

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY COMMENTS OF IEU-OHIO**

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**I. INTRODUCTION**

In its gridSMART Phase 3 application, AEP Ohio proposes expanding several aspects of its earlier phases, including Distribution Automation Circuit Reconfiguration (“DACR”), Volt/Var Optimization (“VVO”), and Advanced Metering Infrastructure (“AMI”) rollout.<sup>1</sup> It also requests additional funding for ongoing projects like the It’s Your Power smart phone app while introducing new programs like distribution Supervisory Control and Data Acquisition (“D-SCADA”) and the installation of a dark fiber network that will, among other things, support rural broadband expansion initiatives.<sup>2</sup>

As is clear from the majority of the initial comments filed in this proceeding, there is little support for the expansion of AEP Ohio’s gridSMART program in the manner that has been proposed. Most notably, several parties take issue with the inclusion of a dark fiber network at all, due to its tenuous-at-best relationship to distribution, its intrusion on

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<sup>1</sup> Application at 3-4.

<sup>2</sup> *Id.*

a competitive market, and the failure of AEP Ohio to provide any sort of credit back to customers for the expected benefit it claims the network will provide.

But the other aspects of the application suffer as well. AEP Ohio's gridSMART Phase 2 rollout has not been as timely as expected, and has not delivered on many of the purported quantitative and qualitative benefits that were promised, and as such, most parties take issue with AEP Ohio's request for an additional \$1.1 billion over 15 years to continue and "expand" these programs that thus far have fallen far short of expectations.

IEU-Ohio requests that the Commission, in accordance with its comments in this proceeding, reject certain aspects of AEP Ohio's application, and conduct or order an audit to be conducted of the costs and benefits thus far realized in gridSMART Phases 1 and 2 before granting approval for any further funding for Phase 3.

## **II. GENERAL COMMENTS**

### **A. AEP Ohio's fiber proposal is anticompetitive and should be rejected or in the alternative, cost recovery should not be approved.**

As pointed out by several parties, including IEU-Ohio, in their initial comments, AEP Ohio's dark fiber proposal is "unrelated to investment in distribution modernization and to the goals of the Phase 3 program, and will result in unjust and unreasonable rates, requiring customers to subsidize a competitive project."<sup>3</sup> This proposal should be rejected outright.

Broadband communication services are competitive.<sup>4</sup> Whatever benefit AEP Ohio claims will flow to the distribution grid by its installation of a dark fiber network, the fact is that by proposing to implement the network for purposes of broadband communication,

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<sup>3</sup> See, e.g., OMAEG/Kroger Comments at 3.

<sup>4</sup> OTA Comments at 4.

AEP Ohio is intentionally interfering in the competitive market for other broadband providers that are unregulated and do not have the benefit of a guaranteed rate of return.<sup>5</sup>

Staff noted the difference between “middle-mile” and “last-mile” provision of broadband services, and recommends the Commission prohibit the sale of “last-mile” services only, as these sales clearly interfere with the competitive market.<sup>6</sup> However, as Ohio Telecom Association (“OTA”) points out, AEP Ohio still intends to use these middle-mile facilities to operate in the competitive market.<sup>7</sup> And as AT&T notes, there is no evidence that AEP Ohio's proposal would even be used to serve rural customers, because there is currently no data available that identifies rural locations that lack access to broadband.<sup>8</sup> The reason, perhaps, that certain areas are “underserved,” is that the risk does not outweigh the benefit for broadband competitive suppliers; the difference is that AEP Ohio, if its proposal is approved, would not be the one accepting the risk – ratepayers would be.

Moreover, while extending broadband to underserved areas is a worthy pursuit, the legal and regulatory structure of an electric distribution utility is a poor vehicle to accomplish that goal. Some of the customers likely to benefit from extending broadband to these underserved areas are likely to be customers of rural electric coops and municipal electric utilities. Thus, if AEP Ohio's proposal is accepted, its captive electric customers will end up funding broadband services to customers that receive electricity from entities beyond the PUCO's jurisdiction. These rural and municipal customers would

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<sup>5</sup> *Id.*; see also AT&T Comments at 2-3.

<sup>6</sup> Staff Comments at 5-6.

<sup>7</sup> OTA Comments at 3.

<sup>8</sup> AT&T Comments at 4-5.

therefore never be subject to a smart grid case requirement to help fund access to broadband. The same inequity could exist across different EDUs' service territories, as certain areas of the state may receive subsidized utility broadband service while others may not, depending on the varying proposals, settlements, and Commission orders on EDU smart grid plans. AEP Ohio's proposal would also only address access to broadband for customers near AEP Ohio's facilities. If rural broadband access is an issue, customers that do not live near AEP Ohio's distribution facilities would see no benefit of a utility dark fiber program.

Furthermore, as IEU-Ohio and other parties pointed out in their initial comments, AEP-Ohio's dark fiber proposal assigns all of the costs and risks of broadband expansion completely to its captive distribution customers, while retaining any substantial benefit for itself.<sup>9</sup> If there is a need to provide broadband service in the manner proposed by AEP Ohio, a competitive market solution would more appropriately assign costs, risks, and benefits to those entities engaged in the broadband expansion.

