BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	)))	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

OBJECTIONS TO THE STAFF REPORT OF INDUSTRIAL ENERGY USERS-OHIO

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December 18, 2020 **Attorneys for Industrial Energy Users-Ohio**

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OBJECTIONS TO THE STAFF REPORT OF INVESTIGATION AND SUMMARY OF MAJOR ISSUES OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to R.C. 4909.19, Ohio Adm.Code 4901-1-28(B), and the Attorney Examiner's Entry dated November 23, 2020, Industrial Energy Users-Ohio ("IEU-Ohio") hereby files its Objections to the Staff Report of Investigation ("Staff Report") in the above-captioned matters. The Staff Report was filed with the Public Utilities Commission of Ohio ("Commission") on November 18, 2020. It provides the Commission Staff's ("PUCO Staff") findings regarding the application for authority to increase rates for distribution service filed by Ohio Power Company ("AEP Ohio") on June 8, 2020. In submitting the Objections listed below, IEU-Ohio specifically reserves the right to contest, through presentation of documentary evidence, testimony, or cross examination, issues on which Staff's position changes, or which are newly raised, between the issuance of the Staff Report and the closing of the record.

I. OBJECTIONS TO THE STAFF REPORT ON AEP OHIO

Revenue Requirement

1. The range of Staff's recommended revenue increase as set out in Schedule A-1 of the Staff Report, is unjust, unreasonable, and not in accordance with Ohio law or proper ratemaking practices. IEU-Ohio objects to the PUCO Staff's recommended revenue increase range of $239,124,000 to $259,718,000. IEU-Ohio recommends a lower revenue requirement increase based on the objections more fully set forth below. IEU-Ohio's objections that may impact the revenue requirement concern adjustments to Return on Equity, the Basic Transmission Cost Rider Pilot program ("BTCR Pilot"), Consolidation of Non-Residential Rate Schedules, Allocation to Transmission Voltage Customers, the Distribution Investment Rider, the Enhanced Service Reliability Rider, and AEP Ohio's proposal to limit the resale of energy.

Rate of Return

2. IEU-Ohio objects to Staff's recommended return on equity range (ROE) as too high. Staff averaged four different ROE methodologies to arrive at its range.[1] As described in more detail below, two of those inputs were incorrectly calculated resulting in an ROE range that is improperly overstated.

Specifically, IEU-Ohio objects to the PUCO Staff's failure to use a lower risk-free rate when calculating the capital asset pricing model (CAPM) cost of common equity estimate, resulting in an overstated recommended rate of return. The risk-free rate is the interest rate an investor would expect to receive in a hypothetical risk-free investment. Using an inflated risk-free rate attributes risk to a company that it does not

[1] Staff Report at Page 26.

have. This applies to all companies, not just monopoly utilities. In this case, the Staff Report found that "[d]ue to the recent drop in yields for U.S. Treasuries to historically low levels, Staff chose to use a 'normalized' risk-free rate of 2.5 percent as published and recommended by Duff and Phelps."[2] Staff erred by using a normalized risk-free rate. Staff should use market rates as they currently exist, and any future change in market rates can be reflected in a future distribution rate case.

As Staff noted, current market rates are low, but Staff should not artificially increase the rate of return to AEP Ohio by using a normalized risk-free rate in its CAPM analysis. Yields for U.S. Treasuries are no longer "historically low" because they have remained low. This is not an anomaly, for the time being low rates are the new normal. Even FERC has wrestled with whether "anomalous capital market conditions" (i.e. historically low interest rates) justify an upward adjustment to a utility's ROE. In 2019, FERC issued a Notice of Inquiry (NOI) seeking information regarding its policies concerning ROE determinations.[3] FERC noted that it issued the NOI in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Emera Maine v. FERC*[4] reversing and vacating Opinion No. 531[5] in which FERC had determined "anomalous capital market conditions" justified an ROE above the midpoint of the zone of reasonableness. Even though the D.C. Circuit Court did not expressly reverse the Commission's finding of anomalous market conditions, the D.C. Circuit Court held that the Commission's decision was unjust and unreasonable because it failed to

