**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 |

**MEMORANDUM CONTRA NOPEC’S AND CONSTELLATION’S MOTIONS TO SUSPEND THE AUTOMATIC APPROVAL PROCESS AND MOTIONS FOR PROCEDURAL SCHEDULE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

AEP proposes a change to shopping customers’ bills that would allow the customers to compare their current charges (paid to a marketer) to what they would have paid under AEP’s standard service offer.[[1]](#footnote-2) AEP’s proposal is a good thing for Ohio consumers.

This information is useful to customers because it provides added transparency to the competitive retail market that does not conveniently exist today for consumers. It gives customers more information to help them make an informed choice about whether to shop for generation (such as with a marketer) or receive generation from the competitively bid standard service offer (from AEP). This information is also being supplied at the opportune time when shopping customers are reviewing their monthly electric bills.

Again, AEP’s approach is good for customers. Many customers may not realize that they could pay lower rates by using the utility’s standard offer instead of receiving generation from a marketer. We note that researchers at Ohio State and Cleveland State have shown that the utilities’ standard offers have provided the most significant savings to Ohio consumers with regard to electricity rates.[[2]](#footnote-3) In fact, according to the PUCO’s apples to apples website, out of 162 marketer offers currently available to AEP’s residential customers, 121 are currently higher than AEP’s standard service offer price to compare.[[3]](#footnote-4) Note that this challenging situation for consumers is even more difficult, because a number of the marketer offers that are lower than AEP’s standard offer price are mere teaser rates. Teaser rates can confuse consumers into signing up for a marketer’s offer that soon will be higher priced. In OCC’s view, teaser rates should not be listed on the PUCO’s apples to apples web page that consumers view and should not otherwise be facilitated. Further, many of the variable rates lower than AEP’s standard service offer include early termination fees or fixed monthly charges on top of the variable rate, thus potentially making them less favorable than the standard service offer.

AEP’s proposed change is also good for those marketers who genuinely provide generation to customers at rates lower than the standard service offer price. For these marketers, the new bill formatting highlights the savings that the customer is receiving from shopping and reinforces the customer’s decision to continue shopping for generation with that marketer.

However, the Northeast Ohio Public Energy Council (“NOPEC”), a retail energy aggregator, has filed three motions. Its motions are a motion to intervene, a motion to suspend automatic approval of AEP’s Application, and a motion for a procedural schedule.[[4]](#footnote-5) Constellation NewEnergy, Inc. also filed a motion to suspend the automatic approval process and a motion for procedural schedule, piggybacking on NOPEC’s motions.[[5]](#footnote-6)

The Office of the Ohio Consumers’ Counsel (“OCC”) respectfully requests that the PUCO deny the motions of NOPEC and Constellation to suspend automatic approval of the AEP Application and for a procedural schedule. AEP’s proposal is helpful to consumers and the PUCO should allow AEP’s Application to be automatically approved under Ohio Adm. Code 4901:1-10-33(F) so that customers can benefit from the new bill format as soon as possible.

OCC certainly acknowledges NOPEC’s interest in this case and its right to participate in PUCO proceedings in general. And therefore OCC does not oppose NOPEC’s motion to intervene.

**I. ARGUMENT**

**A. AEP’s new bill format should be automatically approved under Ohio Adm. Code 4901:1-10-33(F).**

Under Ohio Adm. Code 4901:1-10-33(F), an electric utility’s bill formatting application “shall be deemed approved on the forty-sixth day after the filing” unless the PUCO orders otherwise. NOPEC’s opposition to AEP’s Application is based on its view that AEP’s proposed bill message would be “misleading” to consumers.[[6]](#footnote-7) But, respectfully, AEP’s proposed bill messaging is not misleading. The bill messaging is accurate and provides customers with a data point that they can consider in deciding whether to shop or take generation from AEP’s standard offer.

