

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT REPLY COMMENTS OF
THE KROGER CO.
AND
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

Ohio Power Company (AEP) filed an application for approval to initiate its proposed gridSMART Phase 3 project (Phase 3) on July 26, 2019.¹ AEP seeks approval by the Public Utilities Commission (Commission) of its plan to implement a variety of projects as part of Phase 3, including, but not limited to, distribution automation circuit reconfiguration (DACR), advanced metering infrastructure (AMI), volt/var optimization (VVO), and distribution supervisory control and data acquisition (D-SCADA).² Importantly, Phase 3 also includes a new proposal to install, own, and operate approximately \$52.6 million worth of fiber optic cable (Dark Fiber Project).³ AEP plans to use less than half of the proposed capacity for internal communications, and will

¹ See Application (July 26, 2019).

² Testimony of Scott S. Osterholt at 4 (July 26, 2019) (“Osterholt Testimony”).

³ Osterholt Testimony at 26-27; Seger-Lawson Testimony at 6.

attempt to lease the remainder of the Dark Fiber Project to third-party internet service providers.⁴ AEP seeks to charge its captive customers for the costs associated with installing the Dark Fiber Project through the gridSMART rider, but seeks to keep all potential profits for itself.⁵ As explained by other intervenors, the Dark Fiber Project is unrelated to investment in distribution modernization and to the goals of the Phase 3 program, and will result in unjust and unreasonable rates. The proposal also requires customers to subsidize a competitive product. AEP seeks to collect Phase 3 costs by increasing the existing gridSMART rider to include those costs.⁶

In accordance with the Commission's August 10, 2020 Entry, the Kroger Company (Kroger), the Ohio Manufacturers' Association Energy Group (OMAEG), AT&T Ohio,⁷ Direct Energy Services, LLC and Direct Energy Business,⁸ LLC, the Environmental Law & Policy Center (ELPC) and Ohio Environmental Council (OEC),⁹ Industrial Energy Users-Ohio (IEU),¹⁰ Interstate Gas Supply, Inc. (IGS),¹¹ the Ohio Cable Telecommunications Association (OCTA),¹² the Office of the Ohio Consumer' Counsel (OCC),¹³ Ohio Partners for Affordable Energy,¹⁴ the Ohio Telecom

⁴ Osterholt Testimony at 32 ("Typically, AEP Ohio will deploy a fiber cable with a minimum of 96 total fibers. The utility communication need for fibers and associated spares within these new fiber optical cables is expected to be 48 or less."); see also id. at 27 ("AEP Ohio plans to lease all excess dark fiber capacity above the Company's operational needs to third parties").

⁵ See Seger-Lawson Testimony at 6 ("Fiber revenues will be credited against the rate, up to the incremental cost of fiber that was included in the rate.").

⁶ Testimony of Dona R. Seger-Lawson at 3 (July 26, 2019) ("The gridSMART Phase 3 plan costs will be recovered through the existing gridSMART rider. Once approved, the rider will be recalculated to include these new program costs subject to audits and reconciliation.") ("Seger-Lawson Testimony").

⁷ Comments of AT&T Ohio (Sept. 9, 2020) ("AT&T Comments").

⁸ Initial Comments of Direct Energy Business, LLC and Direct Energy Services, LLC (Sept. 9, 2020).

⁹ Comments of the Environmental Law & Policy Center and the Ohio Environmental Council (Sept. 9, 2020) ("ELPC and OEC Comments").

¹⁰ Comments of IEU-Ohio (Sept. 9, 2020) ("IEU Comments").

¹¹ Initial Comments of Interstate Gas Supply, Inc. (Sept. 9, 2020) ("IGS Comments").

¹² Comments of the Ohio Cable Telecommunications Association (Sept. 9, 2020) ("OCTA Comments").

¹³ Comments by the Office of the Ohio Consumers' Counsel (Sept. 9, 2020) ("OCC Comments").

¹⁴ Comments of Ohio Partners for Affordable Energy (Sept. 9, 2020) ("OPAE Comments").

