BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ned Bushong,	)	
Complainant,	)	
v.	)	Case No. 18-1828-EL-CSS
Ohio Power Company,	)	
Respondent.	)	

INITIAL POST-HEARING BRIEF OF OHIO POWER COMPANY

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INITIAL POST-HEARING BRIEF OF OHIO POWER COMPANY

I. INTRODUCTION

Complainant Ned Bushong failed to carry his burden of showing that Respondent, Ohio Power Company ("AEP Ohio" or the "Company"), provided inadequate, unjust, or unreasonable service to him with respect to Complainant's desire to opt out of the installation of an Advanced Metering Infrastructure ("AMI") meter at his residence. To the contrary, the overwhelming evidence demonstrates that the Company acted reasonably and in conformance with its tariff. For the reasons set forth herein, the Public Utilities Commission of Ohio (the "Commission") should decide this case in AEP Ohio's favor and dismiss the Complaint with prejudice.

II. STATEMENT OF FACTS

A. AEP Ohio's Advanced Meter Opt Out Tariff

The Company is in the process of installing approximately 894,000 AMI meters throughout its service territory as part of its Commission-approved gridSMART® Phase 2 Project. *See 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, Opinion and Order at ¶21 (Feb. 1, 2017); AEP Ohio Exhibit 1 at 2:22-23. The

gridSMART Phase 2 AMI deployment covers the Company's service territory surrounding and including the Complainant's property. *See* Complaint; AEP Ohio Exhibit 1 at 2:22-23.

Under Paragraph 16 of the Terms and Conditions of Service in the Company's Commission-approved tariff (the "Tariff"), a customer who does not wish to have an AMI meter installed on their residence typically has two option. *See* P.U.C.O. No. 20 at 3rd Revised Sheet No. 103-12 (¶16); AEP Ohio Exhibit 1 at 3:8-13, 4:17-19; Tr. at 43:1-13. The customer may either move their metering point, or they may elect to opt out of having an AMI meter installed at their residence. *Id*. If a customer elects to opt out of AMI installation, they will incur a $24 per month AMI opt-out fee for every month a non-AMI meter is installed at their premises. P.U.C.O. No. 20 at 3rd Revised Sheet No. 103-12 (¶16); AEP Ohio Exhibit 1 at 3:12-13. The $24 per month opt-out fee is the amount the Commission has authorized the Company to recover for having to travel to an opt-out customer's residence to physically read the opt-out meter. *See In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-out Service Tariff*, Opinion and Order at 11-12 (April 27, 2016); Tr. at 55:12-17.

In addition, Paragraph 16 of the Tariff makes clear that, "[o]pt out service does not guarantee that customers will retain their existing meter," and that, "[t]he company maintains the right to replace meters for customer on opt-out service with meters that do not have one-way or two-way communication." P.U.C.O. No. 20 at 3rd Revised Sheet No. 103-13 (¶16); AEP Ohio Exhibit 3:16-20. Pursuant to this language, when a customer opts out of AMI installation, it is the Company's normal practice to replace the customer's existing meter with a digital non-emitting, non-communicating meter. AEP Ohio Exhibit 1 at 3:20-4:2; *see* Tr. at 43:1-8.

B. The Complaint

Complainant filed his Complaint with this Commission on December 12, 2018, to express his desire not to have an AMI meter installed at his premises. *See* Complaint. Complainant also generally references alleged safety concerns he believes are associated with AMI meters. *Id.* Further, Complainant insinuated that it would be appropriate for him to read and send in the readings from his current meter or to have the Company estimate his bill every month in lieu of Complainant paying the Company's AMI opt-out fee. *Id.* As relief, Complainant has requested that he be able to keep his current analog meter and that he be exempt from the Company's Commission-approved AMI opt-out fee. *See Id.*; Complainant Exhibit K at 3.

C. AEP Ohio's Attempts to Address Complainant's Concerns

As with any customer who inquires about opt-out service, the Company has discussed with Complainant his options under Paragraph 16 of the Company's tariff. Specifically, the Company informed the Complainant that he is permitted to decline the installation of an AMI meter and have a digital non-emitting meter installed at his residence or, if he wish did not want to pay the $24 per month opt-out fee, he could move the metering point, at his expense, to a different location on his property. Hearing Transcript ("Tr.") at 43:1-13.

