BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

POST-HEARING BRIEF OF
DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC

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I. INTRODUCTION

The discussion of how to incorporate smart grid technology into Ohio's electric utility system has been taking place for a decade, if not more. Ohio Power Company (AEP Ohio) has been working to develop its gridSMART project within its territory since 2009. The project has brought enough success to justify expanding the project with the Phase 2 proposal rollout in this case. Phase 2 will expand the benefits realized from the initial rollout to more customers, with the goal of someday extending those benefits to all customers. Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy) has used and will continue to use the gridSMART platform to develop programs to help customers understand their usage and save money. Direct Energy and its customers benefit from gridSMART and are happy to pay their fair share of the costs. However, as the benefits of the program are expanded to all customers, the costs of the program will also expand to incorporate all customers. All AEP Ohio customers will have the opportunity to realize benefits from gridSMART, therefore all customers should contribute to the costs.

AEP Ohio filed its application in this case just shy of three years ago. The parties here have participated in numerous settlement negotiations. Each party has had an opportunity to express its approval or disapproval of AEP Ohio's application as originally submitted, as well as the Stipulation that is now before the Commission. As much as OCC may want to argue that only a stipulation where a "consumer advocacy group" is a signatory party should be considered by the Commission, the fact is the Commission regularly approves stipulations without such a party having signed. The signatory parties in the case should not be held hostage for any longer just because OCC does not agree with the outcome of this particular agreement.

II. ARGUMENT

A. The Stipulation meets the standards of the Commission's three-part test.

The Commission employs a three-part test to evaluate a stipulation such as the one filed in this case. The Ohio Consumers' Counsel (OCC) in particular focused on the first part of the test, namely, whether the Stipulation is a "product of serious bargaining among capable, knowledgeable parties," and extended the question by asking whether those parties "represent a diversity of interests." (OCC Ex. 18, Wilson Direct at 8-9; Tr. I at 155-163.) OCC witnesses also stated in filed testimony that by not including signatures by parties representing either residential customers in general or at-risk low-income customers in particular, the Stipulation failed this part of the Commission test. (OCC Ex. 13, Lanzalotta Direct at 4-5; OCC Ex. 21, Williams Direct at 6-7.)

As OCC's witnesses acknowledge, albeit in footnote form, the Commission does not actually include in the requirement of "knowledgeable parties" engaging in serious bargaining "a diversity of interests." (OCC Ex. 13 at 4; OCC Ex. 18 at 8; OCC Ex. 21 at 6.) In fact, in the very decision cited by OCC, the Commission states that it "has repeatedly determined that [it] will not require any single party, including OCC, to agree to a stipulation, in order to meet the first prong of the three-prong test." *In re Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opin. & Order at 52 (Mar. 31, 2016); *see also In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opin. & Order at 10, (Feb. 19, 2014); *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opin. & Order at 26 (July 18, 2012).

Commission precedent is clear. The test used to evaluate stipulations does not require signatory parties to include specific groups, even customer advocacy groups like OCC, in order to approve the stipulation.

B. Direct Energy has committed to providing TOU products to AEP Ohio customers.

The stipulation recognizes that AEP Ohio cannot simply flip a switch and have advanced meter infrastructure (AMI) meters installed and data access from AMI meters immediately. Therefore AEP Ohio and signatories agreed to allow access to existing technology for a transition of existing TOU options, followed by broader products once systems are updated to allow for those broader products. (Jt. Ex. 1, Stipulation at 7-9.) Direct Energy offers a variety of time-of-use products to its customers in Texas, Pennsylvania, and Illinois, and plans to offer the same or similar products in Ohio. (Direct Ex. 1, Ringenbach Direct at 3-5.) These programs address the different needs of its customers and give them a level of control over their monthly bill by enabling them to manage their energy usage throughout each day and week. (Tr. II at 249-250.) The programs vary based on the state and the customer's needs; one program in Texas offers credits and discounts for reducing usage during peak times. (*Id*.) In Pennsylvania and Illinois, customers are able to choose a program that offers a two-tiered rate for peak and off-peak usage. (Direct Ex. 1 at 3.) And in each of the three states, Direct Energy offers a chance to receive periods of free service based on reductions in peak usage. (*Id*.)

