

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
THAAH AND AARON YOUNG,

COMPLAINANTS,

v.

CASE NO. 18-1832-EL-CSS

OHIO POWER COMPANY, D.B.A. AEP  
OHIO,

RESPONDENT.

## OPINION AND ORDER

Entered in the Journal on February 13, 2020

### I. SUMMARY

{¶ 1} The Commission finds that the Complainants, Thaah and Aaron Young, have not carried their burden of proving that Respondent, Ohio Power Company, has breached any legal obligation that it holds as a public utility subject to the Commission's jurisdiction.

### II. PROCEDURAL BACKGROUND

{¶ 2} Ohio Power Company, d.b.a. AEP Ohio (AEP Ohio or Respondent) is a public utility and an electric light company as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 4} On December 13, 2018, Thaah and Aaron Young (Complainants) filed a complaint against AEP Ohio alleging that Respondent violated several statutes and Commission rules pertaining to advanced meter infrastructure implementation, including the parameters of opt out service.

{¶ 5} On January 2, 2019, Respondent filed its answer to the complaint, denying many of the allegations contained therein. Additionally, Respondent raised several affirmative defenses, including: Complainants fail to set forth reasonable grounds for their complaint; AEP Ohio has, at all times relevant to Complainants' claims, provided reasonable and adequate service in accordance with all applicable rules, regulations, and orders of the Commission, and its tariffs; and the Commission lacks subject matter jurisdiction to grant the requested relief.

{¶ 6} On February 26, 2019, the parties participated in a Commission-ordered settlement conference. As the parties were unable to resolve the matter, it was scheduled for hearing on June 25, 2019. Complainants were granted two continuances of the hearing prior to it occurring on September 11, 2019. A briefing schedule was established at the conclusion of the hearing, allowing both parties the opportunity to file briefs in support of their positions. The only brief filed was an initial brief timely filed by Respondent on October 16, 2019.

### III. DISCUSSION

#### A. *Factual Background*

{¶ 7} On August 20, 2018, Complainants received a brochure from Respondent describing the implementation of advanced meter service at their residence. Complainants acted to investigate the information described in the brochure by accessing the "Frequently Asked Questions" page on Respondent's website. Further, Complainants communicated with Respondent by phone and email regarding their election to opt out of the advanced meter service program (decline the installation of the advanced meter). (Tr. at 13-22.)

{¶ 8} On August 21, 2018, Respondent replied to Complainants' email, describing advanced meter service opt-out procedures and indicating that Complainants must execute an opt out agreement by September 4, 2018, in order to avoid installation of the advanced meter at their residence (Tr. at 23).

{¶ 9} On August 27, 2018, Complainants received the advanced meter opt out agreement as mailed by Respondent. Dissatisfied with its terms, they communicated with the Commission regarding their concerns. Complainants did not execute the agreement nor communicate further with Respondent about it until November 26, 2018. (Tr. at 26-29, 31, 45)

{¶ 10} On August 27, 2018, and September 9, 2018, Complainants communicated with the Commission regarding their advanced meter installation concerns (Tr. 29, 40). On September 10, 2019, Complainants received a formal complaint package from the Commission. Complainants did not file their complaint nor communicate further with Respondent or the Commission until November 26, 2018. (Tr. 45)

{¶ 11} On November 26, 2018, having not received the executed advanced meter opt out agreement from Complainants, Respondent presented at their residence to install the advanced meter equipment. In response to on-site communications with Complainants, Respondent did not change any metering equipment on this date. (Tr. 45, 55)

{¶ 12} Between November 26, 2018, and December 9, 2018, Complainants renewed multiple phone and email communications with Respondent and the Commission regarding the option to opt out of advanced meter service, ultimately culminating in the filing of their complaint (Tr. 55-63).

**B. *Applicable Law***

{¶ 13} As noted above, R.C. 4905.26 requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable.

{¶ 14} Specifically, at issue in this case are the Commission's rules governing an electric distribution utility's installation of advanced meters and a consumer's ability, alternatively, to request a traditional meter. An electric utility's provision of advanced

metering is addressed in Ohio Adm.Code 4901:1-10-05(J), which directs that the electric utility shall provide a customer with the option to decline installation of an advanced meter and retain a traditional meter where the customer commits to paying for a cost-based, tariffed, opt-out service. The rule further provides that the utility must give at least one business day's notice before its installation of an advanced meter and, if the customer expresses interest in using a traditional meter instead, the utility shall: (a) notify the customer of the requirement to pay the amount of the approved tariff charge; (b) explain the facts concerning advanced meters and attempt to address any customer concerns prior to signing up a customer for advanced meter opt out service; and (c) to the extent that multiple options are offered (to obtain or retain either an advanced meter or a traditional meter), the utility must explain each option and associated costs and give the customer choice over the option selection.

{¶ 15} Respondent has obtained Commission approval as to its plan to install advanced meters. *In re the Application of Ohio Power Co. for Approval of an Advanced Meter Opt-out Service Tariff*, Opinion and Order (Apr. 27, 2016) at 11-12; P.U.C.O. No. 20 at 3rd Revised Sheet No. 103-12 (PUCO 20). According to the tariffs currently filed with the Commission: (1) an advanced meter is Respondent's standard meter for Ohio residential electric customers; (2) any customer has the option to request a traditional meter in lieu of an advanced meter subject to paying a recurring monthly fee of \$24.00.

{¶ 16} In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in order to prevail in this matter, Complainants must prove the allegations in their complaint by a preponderance of the evidence.

### C. *Complainants' Arguments*

{¶ 17} Complainants' service-related allegations regarding Respondent's implementation of advanced meter service at their residence relate to:

- the manner of communications regarding the transition to advanced meter service
- the lack of choice regarding their metering equipment, including claims that Respondent's advanced meter offerings violate Claimants' privacy, and health and safety protections
- the alternatives to advanced meter service, including the obligation to pay the monthly opt-out tariff

{¶ 18} Initially, Complainants are frustrated with the written communication that they received from Respondent on August 20, 2018. Upon receiving Respondent's mailing on that date, they immediately acted to investigate the advanced meter service implementation, and to put Respondent on notice of their election not to allow the installation of advanced meter equipment on their property (Tr. at 18). They describe multiple communications with both Respondent and the Commission between August 20, 2018, and September 10, 2018, wherein they purportedly sought information regarding the advanced meter service rollout and their right to refuse cooperation (Tr. at 18-25). In addition to seeking information regarding metering alternatives, they also expressed frustration regarding the language used in Respondent's proposed opt-out agreement, which provided that Complainants would indemnify and hold Respondent harmless for actions taken to install metering equipment other than an advanced meter (Tr. at 28-29). Ultimately, communications between the parties were paused between September 10, 2018, and November 26, 2018, when a service technician presented without further advance notice to install the advanced meter (Tr. at 45). Thereafter, in response to Complainants' renewed protests and the filing of this complaint, Respondent stayed its actions to install the advanced meter, as well as to collect the \$24.00 monthly in-person meter reading charge that is permissible as part of its rider (Tr. at 86-87, 123-124).

{¶ 19} Complainants are also frustrated by the alternatives to allowing the installation of advanced meter equipment. While Respondent has softened in its initial position and is now willing to allow Complainants to retain their current analog meter so long as it remains functional, Complainants continue to insist on the indefinite use of either

an analog meter or a digital meter that lacks the ability for on-site interconnection. (Tr. at 88, 89.) Complainants remain dissatisfied with the digital, non-advanced, meter that Respondent proposes for installation should the current analog meter ultimately fail, arguing that the new meter is an advanced meter such that they have a legal right of refusal (Tr. at 96).

{¶ 20} Further, Complainants are frustrated by their obligation to pay the \$24.00 monthly tariff as a result of their opt-out election (Tr. at 37, 56). They allege that there was an initial misstatement in the notice that they received about the right to opt out and pay the fee. According to Complainants, at the time of the initial advanced metering installation mailing in August of 2018, the advanced metering installation rollout had yet to reach the 85% deployment threshold necessary to impose the monthly opt-out charge as is required by Respondent's advanced metering installation rider. PUCO 20. They continue to argue against the charge even today, citing to the absence of proof that the 85 percent deployment threshold has been satisfied as a trigger to the right to collect this charge. (Tr. at 35, 37)

#### *D. Respondent's Arguments*

{¶ 21} Respondent contests each of Complainants' arguments. Respondent's witness, Paula Igo, testified concerning her six-plus year involvement in managing advanced meter rollouts. AEP Ohio Ex. 1 at 1-2. She described that customer advanced meter rollouts have occurred in three phases. Two of the three phases have been completed, resulting in nearly one million customers being converted to advanced meters. (Tr. at 151-152) Of those customers, only approximately 390 have opted out of the advanced meter program and agreed to pay the \$24.00 monthly surcharge provided for in PUCO 20. Moreover, of the same customer pool, only four customers have been permitted to retain their existing analog meters for as long as those meters remain properly functioning. (Tr. at 150) Complainants admit that Respondent offered, and continues to offer, to allow Complainants the ability to retain their current analog meter for as long as it remains legally operational (Tr. at 88-89).

{¶ 22} In regard to the indemnification provision concerns cited by Complainants, Ms. Igo testified that the provision aligns with Respondent's approved tariff, and was initially included in the opt out agreement in consultation with Staff (Tr. at 120, 139-140, 149). Regardless of how the language came to exist, she testified that the language was removed from the acknowledgment document in late 2018 or early 2019, based on Respondent's conclusion that the language was unnecessary because it was duplicative of the Commission's indemnification approval contained in PUCO 20 (Tr. at 121). Further, according to Ms. Igo, Respondent communicated with Complainants prior to the hearing regarding the removal of the indemnification language from the opt out document (Tr. at 115, 167).

{¶ 23} Ms. Igo also testified regarding Commission-approved meter alternatives that are available to Complainants: advanced meter, non-communicating digital, and analog (AEP Ohio Ex. 1 at 3-4; Tr. at 125, 127-128). Ms. Igo explained that while non-communicating digital meters do contain a port that allows for on-site technician interface, that port solely enables a technician to tend to diagnostics and repairs relating to a meter's function, which is far different than the information captured and electronically communicated by an advanced meter (Tr. at 125, 128, 155).

#### *E. Commission Conclusion*

{¶ 24} Complainants fail to establish that Respondent breached any legal duty it owes as a public utility subject to the Commission's jurisdiction.

{¶ 25} Respondent fully complied with the requirements in Ohio Adm.Code 4901:1-10-05, as well as PUCO 20. Respondent offered Complainants the option of enrolling in advanced meter service or opting out and agreeing to be subject to the tariffed, cost-based charges associated with such service (Tr. at 88-89). Further, Respondent complied with the customer notice requirements in Ohio Adm.Code 4901:1-10-05(J)(2), by giving Complainants at least one business day of notice of the intention to install an advanced meter (Tr. at 45, 55). Respondent complied with this requirement by providing Complainant

the mailed notice on August 20, 2018, as well as through written communications from August 21, 2018, and August 27, 2018 (Tr. at 13, 23, 26-29).

{¶ 26} Moreover, Respondent provided Complainants with the option to decline installation of an advanced meter and retain a traditional meter through enrollment in a cost-based, tariffed opt-out service, and notified Complainants of the accompanying service charge, in accordance with Ohio Adm.Code 4901:1-10-05(J)(1) and (J)(3)(a). Complainants initially declined the installation of advanced meter service on August 20, 2018. They renewed their objection to advanced meter installation on November 26, 2018. Even as of the date of the record hearing, Complainants repeated their refusal to allow for the advanced meter installation. (Tr. at 26-29, 45-48, 96)

{¶ 27} While Complainants have continued in their opposition to advanced meter installation, Respondent has committed to allow Complainants to use of their prior analog meter, so long as it remains operational. Moreover, as of the hearing date, Respondent had yet to collect the permissible monthly meter reading tariff as authorized in PUCO 20 (Tr. at 88-89). The Commission finds that, as of the date of this Opinion and Order, that Respondents are authorized to begin billing Complainants the \$24.00 monthly charge for service under the Commission-approved tariff applicable to in-person meter reading service. PUCO 20. Complainants acknowledge receiving written communications from Respondent advising them of the \$24.00 monthly opt-out charge associated with their non-conforming use of a traditional meter (Tr. at 24). Moreover, we note that Complainants even stated in a November 27, 2018 email that “we understand and agree there will be a \$24.00 monthly tariff charge for our [a]dvanced meter opt-out service” and later confirmed that understanding in testimony (Complainants Ex. I; Tr. at 90). The Commission has previously found that the \$24.00 charge serves to enable Respondent to recover costs specifically associated with providing metered service to its traditional metered customers. PUCO 20. Complainants meet the criteria for the additional charge. We find that Respondent’s plan to begin applying the \$24.00 monthly charge as against Complainants is



not unreasonable, unlawful, or discriminatory, nor imposed for any purpose other than that which formed the basis for its approval by the Commission.

{¶ 28} The Commission also finds that Respondent acted reasonably when attempting to address Complainants' concerns. Initially, the Commission notes that Respondent has committed to allow Complainants to use their analog meter so long as it remains functional, a valid, yet rare, request pursuant to the plain language of Ohio Adm.Code 4901:1-10-05(J)(1), which has only been granted to four other customers of Respondent's approximately one million customers. Tr. at 152; PUCO 20. Ohio Adm.Code 4901:1-10-05(J)(3)(b) requires a utility, as a condition precedent to enrolling a customer in its tariffed, cost-based advance meter opt-out service, to both "explain the facts concerning advanced meters" and to "attempt to address any customer concerns." The record shows that Respondent complied with these rule provisions. Respondent provided information that Complainants sought as to their refusal of advanced meter installation by August 21, 2018 (Tr. at 23). Thereafter, Complainants failed to seek any further program information or perfect their complaint in this case until after November 26, 2018. Further, Complainants' communications since August 21, 2018, have focused on frustrations concerning the approved opt-out monthly fee and the non-advanced meter equipment that Respondent offers its customers (Tr. at 23, 26-29, 31, 45). As both the fee and acceptable equipment offerings have been approved by the Commission in earlier proceedings, Complainants' customer service and communications allegations against Respondent are not well-taken. *See In re the Application of Columbus Southern Power Company for Approval of Its Electric Security Plan*, Case No. 08-917-EL-SSO, Opinion and Order (Mar. 18, 2009) at 37-38; *In re 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 (Feb. 1, 2017) at ¶70.

{¶ 29} While the Commission acknowledges that Complainants raised concerns regarding alleged health, safety, or privacy risks associated with the Company's advanced

meters that are routinely deployed in conjunction with its gridSMART project, those arguments are rendered moot by the fact the Company has agreed to allow the analog meter currently installed at the Youngs' residence, to which Complainants did not raise similar objections, to continue to serve the residence as long as that meter is functioning within the standards set forth in Ohio Adm.Code 4901:1-10-05 and Paragraph 14 of PUCO 20 (AEP Ohio Ex. 5; Tr. at 87-91, 155). We recognize and agree with AEP Ohio that the current digital, non-emitting meter utilized by AEP Ohio is considered a "traditional meter," as that term is defined in Ohio Adm.Code 4901:1-10-01(FF), and has been approved for deployment in conjunction with the Company's opt-out program (AEP Ohio Ex. 1 at 3-4; Tr. at 125, 170-171, 174-175). As the analog meter and digital, non-emitting meter are the feasible options under the Company's opt-out program and would both be considered traditional meters, Complainants' concerns surrounding the alleged health, safety, or privacy concerns of advanced meters are wholly irrelevant to this proceeding. Furthermore, even if the Commission were to consider Complainants' challenge to Respondent's implementation of advanced metering technology, Complainants fail to satisfy their burden of proof regarding their health, safety, and privacy claims, as they provide no expert opinion as to the medical and electrical issues that are central to analyzing those types of risks (Tr. at 91-92).

{¶ 30} However, we do recognize that the proffered solution of maintaining the current analog meter is likely not a permanent one. As noted by Company witness Igo, analog meters are no longer manufactured and replacement parts and components are not available (AEP Ohio Ex. 1 at 3-5). Consequently, if and when the analog meter currently being used at the Youngs' residence eventually stops functioning within the specified standards, Complainants will have the option of having the Company install one of the non-emitting digital meters routinely used for the Company's opt-out service or choose to relocate their meter location, at their expense, and have an AMI meter installed at the new location (AEP Ohio Ex. 1 at 3-4). For now, Respondent's accommodation allowing for the continued use of the existing analog meter, in accordance with Ohio Adm.Code 4901:1-10-05(J)(1), renders this issue moot. Accordingly, the Commission will not rule in an advisory

manner as to metering options that might arise after the analog meter stops functioning properly.

{¶ 31} The Commission also finds that Respondent acted reasonably regarding initially requiring, and later withdrawing the requirement, that Complainants execute the advanced meter opt-out acknowledgement, which contained an indemnification provision. Respondent's use of the acknowledgement, including its indemnification provision, to document customer opt-out elections is within the authority granted to it by law and its approved tariff. PUCO 20; Ohio Adm.Code 4901:1-10-05(J)(4). Regardless of this finding, the issue is rendered moot by Respondent's concession that it would agree to remove the indemnification language from the form in order to resolve this matter. AEP Ohio Ex. 1 at 6

{¶ 32} Accordingly, Complainants' refusal to allow installation of the equipment is determined to be an advanced meter opt-out service election, which subjects their account to the \$24.00 monthly meter reading charge, as approved in PUCO 20.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 33} On December 13, 2018, Complainants filed a complaint against Respondent regarding Respondent's initiation of advanced meter service at Complainants' residence. Complainants were dissatisfied with the manner in which advanced meter service was offered, the inability to retain their analog equipment, and Respondent's plan to charge Commission-approved tariffed monthly service charges associated with advanced meter opt-out service.

{¶ 34} On January 2, 2019, Respondent filed an answer in which it generally denied all of the allegations of the complaint and set forth affirmative defenses.

{¶ 35} A settlement conference was held on February 26, 2019, and a hearing was held on September 11, 2019.

{¶ 36} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 37} There is insufficient evidence to support a finding that Respondent breached any legal obligation it holds as a public utility subject to the Commission's jurisdiction. As such, we hold that Complainants have failed to meet their burden of proof in this case.

## V. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That this matter be decided in favor of Respondent as the Complainants have failed to sustain their burden of proof. It is, further,

{¶ 40} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

MLW/hac

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Summary: Opinion & Order the Commission finds that the Complainants, Thaah and Aaron Young, have not carried their burden of proving that Respondent, Ohio Power Company, has breached any legal obligation that it holds as a public utility subject to the Commission's jurisdiction. electronically filed by Docketing Staff on behalf of Docketing