

**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

**REPLY BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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TABLE OF CONTENTS

| | PAGE |
|---|------|
| I. INTRODUCTION | 1 |
| II. RECOMMENDATIONS | 5 |
| A. The Settlement is not the product of serious bargaining among capable, knowledgeable parties, and the signatory parties to the Settlement do not represent diverse interests. | 5 |
| B. The Settlement as a package does not benefit customers and the public interest because customers assume all the financial risks from Phase 2 deployment up-front, while there is no guarantee that customers will realize the operational benefits from Phase 2 deployment. | 9 |
| 1. Customers pay all the costs of Phase 2 deployment up-front, but any operational benefits would accrue to customers many years down the road, if at all. | 9 |
| 2. The Settlement is unreasonable because the benefits of the Phase 2 deployment by far accrue to non-residential customers, even though residential customers pay more than 60 percent of the Phase 2 costs. | 14 |
| 3. Mr. Lanzalotta’s criticism of Phase 1 DACR deployment is correct. | 15 |
| 4. Any benefits from time-of-use rates and interval data in the Settlement are speculative..... | 17 |
| 5. Given AEP Ohio’s disconnection data for 2016, AEP Ohio’s use of advanced meters to remotely disconnect residential customers for nonpayment is a factor in this proceeding. | 18 |
| C. The Settlement violates important regulatory principles and practices. | 19 |
| III. CONCLUSION..... | 22 |

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I. INTRODUCTION

In this case, the Public Utilities Commission of Ohio (“PUCO”) will decide whether Ohioans should bankroll the installation of a half billion dollars of “smart grid” technology by their electric distribution monopoly, Ohio Power Company (“AEP Ohio”).¹ The Settlement in this case² would allow AEP Ohio to deploy the second phase (“Phase 2”) of smart grid technology in its service territory, without a regulatory review of whether the plant installed in the first phase (“Phase 1”) is “used and useful” for Ohioans’ electric service, under Ohio law.

Phase 2 involves several projects. Chief among them is installing 894,000 advanced meters on Ohio homes. Much of the deployment would be based on a “feasibility study” that the PUCO would neither review nor approve. The projects, the beneficiary of each project, and who funds each project are summarized below:

¹ See AEP Ohio Ex. 1 (Osterholt Direct Testimony), Exhibit SSO-1 at 9.

² Joint Ex. 1.

| Settlement project | Who benefits | Who pays |
|--|--|---|
| Deployment of 894,000 advanced meters | Primary beneficiary is AEP Ohio because it saves money by being able to remotely read meters, disconnect service, or reconnect service. | Because there is no rate case requirement to pass savings along to customers, customers pay the entire amount. |
| Distribution automation circuit reconfiguration (“DACR”) | 98.4 percent of the benefit goes to industrial and commercial customers, who have the most to lose from outages; 1.6 percent goes to residential customers. | Residential customers pay 62 percent; industrial and commercial customers pay 38 percent. |
| Volt-Var Optimization (“VVO”) technology | AEP Ohio benefits from a more efficient distribution system; Customers may benefit from reduced energy usage. | Customers pay the entire amount. Customers pay for any lost distribution revenues resulting from VVO. |
| Web portal for time-of-use (“TOU”) rates | Primary beneficiaries are competitive service marketers who will be able to offer TOU products to residential customers; Residential customers benefit only if they actually save money. | Customers – even those who do not switch to a competitor’s offering or those that cannot take service pursuant to TOU rates – pay the entire amount. |
| Air emissions benefits | AEP Ohio benefits by using any air emissions benefits to comply with federal Clean Air Act requirements; Customers may benefit from reduced air emissions. | Customers pay for all costs associated with hiring a third party to quantify air emissions benefits and identify needed changes to the distribution system. |
| Green Button | AEP Ohio benefits from any reduced peak demand; Customers may benefit by monitoring and reducing usage. | Customers pay the entire amount. |
| Customer web portal | AEP Ohio benefits from any reduced peak demand; Customers may benefit by monitoring and reducing usage. | Customers pay the entire amount. |

The Settlement would cause residential consumers to pay an unfair share of the costs of these projects. Some of the projects, such as VVO, Green Button, and the web portals, are not required for operation of the smart grid and may provide little, if any, benefit to customers. Yet, all have costs that would be paid for in their entirety by AEP Ohio's customers. In addition, there would be no base distribution rate case at deployment's end that may ensure customers realize benefits from the Settlement.³ A base distribution rate would also ensure that customers pay only for those new smart grid system costs that are prudently incurred and for distribution facilities determined to be used and useful.

