BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	**)**	
Ohio Power Company to Initiate	**)**	**Case No. 19-1475-EL-RDR**
its gridSMART Phase 3 Project	**)**	

REPLY COMMENTS OF AT&T OHIO

The Ohio Bell Telephone Company d/b/a AT&T Ohio (AT&T) hereby replies to the September 9, 2020 Review and Recommendation of Staff on AEP Ohio's fiber deployment proposal (Staff Recommendation). Staff is appropriately skeptical about whether the real motivation behind AEP Ohio's proposal is to "increase the total capital investment while providing additional revenues for the Company through the provision of non-electric products and services." Staff Recommendation at 5. Staff is also right to address competitive safeguards that should apply to AEP Ohio's fiber venture. Specifically, it recommends that AEP Ohio be prohibited from offering retail broadband service. Staff Recommendation at 5-6. Nonetheless, Staff does not recommend that the fiber proposal be rejected (as it should be). Staff's analysis falls short in at least two respects.

First, Staff does not correctly apply the corporate separate requirements of O.R.C 4928.17. That law states, in relevant part, that "no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, *or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service*, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission under this section." O.R.C 4928.17(A) (emphasis added). That "plan *must* require, at a minimum, that the utility provide any competitive retail electric service or nonelectric products and services through a fully separated affiliate." *In re Application of Duke Energy Ohio, Inc. for Approval of its Fourth Amended Corporate Separation Plan*, 148 Ohio St. 3d 510, 513 (2016).

Staff properly states that AEP Ohio's fiber proposal "includes the provision of non-electric telecommunications services" and should be subject to a corporate separation plan "consistent with the statutory requirements before it begins offering the service." Staff Recommendation at 5. Staff should have gone further and explicitly stated that the fiber service must be offered through a fully separate affiliate.

Staff implies that a corporate separation plan may not need to include a fully separated affiliate because middle mile telecommunications service in areas without broadband service is not competitive:

> After preliminary consideration, Staff believes that "middle mile" telecommunications service in areas of the Company's service territory without readily available broadband service is likely not competitive, if the Company can clearly demonstrate that the customers in the area are indeed underserved and that other entities haven't already received federal or state funding to provide service in the area.

Staff Recommendation at 5. Staff appears to suggest that the competitive nature of AEP Ohio's fiber proposal may exempt it from a structural separation. But the competitive nature of a service is irrelevant to whether the competitive safeguards of 4829.17(A) apply. A corporate separation plan requires a fully separate affiliate and the other safeguards set forth in O.R.C. 4928.17(A) whenever the supplier of a noncompetitive retail electric service and supplies a product or service other than retail electric service. Whether the other product or service is competitive is beside the point.

Even if the competitive nature of the product or service were relevant, fiber transport service, including dark fiber, is an intensely competitive business. Major network providers like

AT&T, Verizon, CenturyLink, Charter, Comcast and Windstream have extensive nationwide fiber networks. AT&T Initial Comments at 2-3. Regional carriers like Everstream and Independents Fiber Network have impressive regional networks that cover large parts of Ohio.[1] Even small rural carriers deploy fiber in their networks. And while fiber coverage is by no means ubiquitous, carriers continue to deploy it at a rapid pace.[2] In short, the fiber business that AEP Ohio seeks to enter has all the characteristics of a robustly competitive business, and the competitive safeguards mandated by O.R.C. 4928.17 are needed to prevent AEP Ohio from gaining unfair competitive advantage through use of captive ratepayer funds.

Second, Staff recommends that the Commission defer resolution of critical issues to a later date, but those issues are so important that they need to be addressed before this proposal can go any further. For example, Staff acknowledges that AEP Ohio must prove (1) that there are "last mile" providers that would actually offer retail broadband service to end users (Staff Recommendation at 5-6) and (2) that AEP Ohio would not overbuild in areas funded by other government rural broadband programs (Staff Recommendation at 5). Staff would allow these issues to be deferred to a separation plan amendment proceeding. But these are basic questions that any sound rural broadband plan should address up front. If the Commission believes it is good public policy to have captive ratepayers fund AEP Ohio's entry into a competitive business (which it is not), at the very least it should require AEP Ohio to tell the public where the rural

[1] Everstream's network map is available at https://everstream.net/network-map/. Independents Fiber Network's map is available at https://ifnetwork.biz/regional-map.

[2] See *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285, 2020 Broadband Deployment Report, April 24, 2020, Para. 91. ("U.S. broadband providers invested approximately $80 billion in network infrastructure in 2018, up more than $3.1 billion from 2017. Broadband providers, both small and large, built and upgraded networks across the country, with fiber deployment in the United States now passing 46.5 million unique homes, a 16% increase in homes passed by fiber since 2018.")

broadband will be built, who will offer the retail broadband service, how many end users will be served, and what the retail service will generally be in terms of speed and price. These are showings that can be made now, and they would be necessary before the Commission signed off on an expensive, ratepayer funded project. Deferring these critical questions to a separation plan amendment proceeding puts the cart before the horse. Since AEP Ohio has not meaningfully addressed them at this stage, the proposal should be rejected and should not advance any further.

II. CONCLUSION

For the reasons set forth here and in AT&T's Initial Comments, AEP Ohio's request to construct fiber facilities for use by third parties should be denied.

Dated: September 25, 2020

Respectfully Submitted,

AT&T Ohio

/s/ Mark R. Ortlieb
Mark R. Ortlieb (0094118)
AT&T Ohio
225 West Randolph Street, Floor 25D
Chicago, IL 60606
(312) 608-6350
mo2753@att.com
(willing to accept service by email)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on September 25, 2020 by U.S. Mail and/or electronic mail on the parties shown below.

/s/ Mark R. Ortlieb
Mark R. Ortlieb

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

Steven Beeler
Ohio Attorney General's Office
30 East Broad Street, 16th Floor
Columbus, OH 43215
Steven.Beeler@ohioattorneygeneral.gov

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

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

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

Barbara Bossart
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
Barbara.Bossart@puco.ohio.gov

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

Frank P. Darr
6800 Linbrook Blvd.
Columbus, Ohio
43235 614-390-6750
Fdarr2019@gmail.com

Trent Dougherty
Miranda Leppla
Chris Tavenor
Counsel for the Ohio Environmental Council
1145 Chesapeake Avenue, Suite I
Columbus, OH 43212-3449
dougherty@theOEC.org
mleppla@theOEC.org
ctavenor@theoec.org

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

Robert Kelter
Nikhil Vijaykar
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
rkelter@elpc.org
nvijaykar@elpc.org

William J. Michael
Ambrosia Logsdon
Amy Botschner O'Brien
Office of the OH Consumers' Counsel
65 East State Street, 7th Floor
Columbus, OH 43215-4213
william.michael@occ.ohio.gov
ambrosia.logsdon@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov

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

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

Matthew R. Pritchard
MCNEES WALLACE & NURICK
21 East State Street, 17th Floor
Columbus, OH 43215
mpritchard@mcneeslaw.com

David C. Rinebolt
Ohio Partners for Affordable Energy
PO Box 1793
Findlay, OH 45839-1793
drinebolt@opae.org

Krystina Schaefer
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
Krystina.Schaefer@puco.ohio.gov

Mark Whitt
Lucas A. Fykes
Whitt Sturtevant LLP
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com