Although the Company's normal practice is to replace analog meters with digital non-emitting meters as part of a customer's election to opt-out of AMI installation, the Company was and is willing to allow Complainant to take service via the analog meter currently installed at his residence as long as the meter operates within the limits prescribed in the Commission rules. AEP Ohio Exhibit 1 at 5:3-8; Tr. at 34:5-7, 43:14-18. However, given their antiquated nature, utility grade analog meters are no longer manufactured and replacement parts and components are not readily available. AEP Ohio Exhibit 1 at 4:8-12. As such, the Company cannot agree to

replace Complainant's existing analog meter with another analog meter when the current meter fails. Tr. at 43:19-24.

Despite the Company's efforts, Complainant has refused to pay the Commission-approved $24 per month opt-out and, therefore, proceeded to hearing on his Complaint. *See* Complaint; Tr. 34:8-11.

III. LAW AND ARGUMENT

A. Standard of Review

R.C. 4905.22 requires, in part, that a public utility like AEP Ohio "furnish necessary and adequate service and facilities." The term "necessary and adequate service" has not been defined, either by statute or by administrative rule. Rather, the determination of what constitutes adequate service "is left to the commission and dependent upon the facts of each case." *In the Matter of Miami Wabash Paper, LLC v. The Cincinnati Gas & Elec. Co.*, Case Nos. 02-2162-EL-CSS and 01-3135-EL-CSS, Opinion and Order at 6 (Sept. 23, 2003). Complainant bears the burden of proving that AEP Ohio's actions amounted to inadequate service. *See Ohio Bell Telephone Co. v. Pub. Util. Comm.*, 49 Ohio St.3d 123, 126, 551 N.E.2d 145 (1990); *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966). He has failed to meet that burden in this case.

B. At All Times Relevant to the Complaint, AEP Ohio Provided Adequate Service to Complainant According to All Applicable Provisions of Title 49, Revised Code, and the Regulations Promulgated Thereunder, and in Accordance with all Applicable Provisions of its Tariff.

Complainant has failed to set forth any evidence demonstrating that AEP Ohio's actions with regard to his request for opt-out service were in any way inadequate, unjust, or unreasonable. To the contrary, the evidence demonstrates that AEP Ohio's conduct conformed in all respects with the requirements set forth in the Company's Commission-approved tariff, as

well as Ohio law and regulations. Accordingly, because the Company provided adequate service, the Commission should dismiss the Complaint.

1. AEP Ohio requiring Complainant to pay a tariffed charge cannot support a finding that AEP Ohio's conduct is in any way inadequate, unjust, or unreasonable

When the Commission approves a utility's tariff, it tacitly signifies that the provisions of the tariff are neither unjust nor unreasonable on their face. *See In the Matter of the City of Reynoldsburg v. Columbus Southern Power Company*, Case No. 08-846-EL-CSS, Opinion and Order at 14 (April 5, 2011). In deciding *City of Reynoldsburg* in favor of the utility, the Commission made clear that where the language of a utility's tariff covers a dispute and the tariff is not unjust, unreasonable, or unlawful, the utility acts appropriately when it provides service pursuant to the provisions of that tariff. *Id*. at 29-30. In upholding that Commission's decision in that case, the Ohio Supreme Court stated,

> "[t]he conduct rule created by the tariff statutes is clear: no public utility may charge a rate for a service or commodity furnished by it unless that rate is approved by the commission and set down in tariff schedules filed with the commission. Likewise, the utility's customers are bound to pay the rate that is set forth in the utility's tariff filing."

In re Complaint of Reynoldsburg, 134 Ohio St.3d 29, 40-41, 979 N.E.2d 1229 (2012).

Complainant raises three issues in his Complaint in this proceeding. First, Complainant states that he does not want an AMI meter installed at his residence. *See* Complaint; Tr. at 33:11-15. Complainant also states that he wishes to retain the analog meter currently installed at his residence. *See* Complaint; Tr. at 33:16-19. Finally, Complaint requests that he be exempt from paying the Company's monthly AMI opt-out fee. *See* Complaint; Tr. at 34:8-11. It is undisputed that the Company is willing to provide Complainant with opt-out service and allow Complainant to continue to take service via the analog meter presently installed at his residence as long as that

meter is functioning properly. Tr. at 33:20-34:7; AEP Ohio Exhibit 1 at 5:3-8. Thus, as Complainant admits, the only issue remaining is Complainant's refusal to pay the Company's monthly AMI opt-out fee. Tr. at 34:8-11. But Paragraph 16 of the Company's Tariff clearly forecloses Complainant's requested relief.

The Commission has reviewed and approved, and the Company has filed with the Commission, the Company's AMI opt-out provisions, including the monthly opt-out fee applicable to all opt-out customers. *In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-out Service Tariff*, Opinion and Order at 11-12 (April 27, 2016); P.U.C.O. No. 20 at 3rd Revised Sheet No. 103-12 (¶16). Upon approval of those provisions, the Commission confirmed that the AMI opt-out tariff provisions are neither unjust nor unreasonable. Complainant has presented no evidence showing the Company's AMI opt-out tariff is unjust, unreasonable, or unlawful; rather, it appears Complainant is just unwilling to pay it. Thus, pursuant to the Ohio Supreme Court's ruling in *In re Complaint of Reynoldsburg*, if Complainant wishes to take AMI opt-out service, he is required to pay the Company's Commission-approved monthly opt-out fee. The Company's refusal to exempt Complainant from this tariffed charge applicable to all opt-out customers does not support a finding that the Company actions were inadequate, unjust, or unreasonable as the Company is simply attempting to provide opt-out service pursuant to its approved tariff.

2. It is not appropriate for Complainant to read his own meter or for AEP Ohio to estimate Complainant's bill every month in lieu of Complainant paying the monthly opt-out fee.

Complainant's suggestion that he should be able to read his own meter or have the Company estimate his bill in lieu of paying the monthly opt-out fee is improper. Ohio Adm.Code 4901:1-10-05(I) requires an electric utility obtain actual readings of every in-service customer

meter at least once each calendar year. Further, that rule states that "the utility shall make reasonable attempts to obtain accurate, actual reading of the energy and demand, if applicable, delivered for the billing period * * *." Ohio Adm.Code 4901:1-10-05(I).

Allowing the Complainant to read his own meter, or having the Company estimate his bill every month, would require the Company to violate Ohio Adm.Code 4901:1-10-05(I). First, in either situation, the Company would not be making a "reasonable attempt" to read Complainant's meter every month. Additionally, in either situation, the Company would not be taking an actual reading of Complainant's meter at least once each calendar year, which would also violate Ohio Adm. Code 4901:1-10-05(I).

In addition to violating the Commission's rules, allowing a customer to read his or her own meter creates significant operational concerns. First and foremost, this proposition creates a high probability of inaccurate reads and/or bill manipulation. Tr. at 49:6-14; AEP Ohio Exhibit 1 at 5:14-16. The Company also lacks the infrastructure to use customer meter reads in creating a bill for the customer's monthly usage. AEP Ohio Exhibit 1 at 5:16-18; *see* Tr. at 49:15-20, 50:8-11. The cost to create such a system would be significant and, even if the Company created such a system, the system could not account for inaccurate or manipulative information provided by the customer. AEP Ohio Exhibit 1 at 5:18-21; Tr. at 49:15-20, 50:8-11. Therefore, given the variety of concerns such a system would create, Complainant's suggestion is entirely improper.

3. The Commission has reviewed and approved AEP Ohio's AMI technology and deployment multiple times and has stated that the appropriate remedy for alleged concerns related to AMI technology is the installation of a digital non-emitting meter and payment of the applicable opt-out fee.

The Commission reviewed and approved the Company's deployment of AMI technology in 2011 and again, upon subsequent review, in 2017. *See In the Matter of the Application of*

Columbus Southern Power Company for approval or its Electric Security Plan, Case No. 08-917-EL-SSO, Opinion and Order at 37-38 (Mar, 18, 2009); *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, Opinion and Order at ¶70 (Feb. 1, 2017). Earlier this year, in *Logan v. Ohio Power Company*, the Commission stated that the appropriate remedy for a complainant who alleges health concerns regarding smart meters is to request the installation of a non-emitting meter and pay the applicable fee. *Logan v. Ohio Power Company*, Case No. 17-1943-EL-CSS, Opinion and Order at ¶25 (Jan. 16, 2019).

Here, although Complainant admits that he is not a medical or electrical expert, he makes unsubstantiated claims that AMI technology present health and safety concerns. *See, e.g.*, Tr. at 9:19-10:1, 10:23-25, 11:7-13, 14:12-17, 15:18-20, 15:25-16:6, 16:20-24, 18:4-7, 18:13-24, 19:16-22, 20:12-15, 21:4-8, 27:13-25, 32:12-21; Complainant Exhibit K at 1-3. Because Complainant is unqualified to offer the opinions he has espoused, and he has presented no credible evidence substantiating them, the Commission should disregard them. Complainant's health and safety claims are inappropriately raised in this proceeding in any event, as the Commission has reviewed and approved the Company's AMI technology and deployment multiple times. Thus, to the extent Complainant raises claims related to the Company's AMI deployment and technology, those claims are res judicata. *See Jacobs v. Teledyne, Inc.*, 39 Ohio St.3d 168, 169-170, 529 N.E.2d 1255 (1988) (stating that, "[the Ohio Supreme Court] has applied the doctrine of res judicata to those administrative proceedings which are 'of a judicial nature and where the parties have had an ample opportunity to litigate the issues involved in the proceeding * * *.'"); *Johnson's Island, Inc. v. Board of Trustees of Danbury Tp.*, 69 Ohio St.2d 241, 244, 431 N.E.2d 672 (1982) (stating, "* * * the application of the concept of res judicata not

only precludes the relitigation of the same cause as between the parties, its "collateral estoppel" aspect precludes relitigating legal or factual issues in a second lawsuit that were the general subject of litigation in the first action even though the second is a different cause of action.").

The only piece of evidence admitted at hearing that Complainant presented regarding these issues was an article from the World Health Organization regarding the *possible* health effects caused by exposure to radiofrequency electromagnetic fields by wireless communication devices, with specific reference to cell phone use. Complainant Exhibit A. That document, however, is not relevant because it does not relate to Complainant's claims regarding AMI technology.[1] Moreover, as stated previously, the only issue still in dispute is Complainant's refusal to pay the Company's tariffed AMI opt-out fee, not the safety of repeatedly-approved AMI technology that would not be installed at an AMI opt-out customer's residence. *See* Complainant Exhibit A; Tr. at 34:8-11. Thus, the document is not relevant and the Commission should give it no weight when deciding the Complaint.

As the Commission stated in *Logan*, to the extent Complainant has concerns about AMI technology, the proper remedy for those concerns is what the Company has offered to the Complainant here, namely the installation of a non-emitting meter and payment of the Company's Commission-approved AMI opt-out fee. *See Logan v. Ohio Power Company*, Case No. 17-1943-EL-CSS, Opinion and Order at 7 (Jan. 16, 2019). Therefore, because Complainant's claims about the safety of AMI are unsupported by any credible evidence, have already been decided by the Commission, are well outside the scope of this proceeding, and are adequately addressed in the Company's AMI opt-out tariff, the Commission should disregard those issue when deciding this Complaint.

[1] Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence. Evid.R. 401.

IV. CONCLUSION

As Complainant admits, the only issue in dispute is Complainant's refusal to pay the Company's monthly AMI opt-out fee. The Company has presented Complainant with potential solutions under the Company's tariff and even agreed to allow Complainant to keep his analog meter. Despite the Company's repeated attempts to address Complainant's desire not to have an AMI meter installed at his residence, Complainant asks the Commission to find that the Company should exempt him from the AMI opt-out fee all opt-out customers are required to pay under the Company's Tariff. Under Commission and Ohio Supreme Court precedent, however, Complainant's refusal to pay a tariffed charge cannot support a finding that the Company's actions were in any way inadequate, unjust, or unreasonable. For these reasons, Complainant has failed to carry his burden of proving that the Company provided inadequate, unjust, or unreasonable service to him. The Commission therefore should decide this case in the Company's favor and dismiss the Complaint with prejudice.

Respectfully submitted,

/s/ Tanner S. Wolffram

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by regular mail upon the address listed below, on this 29th day of August, 2019.

/s/ Tanner S. Wolffram
Tanner S. Wolffram

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Complainant

Summary: Brief - Initial Post-Hearing Brief of Ohio Power Company electronically filed by Tanner Wolffram on behalf of Ohio Power Company