As the Office of the Ohio Consumers' Counsel ("OCC") demonstrated at hearing and in its initial brief,⁴ the Settlement does not meet the PUCO's three-prong test for approving settlements. The Settlement was not the product of serious bargaining among knowledgeable parties with diverse interests, as evidenced by the fact that only one segment of one customer class signed onto the Settlement. The Settlement does not benefit customers and is not in the public interest, because the costs customers – especially residential customers – pay through the gridSMART 2 Rider far outweigh the benefits those customers would receive through Phase 2 deployment. And the Settlement

³ There is no rate case scheduled to incorporate the proposed smart grid costs into AEP Ohio's rate base, and the proposed Settlement does not proscribe a future rate case to ensure that Ohio customers are credited for the full amount of operational savings generated from the smart grid Phase 2 project.

⁴ Initial briefs were also filed by AEP Ohio, the PUCO Staff, Interstate Gas Supply, Inc. ("IGS"), Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy"), and Ohio Partners for Affordable Energy ("OPAE"). In addition, the Retail Energy Supply Association ("RESA") filed a letter on September 2, 2016. In the letter, RESA noted that it did not sign the Settlement, and expressed support for "a Phase 2 deployment of AEP Ohio's gridSMART project." Letter at 1. RESA, however, did not specifically endorse the Phase 2 deployment set forth in the Settlement. On September 12, 2016, Ohio Environmental Council and Environmental Defense Fund – signatories to the Settlement – filed a letter in support of the Settlement. If OCC does not respond specifically to any argument made in other parties' filings, that fact should not be construed as OCC's acquiescence to the argument.

violates important regulatory principles and practices, particularly through the violation of PUCO orders,⁵ a discriminatory allocation of costs, and the violation of the principle of cost causation. For all of the reasons stated herein and in OCC's initial brief, the PUCO should reject the Settlement.

If, however, the PUCO were to approve the Settlement (contrary to OCC's recommendation), it should modify the Settlement as suggested by OCC. VVO costs should be collected – subject to capped rates – through the Distribution Investment Rider (“DIR”), as the PUCO directed in AEP Ohio's second electric security plan case.⁶ The Settlement's process for determining the scope and magnitude of operational cost savings should be expedited.⁷ The amount of the operational cost savings credit to customers should be increased in proportion to AEP Ohio's updated estimate of operational savings.⁸ The PUCO should also levelize a greater amount of the operational cost savings to customers to reduce customer risk and to better balance the benefits and costs of AEP Ohio's smart grid deployments.⁹ AEP Ohio should cease collecting the \$53 reconnection charge for consumers who have an AMI and are remotely disconnected.¹⁰

⁵ For example, the Settlement violates the PUCO's Order in Case No. 11-346-EL-SSO regarding the required details for Phase 2. *See* OCC Ex. 13 (Lanzalotta Testimony) at 9-12. In addition, the Settlement violates that same Order by not including collection of costs for VVO in the DIR. *See id.* at 19.

⁶ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al, Opinion and Order (August 8, 2012) at 62.

⁷ OCC Ex. 18 (Gonzalez Testimony) at 7.

⁸ *Id.*

⁹ *Id.*

¹⁰ OCC Ex. 21 (Williams Testimony) at 22-24.

Further, the PUCO should proscribe a deadline for the filing of a post-deployment base distribution rate case as a condition of smart grid investment approval.¹¹

II. RECOMMENDATIONS

A. **The Settlement is not the product of serious bargaining among capable, knowledgeable parties, and the signatory parties to the Settlement do not represent diverse interests.**

AEP Ohio claims that OCC is attempting to add diversity of interests as an element of the first prong of the PUCO's test for approving settlements.¹² This is just not true. It has been the PUCO, not OCC, that has included diversity of interests among the signatory parties as a consideration under the first prong. As OCC noted, the PUCO first considered diversity of interest among the signatory parties more than 30 years ago.¹³ Further, diversity of interests among signatory parties has been a constant in the PUCO's examination of the first prong for more than a decade.¹⁴

¹¹ OCC Ex. 13 (Lanzalotta Testimony) at 17; OCC Ex. 18 (Gonzalez Testimony) at 8; OCC Ex. 21 (Williams Testimony) at 24-25.

¹² AEP Ohio Brief at 5.

¹³ OCC Brief at 5, citing *In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company*, Case No. 84-1187-EL-UNC, Opinion and Order (November 26, 1985), 1985 Ohio PUC LEXIS 9, [21], 71 P.U.R.4th 140.

¹⁴ *See, e.g., In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Revised Code Section 4929.11 of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May Be Required to Defer Such Expenses and Revenues for Future Recovery Through Such Adjustment Mechanisms*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007) at 15; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, et al., Opinion and Order (December 14, 2011) at 9; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) at 43.

IGS asserts that the PUCO has “flatly rejected the claim that there must be a diversity of signatory parties in order to satisfy the first prong.”¹⁵ Nevertheless, the PUCO did consider the diversity of the signatory parties in that case.¹⁶ Further, in another case decided the same day, the PUCO did not deny that diversity among the signatory parties is a consideration in a stipulated case. In fact, the PUCO touted the diversity of signatory parties to the settlement in that case.¹⁷ The diversity of the signatory parties to the Settlement in this case is a significant issue, given that only one signatory party represents a customer class, and only a small portion of the class.