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[2] Staff Report at 25.
[3] *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, Docket No. PL19-4-000, 166 FERC ¶61,207.
[4] Emera Maine v. FERC, 854 F.3d 9 (D.C. Cir. 2017).
[5] *Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶61,234, *order on paper hearing*, 149 FERC ¶61,032 (2014), *order on reh'g*, 150 FERC ¶61,165 (2015).

cite record evidence supporting its conclusion that anomalous market conditions warranted in ROE above the midpoint. In deviating from its standard approach, Staff did not demonstrate, or even allege, that current market conditions are anomalous. It is therefore unreasonable to ignore current market conditions and utilize a normalized approach.

The most common proxy for the risk-free rate when conducting a CAPM cost of common equity estimate is yields on U.S. Treasury Bonds, and has been regularly employed by Staff in recent rate cases.[6] As of close on November 27, 2020, yields on 30-year Treasury Bonds were 1.57 percent, while yields on 13-week Treasury Bonds were 0.0730 percent. Accordingly, the PUCO Staff should have used a risk-free rate between 0.0730 percent and 1.57 percent when calculating the CAPM cost of common equity estimate. Using the average of 0.8215 percent, all else being held equal, the CAPM estimate of the cost of common equity would be 5.90 percent.

3. IEU-Ohio objects to the PUCO Staff's failure to consider the reduced risk faced by AEP Ohio resulting from distribution cost recovery riders. By excluding that consideration, the PUCO Staff arrived at an overstated rate of return. Distribution cost recovery riders ensure the company recovers its costs for certain capital investments. Take, for example, AEP Ohio's Distribution Investment Rider (DIR), which ensures AEP Ohio recovers its costs for replacing aging infrastructure and improving service reliability.[7] Instead of making capital improvements and carrying the risk of non-recovery until its next

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[6] *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, Docket No. PL19-4-000, 166 FERC ¶61,207, at ¶14, "The risk-free rate is represented by a proxy, typically the yield on 30-year Treasury bonds.", *citing* Roger A. Morin, New Regulatory Finance 308 (Public Utilities Reports, Inc. 2006) at 155-162; *see also*, *e.g.*, *In Re Dayton Power & Light*, Case No. 15-1830-EL-AIR, Staff Report at 19 (Mar. 12, 2018); *Vectren Energy Delivery of Ohio*, Case No. 18-298-GA-AIR, Staff Report at 21 (Oct. 1, 2018).

[7] See Case No. 11-346-EL-SSO (*ESP 2*), Opinion and Order (Aug. 8, 2012) at 46-47.

base distribution rate case, AEP Ohio immediately begins charging customers under the rider after it makes the capital investment. AEP Ohio then continues to charge customers under the rider until the property is added to rate base in the company's subsequent base distribution rate case. Other AEP Ohio distribution service riders that decrease the Company's risk include its Storm Damage Recovery Rider[8], Decoupling Rider (PTBAR)[9], Enhanced Service Reliability Rider[10], Uncollectible Expense Rider, and more. Each of these distribution riders reduce the level of business and financial risk faced by AEP Ohio. Further, some of these distribution riders provide recovery assurance that other electric distribution utilities in the state do not have, namely Duke Energy Ohio, Dayton Power & Light Company, or the FirstEnergy Companies. The Staff Report fails to adjust downward the ROE to account for AEP Ohio's reduced risk of providing electric distribution service.

To appropriately reflect the reduced risk to AEP Ohio from the very significant amount of revenue collected through distribution riders, the Commission should set AEP Ohio's overall rate of return based on the ROE at the midpoint of the bottom half of the PUCO Staff's recommended ROE range, after that range is corrected for the errors identified in IEU-Ohio Objection number 2.

