**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format. | )  )  ) | Case No. 20-1408-EL-UNC |

**REPLY COMMENTS ON AEP’S PROPOSED   
IMPROVEMENTS TO THE FORMAT FOR CUSTOMER BILLS**

**BY**

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The Public Utilities Commission of Ohio (“PUCO”) should grant AEP’s application because it is pro-markets and pro-consumer. It would provide customers with important information about what they paid to their marketer and what they could have paid under AEP’s standard service offer (“SSO” or “standard offer”). When customers are deciding whether to switch to a marketer or whether to buy electricity from their utility’s competitively bid standard offer, one of the most important factors is the price. AEP’s proposed language provides clarity to consumers, thus making them more informed about how they spend their money. And informed consumers are good for competitive markets.

Yet the following energy suppliers oppose AEP’s proposal: aggregator Northeast Ohio Public Energy Council (“NOPEC”) and marketers Constellation NewEnergy, Inc. (“Constellation”); Reliant Energy Northeast LLC, Xoom Energy Ohio, LLC, and Steam Ohio Gas & Electric, LLC (collectively, “NRG”); Interstate Gas Supply, Inc. (“IGS”); and the Retail Energy Supply Association (“RESA”).[[1]](#footnote-2) The PUCO should overrule these oppositions to AEP’s proposals for enhancing information and protection for consumers.

As explained below, the arguments against the AEP proposal fail for a variety of reasons. But the marketers’ opposition really seems grounded in a stance that AEP’s proposal is bad for a marketer’s business if customers find out they are paying more than they need to and ultimately decide that they would be better off with the SSO (and not with a marketer). That’s certainly not a reason for denying consumers this important information for their decision-making in the market.

AEP’s application should be approved.

# I. REPLY

## A. Having better informed consumers is good for competitive markets (and for consumers in the markets), which advances state policies under R.C. 4928.02.

In criticizing AEP’s proposed bill message—which would provide meaningful, objective information to customers—the Suppliers refer to various state policies under R.C. 4928.02. As the Suppliers point out, R.C. 4928.02(C) provides that it is state policy to “[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.”[[2]](#footnote-3) IGS references R.C. 4928.02(D), which says that it is state policy to “[e]ncourage innovation and market access for cost-effective supply- and demand-side retail electric service.”[[3]](#footnote-4) But AEP’s proposal will result in better informed consumers, which is consistent with the various state policies under R.C. 4928.02.

R.C. 4928.02(A), for example, says that it is state policy to “[e]nsure the availability to consumers of ... reasonably price retail electric service.” AEP’s proposal advances this state policy by providing customers with more information about what they are paying for retail electric service to a marketer and what they could have paid under the SSO. This will help customers to be informed and able to determine whether their retail electric service from a marketer is in fact “reasonably price[d].”

R.C. 4928.02(B) says that it is state policy to “[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.” Again, AEP’s proposal advances this state policy by providing customers with more information about pricing. With this additional information, customers will be better equipped to determine whether their marketer’s offering will “meet their respective needs” and is comparable to other options.

R.C. 4928.02(C) says that it is state policy to “[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.” The key phrase here is *effective* choices. Customers can only make effective choices if they are informed enough to make rational choices in their best interest. AEP’s proposal advances this state policy by giving customers more information that they can use to make effective choices.

R.C. 4928.02(D) says that it is state policy to “[e]ncourage innovation and market access for cost-effective supply- and demand-side retail electric service.” AEP’s proposal advances this state policy because giving customers more pricing information enables them to be better equipped to determine whether their retail electric service is in fact cost-effective.

R.C. 4928.02(I) says that it is state policy to “[e]nsure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.” AEP’s proposal advances this state policy particularly where the customer paid a rate substantially higher than the SSO. Unconscionably high charges to consumers could be prima facie evidence of “unreasonable sales practices,” which it is state policy to protect consumers against. Unconscionably high rates could also point to market deficiencies and market power, suggesting that there is a disconnect between marketers and consumers in understanding the value of signing a contract with a marketer. Thus, providing customers with more information about their charges as compared to the SSO would protect consumers from market deficiencies and market power.

R.C. 4928.02(L) says that it is state policy to “[p]rotect at-risk populations.” AEP’s proposal is particularly important for low or lower-income customers who might learn that they could pay less for electricity with the SSO. These more vulnerable customers cannot afford to pay more for the same thing. So AEP’s proposal, which would provide them with additional pricing information, can serve as an important consumer protection.

The state policies under R.C. 4928.02 are designed to encourage the development of the competitive market for retail electric service. They are also designed to protect consumers in the process. AEP’s proposal does both. It provides more information to consumers, and informed consumers are essential to ensuring that markets are competitive. Thus, it is consistent with state policies and should be approved.