Under AEP’s proposal, the following message would be included on shopping customers’ bills:

The supply portion of your bill using AEP Ohio’s Standard Service Offer rate (also known as the Price-to-Compare) of $0.0xx per kWh would have been $xx.xx. Compare with your current supplier charges listed below on this bill for potential savings.[[7]](#footnote-8)

NOPEC takes issue with this language for several reasons. First, NOPEC finds the phrase “potential savings” misleading. According to NOPEC, AEP’s price to compare “is not an apples-to-apples comparison to all competitive market offerings.”[[8]](#footnote-9) NOPEC claims that the comparison is unfair because (i) some shopping customers pay fixed-price contracts (instead of a per kWh charge under the standard service offer), (ii) some shopping customers are on introductory or month-to-month contracts, (iii) some shopping customers might be willing to pay a “small premium” for renewable energy, and (iv) AEP’s proposed message doesn’t inform customers that the standard offer price will change at a later date.[[9]](#footnote-10) None of these arguments justifies rejecting AEP’s proposed bill message that would help consumers in making more informed decisions concerning their generation provider.

First, it is true that shopping customers might pay fixed-price contracts or introductory or month-to-month rates. But that has no bearing on the accuracy of AEP’s proposed billing message. The proposed message provides the customer with a snapshot of their current month’s charges. It does not purport to do more. A customer on a fixed-price contract would benefit from knowing how that fixed price compares to the standard service offer. Likewise, a customer on an introductory rate (aka, a teaser rate) would benefit from knowing how that introductory rate compares to the standard service offer rate. (Again, the PUCO should be protecting consumers from marketers’ use of teaser rates.)

NOPEC’s reference to introductory rates is particularly unpersuasive. In OCC’s experience, marketers often offer introductory rates (teaser rates) that are lower than the standard service offer rate for a limited time, as a means of encouraging the customer to sign up with the marketer. But then after the introductory rate expires, the marketer rate increases above the standard service offer—sometimes substantially above. If anything, therefore, comparing an introductory offer rate to the standard service offer rate would mislead the customer *in favor of the marketer* by suggesting that the customer is getting a good deal when in fact they may be about to get a bad deal.

Placing AEP’s proposed information on the bill each month would highlight for that customer when the transition from the introductory rate to a higher rate occurs. Absent this information on a monthly bill, that rate transition could go unnoticed by the consumer for many months to the consumer’s detriment. Again, the PUCO should not be facilitating the anti-consumer use of teaser rates by marketers.

NOPEC’s reference to renewable energy likewise does not justify a rejection of the Application. It may be true, as NOPEC contends, that some customers “are willing to pay a small premium because of the important positive environmental attributes of the product.”[[10]](#footnote-11) AEP’s proposed bill message does not prevent a customer from continuing to decide to pay more for renewable energy. In fact, the proposed messaging would allow the customer to determine whether they are paying a “small premium” or if they are perhaps paying a “large premium”—one that they might be unwilling to pay. But either way, the customer is made aware of the size of the premium, and more information for customers in a competitive market is a good thing.

Further, NOPEC’s reference to the standard service offer changing in the future is irrelevant. AEP’s proposed bill formatting message does not in any way suggest that the standard service offer stays the same forever. It provides a one-month snapshot that accurately tells the customer whether they paid more (or less) with a marketer than they would under the standard service offer. This is one data point among many that a customer might consider in deciding whether to shop for generation. If the customer sees that the marketer’s charges were higher than what the customer would have paid under the standard offer, it is the marketer’s job to convince the customer why it should continue to take generation from the marketer—whether that be because of renewable attributes, projected future costs, or otherwise.

Finally, the PUCO’s rules require AEP to have a price-to-compare message on the bill that provides the rate customers pay under the standard service offer.[[11]](#footnote-12) AEP’s proposed bill format merely uses that rate per kWh along with the customer usage to show what the cost would have been using the standard offer rate.

There are countless factors that a customer might consider in deciding whether to shop. One important factor is how the marketer’s rate compares to the price to compare. AEP’s proposal provides this information objectively so that the customer can take it into account along with whatever other factors are important to the customer. That consumer information from AEP should not be viewed as misleading. The PUCO should appreciate AEP’s proposal, as we do.

**B. There is not a basis for NOPEC’s claim that AEP’s proposed bill formatting change must be made in a rulemaking case.**

In support of its motions, NOPEC further argues that AEP’s proposed “should be considered within the broader context of a rulemaking case.”[[12]](#footnote-13) According to NOPEC, the proposal “should be done within a rulemaking case which would allow all interested parties to voice potential concerns.”[[13]](#footnote-14) 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” and that the application shall be automatically approved if the PUCO does not act upon that application within 45 days. AEP’s Application complies with this rule.