Transmission Pilot

4. IEU-Ohio objects to the PUCO Staff's failure to investigate and consider the transmission pilot program available to large customers in AEP Ohio's service territory. The PUCO Staff is required to investigate all of "the facts set forth in [AEP Ohio's] application and the exhibits attached thereto, and of the matters connected therewith"

[8] *See ESP 2*; *ESP 3*; and *In re Ohio Power Company to Update its Storm Damage Recovery Rider Rates*, Case No. 20-850-EL-RDR.
[9] See *In re Ohio Power Company*, Case No. 11-351-EL-AIR, et al. (*2011 Rate Case*).
[10] Staff Report at 29-30; ESP 3, Opinion and Order (Apr. 25, 2018) at ¶111, 192-196.

and to report the results of such investigation in the Staff Report.[11] In *ESP 4*, the PUCO held that the Basic Transmission Cost Rider Pilot (BTCR Pilot) be reviewed in the rate case utilizing the information and experience gained during the pilot program.[12] The BTCR Pilot program is a matter connected with this case but which the PUCO Staff failed to investigate.

Transmission costs are allocated based on peak demand; in the AEP Transmission zone that peak demand is the single zonal transmission peak or 1 CP. The BTCR was created a few years ago as part of an AEP Ohio ESP case. The BTCR, however, is billed on monthly billing demand, a demand statistic defined in AEP-Ohio's distribution tariff that has no relation to the 1 CP.[13] Prior to the creation of the BTCR, shopping customers were billed for transmission service based on demand during the 1 CP. A customer's demand during the 1 CP is referred to as their Network Service Peak Load ("NSPL"). The BTCR thus resulted in certain businesses who had managed their demand during the 1 CP subsidizing other businesses that had not done so.

The BTCR Pilot allows participating customers to be billed based on their demand during the AEP Transmission Zone 1 CP, *i.e.* based on their NSPL demand, just like the process that had existed for many years prior to the creation of AEP Ohio's nonbypassable transmission rider. Aligning cost incurrence with billing methodologies sends price signals to customers to reduce consumption during times of system

[11] R.C. 4909.19(C).
[12] ESP 4, Opinion and Order (Apr. 25, 2018) at ¶95.
[13] For example, the current definition of monthly billing demand for a transmission voltage customer is: "Billing demand in KW shall be taken each month as the single highest 30-minute integrated peak in KW as registered during the month by a 30-minute integrating demand meter, or indicator, or at the Company's option, as the highest registration of a thermal-type demand meter. The monthly billing demand established hereunder shall not be less than 60% of the greater of (a) the customer's contract capacity, or (b) the customer's highest previously established monthly billing demand during the past 11 months, nor less than 8,000 KW."

constraints. Customers that curtail usage during the AEP Transmission zone 1CP reduce the costs that flow to AEP-Ohio that ultimately are recovered from all customers through the BTCR. Accordingly, the BTCR Pilot aligns with appropriate rate design methodology and produces system wide benefits for AEP-Ohio customers.

IEU-Ohio recommends that the BTCR Pilot program continue on a pilot basis, but that the program be expanded to include more slots for companies to participate. In *ESP 4*, the Commission approved expansion to 34 participation slots – 10 for OMAEG, 10 for OEG, 9 for IEU-Ohio, 3 for public school customers of Direct Energy, and 2 for IGS customers.[14] While the MW participation cap ends after 2020,[15] the Commission should expand the number of companies allowed to participate with the recognized organizations. The Commission should expand the number of slots to 20 participants per recognized organization.

The information and experience gained during the pilot program demonstrates that it has been effective at undoing the intra-class subsidization caused by the Base Transmission Cost Rider (BTCR). For example, interest in the BTCR Pilot program has exceeded the MW participation cap (this cap is in essence a financial benefit cap that works to limit the pace at which the prior intra-class subsidization can be undone for pilot customers). For the customers that participate, the BTCR Pilot program works by sending proper market price signals and aligns cost causation with cost responsibility.

