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. 20-0585-EL-AIR**
In the Matter of the Application of Ohio Power Company for Tariff Approval.	)))	**Case No. 20-0586-EL-ATA**
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	**Case No. 20-0587-EL-AAM**

POST-HEARING BRIEF OF WALMART INC.

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Dated: June 14, 2021

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POST-HEARING BRIEF

Walmart Inc. ("Walmart") by its attorneys, respectfully submits this Post-Hearing Brief to the Public Utilities Commission of Ohio ("Commission") in the above referenced proceeding concerning the Application of Ohio Power Company ("OPCo" or "Company") for approval of an increase in its electric distribution rates. As a Signatory Party to the Joint Stipulation and Recommendation ("Stipulation") filed in this docket on March 12, 2021, as subsequently updated on May 11, 2021, Walmart supports approval of the Stipulation for all the reasons set forth in the Testimony filed in support of the Stipulation[1] and as set forth at the hearing. The limited purpose of this Post-Hearing Brief is to address why the Commission should reject the alternative rate mechanism for low-load factor customers in the General Service ("GS") Rate Class that was proposed by Nationwide Energy Partners, LLC ("NEP") in this case.

I. FACTUAL BACKGROUND

On June 1, 2020, the Company filed an application to increase its electric distribution rates. On June 22, 2020, Walmart filed its Motion to Intervene in the case. Walmart's Motion was granted

[1] Including the testimony filed by Andrea E. Moore, Adrien M. McKenzie, CFA, and David M. Roush on behalf of the Company. *See* AEP Exhibits 4, 5 and 6, respectively.

via Entry of the Hearing Examiner on July 29, 2020. Commission Staff ("Staff") filed their Staff Report on November 18, 2020. Thereafter, on December 18, 2020, Walmart filed its objections to the Staff Report. Prior to filing testimony in support of Walmart's objections, the parties began settlement negotiations, which resulted in the filing of a non-unanimous Stipulation on March 12, 2021, signed by the Company, Staff, Walmart, The Kroger Company ("Kroger"), Ohio Hospital Association ("OHA"), Ohio Energy Group ("OEG"), Industrial Energy Users - Ohio ("IEU Ohio"), Ohio Consumers' Counsel ("OCC"), Ohio Manufacturers' Association Energy Group ("OMAEG"), One Energy Enterprises LLC, Clean Fuels Ohio, ChargePoint, Inc., EVgo Services LLC, and Ohio Cable Telecommunications Association.[2]

Among the parties opposing the Stipulation were NEP and Armada Power, LLC ("Armada"). NEP and Armada Power are sister companies, owned by the same majority shareholder.[3] NEP and Armada both filed Direct Testimony in opposition to the Stipulation. In particular, Armada filed the testimony of Eric Rehberg ("Rehberg Direct"), the Chief Engineer of Armada, in support of a grid integrated water heater pilot program.[4] NEP filed the Direct Testimony of Teresa Ringenbach, the Vice President of Business Development for NEP, and the Direct Testimony of Susanne Buckley ("Buckley Direct"), a partner with new River Group, LLC d/b/a Scioto Energy. On May 5, 2021, NEP filed a "Notice of Witness Substitution," whereby NEP reported that Ms. Buckley was conflicted and not able to testify in these proceedings.[5] This filing further indicated that Eric Rehberg, the Chief Engineer of Armada, "adopts Ms. Buckley's

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[2] *See* Joint Ex. 1.

[3] Transcript. ("Tr.") Vol. IV, p. 807, lines 6-14.

[4] Armada Ex. 17; *see also* Tr. Vol. IV, p. 687, line 25 to p. 688, line 3.

[5] NEP Ex. 35, Notice of Witness Substitution, p. 1 (filed May 5, 2021).

pre-filed testimony and substitutes as one of the witnesses on behalf of NEP."[6] Attached to this Notice was "a new version of testimony"[7] that was largely identical to the Buckley Direct except that "Mr. Rehberg's personal information and background have been submitted at the beginning of the testimony, his resume added, and slight revisions are reflected in Answers 10 and 11 and in Exhibit A."[8]

Ms. Buckley's testimony as subsequently adopted by Mr. Rehberg addressed the "impact to GS-2 and GS-3 customers in [the Company's] service territory" resulting from the Stipulation.[9] It also proposed "an alternative rate structure that can be utilized for low-load factor customers and an alternative pilot program that can be adopted by the Commission to allow for investigation of the alternative rate structure."[10]

Mr. Rehberg testified at the hearing in this matter on behalf of NEP on May 17, 2021. In discussing the alternative rate framework that he was sponsoring for low-load factor customers, Mr. Rehberg confirmed that the structure would apply to GS customers with a load factor of 40 percent or less.[11] The accounts used to model the NEP Pilot Program were solely four NEP customers.[12] Mr. Rehberg did not model or analyze any other types of low-load factor customers in creating and proposing the NEP Pilot.[13]

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[6] NEP Ex. 35.

[7] *See* NEP Ex. 34, Direct Testimony of Eric Rehberg (Rehberg NEP Direct).

[8] *Id*., pp. 1-2.

[9] *See* Rehberg NEP Direct, p. 2, lines 8-11, which adopted the testimony of Ms. Buckley. Citation is made to Mr. Rehberg's testimony on behalf of NEP because the originally filed testimony from Ms. Buckley was never entered into the record.

[10] *Id*., p. 2, lines 18-20.

[11] Tr. Vol. IV, p. 727, lines 7-11.

[12] *Id*., p. 745, lines 6-8.