The PUCO Staff contends that its presence as a signatory party shows that the Settlement meets the first prong of the PUCO’s test for approving settlements.¹⁸ But there is a critical difference between “balancing” interests of all parties and “representing” the interests of specific parties. In balancing the interests of all parties, the PUCO Staff would place itself in the position of weighing the needs of AEP Ohio versus the needs of customer classes. This is not advocacy.¹⁹ Rather, this puts the PUCO Staff in the position of being a judge or a neutral arbiter.

¹⁵ IGS Brief at 5, citing *In the Matter of the 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, Opinion and Order (March 31, 2016) at 52.

¹⁶ Case No. 14-1693-EL-RDR, Opinion and Order (March 31, 2016) at 52. *See also In the Matter of the Regulations of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio and Related Matters*, Case No. 15-218-GA-GCR, et al., Opinion and Order (September 7, 2016) at 20-21.

¹⁷ Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) at 43.

¹⁸ PUCO Staff Brief at 9. *See also* AEP Ohio Brief at 3, 8.

¹⁹ *See* Tr. Vol. III at 570-571. AEP Ohio claims that OCC witness Lanzalotta acknowledged that the PUCO Staff and other parties have “residential constituents.” AEP Ohio Brief at 8. But Mr. Lanzalotta made clear that no party other than OCC represents residential customers. Tr. Vol. III at 299. *See also id.* at 394.

This is different from representing interests of a customer class or a party to a proceeding. Representation of a customer class or a party involves the formulation of positions favorable to the interests of the client, advocacy on behalf of those interests, and negotiation of (what is hoped to be) the best deal possible for the client.

Further, recognizing that the PUCO Staff “represents” the interests of any or all parties in a proceeding directly contravenes a ruling by the Supreme Court of Ohio in *Time Warner AxS v. PUCO*.²⁰ The case involved the appeal of the PUCO’s approval of a settlement for an alternative regulation plan for Ameritech Ohio, now known as AT&T. The settlement was signed by several parties, including the PUCO Staff.²¹ However, an entire customer class (all competitive local exchange companies) was excluded from participating in the settlement negotiations.²² Although the Court decided the case on only a jurisdictional issue, it nevertheless noted its dismay at the conduct of the discussions that led to the settlement:

The partial stipulation arose from settlement talks from which an entire customer class was intentionally excluded. This was contrary to the commission’s negotiations standard in *In re Application of Ohio Edison to Change Filed Schedules for Electric Service*, case No. 87-689-EL-AIR (Jan. 26, 1988) at 7, and the partial settlement standard endorsed in *Consumers’ Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 125-126, 592 N.E.2d 1370, 1373. ... We would not create a requirement that all parties participate in all settlement meetings. However, given the facts in this case, we have grave concerns regarding the commission’s adoption of a partial stipulation which arose from the exclusionary settlement meetings.²³

²⁰ 75 Ohio St. 3d 229 (1996).

²¹ *Id.* at 229.

²² *Id.* at 234, n. 2.

²³ *Id.* The PUCO also recently stated that “no particular customer class may be intentionally excluded from negotiations.” *In the Matter of the 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, et al., Opinion and Order (March 31, 2016) at 53.

If the PUCO Staff could represent the interests of any and all parties, the Ohio Supreme Court would not have grave concerns about partial settlements that result from exclusionary settlement meetings. By determining that partial settlements from exclusionary settlement meetings are contrary to the three-prong test, the Ohio Supreme Court in effect recognized that the PUCO Staff *does not* represent the interests of anyone.

In addition, the claim that the PUCO Staff – as a signatory party to a settlement – represents any customer class (or all customer classes), or any party (or all parties) to a proceeding is irrational. If that were the case, a settlement signed only by the PUCO Staff and *one* other party²⁴ would satisfy the first prong of the PUCO’s test for settlements. Such a scenario could lead to the absurd result that a settlement could be approved, even if the settlement was not signed by representatives of any customer classes that would pay hundreds of millions of dollars while receiving few, if any, benefits under the settlement.

Recognizing that the PUCO Staff alone “represents” diverse interests would undermine the negotiation process²⁵ and run afoul of longstanding PUCO and Ohio Supreme Court precedent.²⁶ The PUCO should reject the notion that the PUCO Staff alone “represents” diverse interests.

²⁴ Ohio Adm. Code 4901-1-30(A) requires that settlements be signed by two or more parties. Interestingly, the PUCO Staff states that PUCO approval of a settlement does not even require the assent of the applicant. PUCO Staff Brief at 10. This intriguing scenario has never been tried, to OCC’s knowledge.