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[14] ESP 4, Opinion and Order (Apr. 25, 2018) at ¶96.
[15] ESP 4, Opinion and Order (Apr. 25, 2018) at ¶98. The Commission noted that under the stipulation, "Total participation of the specific sponsoring groups in the program may equal or exceed 400 MW in 2018 or 500 MW in 2019 and 2020 . . .". Neither *ESP 4*, AEP Ohio's Application in this case, or the Staff Report recommend MW participation caps for 2021 or beyond.

5. IEU-Ohio objects to the PUCO Staff's failure to reevaluate the BTCR Pilot program to allow certain transmission customers to be permitted to contract at firm service levels. As noted above, IEU-Ohio objects to the PUCO Staff's failure to investigate and consider the BTCR Pilot program. If the PUCO Staff had evaluated the program, they might have recognized that there is a benefit to letting some BTCR Pilot program customers contract at firm service levels, instead of chasing the peaks. This structure would allow a limited number of BTCR pilot customers to elect to set their billing determinant for the BTCR based on a contracted firm service level, with a requirement to reduce consumption to the firm service level during times of transmission system constraint. The concept would be similar to how capacity works on the natural gas side, where customers can elect how much firm transmission capacity to purchase. Moreover, the result would preserve reliability while from a macro-economic perspective not result in the underutilization of manufacturing capacity at points in time when there is no operational or reliability constraint on the transmission grid.

6. IEU-Ohio objects to the failure of the PUCO Staff to make any recommendation that would facilitate transmission voltage customers incorporating in transmission planning their long-term demand reduction capabilities. The current approach to setting the NSPL methodology lies in each transmission zone with incumbent utilities, such as AEP Ohio, so there is potential overlap on jurisdiction on this issue. The Commission should encourage AEP Ohio to work with transmission voltage customers to identify opportunities for transmission voltage customers to commit their capabilities long-term and help reduce future transmission spending, with AEP Ohio potentially recognizing this long-term benefit in the process utilized to calculate transmission billing determinants or

other mechanisms that send price signals to transmission voltage customers in ways that produce system wide benefits and costs savings for all AEP Ohio customers. Transmission costs have been increasing at an unsustainable pace, including in the AEP Transmission Zone. The Commission should direct AEP Ohio to collaborate with transmission voltage customers to discuss opportunities to reduce long-term transmission costs.

Consolidation of Non-Residential Rate Schedules

7. IEU-Ohio objects to the effect that consolidation of the GS rate schedules has on transmission voltage customers. The consolidation results in unreasonable levels of increases on transmission voltage customers that violates concepts of cost causation and gradualism. For example, Staff proposes approximately a 37.5% increase in base distribution charges, but base distribution charges for transmission voltage customers are increasing under the Staff Report by many multiples of that overall system increase.

The following table demonstrates the magnitude of the increase proposed under the Staff Report for all transmission voltage customers that have monthly billing demand in excess of 2,000 kW in the Ohio Power rate zone.[16]

	Annual Increase	Percent Annual charge Increase
Company	$56,922.62	644%
Staff	$46,447.55	525%

The ultimate base distribution increase for transmission voltage customers should

[16] The impacts for a similarly sized transmission voltage customer in the Columbus Southern rate zone would be very similar, with the only difference being that the monthly customer charge is currently $1,060.00, compared to the $512.00 charge for the Ohio Power rate zone. Further, this chart is based off the current customer charge of $512.00, and the 39.11 percent DIR, and 3.48 percent ESRR rates that were in effect at the time the Company prepared the rate case schedules.

be based on the costs properly allocable to transmission voltage customers (who are not connected to the distribution grid at all), but in no event should the increase in transmission voltage customers be more than 2.5 times the system average.