## B. AEP’s proposed bill message objectively and accurately compares two data points—what the customer actually paid to a marketer and what the customer would have paid under the SSO—thus giving customers more information about their bills.

A common theme in the Suppliers’ comments is that AEP’s proposed billing message is somehow misleading.[[4]](#footnote-5) It isn’t.

AEP proposes two sentences be added to customers’ bills. The first sentence is: “The supply portion of your bill using AEP Ohio’s Standard Service Offer rate (also known as the Price-to-Compare) of $0.00xx per kWh would have been $xx.xx.”[[5]](#footnote-6) There is nothing misleading about this sentence. In fact, it is similar to a message that already appears on customers’ bills, and which the PUCO previously approved. Customers’ bills currently state, “in order for you to save money off of your utility’s supply charges, a supplier must offer you a price lower than AEP Ohio’s price of $0.0xx per kWh for the same usage that appears on this bill.” The new message does nothing more than apply basic math: multiplying the price to compare by the customer’s usage. There is nothing misleading about this and it assists customers in making a more informed decision.

The second sentence that AEP proposes be added to the bill is “Compare with your current supplier charges listed below on this bill for potential savings.”[[6]](#footnote-7) Again, there is nothing misleading here. The Suppliers complain that it is misleading to compare SSO charges to the charges that a customer pays to a marketer. According to them, it is not an “apples-to-apples” comparison, and thus is misleading.[[7]](#footnote-8)

The Suppliers are wrong. The PUCO has already rejected the claim that it is invalid to use the SSO rate (aka, the price to compare) as a benchmark for evaluating marketer offers. The PUCO’s website that allows customers to compare marketer rates to the SSO rate is literally called the “Apples to Apples Comparison Chart.”[[8]](#footnote-9) The PUCO’s Apples to Apples Comparison Chart suggests that customers “[c]ompare the supplier offers contained in the chart with the ‘Price to Compare’ shown on your electric bill.”[[9]](#footnote-10) The PUCO’s website then provides AEP’s current price to compare, which is the same one that appears on customers’ bills.[[10]](#footnote-11) In other words, the PUCO’s own website advises customers to make the very comparison that the Suppliers now claim is “misleading.” The PUCO should reject the Suppliers’ claims that customers are being misled by the price to compare.

## C. Customers can consider several factors in deciding whether to shop with a marketer, and price is one important factor.

A common refrain among the Suppliers is that it is not appropriate to compare the SSO rate to a marketers’ rate because marketers offer benefits that go beyond just price. NOPEC, for example, argues that AEP’s proposal does not account for “non-price benefits such as 100% renewable generation pricing or the hedging value/peace of mind of a fixed price contract.”[[11]](#footnote-12) Constellation similar notes that AEP’s proposal “ignores other benefits that many shopping customers desire and choose, such as choosing generation sourced from renewable resources.”[[12]](#footnote-13) NRG also comments that AEP’s proposal fails to explain that shopping with a marketer “may include additional value such as renewable energy or a fixed term plan.”[[13]](#footnote-14) IGS comments that customers might value “stability of a fixed rate, renewable qualities, or extended contract length.”[[14]](#footnote-15)

Some customers might find value in elements like renewable energy and long-term contracts, and some might be willing to pay a higher price for these elements. And importantly, nothing prevents customers from considering these and other factors when making a decision to obtain electricity from a marketer or the SSO. A customer who receives an AEP bill along with the proposed message comparing the SSO to the marketer’s rate will still be able to weigh the benefits of renewable energy, contract length, and other factors.

The Suppliers complain that AEP’s message places undue weight on price.[[15]](#footnote-16) Their complaint is wrong for several reasons. First, price *is* the most important factor for many customers. It is sad that this obvious point about the value of lower prices to consumers even has to be debated, which says something about the weakness of the marketers’ claims.

Further, electricity is, by and large, a commodity. The electrons provided by a marketer are the same as the electrons provided by the SSO, regardless of the generation source. While the Suppliers think that AEP is wrong to place emphasis on the price, they seem to be suggesting the opposite: that price doesn’t matter at all and is therefore irrelevant.

Price is an important factor in consumer purchases and often one of the most important (if not definitive). AEP’s proposal highlights the price that they paid that month, and the price that they could have paid had they made a different choice. This is relevant to consumers in making purchasing decisions. They should be allowed access to this information, which they can then weigh, along with other factors like renewable energy and contract term, according to their individual preferences. That is how competitive markets work.

## D. The Suppliers are right to be concerned with any attempts by electric distribution utilities to interfere with competitive generation markets, but there are no such concerns in this case about bill formatting.

Ohio’s 1999 energy law (Senate Bill 3) set Ohio on the path to a competitive market for electric generation. This competitive market, and especially the competitively-sourced standard service auctions, have provided lower prices for consumers (as reflected in the NOPEC-sponsored study).[[16]](#footnote-17) Electric distribution utilities are out of the generation business, and customers should not pay subsidies to electric distribution utilities related to generation.