²⁵ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to Its Energy Efficiency and Demand Response Programs*, Case No. 14-457-EL-RDR, where the PUCO Staff and Duke conducted extensive settlement negotiations and reached an agreement without inviting participation from any other parties to the case.

²⁶ In approving a partial settlement recently, the PUCO made the claim that the PUCO Staff “impartially represents the interests of all stakeholders, including residential customers.” *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR, et al., Opinion and Order (September 7, 2016), at 20-21. The PUCO’s view in that decision is misguided, however. The above discussion of *Time Warner AxS* shows the illogical rationale behind the PUCO’s claim in the Duke GCR case.

AEP Ohio contends that the PUCO “has repeatedly rejected OCC’s attempts to obtain veto power over settlements.”²⁷ But OCC is not proposing to have “veto power” over settlements. Rather, OCC is merely asking the PUCO to recognize that having only one member of one customer group sign the Settlement is evidence that serious bargaining among capable, knowledgeable parties representing diverse interests did not occur in this situation. Customers of *all* rate classes should not have to pay more than \$500 million under the Settlement simply because the interests of one segment of one customer class were appeased in the agreement by a special carve out.²⁸ PUCO approval of this Settlement could effectively shut the door on serious negotiations in the future as the utility no longer has an incentive to negotiate with anyone but the PUCO Staff.

B. The Settlement as a package does not benefit customers and the public interest because customers assume all the financial risks from Phase 2 deployment up-front, while there is no guarantee that customers will realize the operational benefits from Phase 2 deployment.

1. Customers pay all the costs of Phase 2 deployment up-front, but any operational benefits would accrue to customers many years down the road, if at all.

OCC demonstrated that the deployment of Phase 2 proposed in the Settlement does not include a balancing of rewards and risks between AEP Ohio and its customers.²⁹ Instead, the Settlement uses customers to bankroll the Phase 2 deployment, thus putting undue financial risk on customers for a system that likely never will result in commensurate benefits to consumers. OCC noted that way to address this concern is to

²⁷ AEP Ohio Brief at 5.

²⁸ It is also problematic that the Settlement provision appeasing the sole customer group signing the Settlement was pre-ordained in a settlement signed in another case. *See* OCC Brief at 7.

²⁹ *Id.* at 10-13.

levelize the predicted benefits of the Phase 2 deployment.³⁰ This would reduce the amount customers will have to pay up-front, while easing the risk to customers. Levelization of benefits would more fairly balance the risks and rewards associated with Phase 2 deployment.

AEP Ohio criticizes OCC's levelization proposal. AEP Ohio contends that levelization would improperly require customers to receive a credit for operational savings before AEP Ohio realizes the savings.³¹ In other words, AEP Ohio does not want to share any of the financial risk in Phase 2 deployment. AEP Ohio calls levelization "profoundly unfair to the Company...."³²

But what does AEP Ohio call "fair" to customers? Apparently, AEP Ohio's version of "fairness" for customers is for AEP Ohio to collect hundreds of millions of dollars from customers, while providing a \$1 per-year credit to each customer after the first year (and only \$0.25 to each customer the first year).³³ The Settlement would have customers pay amounts that increase each of the first seven years of Phase 2 deployment.³⁴ For residential customers, the monthly charge is \$0.34 during the first year of deployment, \$0.56 the second year, \$1.03 the third year, \$1.50 the fourth year, \$1.87 the fifth year, \$2.09 the sixth year, and \$2.15 the seventh year. In return,

³⁰ *Id.* at 14.

³¹ AEP Ohio Brief at 24.

³² *Id.*

³³ Under the Settlement, customers would receive a \$400,000 quarterly credit beginning the fourth quarter of the first year of deployment. Joint Ex. 1 at 10. This amounts to \$400,000 the first year and \$1.6 million each year of deployment thereafter. Because AEP Ohio has 1.6 million customers (residential and nonresidential), the average annual customer credit would be \$0.25 the first year and \$1 each succeeding year.

³⁴ See AEP Ohio Ex.3 (Moore Testimony) at Unmarked Attachment gridSMART Phase 2, AMI, VVO, DACR. AEP Ohio did not calculate the charges customers would pay for Phase 2 past the seventh year of deployment, although there most certainly will be some customer charge after the seventh year.

residential customers would receive a nominal monthly credit of \$0.01 the first year,³⁵ and \$0.07 in each subsequent year, unless modified by the PUCO.³⁶ Because there is no timeline for the PUCO to revise the nominal monthly credit,³⁷ the \$0.07 credit could continue for the entire Phase 2 deployment.³⁸