8. IEU-Ohio objects to the inclusion of transmission voltage customers on the same rate schedule as nearly all other non-residential customers. Transmission voltage customers have invested in significant facilities to be able to receive service at transmission voltages. These customers are not connected to the distribution grid. Transmission voltage customers are thus quite distinguishable from the remainder of AEP Ohio's customers. This operational characteristic supports continuation of the current practice of having a separate rate schedule for transmission voltage customers, and properly allocating only those costs reasonably allocable to transmission voltage customers to that rate schedule.

The failure of Staff in the Staff Report to investigate the issue is apparent given the significant percent increases for transmission voltage customers proposed in the Staff Report (as noted in the prior objection). The inclusion of transmission voltage customers in the same rate schedule as all other general service customers fails to comply with concepts of gradualism. Accordingly, the Commission should require that transmission voltage customers be served under their own rate schedule.

Allocation to Transmission Voltage Customers

9. IEU-Ohio objects to the allocation of costs to transmission voltage customers and the PUCO Staff's failure to consider or investigate it. The Staff Report states "Staff reviewed the Company's jurisdictional allocation factors . . ." and "Staff does not

recommend any adjustments . . ."[17] Aside from this conclusory statement, the Staff Report does not demonstrate that Staff actually investigated the facts set forth in the application and the exhibits attached thereto as it relates to the allocation of costs to transmission voltage customers. Specifically, the Cost of Service Study allocates to Transmission Voltage customers costs related to AEP Ohio's distribution service riders for which Transmission Voltage customers receive little or no benefit. The principle of cost causation provides that "approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them."[18] Similarly, courts "evaluate compliance [with cost causation principles] by comparing the costs assessed against a party to the burdens imposed *or benefits drawn by that party*."[19] Transmission voltage customers interconnected directly to the transmission system do not receive the same benefits of AEP Ohio's distribution service riders as customers interconnected to the distribution system. For that reason, IEU-Ohio objects to the Staff Report's cost allocations to transmission voltage customers.

10. IEU-Ohio objects to the rate design for transmission voltage customers. Both AEP-Ohio's Application and the Staff Report recommend a distribution demand charge be assessed on transmission voltage customers who are not connected at all to the distribution system (i.e. they have no demand on the distribution system).[20] The newly created distribution demand charge for transmission voltage customers results in an

[17] Staff Report at 16.
[18] *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).
[19] *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (emphasis added).
[20] IEU-Ohio does not oppose averaging the customer charge between the current CSP and OP rate zones.

unreasonable increase in base distribution rates for transmission voltage customers, as set forth in more detail above.

Distribution Investment Rider

12. IEU-Ohio objects to the PUCO's Staff's proposed revenue caps for AEP Ohio's Distribution Investment Rider (DIR). While IEU-Ohio supports the PUCO Staff for recommending a decrease from AEP Ohio's proposed DIR revenue caps, the PUCO Staff does not go far enough. The rate caps proposed by the PUCO Staff are still unjust and unreasonable. AEP Ohio has made significant capital investments that have increased its rate base over the past 10 years.[21] AEP Ohio does not need to make capital expenditures that significantly outpace depreciation.

Moreover, to the extent substantial DIR caps are authorized going forward, such caps would significantly reduce AEP Ohio's regulatory risk. The reduction of AEP Ohio's regulatory risk from the DIR should be accounted for in the authorized rate of return. In the ROE section above, IEU-Ohio recommends an ROE at the midpoint of the bottom half of Staff's (corrected) ROE range. If the Commission authorizes a DIR with substantial caps going forward, the Commission should establish the rate of return based on an ROE at the bottom of the range.

13. IEU-Ohio objects to the PUCO Staff's comments on the DIR Worksheet to the extent that it is inconsistent with the rate caps that will ultimately be established by the Commission. The Staff Report notes the confusion between the worksheet and what may

[21] See Staff Report at Page 13, third full paragraph.

ultimately be authorized but failed to explicitly recommend that the worksheet not trump the rate caps.