As Ms. Teresa Ringenbach discussed at hearing, Direct Energy has agreed to develop and market time-of-use (TOU) products to AEP Ohio's customers within the gridSMART Phase 2 rollout, via the transition plan laid out in the Stipulation. (Tr. II at 246.) The programs created by Direct Energy will use the existing AEP Ohio system capabilities and be similar to the programs currently offered by AEP Ohio. Under the terms of the Stipulation, signatory CRES providers, including Direct Energy, agree to develop these TOU products within six months of the adoption

of the Stipulation. (Jt. Ex. at 7.) These products would then be marketed and offered by Direct Energy and other CRES providers to AEP Ohio customers throughout the rest of the transition plan timeframe. (*Id*. at 8.) This timeframe could take up to 18 months to be fully realized, as explained in the Stipulation. (*Id*.) In addition, there is nothing preventing other suppliers from also providing products based on this provision, therefore opening the door to CRES provider TOU options to customers, something not currently available in any service territory in Ohio.

Beyond the timeline contemplated in the transition plan, whether or not Direct Energy or other CRES providers are able to provide a more diverse selection of TOU products or other programs through the use of the smart meter technology depends on AEP Ohio's development of the "necessary systems and processes to enable" the TOU programs developed by CRES providers. (*Id*. at 8-9.) The Stipulation provides that AEP Ohio will develop a CRES AMI interval data portal, which will allow CRES providers to offer a "more strategic and competitive" slate of products than is currently possible with the systems AEP Ohio has in place. (*Id*. at 9.)

The stipulation includes further programming and broader data access to allow CRES providers such as Direct Energy to bring products that are not limited to AEP Ohio's original three programs. (*Id*.) Despite OCC's attempt to extract some guarantee from Ms. Ringenbach at hearing, however, Direct Energy is not in a position to guarantee any sort of timeline or, at this point in time, even an exact product line it will be able to offer once broader access is in place. Once the access is available, CRES providers will develop products based on the access and data. Direct Energy's responsibility regarding gridSMART is to work with AEP Ohio to develop products for its customers that allow them to take advantage of the smart meter technology, and to implement these programs once AEP Ohio has put into place the necessary systems and processes and communicated to customers the availability of these programs. (Direct Ex. 1 at 4-

5.) In the spirit of ensuring products come sooner rather than later, Direct Energy has repeatedly committed to the market programs similar to AEP Ohio's existing programs while the other systems and processes are being worked on.

In short, Direct Energy's commitment to offer gridSMART products is real. It is not something Direct Energy "intends" to do, is "thinking about" doing, or "might" do only under certain conditions. The timeline in which Direct Energy can deliver on this commitment is simply not within its control.

C. Costs for gridSMART should be shared by all customers who stand to benefit from the technology.

Direct Energy acknowledges that the Phase 2 rollout of gridSMART, as well as the development of the data access to allow for TOU products by CRES providers and the systems necessary for the implementation of these products, will require a significant financial investment. CRES providers will also have to spend money to integrate their systems and market products. These costs will likely be passed onto those customers who take the offer. AEP Ohio and all consumers, however, must each be responsible as well for their fair share of the gridSmart investment, which this settlement ensures.

CRES provider customers do stand to benefit from the expansion of smart grid technology in Ohio, but this does not mean that CRES provider customers alone should bear the entire financial burden. The original gridSMART did not place costs on customers based on whether they used gridSmart technologies, and neither should the expansion. CRES provider customers should not face discriminatory charges for taking an offer from a CRES provider that uses smart meter data anymore than a current AEP Ohio customer who participates in AEP Ohio TOU offers is charged "extra" for their use.

In the case of AEP Ohio customers, it is appropriate for all customers to pay a portion of an aggregated amount for the technology. The benefits to the entire customer base are clear, and several of these benefits have begun to be realized through Phase 1, including reduced customer outage events, shorter outages and faster restoration times, improved energy efficiency and demand reduction, and overall improved customer satisfaction. (AEP Ohio Ex. 1, Osterholt Direct, Ex. SSO-1 at 1.) With the Phase 2 rollout, additional benefits are possible, such as support for a more robust customer choice market and potential for time-differentiated rate design offerings. (*Id*. at 2.)

That some customers may choose not to avail themselves of benefits available through gridSMART is no reason to sanction the avoidance of costs. Just as the state highway system is available to all but portions of it used only by some, all Ohio taxpayers pay their share of costs associated with building and maintaining the public highways. Because gridSMART will be available to all AEP Ohio customers, fairness dictates that everyone pays.

III. CONCLUSION

This case has been going on for three years. The development of smart grid technology has been discussed in this state for the last decade. The parties in this case have each had the opportunity to discuss the merits of AEP's business case for gridSMART Phase 2, and through those discussions a stipulation has been reached. The validity of the signed stipulation has been discussed both in testimony and at hearing. While not all of the parties to the case have signed the stipulation, the opinions and concerns of each of the parties have been taken into account in crafting the Stipulation.

Dated: September 2, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post-Hearing Brief was served by electronic mail this 2nd day of September, 2016, to the following:

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