Hence, under the Settlement residential customers could pay the following amounts during Phase 2 deployment before the PUCO determines the proper operational savings credit for customers:

| Year | Monthly charge | Average credit | Net monthly charge | Annual charge |
|---|----------------|----------------|--------------------|---------------|
| 1 | \$0.34 | (\$0.01) | \$0.33 | \$3.96 |
| 2 | \$0.56 | (\$0.07) | \$0.49 | \$5.98 |
| 3 | \$1.03 | (\$0.07) | \$0.96 | \$11.52 |
| 4 | \$1.50 | (\$0.07) | \$1.43 | \$17.16 |
| 5 | \$1.87 | (\$0.07) | \$1.80 | \$21.60 |
| 6 | \$2.09 | (\$0.07) | \$2.02 | \$24.24 |
| 7 | \$2.15 | (\$0.07) | \$2.08 | \$24.96 |
| Total amount paid by each customer over the first seven years | | | | \$109.42 |

AEP Ohio has 1.3 million residential customers. With each customer paying \$109.42 over the first seven years, AEP Ohio could collect at least \$142,246,000 from residential customers *before* the PUCO determines the correct amount of credit that customers should receive. This is in addition to the hundreds of millions of dollars AEP Ohio would collect from nonresidential customers.³⁹ This is “profoundly unfair” to customers.

³⁵ This credit is an “average monthly credit.” *See id.* However, the credit would not begin until the tenth month after deployment starts. *See* Joint Ex. 1 at 10.

³⁶ *See id.*

³⁷ *See* Tr. Vol. III at 593.

³⁸ This is despite AEP Ohio’s assertion that operational savings will begin at a low level and increase over time as Phase 2 is deployed. AEP Ohio Brief at 24.

³⁹ *See* AEP Ohio Ex.3 (Moore Testimony) at Unmarked Attachment gridSMART Phase 2, AMI, VVO, DACR.

Unfortunately, this is a likely outcome. The Settlement has no timeline for the PUCO to review the operational savings from Phase 2 and no guarantee that the operational savings will be adjusted at all. Thus there is no certainty that the PUCO will review and adjust the customer credit some time during Phase 2 deployment. Although not defined in the Settlement, PUCO Staff witness Schweitzer testified at hearing that he *expects* the review of the credit to begin 18 months to three years after deployment begins.⁴⁰ He did not know specifically what would be the completion date for such review or a time period for when such any possible adjustment could be implemented.⁴¹ This is not a certainty.⁴²

Even assuming that Mr. Schweitzer is correct, it may take another six months to a year before any consultant hired by the PUCO Staff would issue a report.⁴³ Only at that point – two to four years after deployment begins – would negotiations among the parties to this proceeding, for the purpose of adjusting the credit, possibly occur. By this time, half or all of the 894,000 advanced meters will have been deployed and paid for by customers, with no refund to customers if the meters do not function properly.⁴⁴

If negotiations fail, the PUCO would begin a proceeding – which would likely include a hearing – to determine the proper credit to customers. Hence, it may be an additional year or more before the PUCO issues a decision on revising the customer

⁴⁰ Tr. Vol. III at 593-594.

⁴¹ *Id.*

⁴² *Id.* at 594. AEP Ohio claims that testimony by Ms. Moore shows that the Settlement includes a “mandatory” mid-deployment review of the customer credit. AEP Ohio Brief at 23. Nevertheless, Ms. Moore acknowledged that the four corners of the Settlement do not call for such a review. *See* Tr. Vol. I at 181-182. The PUCO should judge a settlement by what is actually contained in the document, and not a post hoc explanation of the settlement.

⁴³ Tr. Vol. III at 595.

⁴⁴ Deployment of the meters will take approximately 48 months. *See* Joint Ex. 1 at 5.

credit. Even assuming the timeline suggested by the PUCO Staff witness would occur, this means that customers will likely receive the nominal \$400,000 per quarter credit (beginning in fourth quarter of the first year) during the entire deployment of Phase 2. And because the Settlement does not require a distribution base rate case after Phase 2 deployment is completed, customers have no assurance that they will realize all the operational savings benefits they are entitled to from Phase 2 deployment. The absence of a base distribution rate case also means that there will be no review of whether that the system deployed is even used and useful in providing service to customers.

AEP Ohio further claims that several non-operational benefits would flow from the installation of advanced meters. These benefits include fewer estimated bills, quicker connection and reconnection of a customer's electric service, reduced miles driven by AEP Ohio personnel, and increased safety for AEP Ohio work crews.⁴⁵ Each of these benefits, however, would involve reduced costs and other benefits for AEP Ohio, either directly or indirectly. For example, fewer estimated bills means that AEP Ohio would have a more consistent revenue stream because it would practically eliminate undercharges that delay proper payment for service. And increases in safety for work crews would mean less costs and liability associated with employee injuries, such as possible reductions in insurance costs. A distribution base rate case would help capture these benefits and pass them along to customers.

The Settlement front-loads the expenses for many of the Phase 2 projects, so that customers will pay for these expenses and returns during, or even prior to, deployment.