NOPEC’s concern that “all interested parties” should have an opportunity to “voice potential concerns” does not support a requirement that this case be handled through rulemaking. Any party that wants to voice its potential concerns has had an opportunity to intervene in this case and voice any potential concerns it might have. Indeed, NOPEC has taken that opportunity by filing its Motions. NOPEC’s Motions include more than just a request for relief but also include what are, in substance, five pages of comments where NOPEC expresses its substantive concerns regarding the Application. NOPEC’s concerns are now before the PUCO.

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 standard. AEP has chosen to go above and beyond to provide additional 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. The PUCO should proceed in this case with the schedule for this case under Ohio Adm. Code 4901:1-10-33(F).

**II. CONCLUSION**

AEP is trying to do the right thing by providing shopping customers with information that can help them decide whether to shop or whether to receive generation service from the standard service offer. Customers with favorable marketer rates will receive a message showing that they are paying less with their marketer. Customers with an unfavorable marketer rate will receive a message showing that they are paying more with their marketer. Either way, customers are receiving important information that they can use—along with all kinds of other information available to them—in deciding what is best for them. To protect consumers, the PUCO should allow AEP’s Application to be automatically approved, as provided by the PUCO’s rules.

Respectfully submitted,

 Bruce Weston (0016973)

 Ohio Consumers’ Counsel

 /s/ *Christopher Healey*

Christopher Healey (0086027)

 Counsel of Record

Ambrosia E. Wilson (0096598)

Assistant Consumers’ Counsel

 **Office of the Ohio Consumers’ Counsel**

 65 East State Street, 7th Floor

 Columbus, Ohio 43215

Telephone [Healey]: (614) 466-9571

Telephone [Wilson]: (614) 466-1292

christopher.healey@occ.ohio.gov

 ambrosia.wilson@occ.ohio.gov

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission, this 1st day of October 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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| john.jones@ohioattorneygeneral.govgkrassen@bricker.comdstinson@bricker.comdparram@bricker.commjsettineri@vorys.comglpetrucci@vorys.com | stnourse@aep.combethany.allen@igs.comjoe.oliker@igs.commichael.nugent@igs.com |
| Attorney Examiners:sarah.parrot@puc.state.oh.usgreta.see@puco.ohio.gov |  |

1. Ohio Power Company’s Application for Approval of a Change in Bill Format (Aug. 24, 2020) (the “Application”). [↑](#footnote-ref-2)
2. *See* Electricity Customer Choice in Ohio: How Competition has Outperformed Traditional Monopoly Regulation (2016), *available at* <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2420&context=urban_facpub>. [↑](#footnote-ref-3)
3. *See* <https://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=Electric&TerritoryId=2&RateCode=1>. Some of these higher priced offers do include renewable energy, which some customers are willing to pay more for. [↑](#footnote-ref-4)
4. *See generally* Northeast Ohio Public Energy Council’s Motion to Intervene, Motion to Suspend the Automatic Approval Process, and Motion for Procedural Schedule (Sept. 16, 2020) (the “NOPEC Motions”). [↑](#footnote-ref-5)
5. Motion to Intervene, Motion to Suspend the Automatic Approval Process and Motion for a Procedural Schedule of Constellation NewEnergy, Inc. (Sept. 25, 2020) (the “Constellation Motions”). [↑](#footnote-ref-6)
6. NOPEC Motions at 3. [↑](#footnote-ref-7)
7. Application at 1. [↑](#footnote-ref-8)
8. NOPEC Motions at 2. [↑](#footnote-ref-9)
9. NOPEC Motions at 2. [↑](#footnote-ref-10)
10. NOPEC Motions at 2. [↑](#footnote-ref-11)
11. Ohio Adm. Code 4901:1-10-33(C)(18). [↑](#footnote-ref-12)
12. NOPEC Motions at 3. [↑](#footnote-ref-13)
13. NOPEC Motions at 3. [↑](#footnote-ref-14)