Association (OTA),¹⁵ and the Smart Thermostat Coalition¹⁶ submitted comments on September 9, 2020.¹⁷ On that same date, Staff submitted its Review and Recommendation.¹⁸ Consistent with the Commission’s August 10, 2020 Entry, Kroger and OMAEG hereby submit the following joint reply comments.

II. JOINT REPLY COMMENTS

A. AEP’s Dark Fiber Project is unlawful and unreasonable.

In their initial comments, Kroger and OMAEG explained that the Dark Fiber Project, as proposed, is unlawful,¹⁹ anti-competitive,²⁰ unrelated to the purposes of the gridSMART program,²¹ and unreasonable in costs and scope²² to ratepayers.²³ Many other intervenors raised similar concerns regarding the Dark Fiber Project. Staff also seemed to raise some concerns.

First, Kroger and OMAEG support the argument that R.C. 4928.17 prohibits AEP from providing fiber, or any other competitive product without an adequate corporate separation plan.²⁴ The Supreme Court of Ohio has determined that an adequate corporate separation plan must be for an interim basis, and must demonstrate functional separation.²⁵ As other intervenors have noted,

¹⁵ Comments of Ohio Telecom Association (Sept. 9, 2020) (“OTA Comments”).

¹⁶ Smart Thermostat Coalition Comments (Sept. 9, 2020) (“Thermostat Coalition Comments”).

¹⁷ See Joint Comments of the Kroger Co. and the Ohio Manufacturers’ Association Energy Group (Sept. 9, 2020) (“Kroger and OMAEG Joint Comments”).

¹⁸ Staff Review and Recommendation (Sept. 9, 2020) (“Staff Review”).

¹⁹ Kroger and OMAEG Joint Comments at 9,

²⁰ *Id.* at 7-8.

²¹ *Id.* at 4-5.

²² *Id.* at 5-7.

²³ *Id.* at 4.

²⁴ R.C. 4928.17(A) (“[N]o electric utility shall engage...in the business of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service.”).

²⁵ *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, ¶ 6.

AEP's proposed Dark Fiber Project does not demonstrate functional corporate separation for an interim time period sufficient to comply with R.C. 4928.17.²⁶

Second, Kroger and OMAEG reiterate their concerns about the effect of subsidization on the competitive broadband market. The statewide market for middle mile internet service is a competitive market that is not subject to public utility regulation and, therefore, should not receive guaranteed cost recovery.²⁷ Allowing AEP to enter this competitive market with the advantage of guaranteed funding from captive ratepayers would put other providers at a competitive disadvantage.²⁸ Further, Staff acknowledged that in order for AEP to be able to provide this competitive product, AEP would have to demonstrate that there are areas within its service territory that are without readily available broadband service. As Staff explained, AEP would have to “*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.”²⁹ This individual-area analysis of the lack of competition, as the Staff acknowledges, requires a degree of specific proof that AEP has failed to provide.

Third, the proposed Dark Fiber Project is unreasonable in its scope and in placing the full financial burden on customers, while providing any potential profits to AEP. Other intervenors have also acknowledged the imbalance of costs and benefits to this Project.³⁰ AEP cannot reasonably allocate the full cost of the overbuilt Dark Fiber Project to captive ratepayers while only crediting them for any revenues up to the initial investment costs of the fiber.³¹

²⁶ See, e.g., IEU Comments at 6-8; OCTA Comments at 7-8; OTA Comments at 7-8, 11-12.

²⁷ See, e.g., AT&T Comments at 2-3; OCTA Comments at 5.

²⁸ See, e.g., AT&T Comments at 2; OCTA Comments at 12-16; OTA Comments at 19.

²⁹ Staff Review at 5 (emphasis added).

³⁰ See IGS Comments at 10; OCC Comments at 10-12.

³¹ See OPAE Comments at 4-6; Staff Review at 6.