⁴⁵ AEP Ohio Brief at 10-11.

But the Settlement does not guarantee that customers will realize the benefits from Phase 2 deployment. The Settlement thus does not benefit customers or the public interest.

2. The Settlement is unreasonable because the benefits of the Phase 2 deployment by far accrue to non-residential customers, even though residential customers pay more than 60 percent of the Phase 2 costs.

AEP Ohio touts the cost/benefit ratio associated with the Settlement.⁴⁶ The benefits from the Settlement, however, overwhelmingly flow to non-residential customers, while residential customers pay the majority of the costs. This is unreasonable.

As discussed in OCC's brief,⁴⁷ AEP Ohio estimates that Phase 2 will result in \$1,016 million (i.e., \$1.016 *billion*) in reliability benefits over 15 years. Reliability benefits thus make up 77 percent of the claimed cash view total benefits, and 76 percent of the net present value view benefits.⁴⁸ But residential customers would receive only 1.6 percent of the alleged Phase 2 reliability benefits.⁴⁹ In addition, residential customers would receive only 19 percent of the total claimed benefits, while paying 62 percent of the costs.⁵⁰

AEP Ohio attempts to cast doubt on Mr. Lanzalotta's cost allocation calculations by criticizing some of the data used in the calculations.⁵¹ But the data used by Mr.

⁴⁶ AEP Ohio Brief at 18-19.

⁴⁷ OCC Brief at 16.

⁴⁸ OCC Ex. 13 (Lanzalotta Testimony) at 23.

⁴⁹ *Id.* at 24, Table 3.

⁵⁰ *Id.* Mr. Lanzalotta explained that the residential customer class's share of the total benefits, \$272 million, divided by \$1.426 billion equals 0.191, or about 19%.

⁵¹ AEP Ohio Brief at 27.

Lanzalotta came from AEP Ohio itself in a discovery response.⁵² If the data is flawed, that is AEP Ohio's fault. Further, the data in question would make only about a four percent difference in the calculations in Table 3.⁵³ This is insignificant, considering that the benefits calculated in Table 3 make up only one portion (customer benefits from avoided outages) of the overall claimed benefits from Phase 2.

Regardless of the data employed to analyze benefits, the Settlement results in an unreasonable cost/benefit ratio for residential customers. Residential customers would pay 62 percent of the costs for Phase 2, but would receive much less in benefits.

The cost allocation of Phase 2 proposed by AEP Ohio and incorporated into the Settlement, is unfair to residential consumers. It is unjust, unreasonable, and not in the public interest.

3. Mr. Lanzalotta's criticism of Phase 1 DACR deployment is correct.

Promises of increased electric service reliability comprise a large portion of the proposed Phase 2 benefits in the Settlement.⁵⁴ As discussed in OCC's Brief, although such increased electric service reliability should, at some point, be reflected in AEP Ohio's defined electric service reliability index performance, that does not happen in this case.⁵⁵ There have been increases in the number of customer interruptions, as reflected in AEP Ohio's System Average Interruption Frequency Index ("SAIFI"),⁵⁶ in the Phase 1

⁵² See OCC Ex. 16.

⁵³ Residential customers comprise approximately 1.3 million of AEP Ohio's 1.6 million customers, or 81.25 percent of AEP Ohio's customer base. Table 3 had residential customers comprising 85.9 percent of the customer base.

⁵⁴ See AEP Ohio Ex. 1 (Osterholt Direct Testimony), Exhibit SSO-1 at 9, showing that reliability accounts for \$1.016 billion of the \$1.426 billion of the projected customer benefits for Phase 2.

⁵⁵ OCC Brief at 25.

⁵⁶ SAIFI is a measure of the number of outages an average customer experiences in a year.

DACR circuits after they were in service a year or two. Such performance calls into question the projected benefits from increased reliability for the Phase 2 projects.

Mr. Lanzalotta demonstrated that the Phase 1 DACR feeders, excluding major events, became less reliable over the 2013-2015 timeframe.⁵⁷ In fact, the SAIFI of the Phase 1 circuits was higher (less reliable) than AEP Ohio's system as a whole.⁵⁸

AEP Ohio attempts to refute Mr. Lanzalotta's findings by claiming that "the best measure of the DACR's system performance" is to examine how DACR tends to make SAIFI performance better than it would have been without DACR.⁵⁹ AEP Ohio's suggested method, however, would not provide a true assessment of the performance of circuits equipped with DACR. Assuming that DACR is installed properly, deploying DACR should almost always improve performance of a circuit compared to the same circuit's performance without DACR. Hence, AEP Ohio's theory would likely show a positive performance for DACR-equipped circuits in almost every instance.

Mr. Lanzalotta's analysis provides a better comparison between circuits with DACR and those without. Mr. Lanzalotta compared the reliability of circuits with DACR and those without DACR under the same or similar circumstances. This is more logical and more realistic approach than AEP Ohio's method. The PUCO should consider Mr. Lanzalotta's analysis and disregard AEP Ohio's.