While broadband expansion by AEP Ohio in the manner proposed interferes in the competitive market and inappropriately assigns costs, risks, and benefits, the law does not necessarily prohibit AEP Ohio's unregulated parent or affiliates from entering into this market. Another solution, as IEU-Ohio suggested in its initial comments, is for AEP Ohio to partner with other businesses to provide benefits to underserved communities, but the risk should not be shouldered by captive ratepayers.<sup>10</sup>

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<sup>9</sup> See, e.g., IEU-Ohio Comments at 7.

<sup>10</sup> *Id.* at 8-9.

The Commission should reject outright AEP Ohio's proposal to implement a dark fiber network due to its unlawful, anticompetitive nature. However, if the Commission approves the proposal, it should adopt Staff's recommendations to prohibit the provision of "last-mile" broadband service, and to credit all revenues associated with leasing the excess capacity back to customers through the life of the rider.

**B. The Commission should audit the progress of gridSMART Phases 1 and 2 before approving spending and cost recovery for Phase 3.**

The Phase 3 proposal by AEP Ohio will, if fully approved, cost customers over \$1.1 billion over the next 15 years.<sup>11</sup> Several parties propose that before granting approval for these Phase 3 costs, the Commission examine some or all of the ongoing obligations from Phases 1 and 2, and request that the Commission deny recovery until or unless it finds AEP Ohio has met these obligations. IEU-Ohio agrees and proposes that the Commission order an audit of the progress of gridSMART Phases 1 and 2, and either (1) deny cost recovery for Phase 3 until it determines that previous costs collected were prudent; or (2) refund or offset the approved recovery for Phase 3 by the amount determined from Phases 1 and 2 to have been imprudently recovered.

Staff in its comments notes that only 11 of the 250 circuits on which AEP Ohio was to employ DACR have been enabled to date, and states that it is premature to approve an expanded deployment at this time.<sup>12</sup> OCC notes that AEP Ohio is more than halfway through the Phase 2 timeline, and yet only 4.4% of the total circuits have been completed.<sup>13</sup> As OCC further points out, the DACR deployment in Phase 2 was meant to

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<sup>11</sup> See IEU-Ohio Comments, Att. A.

<sup>12</sup> Staff Comments at 4.

<sup>13</sup> OCC Comments at 4.

provide the vast majority of customer benefits, but due to the failure of AEP Ohio to timely deploy, those benefits have largely gone unrealized.<sup>14</sup> Likewise, the VVO deployment in Phase 2 was projected to save customers \$210 million over 15 years.<sup>15</sup> However, increased capital costs and other factors appear to have limited the benefit of this rollout, and Staff has recommended an evaluation of the feasibility and prioritization of planned circuits to ensure only cost-effective investments in VVO are made.<sup>16</sup>

Staff, Direct Energy, and IGS all question the current state of AEP Ohio's AMI deployment and question the wisdom of approving additional deployment until the issues of wholesale settlement and data access enhancements are addressed.<sup>17</sup> OCC notes that the projected benefits of Phase 2's AMI meter rollout was \$200 million over 15 years.<sup>18</sup> An audit of the actual realized benefits of the meter rollout, compared against the cost savings credited back to customers so far through the gridSMART rider, and combined with a discussion of the future benefits of true data access enhancements, will be useful in determining when and whether a Phase 3 rollout is prudent.

Again, AEP Ohio's smart grid plan comes with very large and concrete costs and, based on AEP Ohio's actions thus far, amorphous or nonexistent benefits.

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<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> Staff Comments at 4-5.

<sup>17</sup> *Id.* at 4; Direct Energy Comments at 2-3; IGS Comments at 3-4.

<sup>18</sup> OCC Comments at 7.

**C. The Commission should order AEP Ohio to implement a spending cap on Phase 3 costs and to amend its application to include an operational cost savings credit as required by the Phase 2 stipulation.**

IEU-Ohio supports Staff's recommendations that (1) the Commission cap the total spending on gridSMART Phase 3 to no more than the estimated costs included in the application; and (2) AEP Ohio amend its application to include an operational cost savings credit as agreed upon in the Phase 2 Stipulation.<sup>19</sup>

As discussed above, AEP Ohio's proposal, if fully adopted, will cost ratepayers over \$1.1 billion over the next 15 years. Staff recommends a cap on total spending on all approved program components to the estimated spending amounts included in the application.<sup>20</sup> IEU-Ohio supports this recommendation but would urge the Commission to strongly consider limiting cost recovery to only those elements that are directly related to distribution, and reject recovery altogether through the gridSMART rider for any elements of the application that involve competitive retail electric services or non-electric products or services. Likewise, any approved elements of AEP Ohio's application that are energy efficiency-related should appropriately reflect the opt-out opportunity that exists for eligible customers.