In their initial comments, some of the Suppliers raise concerns about AEP interfering with the retail energy market because of its proposed billing message. Constellation, for example, claims that AEP’s proposed billing message is akin to AEP using its “unique power and position” to “discriminate against the shopping selections of the residential shopping customers and harm the market.”[[17]](#footnote-18) Constellation also argues that AEP’s proposed billing message would “result in contract interference,” thus making it not “just and reasonable” under R.C. 4905.22.[[18]](#footnote-19) Similarly, NRG argues that AEP’s proposal would “interfere with and discriminate against the shopping customer’s decision.” IGS references Ohio’s deregulated market, stating that “Ohio’s regulatory structure provides ... a distinct separation of competitive and noncompetitive retail electric service.”[[19]](#footnote-20) RESA claims that AEP’s message is “promoting the SSO,” which RESA considers to be “anticompetitive.”[[20]](#footnote-21) RESA also claims that AEP’s billing message would “extend an undue preference or advantage to itself.”[[21]](#footnote-22)

The entirety of these Supplier claims can be dismissed as patent exaggerations of the impact of AEP’s proposal. The Suppliers seemingly suggest that AEP’s two-line billing message would bring the retail energy market to a halt, toppling it as every residential customer in AEP’s territory would immediately revert to the SSO, to the detriment of Ohio’s marketers. No one should believe the marketers’ sky-is-falling type rhetoric about the impact that AEP’s billing message will have on the retail market in Ohio.

And not one of the Suppliers’ claims about AEP “interfering” with the retail market has merit. Take Constellation’s claims that AEP’s proposal “touts the standard offer and instructs the residential customer to reconsider the contract it has with Constellation or any other supplier for ‘savings.’”[[22]](#footnote-23) This is a gross mischaracterization of AEP’s proposal. Nothing in the proposal “instructs” customers to do anything. Nothing in the proposal “touts the standard offer.” To the contrary, for customers who are paying less with a marketer, AEP’s proposal would reinforce that decision, which is the opposite of touting the standard service offer. The proposal provides objective information to customers and informs customers that they can use this information in deciding whether to shop for generation or receive generation from the SSO. Nothing more. In reality, AEP’s proposal is an important step in righting the disadvantage consumers face in making decisions (including bad decisions) about marketer offers.

RESA’s descriptions of AEP’s proposal are particularly inaccurate. RESA claims that AEP’s bill formatting proposal is intended to allow AEP to “promote its generation product (the SSO) as the ‘better value’ relative to CRES offers.”[[23]](#footnote-24) RESA doubles down on this claim, arguing that AEP is seeking to “extend an undue preference or advantage to itself.”[[24]](#footnote-25) These claims demonstrate RESA’s misunderstanding about how AEP’s standard service offer works or about consumer protection or about both.

The standard service offer is procured through competitive auctions, *where marketers* bid for the opportunity to provide generation to AEP’s customers through the SSO. AEP does not own generation, does not provide generation directly to its customers through the SSO (or otherwise), and, as a distribution-only utility, stands to gain nothing based on a customer’s choice to shop with a marketer or take generation from the standard service offer. RESA’s claims that AEP is trying to enrich itself through its proposed billing message does not square with the way electricity generation works in Ohio.

In short, the PUCO should certainly be wary of distribution utility proposals that might interfere with power plant competition. This typically occurs when captive residential customers are required to subsidize generation (such as subsidies they have paid for the Ohio Valley Electric Corporation power plants, and nuclear plant subsidies that they could pay under House Bill 6). It does not occur through bill messages that provide basic information about retail pricing to consumers.

The PUCO should be finding ways to enhance protections for consumers in their retail energy shopping. AEP’s proposal is one of the ways that consumer protection should be improved.

## E. AEP’s proposal is consistent with the PUCO’s rules, so the PUCO should approve the application in this case without opening a new rulemaking case or Commission-Ordered Investigation.

NOPEC asks the PUCO to reject AEP’s proposed bill format changes because NOPEC prefers that it be addressed in a “rulemaking proceeding or a Commission ordered investigation that establishes uniform statewide EDU rules.”[[25]](#footnote-26) NOPEC cites no authority for this position. Rulemakings have their place, but this is not the place. AEP’s proposed consumer protection should be resolved in this case without delay.

Ohio Adm. Code 4901:1-10-33(F) explicitly provides that an electric distribution utility may file an application for a “new consolidated bill format.” AEP’s Application complies with this rule.