⁵⁷ OCC Ex. 13 (Lanzalotta Testimony) at 31, Table 6.

⁵⁸ OCC Brief at 25.

⁵⁹ AEP Ohio Brief at 16.

4. Any benefits from time-of-use rates and interval data in the Settlement are speculative.

AEP Ohio asserts that the Settlement “will provide substantial customer benefits” by promoting a competitive market for TOU rates.⁶⁰ Even though AEP Ohio does not quantify such benefits, it still overstates the customer benefit from TOU rates.

Any benefits from the Settlement’s provision concerning TOU rates and interval data are speculative. TOU programs would be attractive to customers only if they exist, customers can take advantage of them, and the programs actually help customers to save money. But this is not guaranteed. In fact, the Settlement does not even guarantee that marketers will offer TOU programs, let alone advantageous ones that would make customers want to switch from their present service plans.

The results thus far have not been encouraging. Only 2,200 of AEP Ohio’s residential customers have switched to TOU programs.⁶¹ It is not clear that any programs offered by marketers as a result of the Settlement would improve this situation. The speculative nature of benefits from TOU programs under the Settlement deserves little weight as the PUCO considers the Settlement. Regardless of whether marketers offer TOU rates and whether customers participate and save money through TOU rates, customers still would have to pay for the billing data to be provided to the marketers through the marketers’ web portal. Customers also would have to pay to be able to view such data through the Customer Web Portal.⁶²

⁶⁰ *Id.* at 21.

⁶¹ *See* Tr. Vol. I at 61.

⁶² Joint Ex. 1 at 11, 12.

5. Given AEP Ohio’s disconnection data for 2016, AEP Ohio’s use of advanced meters to remotely disconnect residential customers for nonpayment is a factor in this proceeding.

AEP Ohio claims that being able to remotely disconnect residential customers for nonpayment is an important operational savings achieved through advanced meters.⁶³ But AEP Ohio contends that remote disconnection of residential customers for nonpayment should not be addressed in this proceeding.⁶⁴ AEP Ohio argues that the PUCO has already rejected OCC’s objections to remotely disconnecting residential customers for nonpayment.⁶⁵ AEP Ohio is wrong.

In granting AEP Ohio a waiver of the in-person notice requirement of the disconnection rules, the PUCO stated that it could find no direct connection between the waiver and “the number of residential accounts *eligible* for disconnection.”⁶⁶ However, the data presented by OCC witness James Williams in this case shows a direct connection between the waiver and the number of residential customers *actually disconnected*.

Mr. Williams discussed AEP Ohio’s most recent report regarding the disconnection of residential customers for nonpayment.⁶⁷ Mr. Williams testified that AEP Ohio’s June 2016 report shows that between June 1, 2015 and May 31, 2016, AEP Ohio disconnected 135,872 residential customers for nonpayment.⁶⁸ This number was

⁶³ AEP Ohio Brief at 28.

⁶⁴ *Id.* at 29.

⁶⁵ *Id.*

⁶⁶ *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Rule 4901:1-18-06(A)(2), Ohio Administrative Code*, Case No. 13-1938-EL-WVR, Entry (March 18, 2014) at 7 (emphasis added).

⁶⁷ OCC Ex. 21 (Williams Testimony) at 19.

⁶⁸ *See id.*

23.3 to 55.9 percent higher than 2010, 2012, 2013, 2014, 2015, and nearly double the 2011 rate.⁶⁹

Further, of those customers, 40,299 were residential customers in the Phase 1 area.⁷⁰ Therefore, Mr. Williams demonstrated, approximately 29.7 percent of AEP Ohio customers disconnected for nonpayment were in the Phase 1 area.⁷¹ AEP Ohio residential customers who have advanced meters comprise approximately ten percent of the 1.3 million residential customers in AEP Ohio's service territory.⁷² Hence, 29.7 percent of disconnections for nonpayment in AEP Ohio's service territory were in the area where only ten percent of AEP Ohio's customers reside. These customers are also the only residential customers in AEP Ohio's service territory who have advanced meters.

Thus, AEP Ohio residential customers with advanced meters are being disconnected for nonpayment at a disproportionately high rate compared to AEP Ohio residential customers without advanced meters. This is compelling evidence that waiver of the in-person notice requirements does indeed lead to more disconnections.

C. The Settlement violates important regulatory principles and practices.

Several signatory parties claim that the Settlement does not violate important regulatory principles and practices. AEP Ohio discusses customer credits, cost

⁶⁹ *See id.*

⁷⁰ *Id.* at 20.

⁷¹ *Id.*

⁷² *Id.*

allocation, and its practice of remotely disconnecting customers for nonpayment.⁷³ OCC has already addressed these issues in this Reply Brief.