[13] *Id*., p. 745, line 9 to p. 747, line 24

Under the NEP Pilot Program, rather than collecting the Company's distribution costs for low-load factor GS customers through the demand-only charge as proposed in the Stipulation, Mr. Rehberg proposed a different rate with demand and energy components.[14] Mr. Rehberg confirmed that his proposal would result in "the same amount of revenue" being collected by the Company, but only if the customer's "consumption didn't change."[15] By recovering distribution costs through the energy charge, however, Mr. Rehberg also conceded that customers on this proposed rate could "manage their costs" to avoid paying for certain costs associated with distribution by altering their energy use.[16] Mr. Rehberg acknowledged this outcome stating:

Q: But you understand, right, that by putting [costs] onto the energy charge, that customers can avoid paying [costs] by using less energy?

A. That is the risk that utilities have dealt with for the last more than a century; so, yeah, I suppose that's generally true.[17]

Under cross-examination from counsel for Kroger, Mr. Rehberg made the point even clearer, stating:

Q: …Your testimony on behalf of NEP proposes a new low-load factor rate schedule, correct?

A: That's correct.

Q: And based upon your analysis, the proposed rate schedule would reduce distribution rates for low-load factor GS-2 and GS-3 customers, correct?

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[14] *Id*., p. 730, lines 18 to p. 731, line 5; *see also id.*, p. 728, lines 1-10.

[15] *Id*.

[16] *Id*., p. 728, line 18 to p. 729, line 2.

[17] *Id*., p. 731, lines 9-14.

A: It would reduce the demand component from what was proposed in the Stipulation but then add in a kilowatt-hour component.

Q: But that would effectively decrease -- I mean that's why you are doing it, right? I mean, that would effectively decrease the low-load factor GS-2, GS-3 customers' distribution rates, right?

A: Not necessarily. It depends on their usage. If they kept their usage that same as I did in the simulations that I propose here, their costs would actually be the same, but it gives them the capability to control their costs across both factors.[18]

According to Mr. Rehberg, if the NEP Pilot Program was adopted and customers maximized savings via the bill component collected through the energy charge, the pilot program would cause the Company to under collect up to $1.2 million per year from this class of customers.[19] Neither NEP nor Mr. Rehberg identified who would be responsible for any such shortfall.[20]

II. ARGUMENT

The Commission should reject the low-load factor pilot program proposed by NEP because: (1) it improperly seeks to recover fixed distribution costs through a volumetric charge; and (2) it will likely result in an under-recovery for those customers taking service under the NEP Pilot Program, thereby improperly imposing costs on other customers.

[18] *Id*., p. 739, lines 4-24.

[19] *Id*., p. 740, lines 7-19.

[20] *Id*., p. 791, lines 3-16.

A. **Distribution Costs are fixed costs that should not be recovered from the volumetric charge**.

This is a distribution rate case.[21] The costs to be collected in this case do not vary with the volume of energy consumed,[22] but are fixed costs that are either customer-related or demand-related.[23] The Company does not have any volumetric or energy-related costs.[24] In proposing the NEP Pilot Program (which would recover some of these fixed costs through an energy charge), Mr. Rehberg acknowledges that he is merely trying to increase the demand charge "at a slower rate"[25] in order to save money for low-load factor customers like NEP.[26] The proposal is not linked to traditional ratemaking principles, including the notion that fixed costs should be recovered through fixed bill components.[27] Indeed, Mr. Rehberg's testimony at the hearing revealed a fundamental misunderstanding of the nature of distribution costs incurred by a utility.[28] Because these costs are clearly fixed costs, the Commission should reject NEP's proposal for a pilot program that recovers costs through the volumetric energy charge as inconsistent with sound ratemaking principles.

B. **Adopting the NEP Pilot Program improperly shifts costs to other customers**.

NEP's testimony also concedes that the pilot program presents the potential -- if not a guarantee -- that the Company will have an under-recovery of up to $1.2 million per year from

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[21] Tr. Vol. I, p. 37, lines 6-13 (in the context of conducting the jurisdictional cost of service study).

[22] *Id*., p. 99, lines 10-14.

[23] *Id*., p. 101, lines 14-18.

[24] *Id*., p. 40, lines 12-19 (in the context of the class cost of service study).

[25] Tr. Vol. IV, p. 730, line 18 to p. 731, line 2.

[26] As a business model, NEP owns, operates or is affiliated with multiple family unit development accounts that take service from the utility under a single account. *Id*., p. 840, lines 18-23. NEP is responsible for charging the sub-meters who take service under this single account under whatever methodology they choose. Adoption of the NEP Pilot Program has no impact on what or how much NEP would charge its sub-meters.

[27] *See* Tr. Vol. I, p. 99, lines 10-17.

[28] *See e.g., id*., p. 729, line 3 to p. 730, line 9.

those customers participating in the pilot program. Although NEP does not identify who should pick up those costs, it is clear that the NEP Pilot Program would undoubtedly subsidize participating customers. Adopting a pilot program that either imposes costs on other customers and/or prevents the Company from recovering its prudently incurred costs should be rejected. Customers participating in the NEP Pilot Program would not be paying their fair share of the Company's costs to provide distribution service and, therefore, the NEP Pilot Program is not reasonable.

III. CONCLUSION

For all the reasons set forth herein, Walmart Inc. respectfully requests that the Commission approve the Joint Stipulation and Recommendation filed in this case on March 12, 2021, as subsequently updated on May 11, 2021, and reject the pilot program for low-load factor customers proposed by Nationwide Energy Partners, LLC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief of Walmart Inc. was served by electronic mail, upon the following Parties of Record on this 14th day of June, 2021.

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