

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of _____)
Ohio Power Company to Initiate Phase 2) Case No. 13-1939-EL-RDR
of its gridSMART Project and to _____)
Establish the gridSMART Phase 2 Rider.)

**POST-HEARING BRIEF OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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I. Introduction

Ohio Partners for Affordable Energy (“OPAE”) herein submits to the Public Utilities Commission of Ohio (“Commission”) this post-hearing brief in this proceeding concerning the application of Ohio Power Company (“AEP Ohio”) to initiate Phase 2 of its gridSMART program and to establish a rider to collect from its customers the costs associated with Phase 2. Phase 2 is an expansion of AEP Ohio’s Phase 1 grid project, and the Phase 2 rider is the proposed mechanism for recovering the investment beyond Phase 1. On April 7, 2016, a Stipulation and Recommendation (“Stipulation”) was filed to resolve the issues in this case. OPAE is not a signatory party to the Stipulation and requests that the Commission modify the Stipulation to address the recommendations herein.

II. The Stipulation should be modified to comport with Ohio’s consumer protection laws.

On the same day AEP Ohio filed this application, AEP Ohio also filed an application in Case No. 13-1938-EL-WVR for a waiver of Ohio Administrative Code

(O.A.C.) Rule 4901:1-18-06(A)(2), which requires that the utility, on the day of disconnection for nonpayment of a residential customer, provide the customer or adult at the premises with personal notice of the disconnection and, if neither is at home, the utility shall attach written notice to the premises at a conspicuous location. OPAE opposed the waiver request. OPAE Motion to Intervene and Protest, Case No. 13-1938-EL-WVR (September 23, 2013). On March 18, 2015, the Commission granted the waiver and established a pilot program to determine the effects of the waiver on customers.

The Office of the Ohio Consumers' Counsel ("OCC") witness James D. Williams testified in this proceeding that AEP Ohio customers in the Phase 1 area were more likely to be disconnected for non-payment than other AEP Ohio customers. OCC Ex. 21 at 19. In addition, customers in the Phase 1 area are being disconnected at a much higher rate even though they owe considerably less money than customers who do not have smart meters. The evidence shows that smart meter technology allows more disconnections at a quicker rate than traditional meters. Id.

The Commission should rescind the waiver and require AEP Ohio to comport with Ohio's consumer protection laws. AEP Ohio personnel should be required to make a personal visit to a residential customer's premise on the day of disconnection to provide notice and accept payment (or make available another means to avoid disconnection) and to inform the customer of customer rights and payment options. Because there is now no personal notice on the day of

disconnection, customers with smart meters may not be informed of the disconnection, the reasons for the disconnection, and their options to avoid disconnection. Simply because a smart meter allows remote disconnection is no reason to eliminate consumer protections; in fact, the ease with which advanced meter technology allows disconnections, as documented by OCC witness Williams, is a reason to enhance consumer protections. Without a personal contact, customers cannot be presumed to have notice of the disconnection, the reason for the disconnection, or their rights and remedies to avoid the disconnection as required by Ohio law. The customers cannot avail themselves of the payment plans, payment assistance programs, or the right to dispute the reason for the disconnection. O.A.C. 4901:1-18-06(A)(4). The personal notice on the day of disconnection is the most effective way to ensure that utility customers are directed to community agencies that can provide funding to prevent the disconnection or work with the utility to put in place a payment plan that avoids disconnection. *Id.* at 20-21. The Commission should rescind the waiver because it is now shown to increase disconnections and because it is unlawful and unreasonable to deprive customers of the protections required by law.

With the waiver, the Commission is allowing inadequate notice of disconnection, and therefore, unlawful disconnections of service for customers with smart meters. The waiver's alternative notification procedures cannot assure that adequate notice is effectively communicated to the customer. Only the personal notice, whether given directly to an adult in the residence or by the notice placed on

the customer's residence on the day of disconnection, guarantees customers are made aware of their rights and remedies under Revised Code Section 4933.122. At the very least, the Commission should require the Staff of the Commission to analyze the data available to the Staff after the implementation of the waiver in September 2015. This data exists to allow the Staff to determine the impact of the waiver on customers. The Staff should be required to report the results of its analysis of the impact on the waiver in the public record.