The PUCO Staff and IGS simply state that the Settlement complies with all important and relevant regulatory principles and practices.⁷⁴ Direct Energy, while claiming that the Settlement meets all three prongs of the test for settlements, only addresses the first prong.⁷⁵ The signatory parties are wrong.

Contrary to the signatory parties' assertions, the Settlement violates prior PUCO orders, and does not show that the implementation of Phase 2 will ensure the availability of reliable and non-discriminatory electric service. The state policy related to electric utility regulation is to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."⁷⁶ The Settlement would violate this state policy to the extent that some Phase 2 programs, notably distribution automation, are based on Phase 1 programs that have experienced increased numbers of customer interruptions in 2014 and 2015.

In addition, the economic justification of Phase 2 projects is discriminatory. The estimated reliability benefits, which make up more than 75 percent of the total 15-year cash benefits projected for the Phase 2 projects, accrue primarily to commercial and industrial customer classes.⁷⁷ But more than 60 percent of the costs of the Phase 2 projects are allocated to residential customers.

⁷³ AEP Ohio Brief at 28-31.

⁷⁴ PUCO Staff Brief at 15-16; IGS Brief at 6-7.

⁷⁵ Direct Energy Brief at 2-3.

⁷⁶ R.C. 4928.02(A).

⁷⁷ See OCC Ex. 13 (Lanzalotta Testimony) at 8.

The Settlement also violates the important regulatory principle of cost causation. The marketers' web portal is included in the Settlement only because the marketers need access to customer information in order to offer and provide TOU products to customers.⁷⁸ AEP Ohio witness Osterholt stated that the marketers' data portal provides "an important tool" for marketers in identifying which customers would be most likely to sign up for TOU rates.⁷⁹ Yet, the marketers will not pay any of the costs associated with this tool. Instead, the costs will be borne by residential customers⁸⁰ – even those who are not taking service through a TOU program or cannot even participate in a TOU program.⁸¹

Direct Energy contends that marketers will have to spend money to integrate their systems and market products.⁸² But this cost – if there is any cost at all – is of the marketers' own doing. They are the ones who sought the web portal; customers did not. For marketers, this is a normal cost of doing business.

Direct Energy also asserts that because Phase 1 costs were borne by all AEP Ohio customers, the same should be true for Phase 2 costs.⁸³ But there were no Phase 1 costs that were necessitated simply to accommodate a single group of marketers. Instead, the

⁷⁸ See Direct Energy Ex. 1 (Ringebach Testimony) at 4, 5 (where she notes that the products and services planned by Direct Energy would be available when Phase 2 is complete and the revised AMI portal is available to offer interval data).

⁷⁹ AEP Ohio Ex. 1 (Osterholt Direct Testimony) at 22. See also Joint Ex. 1 at 9 (referring to the "CRES AMI interval data portal"). Release of customer data should be with customer consent and comply with all PUCO rules. See Ohio Adm. Code 4901:1-10-24.

⁸⁰ See Tr. Vol. I at 78.

⁸¹ Tr. Vol. II at 249.

⁸² Direct Energy Brief at 5.

⁸³ *Id.*

Phase 1 costs were borne by all AEP Ohio customers because Phase 1 was a pilot program meant to gauge whether smart grid technology would improve electric service.⁸⁴

Oddly enough, Direct Energy makes the statement that Phase 2 costs “should be shared by all customers who stand to benefit from the technology.”⁸⁵ Customers, however, are not the only ones who will benefit from the technology. Marketers also will benefit, but will pay nothing. Everyone who stands to benefit from the technology should help pay for it.

Direct Energy’s analogy to highways (used by some but paid for by all⁸⁶) also misses the mark. All users of highways pay for the highway system, in part, through gas taxes. Some pay directly through tolls. But marketers would pay nothing for being able to sell their products to consumers as a result of Phase 2 deployment. Marketers would get a free ride on the “highway” paid for by customers. This is unjust and unreasonable.

III. CONCLUSION

The Settlement filed in this case allocates more than 60 percent of Phase 2 smart grid costs to residential customers. Yet, residential customers will receive less than 20 percent of the benefits. This is unfair. In addition, there is no guarantee that customers will realize all the benefits due them from Phase 2. Further, customers will pay for the entire Phase 2 project before the costs are determined to be prudent and the facilities are deemed used and useful. Furthermore, consumers are required to pay the deployment costs, even though marketers pay nothing for portions from which they will benefit. The

⁸⁴ See *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, et al., Opinion and Order (March 18, 2009) at 37-38.

⁸⁵ Direct Energy Brief at 5.

⁸⁶ *Id.* at 6.

Settlement is unjust, unreasonable, and not in the public interest. The PUCO should reject the Settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was served on the persons stated below via electronic transmission this 16th day of September 2016.

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