14. IEU-Ohio objects to the PUCO Staff's DIR calculation to the extent that the elimination of excluding the EE/PDR offset goes beyond recognizing the EE/PDR program has terminated. The PUCO Staff makes a recommendation that begins "[t]o the extent the EE/PDR Rider is not terminated, or capital costs associated with these type[sic] of expenditures are allowed to be recovered by the Company in some manner . . ." The statute authorizing the PUCO to approve an EE/PDR program has terminated, therefore the program itself is terminated. The PUCO Staff's DIR calculation could be interpreted as potentially supporting authorization for new EE/PDR costs to be included in the DIR at some point in time.[22] The EE/PDR has terminated and no costs should be included in the DIR, now or in the future. Moreover, EE/PDR costs are bypassable by mercantile customers, and therefore, including EE/PDR costs in the DIR would require the DIR to be conditionally bypassable.

Enhanced Service Reliability Rider

15. IEU-Ohio objects to the PUCO's Staff's proposal to allow AEP Ohio to charge customers an amount in excess of the test year amount under the ESRR for its so-called Danger Tree Program. In AEP Ohio's *ESP 3*, the Commission held that "[t]he continuation of the ESRR after the next AIR case will be an issue for determination as part of the next AIR case." The test year expense, between the amount in base rates and the amount recovered through the ESRR, is $51.6 million. Staff proposes, however, that AEP Ohio charge customers approximately $35 million in base rates and $25 million in the ESRR.[23]

[22] Staff Report at Page 20.
[23] Staff Report at Pages 29-30.

The Commission should not approve costs higher than the test year expense. The vegetation management costs as recommended in the Staff Report, including costs for the proposed Danger Tree Program, would be unjust and unreasonable for transmission customers.

Resale of Energy

16. IEU-Ohio objects to AEP Ohio's tariff to limit the resale of energy to the extent that AEP Ohio seeks to impose conditions beyond the Commission's long-standing Shroyer Test. The Shroyer Test calls for an evaluation of three questions: (1) whether the entity has "manifested an intent to be a public utility by availing itself of special benefits available to public utilities; (2) whether such utility service is available to the general public rather than to a specific class of residents; and (3) whether the provision of utility services is "ancillary" to the entity's "primary business."[24] The traditional Shroyer Test has been applied for decades and never been overturned. However, AEP Ohio's proposal could be understood to require explicit Commission approval for a resale arrangement. The Commission should reject any such proposal that requires explicit Commission approval for an entity to resell energy. The resale of energy should be allowed, consistent with the Shroyer Test, as it has been for decades. The Commission's traditional Shroyer Test has never been overruled and should continue to. IEU-Ohio objects to AEP Ohio's proposal to limit the resale of energy.

II. STATEMENT OF MAJOR ISSUES

[24] *In re Complaints of Inscho v. Shroyer's Mobile Homes*, Pub. Util. comm. Nos. 90-182-WS-CSS, 90-252-WS-CSS, and 90-350-WW-CSS, 1992 WL 937210 (Feb. 27, 1992).

1. The revenue requirement increase recommended by the PUCO Staff and whether such increase is unjust, unreasonable, and not in accordance with Ohio law or proper ratemaking practices.

2. The PUCO Staff's rate of return calculations.

3. The rate design, allocations, and tariff definitions applicable to transmission voltage customers.

4. The PUCO Staff's failure to review the BTCR Pilot program or to reevaluate the program based upon the information and experience gained so far.

5. The consolidation of rate schedules and its impacts on customers.

6. The DIR revenue caps and whether they are unjust, unreasonable, and not in accordance with Ohio law or proper ratemaking practices.

7. The proposed charges to customers under the ESRR and whether such charges are unjust, unreasonable, and not in accordance with Ohio law or proper ratemaking procedures.

8. AEP Ohio's proposal to limit the resale of energy.

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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 *Objections to the Staff Report of Investigation and Summary of Major Issues 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 18th day of December 2020, *via* electronic transmission.

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