Further, there would be no need for AEP to make this proposal in a rulemaking case because AEP’s proposed bill message does not require any changes to the rules. Ohio Adm. Code 4901:1-10-33(C)(18) requires AEP to include the price to compare on customers’ bills. This is a minimum service standard, which AEP has chosen to go above and beyond to provide additional meaningful and valuable information to customers (essentially multiplying the customers’ kWh usage by the price to compare). The rules do not prohibit this.

Rulemaking cases exist for the purpose of the PUCO making *changes* to its rules based on input from parties. AEP is not seeking any change to a rule here. If AEP were to propose a change to the format of its own bills in a rulemaking case, it would likely be outside the scope of that case. For that reason, NOPEC’s suggestion that AEP’s changes be addressed in a rules case is not well taken.

NOPEC has further failed to establish that a Commission-Ordered Investigation is necessary to effect AEP’s proposed changes. An investigation into the rates that marketers in Ohio are charging customers would not be a bad thing, as it could reveal the extent to which customers throughout the state might be overpaying for electricity when they switch to a marketer. But AEP’s proposal, being consistent with the PUCO’s current rules, can and should be approved in this case without a full PUCO investigation.

# II. CONCLUSION

The Marketers believe that their residential customers are sophisticated buyers who choose to pay more for electricity based on elements like renewable attributes, hedge value, and contract length, among other things. If these customers are in fact willing to pay more for these features or products, then AEP’s proposal will not negatively impact the retail energy market. These customers can see the bill message, be reminded that they are paying more, and continue to pay more because they (supposedly) are OK with paying more.

It is not hard to figure out what the Marketers are really concerned about: customers who *don’t* already realize they are paying more (thus resulting in higher profits for the Marketers) and who might figure it out based on AEP’s proposed billing message. This might cause harm to *marketers* (because they might make less profit), but it unequivocally benefits competitive *markets*, which function better when customers are informed and knowledgeable.

AEP’s proposal is pro-markets and pro-consumer. Period. It provides customers more information about the products that they are buying. It encourages marketers to compete on price and provide better value to customers. The PUCO should approve the AEP proposal without modification and without delay.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 18th day of November 2020.

*/s/ Christopher Healey*

Christopher Healey

Assistant Consumers’ Counsel

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

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1. Constellation, NRG, IGS, and RESA will collectively be referred to as the “Marketers.” The Marketers and NOPEC will collectively be referred to as the “Suppliers.” [↑](#footnote-ref-2)
2. *See* NOPEC Comments at 3; NRG Comments at 7; Constellation Comments at 2-3; RESA Comments at 2. [↑](#footnote-ref-3)
3. IGS Comments at 6. [↑](#footnote-ref-4)
4. *See* NOPEC Comments at 2 (“AEP-Ohio’s proposed bill message would mislead customers...”); Constellation Comments at 6 (AEP’s proposal “disseminates potentially misleading information”); NRG Comments at 8 (“AEP Ohio’s proposed message would provide potentially misleading information”); IGS Comments at 7 (referring to what IGS claims are “AEP Ohio’s misleading comparisons with CRES offerings”); RESA Comments at 3 (“Promoting the SSO as a benchmark for ‘savings’ is false and misleading.”). [↑](#footnote-ref-5)
5. *See* Application at 1. [↑](#footnote-ref-6)
6. Application at 1. [↑](#footnote-ref-7)
7. NOPEC Comments at 2; Constellation Comments at 6; NRG Comments at 8; IGS Comments at 4. [↑](#footnote-ref-8)
8. *See* <https://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=Electric&TerritoryId=2&RateCode=1>. [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. *Id.* [↑](#footnote-ref-11)
11. NOPEC Comments at 3. [↑](#footnote-ref-12)
12. Constellation Comments at 7. [↑](#footnote-ref-13)
13. NRG Comments at 3. [↑](#footnote-ref-14)
14. IGS Comments at 3. [↑](#footnote-ref-15)
15. *See, e.g.,* IGS Comments at 2 (“it is abundantly clear from AEP Ohio’s Application that it believes price ... is the only factor in determining ‘value’ for electricity”). [↑](#footnote-ref-16)
16. *See* Update on Electricity Customer Choice in Ohio: Competition Continues to Outperform Traditional Monopoly Regulation, *available at* <https://www.nopec.org/media/1573/19nop32-whitepaper_web.pdf>. [↑](#footnote-ref-17)
17. Constellation Comments at 3. [↑](#footnote-ref-18)
18. *Id.* at 5. [↑](#footnote-ref-19)
19. IGS Comments at 2. [↑](#footnote-ref-20)
20. RESA Comments at 3. [↑](#footnote-ref-21)
21. RESA Comments at 5. [↑](#footnote-ref-22)
22. Constellation Comments at 3. [↑](#footnote-ref-23)
23. RESA Comments at 5. [↑](#footnote-ref-24)
24. *Id.* [↑](#footnote-ref-25)
25. NOPEC Comments at 4. [↑](#footnote-ref-26)