The Commission should modify the Stipulation, rescind the waiver, and require that the consumer protections set forth in R.C. Section 4933.122 and O.A.C. Rule 4901:1-18-06(A) extend to all residential customers, including those with smart meters. In the alternative, the Commission should require the Staff to analyze the data it has already collected since September 2015 on the impact of the waiver and report its findings in this docket.

III. The Stipulation should be modified to expedite the return of operational cost savings to customers.

Under the Stipulation, concurrent with the inclusion of costs in the Phase 2 rider, a credit reflecting projected operational cost savings will be incorporated so that it offsets the costs otherwise recovered through the rider. Stipulation at 10. The initial cost savings credit will flow back \$400,000 per quarter starting in the fourth quarter of the first year and will not be adjusted or reconciled during the time it will be in effect, which will extend until the Commission adopts a new operational cost savings credit. The Commission Staff may obtain a consultant to recommend an

ongoing level of operational benefits to be achieved and recognized in rates as part of the annual rider filing. After the recommendation is made, AEP Ohio and intervenors shall endeavor to reach agreement on whether the recommended level of benefits should be adopted. If no agreement is reached, the Commission shall establish a process to determine the estimated level of benefits to be netted against costs. The Commission will then adopt a new operational cost savings credit to net against the costs. Id.

OCC witness Peter J. Lanzalotta testified that the Stipulation allows AEP Ohio to front load expenses for the Phase 2 projects, while potential benefits to customers are not passed through until some future undetermined date. Thus, the Stipulation unfairly burdens customers with the financial risks of the Phase 2 projects that should be borne by AEP Ohio shareholders. Customers should not have to shoulder all the financial risks.

OCC witness Wilson Gonzales testified that the Stipulation should be modified to improve the provisions for operational cost savings to customers. The process for determining the scope and magnitude of operational cost savings should be expedited. OCC Ex. 18-19 at 7. The amount of operational cost savings credited to customers should also be increased in line with AEP Ohio's updated estimate of operational savings, while taking account of the Phase 1 investment. A greater amount of the operational cost savings credit should also be levelized over the years of the Phase 2 project to reduce customer charges and better balance the benefits and costs of Phase 2 deployment. Id. Also, the Commission should require base rate case timing as a condition of smart grid investment approval to allow customers to capture the full operational cost savings when the project is completed. Id. at 8.

OCC witness Williams testified that AEP Ohio is already collecting from customers amounts in base rates that might provide an off-set to the rider charges proposed by AEP Ohio in the Stipulation. The Stipulation does not reduce cost-based reconnection charges to account for the remote reconnect capability that is provided with smart meters. AEP Ohio currently charges customers who are disconnected for non-payment a reconnection fee of \$53 to restore service. OCC Ex. 21 at 22. The reconnection charge should be considerably less for customers with smart meters because the cost of the visit to the customer's residence is avoided. The \$53 reconnection charge is not cost based for customers who have smart meters and are reconnected remotely. *Id.* The Stipulation does not require AEP Ohio to establish new cost-based reconnection charges for customers who will receive the smart meters. *Id.* at 23.

The benefits of smart grid deployment must be monetarily quantified in order for consumers to receive monetary benefits they are already paying for. The Commission should quantify these benefits and allow for credits to costs recovered through the rider. Any monetary benefits should be accounted for and passed on to ratepayers through the Phase 2 rider. Efforts should be made to carry forward benefits through the rider so that customers enjoy accelerated benefit recovery in the same manner that AEP Ohio receives accelerated, dollar-for-dollar cost recovery through the rider. The rider's cost recovery mechanism requires effort to establish a forward accelerated benefit realization mechanism for the benefit of customers. The Stipulation should be modified to expedite the process by which operational costs savings are identified and returned to customers. The tariffed fee for the reconnection of service must also be reduced for customers with smart meters.