In Case No. 13-1939-EL-RDR, the parties stipulated to an operational cost savings credit that would flow through the Phase 2 rider and was intended to offset the costs otherwise recovered through the rider.<sup>21</sup> Pursuant to the Stipulation approved in Case No. 18-1618-EL-RDR, in which an audit was conducted of AEP Ohio's operational cost savings due to gridSMART Phase 2 deployment, customers are to be credited a total of

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<sup>19</sup> Staff Comments at 5.

<sup>20</sup> *Id.*

<sup>21</sup> Case No. 13-1939-EL-RDR, Phase 2 Stipulation at 10 (Apr. 7, 2016).



\$8.23 million in 2020 and \$8.396 million in 2021.<sup>22</sup> In the Phase 3 application, no such credit was proposed, despite, as Staff points out, several anticipated operational benefits expected to result in cost savings.<sup>23</sup> While any credit will likely do little to stem the tide of AEP Ohio's proposed overall \$1.1 billion price tag, customers deserve to see the benefit of the improvements being made in the form of lower costs. Staff's recommendation that AEP Ohio amend its application to include an operational cost savings credit to the Phase 3 rider should be adopted.

**D. Customer energy usage data should be made readily available to customers and suppliers.**

IEU-Ohio supports greater customer energy usage data access and encourages the Commission to direct AEP Ohio to make the raw usage data available to competitive suppliers as quickly and easily as possible.

IEU-Ohio believes that customer data should ultimately be owned and controlled by the customer, not by the utility or a third party, and that the customer should determine how and by whom that data is used. If AEP Ohio simply collects and disseminates the data (because it is the only party in the position to do so), the customer can shop for suppliers based on the best products available, and elect which, if any, of those suppliers should have access to its customer data. Time-of-use and other data-based products are competitive offerings and it should be up to the customer and supplier to craft the best use of the raw data, not AEP Ohio.

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<sup>22</sup> Case No. 18-1618-EL-RDR, Finding and Order at 26 (Nov. 21, 2019).

<sup>23</sup> Staff Comments at 6.

**E. Smart thermostats are a competitive service and should not be recovered through a nonbypassable rider.**

Some commenters call for a “vast expansion” of AEP Ohio’s smart thermostat program to match the scale of the proposed AMI deployment.<sup>24</sup> Their argument is that the investments proposed by AEP Ohio to be made into the It’s Your Power smart phone app cannot provide the purported customer benefits without a corresponding investment in smart thermostats.<sup>25</sup> They argue, in fact, that the proposal for increased investment in the smart phone app should be rejected unless it is accompanied by an increased investment in an expanded smart thermostat program.<sup>26</sup>

This argument by the smart thermostat proponents is off-base and should be rejected. At the outset, the proposal is anticompetitive and cannot be supported by current state law. Moreover, the Commission has recently rejected a similar argument by these same proponents.<sup>27</sup> In the FirstEnergy grid mod case, the Commission stated that if STC was interested in improving the availability of smart thermostats to customers in the service territory to support the competitive marketplace, it should work with competitive suppliers or propose manufacturer marketing campaigns.<sup>28</sup> The smart thermostat proponents in this case have not demonstrated why this same strategy should not be employed in AEP Ohio’s territory as well. Furthermore, the proposal in this proceeding by the smart thermostat proponents is even less defined than it was in the FirstEnergy case.

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<sup>24</sup> See, e.g., ELPC/OEC Comments at 4; see also Smart Thermostat Commission (“STC”) Comments at 8-9.

<sup>25</sup> See, e.g., ELPC/OEC Comments at 5.

<sup>26</sup> *Id.*

<sup>27</sup> Case Nos. 16-481-EL-UNC et al, Opin. & Order at 60-61 (Jul. 17, 2019).

<sup>28</sup> *Id.*

There is no discussion of proposed costs, or a question of what the current smart thermostat usage among AEP Ohio customers is, just a general demand for a vast expansion of the existing rebate program, which the proponents also offer no arguments to suggest is insufficient at its current levels. Expanded use of smart thermostats should be accomplished by third parties, but if the Commission sees fit to authorize such a program, it should, as IEU-Ohio suggested in its initial comments, do so on an opt-in basis and with recovery via a bypassable rider for customers who choose not to opt in.

There is no reasonable argument to be made for increased investment in a competitive product like smart thermostats that can be provided, and is in fact already being provided, in the marketplace, when AEP Ohio already has a rebate program in place, and when the current proposed Phase 3 costs are already in excess of \$1 billion. The Commission should concentrate its efforts on finding ways to limit the overall approved costs of the program, not approve open-ended expansions. The proposal to increase AEP Ohio's smart thermostat program should be rejected.

### **III. CONCLUSION**

As most parties agree, several aspects of AEP Ohio's gridSMART Phase 3 application are problematic at best and unlawful at worst. Certain provisions, such as the dark fiber proposal, should be rejected outright. Whether or not the Commission chooses to reject any aspect of the proposed Phase 3, it is imperative that it order a comprehensive audit of the costs of the gridSMART program thus far, and limit recovery to only those areas that are prudent, beneficial to customers, and related directly to distribution.

Respectfully submitted,

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## **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 *Reply 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 25th day of September 2020, *via* electronic transmission.

/s/ Matthew R. Pritchard

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