.gov](mailto:Greta.see@puco.ohio.gov)  jdunn@oneenergyllc.com ktreadway@oneenergyllc.com mpritchard@mcneeslaw.com awalke@mcneeslaw.com stephanie.chmiel@thompsonhine.com vanessa.boddy@thompsonhine.com [khelfrich@ohioec.org](mailto:khelfrich@ohioec.org)  lkaleps@ohioec.org mjsettineri@vorys.com glpetrucci@vorys.com [jreckert@vorys.com](mailto:jreckert@vorys.com)  [jlang@calfee.com](mailto:jlang@calfee.com)  mbarbara@calfee.com | [stnourse@aep.com](mailto:stnourse@aep.com)  mjschuler@aep.com mkurtz@BKLlawfirm.com jkylercohn@BKLlawfirm.com Stacie.Cathcart@igs.com Natalia.Messenger@igs.com dproano@bakerlaw.com cpirik@dickinsonwright.com todonnell@dickinsonwright.com cgrundmann@spilmanlaw.com dwilliamson@spilmanlaw.com slee@spilmanlaw.com dparram@brickergraydon.com dborchers@brickergraydon.com kherrnstein@brickergraydon.com rmains@brickergraydon.com trent@hubaydougherty.com bojko@carpenterlipps.com [easley@carpenterlipps.com](mailto:easley@carpenterlipps.com)  [kennedy@whitt-sturtevant.com](mailto:kennedy@whitt-sturtevant.com)  [cockrell@whitt-sturtevant.com](mailto:cockrell@whitt-sturtevant.com) |

1. Application, at ¶ 12. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. R.C. 4905.22 – “Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.” [↑](#footnote-ref-3)
4. Application at para. 12. [↑](#footnote-ref-4)
5. Application at para. 16. [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Id*. at para. 17. [↑](#footnote-ref-8)
9. *Id*. at para. 16. [↑](#footnote-ref-9)
10. Application at para. 22. [↑](#footnote-ref-10)
11. AEP made proposals that OCC has no objection to currently. They are as follows: 1) New data centers must participate in the PJM Emergency Demand Response program or AEP-declared emergency event and be subject to disconnection and 2) New data centers must pay all base rates and rider rates that other General Service customers pay for the time being until cost of service studies are conducted establishing an updated basis for charging these consumers a fair portion of transmission and distribution rates. [↑](#footnote-ref-11)
12. *See* Lisa Kelso’s Pre-filed Testimony, Q and A 8. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id*. [↑](#footnote-ref-14)
15. *Id*. [↑](#footnote-ref-15)
16. *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, Schedule E-2 and Douglas R. Buck Pre-filed testimony at p.3. [↑](#footnote-ref-16)
17. Lax transmission line approvals for data center projects (e.g., Duke's recent M-3 filing at the PJM Transmission Expansion Advisory Committee Meeting) raise concerns about future likely consumer cost increases. The OCC previously filed a complaint at FERC concerning the lack of a stringent approval process for supplemental transmission projects by PJM. The PUCO’s Federal Advocate and the PUCO itself has recognized the harm to consumers under this current regime. PJM’s "Do No Harm" standard prioritizes grid stability over affordability. Ultimately, consumers shoulder these huge transmission costs with little oversight and without any automatic allocation of costs through updated cost studies. Given the near certainty of approval for a future AEP transmission line, it’s worth the PUCO laying out procedures now to protect against likely future harms to non-data center consumers. [↑](#footnote-ref-17)