B. The gridSMART rider is not the proper recovery method for any fiber costs.

As noted by IGS, AEP has “failed to demonstrate that the installation of fiber optic cable is eligible for recovery under the gridSMART Rider.”³² The Dark Fiber Project as a whole is unrelated to the purported purposes of the gridSMART project. While some comments claim that the Dark Fiber Project may provide benefits for rural Ohioans lacking broadband internet, and that the fiber project as a whole may enable better communication for AEP,³³ AEP has not yet demonstrated an actual need in any of the areas it proposes to build fiber, a reasonable expectation that the project will prove profitable, or a connection to the original purpose of the gridSMART rider. Even if, however, an investment in fiber could be justified, costs associated with the Project should not be recovered through the gridSMART rider. Rather than resorting to single-issue ratemaking, the Commission should find that if any of these costs are in fact eligible for recovery from customers, they should be recovered through a base rate case.

C. The gridSMART program should not include any smart thermostat component.

In their comments, ELPC, OEC, and the Thermostat Coalition attempt to make a case for including and subsidizing smart thermostat technology through AEP’s gridSMART rider.³⁴ AEP’s proposal does not include any mention of smart thermostat technology and the Commission should reject the parties’ attempts to add costs associated with smart thermostat technology, another competitive product, to AEP’s gridSMART proposal and rider.³⁵

³² IGS Comments at 9-11.

³³ See OPAE Comments at 4-6; Staff Review at 5-6.

³⁴ ELPC and OEC Comments at 4 (Sept. 9, 2020); Thermostat Coalition Comments at 8-9 (Sept. 9, 2020).

³⁵ See Thermostat Coalition Comments at 3 (referring to a subsidization of smart thermostats as a “missing piece” of AEP’s proposal).

The Commission should not consider any subsidized smart thermostat program as part of Phase 3. Similar to the Dark Fiber Project, the Commission should leave development of smart thermostat technology to the competitive market. As AEP's witness notes in its testimony, customer's adoption of "behind the meter" technology will "soon have significant operational and customer impacts" when coupled with investments in smart grid distribution technology.³⁶ In other words, subsidization in smart thermostat technology is completely unnecessary. If smart thermostats deliver actual benefits to consumers, then market forces will drive consumers to adopt those technologies of their own accord as grid modernization increases.

Additionally, it is unjust and unreasonable to include this subsidy in the gridSMART rider, especially given that AEP did not even request or propose it as part of its gridSMART program.³⁷ Captive customers should not be required to pay for a competitive product that members of the Thermostat Coalition sell on the open market.³⁸ Additionally, Staff has recognized the risk of anti-competitive behavior when electric distribution utilities invest in technology on the customer's side of the meter.³⁹ The Commission should encourage the offering of competitive, behind the meter technologies through the free market, rather than requiring customers to subsidize such products.

III. CONCLUSION

³⁶ Osterholt Testimony at 23-24 ("As customers adopt technologies like electric vehicles and behind-the-meter storage, AMI data will allow AEP Ohio to detect new customer assets, predict their system impact, and assess and deploy options for reliable and cost-effective integration").

³⁷ See Thermostat Coalition Comments at 3, 8 (suggesting the gridSMART rider should fund "over 125,000 rebates of \$50 toward the purchase of" thermostats).

³⁸ See *id.* at 1 ("The Smart Thermostat Coalition...is ad hoc coalition comprised of ecobee Inc. and Google, LLC, two industry leaders in smart thermostat technology.").

³⁹ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Adjust its Rider and for Approval to Change Accounting Methods*, Case Nos. 19-1750-EL-UNC, et al., Staff's Review and Recommendation at 12 (Apr. 15, 2020); see also *PowerForward: A Roadmap to Ohio's Electricity Future* at 20, available at <https://www.puco.ohio.gov/industryinformation/industry-topics/powerforward/powerforward-a-roadmap-to-ohioelectricity-future>.

For the aforementioned reasons, Kroger and OMAEG request that the Commission deny AEP's request to implement the Dark Fiber Project and deny the request to include subsidies related to smart thermostats as part of Phase 3 of AEP's gridSMART Program paid for by customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Reply Joint Reply Comments Of The Kroger Co And The OMAEG electronically filed by Ms. Cheryl A Smith on behalf of The Kroger Co.