IV. Ohio law does not allow pre-paid electric service; therefore, the Stipulation should be modified to eliminate provisions regarding pre-paid service.

The Stipulation states that AEP Ohio agrees to work with the Staff and interested parties within the gridSMART Collaborative to identify any legal and regulatory barriers for an electric distribution utility or competitive retail electric service (“CRES”) provider pilot pre-paid metering programs that customers could opt-into. Stipulation at 12. The Stipulation continues that any future opportunity to move forward with pre-paid metering would address consumer protections. *Id.*

Pre-paid metering service in Ohio is unlawful, just as the elimination of the personal visit on the day of disconnection is unlawful in Ohio. The Stipulation acknowledges Ohio law by referring to “pilot prepaid metering programs” that would address consumer protections, i.e., seek a waiver of the law. Avoiding consumer protections by establishing pilot programs that waive consumer protection laws is apparently another smart technique.

Pre-pay service involves a customer depositing some amount of money into a credit or debit account. Customers receive updates when their accounts hit certain thresholds so they know when they can reload the accounts. *Tr. II* at 270. Customers may be told they have \$30 left, that the \$30 is going to last another three days, etc., and that they need to deposit more money. *Id.* at *II* at 271. Pre-pay is apparently common in Texas where the retail supplier can determine deposit requirements to establish service. In Ohio, a deposit to establish service is determined by the utility. In Texas, if a supplier determines that the customer’s

credit is not good enough and a deposit is necessary, the customer may be placed by the supplier on pre-paid service for three months and if the account balance never falls to zero, the deposit requirement may be waived so that the customer can go to past-paid service and get a bill at the end of the month like other customers. Id. at II at 272.

For a pre-pay customer, once the account goes to zero, the customer is shut off. The customer must immediately put money on the account to be turned back on. It is obvious that this service completely disregards Ohio's customer protection rules for deposits and disconnections of service. Customers could be required to make unreasonable deposits and could be disconnected so many times that their service would not be reliable. Pre-paid service is second-class service of a type not contemplated by Ohio law.

The Stipulation's provision that the pre-pay concept will be discussed in the future should be eliminated. Pre-pay is illegal in Ohio and the Commission should modify the Stipulation to eliminate this unlawful provision.

V. Time-of-use rates may not benefit all customers, especially low-income customers; therefore the Stipulation should be modified so that the costs to implement these time-of-use rates should not be assigned to customers.

The Stipulation creates a Time-of-Use ("TOU") transition plan. The CRES agree to develop similar programs to AEP Ohio's current TOU programs within six months of the Stipulation being adopted. Stipulation at 7. The Stipulation includes the steps to be followed in the TOU transition plan. Stipulation at 8. All costs associated with the transition plan and the CRES web portal will be paid by

customers. Tr. II at 248. Under the Stipulation, CRES providers will not pay any of the costs. Id. All the costs of the steps of the transition plan will go through the Phase 2 Rider. Id. at 248. The rider is non-bypassable so that the costs will be collected from all customers regardless of whether they participate in a TOU program or not.

Time-differentiated rates allow customers to pay lower prices by reducing peak demand usage and reacting to pricing signals to control their consumption. Only certain customers can benefit from TOU rates. While there are always references to “savings” from these rates, these savings only occur if the customer is able to react to price signals and monitor usage on practically an hourly basis. This is an unrealistic requirement for many customers, including low-income customers, who may end up paying far more when they are unable to monitor and control their usage. Low-income customers work, often at multiple jobs with varying work times. Time-of-use rates are appropriate only for customers who are willing and able to purchase certain equipment and appliances and expend the time necessary to benefit from these rate offerings by monitoring their hourly usage. The risks imposed by these rate designs are not acceptable for most customers, especially low-income customers.

As OCC witness Williams pointed out, there is no assurance that customers will be able to participate in TOU programs in sufficient numbers to assure the stipulated investment is cost effective. The web portal to provide CRES providers with interval data will not be available for at least another two years. As few as 5% of customers may participate. OCC Ex. 21 at 12. The Stipulation requires customers who have no interest in TOU rates to pay for the system capabilities when only a relative few number of customers may actually participate. Id. There is

also no assurance that customers will actually save money on the CRES TOU programs.

The Commission should require AEP Ohio to perform shadow billing so that a determination can be made if customers on TOU rates are actually saving money, especially with respect to the CRES TOU programs when they are established. The level of customer savings from TOU programs should be made public and evaluated. OCC Ex. 21 at 13. In addition, the Stipulation should be modified to require that CRES providers, the beneficiaries of the stipulated provisions for TOU rates, pay for the web portal and other infrastructure investments required to implement TOU rates. Customers should not pay the costs associated with the Stipulation's TOU provisions.

VI. The Stipulation should not provide that AEP Ohio's \$20 million investment in VVO satisfies AEP Ohio's obligation to spend \$20 million on an Ohio investment.

The Stipulation states that AEP Ohio will make a capital investment of at least \$20 million for Volt VAR Optimization ("VVO"). Stipulation at 6. The stipulating parties agreed that the proposed VVO investment resolved AEP Ohio's outstanding obligation for renewable or similar capital investment associated with its 2009 Significantly Excessive Earnings Test ("SEET") case, Case No. 10-1261-EL-UNC. Stipulation at 7. AEP Ohio's obligation to invest \$20 million in a project benefiting Ohio ratepayers arose from the Commission's reduction of the refund to Columbus Southern Power Company's ("CSP") ratepayers resulting from the SEET. The SEET refund was reduced because of "capital commitments made by CSP for both 2010 and 2011." Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011) at 25-27. The Commission also made a downward adjustment in ratepayer refunds to

account for “AEP-Ohio’s future committed investments in Ohio” in another SEET order. Case No. 11-4571-EL-UNC, Opinion and Order (October 23, 2013) at 27.

OCC witness Lanzalotta testified that the \$20 million that AEP Ohio committed to spend in 2012 was not spent. Now this old issue is to be resolved in this proceeding. However, under the Stipulation, it will be six years from the date of the approval of the Stipulation that the proposed VVO deployment will be completed. OCC Ex. 13 at 20. Mr. Lanzalotta also testified that the Commission has found that VVO is not specifically related to smart grid technology and that VVO costs should be collected only within AEP Ohio’s Distribution Investment Rider (“DIR”), not the smart grid rider. *Id.* at 18-19. Mr. Lanzalotta also testified that a more moderate sized deployment of VVO technology would have permitted AEP Ohio to learn about installing and operating the technology as well as possibly permitting AEP Ohio to use less expensive internal labor for deployment. *Id.* at 18. Mr. Lanzalotta testified that the Stipulation’s expansion of VVO appears speculative and unduly ambitious with adverse cost consequences to customers. *Id.* at 19.

The Commission should find that the \$20 million VVO investment will not satisfy AEP Ohio’s obligation resulting from the SEET cases. The VVO investment is both costly and speculative. AEP Ohio’s VVO investments should be recovered through its DIR. If AEP Ohio cannot find a suitable investment to satisfy its \$20 million commitment, this amount must be returned to ratepayers for their benefit. The Commission should modify the Stipulation so that the VVO investment does not satisfy the SEET obligation.

VII. Conclusion

OPAE requests that the Commission modify the Stipulation and Recommendation as set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief will be served electronically by the Commission's Docketing Division upon the following electronically subscribed parties identified below on this 2nd day of September 2016.

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Summary: Brief electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy