

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of
Ohio Power Company to Initiate its
gridSMART ® Phase 3 Project.

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Case No. 19-1475-EL-RDR

COMMENTS OF IEU-OHIO

Matthew R. Pritchard (Reg. No. 0088070)
(Counsel of Record)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 719-2842
Telecopier: (614) 469-4653
mritchard@mcneeslaw.com
(willing to accept service via email)

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ATTORNEY FOR IEU-OHIO

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Industrial Energy Users-Ohio (“IEU-Ohio”) submits the following comments on the gridSMART Phase 3 Application filed by the Ohio Power Company (“AEP Ohio”). As reflected in more detail below, the Commission should: (1) restrict AEP Ohio from providing competitive retail electric services or non-electric products or services; (2) mandate that mercantile customers can opt out of the costs of any energy efficiency-related proposal contained in the smart grid plan; and (3) structure the availability of smart grid technologies that can be offered by third parties to be available on an opt-in basis with costs bypassable by those that do not opt in.

I. INTRODUCTION

AEP Ohio’s Application in this matter seeks authority to implement Phase 3 of AEP Ohio’s gridSMART initiative.

According to AEP Ohio, Phase 1 was concentrated to 110,000 customers in select areas and focused on “technology, implementation, operations, consumer and stakeholder acceptance, data management, and benefit assessment,” which enabled AEP Ohio “to integrate commercially available products, innovative technologies, and new consumer products and services within a secure two-way communication network

between utility and consumer.”¹ According to AEP Ohio, Phase 2 deployed “proven project technology solutions to deliver advanced metering infrastructure (AMI), distribution automation circuit reconfiguration (DACR), and volt/var optimization (VVO) to more customers over a larger portion of AEP Ohio’s service territory.”² The price tag for these amorphous benefits has been staggering.

Now in Phase 3, AEP Ohio proposes to: (a) expand DACR; (b) deploy distribution supervisory control and data acquisition; (c) deploy additional VVO; (d) finalize the rollout of smart meters, *i.e.* AMI; (e) deploy fiber optic infrastructure; (f) install a distribution line sensor demonstration of 3,100 total sensors to assess reliability benefits; (g) implement an incremental VVO pilot; (h) continue deployment and management of the It’s Your Power smart phone application (previously recovered through AEP Ohio’s energy efficiency rider); and (i) add additional electronic data interchange (EDI) functionality for competitive retail electric service (CRES) providers.³ AEP Ohio witness Scott Osterholt attempts to describe the amorphous benefits that AEP Ohio anticipates from Phase 3. The costs, however, remain concrete and staggering, with the capital budget for Phase 3 having a proposed price tag of \$937.9 million.⁴ After gross ups and accounting for additional operations and maintenance (“O&M”) expense, the total revenue requirement to be charged to customers over the next 15 years is more than \$1.1 billion.⁵

¹ AEP Ohio Application at 2.

² *Id.* at 3.

³ *Id.* at 3-4.

⁴ Osterholt Direct at 5.

⁵ Seger Lawson Direct, Ex. DRSL-3. In Attachment A to these Comments, IEU-Ohio has extracted some of the information from this exhibit, and presented it in summary form.

II. GENERAL COMMENTS

AEP Ohio is a regulated electric distribution utility that should be delivering adequate, safe, and reliable retail electric service at fair prices in an environment that provides competitive choices (*See PUCO Mission Statement*).⁶ While adequacy, safety, and reliability are all very important factors, the latter two concepts of fair pricing and facilitating a competitive environment often seem lost in the debate each time a new proposal appears before the PUCO. Programs with a billion-dollar price tag need to produce concrete and discernable improvement to the adequacy, safety, and reliability of retail electric service or they should not be pursued. And, before a utility rolls out new technologies we must also stop and ask whether the technology is part of the utility's noncompetitive service backbone, or if the utility's backbone infrastructure can be used to allow the competitive marketplace to deploy innovative technologies. Utility regulation cannot simply be a path towards increased rate base, increased shareholder earnings, and industry innovation awards to add to the corporate mantel.

For example, energy efficiency initiatives can not only be provided by the competitive marketplace, but they can be done without stacking on multiple layers of expensive utility costs and profits. The VVO deployment AEP Ohio seeks in this case, for example, comes at a fully weighted cost of capital (*i.e.*, with a return on equity, or profit, of about 10%). Energy savings from energy efficiency initiatives have in the past turned into "lost distribution revenue" claims, with collection through additional customer charges. Utility revenue from energy efficiency programs that produce net income is grossed-up for an assumed federal corporate income tax, regardless of whether any

⁶ <https://puco.ohio.gov/wps/portal/gov/puco/>.

federal corporate income tax is paid (for example every dollar of shared savings paid by customers was grossed up by 35% or 21% regardless of whether the utility or its parent company actually owed federal corporate income tax). To ensure customers actually receive the benefits of the regulated energy efficiency offering, measurement and verification audits occur, sometimes through additional litigated cases at the Commission. Before the Commission sends utilities down the smart grid path, it must closely consider whether the activities can and should be undertaken by a regulated utility in the first place. This is what is outline by the PUCO's mission statement and what the law mandates.

III. SPECIFIC COMMENTS

A. Energy Efficiency programs are, by law, bypassable by mercantile customers.

AEP Ohio witness Osterholt describes VVO as, “broadly speaking, [provid[ing]] energy efficiency benefits”⁷ AEP Ohio also proposes to continue the “It’s Your Power” App which provides some information to residential and commercial customers. AEP Ohio alleges that the app has helped reduce energy consumption for those customers using the app by roughly two percent. AEP Ohio estimates that charges to customers for Phase 3 VVO will be approximately \$200 million, an additional \$2.1M for its third-generation VVO pilot program, and approximately \$2.7 million to continue the app.⁸ Ohio law, specifically R.C. 4928.6610 to 4928.6615, authorizes mercantile customers to opt out of the costs of an electric distribution utility’s energy efficiency plan. Accordingly, the

⁷ Osterholt Direct at 19.

⁸ Seger Lawson Direct at Ex. DRSL-3.

Commission must appropriately account for the mercantile opt-out opportunity in any energy efficiency related measures AEP Ohio seeks to implement in this proceeding.⁹

B. AEP Ohio cannot provide internet services, i.e. a nonelectric product or service. To the extent that AEP Corp. seeks to provide internet services, it must be provided by through a fully separated affiliate of AEP Ohio.

AEP Ohio seeks authority to install fiber optic cable (“fiber”) from its substations to access points on distribution lines with DACR and VVO. AEP Ohio alleges this will enhance the smart grid technologies it seeks to deploy.¹⁰ AEP Ohio further alleges that over a 10-year period the fiber buildout will save approximately \$5.3 million in expenses associated with the current cellular communications network it currently utilizes.¹¹ However, the overall charge to customers for the proposed fiber roll out is estimated at \$71.8 million over the 15-year plan.¹²

AEP Ohio further seeks authority to overbuild its fiber capacity and make available the “majority” of its requested fiber build out to be made available to other internet service providers.¹³ That is, AEP Ohio requests authority to help deploy “middle mile” broadband internet service.¹⁴ It is not clear from the filing how much of the \$71.8 million price tag is associated with the proposal to overbuild its system to engage in offering internet services to third parties. There is also insufficient information in AEP Ohio’s filing to determine if the lack of high speed internet is a last mile or a middle mile issue (or both) and lack of

⁹ The legality of any energy efficiency program in noncompetitive distribution rates also must be carefully reviewed given the recent mandate in the law to wind down and end the utility’s energy efficiency plans. See R.C. 4928.66.

¹⁰ Osterholt Direct at 24-25.

¹¹ *Id.* at 26.

¹² Seger-Lawson Direct, Exhibit DRSL-3.

¹³ Osterholt Direct at 31.

¹⁴ *Id.* at 33.

information in the application and supporting testimony to demonstrate that a regulated monopoly electric utility is best suited for the task of expanding high speed internet into underserved areas of Ohio.

AEP Ohio indicates that it would seek to lease out its unused capacity and provide some credits to its captive customers. AEP Ohio's proposal, however, requests authority to limit the total amount of lease revenue credited to customers at the incremental cost of the fiber included in rates.¹⁵ That is, AEP Ohio proposes that it gets to earn a guaranteed return on the deployment of fiber to be collected from captive distribution customers, but if the leasing activity is extremely successful AEP Ohio wants to then earn above its authorized rate of return while sharing none of the excess profit with the customers who were saddled with all of the risk.

Although the application and supporting testimony fail to support AEP Ohio's proposal, the proposal must fail in any event because it is barred by Ohio law. R.C. 4928.17(A) prohibits an electric utility from providing both a noncompetitive retail electric service and a non-electric product or service. That is, AEP Ohio cannot distribute electricity to consumers in Ohio and also offer other products such as internet service. If AEP Corp. decides to enter the internet business, it must be done "through a fully separated affiliate of the utility."¹⁶ Although R.C. 4928.17(C) temporarily allowed for functional corporate separation, in 2016 the Ohio Supreme Court questioned whether interim functional corporate separation was still permissible.¹⁷ In that same decision,

¹⁵ Seger-Lawson Direct at 7.

¹⁶ R.C. 4928.17(A)(1).

¹⁷ *In re Application of Duke Energy Ohio, Inc., for Approval of its Fourth Amended Corporate Separation Plan*, 148 Ohio St.3d 510, 2016-Ohio-7535 at ¶ 26.

Justice Kennedy offered a concurring opinion that held that R.C. 4928.17(C) did not allow a utility to “‘rebundle’ in order to provide new nonelectric products and services that are required to be offered through a fully separated affiliate.”¹⁸ To allow AEP Ohio’s proposal would require a modification of AEP Ohio’s corporate separation plan and extend the functional corporate separation authorization for at least another 15 years. Such an outcome would not be consistent with the requirements of R.C. 4928.17.

Moreover, any functional corporate separation plan must comply with the state policies contained in R.C. 4928.02. R.C. 4928.02(H) prevents the flow of anticompetitive subsidies between non-competitive electric services and nonelectric products and services. AEP Ohio’s proposal would result in its captive distribution customers being required to fund a product or service other than retail electric service. Thus, AEP Ohio’s fiber proposal could not be authorized as currently proposed in the Application and supporting testimony.

Ohio law simply does not allow AEP Ohio, a regulated monopoly electric distribution company, to engage in unregulated lines of business, new or existing. The law does not punish AEP Corp., however, as it authorizes a fully separate affiliate to engage in any lawful business. To the extent there are legitimate opportunities for AEP Ohio to partner with other businesses to achieve societal benefits, such as assisting in the deployment of broadband internet to additional areas of Ohio, AEP Ohio should be encouraged to continue that pursuit (to the extent it is lawful and prudent under Ohio’s statutes and Commission regulation). Of course, that might mean that while AEP Ohio is a partner in the project, competitive forces drive the project and its costs, that the risk of

¹⁸ *Id.* at ¶ 34 (*concurring opinion of J. Kennedy*).

the endeavor is not be shouldered by captive utility customers, and the reward of the endeavor is not earned by the utility. But that is the tradeoff for being a regulated monopoly with a certified franchise territory.

C. If the Commission authorizes gridSMART Phase 3 to include competitive services or functions, or nonelectric products and services, they should be provided on an opt-in basis and be bypassable by those that do not opt in.

As reflected above, AEP Ohio's application includes proposals that may be best categorized as something other than a noncompetitive retail electric service (e.g. system-wide grid level VVO energy efficiency), and in which case the Commission first needs to determine whether AEP Ohio should even engage in deploying the service or technology. If the Commission authorizes such a project, it should consider, as appropriate, concepts to make the service/technology available on an opt-in basis and cost-recovery bypassable for those customers that do not opt in. This is, of course, not as simple as would including the costs in ratebase and requiring all captive customers to fund the technology. However, this is not only what the law and state policy require, but it will discipline the scope, costs, and production of benefits in these types of programs; programs that often come with large fixed costs but unknown and hard to quantify tangible improvements to adequacy, safety, or reliability.

IV. CONCLUSION

As demonstrated herein, the Commission should (1) restrict AEP Ohio from providing competitive retail electric services or non-electric products or services; (2) mandate that mercantile customers can opt out of the costs of any energy efficiency related proposal contained in the smart grid plan; and (3) structure the availability of smart

grid technologies that can be offered by third parties to be available on an opt-in basis with costs bypassable by those that do not opt in.

Respectfully submitted,

/s/ Matthew R. Pritchard

Matthew R. Pritchard (Reg. No. 0088070)

(Counsel of Record)

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 719-2842

Telecopier: (614) 469-4653

mpritchard@mcneeslaw.com

ATTORNEY FOR IEU-OHIO

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 9th day of September 2020, *via* electronic transmission.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

Mark R. Ortlieb
AT&T Ohio
225 West Randolph, Floor 25D
Chicago, IL 60606
Mo2753@att.com

Caroline Cox
Environmental Law & Policy Center
21 West Broad Street, Suite 500
Columbus, Ohio 43215
CCox@elpc.org

Bethany Allen
Joseph Olikier
Michael Nugent
IGS Energy
6100 Emerald Pkwy
Dublin, Ohio 43016
Bethany.Allen@igs.com
Joe.Olikier@igs.com
Michael.Nugent@igs.com

Madeline Fleisher
Dickinson Wright PLLC
150 East Gay Street, Ste 2400
Columbus, Ohio 43215
MFleisher@DickinsonWright.com

Kimberly W. Bojko
Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 North High Street, Ste 1300
Columbus, Ohio 43215
Bojko@carpenterlipps.com
Paul@CarpenterLipps.com

Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm Kurtz & Lowry
36 East Seventh Street, Ste 1510
Cincinnati, Ohio 45202
MKurtz@BKLawfirm.com
KBoehm@BKLawfirm.com
JKylerCohn@BKLawfirm.com

Dylan F. Borchers
Devin D. Parram
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
DBorcher@bricker.com
DParram@bricker.com

William . Michael
Ambrosia Logsdon
Amy Botschner O'Brien
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
William.Michael@occ.ohio.gov
Ambrosia.Logsdon@occ.ohio.gov
Amy.Botschner.Obrien@occ.ohio.gov

Robert Dove
Kegler Brown Hill + Ritter LPA
65 East State Street, Ste. 1800
Columbus, Ohio 43215
RDove@KeglerBrown.com

Steven T. Nourse
Christen M. Blend
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
STNourse@aep.com
CMBlend@aep.com

Gretchen L. Petrucci
Vorys Sater Seymour and Pease LLP
52 East Gay Street
PO Box 1008
Columbus, Ohio 43215-1008
GLPetrucci@voys.com

Mark A. Whitt
Whitt Sturtevant LLP
88 East Broad Street, Ste 1590
Columbus, Ohio 43215
Whitt@whitt-sturtevant.com

Frank P. Darr
6800 Linbrook Blvd
Columbus, Ohio 43225
FDarr2019@gmail.com

Miranda Leppla
Chris Tavenor
1145 Chesapeake Ave, Ste. I
Columbus, Ohio 43212
MLeppla@theOEC.org
CTavenor@theOEC.org

Werner Margard
Attorney General
Werner.margard@ohioattorneygeneral.gov

Sarah Parrot
Greta See
Attorney Examiners
Sarah.Parrot@puc.state.oh.us
Greta.See@puc.state.oh.us

Attachment A

Summation of Certain Revenue Requirement Data Extracted from the Testimony of D. Seger-Lawson, Exhibit DRSL-3

Year	Annual Revenue Requirement (millions)	Annual Volt/Var Revenue Requirement	Annual Incremental Volt/Var Revenue Requirement	Annual Fiber Revenue Requirement	Annual Its Your Power App Revenue Requirement
1	\$ 8.2	\$ 121,480	\$ 14,409	\$ 37,302	\$ 39,275
2	\$ 23.4	\$ 2,270,595	\$ -	\$ 698,136	\$ -
3	\$ 42.2	\$ 4,990,774	\$ 200,002	\$ 1,556,864	\$ 176,825
4	\$ 57.6	\$ 7,766,747	\$ 194,012	\$ 2,389,653	\$ 241,046
5	\$ 68.8	\$ 10,456,121	\$ 188,022	\$ 3,196,089	\$ 302,170
6	\$ 77.9	\$ 13,082,544	\$ 182,032	\$ 3,975,750	\$ 317,841
7	\$ 85.5	\$ 14,559,960	\$ 176,042	\$ 4,728,206	\$ 296,923
8	\$ 92.5	\$ 15,896,479	\$ 170,052	\$ 5,453,022	\$ 276,005
9	\$ 99.3	\$ 17,052,690	\$ 164,062	\$ 6,149,755	\$ 255,087
10	\$ 106.2	\$ 18,219,304	\$ 158,072	\$ 6,817,952	\$ 234,169
11	\$ 112.7	\$ 19,316,593	\$ 152,082	\$ 7,448,855	\$ 213,251
12	\$ 93.7	\$ 20,481,854	\$ 146,092	\$ 7,875,094	\$ 192,333
13	\$ 91.2	\$ 19,164,091	\$ 140,102	\$ 7,618,383	\$ 171,416
14	\$ 87.7	\$ 18,475,464	\$ 134,112	\$ 7,143,541	\$ 64,090
15	\$ 84.3	\$ 17,786,837	\$ 128,122	\$ 6,668,699	\$ -
Total	\$ 1,131	\$ 199,641,533	\$ 2,147,215	\$ 71,757,301	\$ 2,780,431

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Summary: Comments Comments of IEU-Ohio electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio