

**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

---

**REPLY BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

---

Ohio Partners for Affordable Energy (“OPAE”) hereby submits this Reply to select arguments made by the Ohio Power Company (“AEP”) and other Signatory Parties in their Initial Briefs. OPAE does not dispute that the Stipulation, as proposed, contains at least one benefit for customers in the form of the advancement of transparency through AEP’s shadow billing commitments. But many of the other claimed benefits are illusory or provide no benefit at all and therefore the Stipulation, as a package, does not benefit customers. Further, the Stipulation violates several important regulatory principles and at last one statutory provision and therefore the Stipulation cannot be approved without modification.

**I. AEP’s current rates and tariffs should be the comparison point to determine the Stipulation’s benefits not the Application.**

AEP mischaracterizes an Ohio Supreme Court Case multiple times in its Brief claiming the Court held that merely repeating one’s litigation position is not an

appropriate basis for contesting a settlement.<sup>1</sup> The quote AEP cites is not a holding at all, but merely dicta as the issue the Court was addressing with AEP's selected quote was actually held to be outside the jurisdiction of the Court. *Cf. Ohio Partners for Affordable Energy v. Pub. Util. Comm.'n (In re E. Ohio Gas Co.)*, 144 Ohio St.3d 265, 2015-Ohio-3627, ¶ 33 (holding, "'OPAE did not raise this specific argument in its notice of appeal. We therefore lack jurisdiction to consider it now.'")

However, AEP's distillation of the Court's dicta, while mischaracterized as a holding, is nonetheless relevant to this case. Both AEP and Staff point to benefits of the Stipulation compared to the Application. But the Application was just that, an application. It was never approved, it is merely a proposal. AEP and Staff's arguments would have the Commission believe its approval was guaranteed and therefore any reduction in what AEP originally proposed qualifies as a benefit for customers and therefore the Stipulation, as a package, is beneficial. But this is simply not the case. Just as staunchly maintaining one's litigation position in a settlement discussion is not truly attempting to settle, comparing the Stipulation's alleged benefits to what was originally proposed does not provide an accurate portrayal of the Stipulation's benefits. Instead, the Stipulation must be compared to AEP's current rates and tariffs.

Staff spends over five pages of its Brief, under the section discussing the Stipulation's purported benefits, comparing the Stipulation to AEP's original proposal.<sup>2</sup> Staff touts the Stipulation's \$110.8 million decrease in the proposed revenue requirement "over the Company's proposed revenue requirement."<sup>3</sup> Staff also points to

---

<sup>1</sup> AEP Initial Brief at pp. 4 & 58.

<sup>2</sup> Staff's Initial Brief pp. 8-14.

<sup>3</sup> *Id.* at 9.

the proposed customer charge of \$10 being lower than the “\$14 proposed by AEP Ohio”.<sup>4</sup> This is particularly egregious given Staff’s own calculations resulted in a finding the customer charge should be \$6.01.<sup>5</sup> Both Staff and AEP point to the delayed implementation of the punitive delayed payment charge as a benefit for customers.<sup>6</sup> Except, currently, there is no delayed payment charge at all. But, this Stipulation, if approved, will implement one. Yet, Staff and AEP claim the delayed implementation of purely punitive charge **that does not currently exist nor been approved** for AEP’s residential customers as a benefit to customers.

There are numerous other examples in the cited pages of Staff comparing the Stipulation to the Application. Staff’s rationale that these changes amount to benefits is essentially telling the Commission, well they asked for more so this is a good deal. Even the most green negotiator knows to ask for best case scenario so you can leave yourself room to negotiate. AEP’s application is its litigation position and should not be viewed as preapproved. Staff’s approach of comparing what was originally asked for by the Company versus what is actually being agreed to in the Stipulation does not demonstrate any actual benefits and undermines the entire settlement process. Only comparisons of what the Stipulation proposes versus is what is currently approved by the Commission are appropriate to determine what actually benefits customers.

The Commission should reject these disingenuous comparisons and review the Stipulation compared to what is currently authorized by the Commission to determine if

---

<sup>4</sup> Id.

<sup>5</sup> Staff Exhibit 1 at p. 40.

<sup>6</sup> Staff Initial Brief at p. 10; AEP’s Initial Brief at p. 3.

the Stipulation, as a package, benefits customers. It will be clear to the Commission that, absent modification, the Stipulation, as a package, does not benefit customers.

**II. The failure to include a demand-side management program is a violation of R.C. 4905.70 and state policy as codified in R.C. 4928.02.**

AEP claims that there is no violation of important regulatory principle or practice in its removal of demand-side management (“DSM”) programs.<sup>7</sup> AEP notes the reservation of its right to bring such a proposal at a later date and “the current state of energy efficiency in Ohio” as reasons it withdrew its DSM proposal.<sup>8</sup> Kroger and the Ohio Manufacturer’s Association Energy Group (“OMAEG”) claim no opposing party can identify a source of law allowing distribution utilities to offer energy efficiency programs.<sup>9</sup> OPAE clearly identified R.C. 4905.70 as the statutory authority behind authorizing DSM programs. R.C. 4905.70 requires the Commission to initiate programs to promote and encourage the conservation of energy and reduction in the growth rate of energy consumption. As noted in OPAE’s Initial Brief, these are the exact goals of demand-side management programs.

While debating Amended Substitute House Bill 6 (“H.B. 6”) on the floor of the House of Representatives, Representative Seitz specifically identified R.C. 4905.70 as the authority for utilities to offer voluntary energy efficiency programs, after the passage of H.B. 6, and noted that natural gas utilities have been authorized to do so via R.C. 4905.70 for years.<sup>10</sup> There is no uncertainty regarding the authority provided in R.C.

---

<sup>7</sup> AEP’s Initial Brief at p. 20.

<sup>8</sup> Id.

<sup>9</sup> Kroger’s Initial Brief at p. 11; OMAEG Initial Brief at p. 26.

<sup>10</sup> Ohio House of Representatives, July 23, 2019, <https://ohiochannel.org/video/ohio-house-of-representatives-7-23-2019> at 30:57-31:37. Last accessed July 5, 2021.

4905.70 even after the passage of H.B. 6. The General Assembly expressly identified it as a path for the proposal and approval of energy efficiency programs moving forward. Kroger and OMAEG's arguments regarding legislative intent are meritless. Failure to include a DSM program in the Stipulation is unjust and unreasonable and a violation of the Commission's duty to encourage conservation and efficient use of energy as codified in R.C. 4905.70.

OPAE respectfully requests that the Commission modify the Stipulation to include a DSM program or reject the Stipulation and require AEP to propose a DSM program. This will both fulfill the Commission statutory duty and ensure customers do not miss out on the same programs and benefits the Commission has previously approved for them.

**III. The Stipulation, absent modification, improperly collects demand related charges through fixed rates which is contrary to Ohio's codified energy policy and disadvantages low-use customers, many of whom are low-income.**

Fixed rider charges are backdoor increases in the customer charge and are unjust and unreasonable. Charges should be a function of usage, designed to recover the costs a customer places on the system. Distribution investments, beyond direct customer service charges, have traditionally been volumetric charges. OPAE already addressed the specifics of various riders that are proposed to be collected via a fixed charge that are properly collected through a volumetric charge and will not reiterate those same arguments here. However, AEP attacked the underlying rational Witness Rinebolt put forth in his testimony and OPAE will address AEP's mischaracterizations.

AEP claims, without citing to any particular instance, that OPAE Witness Rinebolt "appeared to use" the term "low-income" and "low-use" interchangeably in his

testimony.<sup>11</sup> AEP then states that Witness Rinebolt then “openly admitted” on cross examination that not all low-income customers are low use customers.<sup>12</sup> Yet, a cursory reading of Witness Rinebolt’s testimony clearly demonstrates a repeated delineation between low-income customers and low-use customers, though Witness Rinebolt does acknowledge that often low-income customers are also low-use customers. Direct Testimony of David C. Rinebolt at pp. 4-5 (“Further, fixed charges have an inequitable impact on low-use customers, **many of whom are low-income**”; p. 5 (“Most low-income customers are also low-use customers.”; p. 9 (“Because low-income customers tend to be low-use customers”); p. 14 (“Fixed rate riders discriminate against low-use customers, many of whom are low-income”.) Witness Rinebolt made the same clarification while being cross-examined about the alleged interchangeability of his usage of the terms within his testimony stating, “[Low-income customers] are more likely to be low-use customers. Certainly not all of them are.”<sup>13</sup>

AEP notes in its Brief that Witness Rinebolt admitted he did not complete or review any specific studies in regards to the demand that low-use customers place on AEP’s system and instead merely infers from the data and his own experience.<sup>14</sup> However, Witness Rinebolt’s experience provides quite the well to draw from given his more than thirty-seven years in the field<sup>15</sup> including approximately ten years managing portions of AEP’s low-income programs through his role as Executive Director of

---

<sup>11</sup> AEP Initial Brief at p. 24.

<sup>12</sup> Id.

<sup>13</sup> Tr. II at 447, lines 17-18.

<sup>14</sup> AEP Initial Brief 24.

<sup>15</sup> Direct Testimony of David C. Rinebolt p. 2.

OPAE.<sup>16</sup> Witness Rinebolt also indicated his opinion on the characteristics and often similarities between low-income and low-use customers was built through reviewing the data on the 300,000-400,000 clients OPAE has served as well as his work with the United States Energy Information Administration related to low-income customers. It is clear that Witness Rinebolt has the requisite knowledge and experience to infer and draw conclusions on the impacts of fixed riders on both low-income customers and low-use customers.

AEP also notes that despite Witness Rinebolt's arguments on cross-examination "he agreed, based upon the information in Mr. Roush's table, that there is a greater percentage reduction in the monthly bill for low-use customers than high-use customers following implementation of the Stipulation."<sup>17</sup> While it is true Mr. Rinebolt acknowledged Mr. Roush's tables are correct as of a specific snapshot in time, he still concluded that low-use customers will experience a greater percentage increase following the implementation of the Stipulation stating,

In reviewing both the original testimony and then Mr. Roush's supplemental testimony -- or testimony in support of the Stipulation as revised, he uses a particular set of rider amounts that -- and I compared those rider amounts, at no little effort, to the rider amounts that had been filed from AEP since this case was filed. And I also looked at the provisions in the Stipulation that designated the size of the DIR rider over the next three or four years. And so at this snapshot in time, these tables are absolutely correct.

But once those other riders come into play at increasing levels, the fixed charges for small customers will grow. And those charges will be a higher percentage of the bill for resi -- for those customers -- for low-use customers than they will be for high-use customers.

---

<sup>16</sup> Id at p. 3.

<sup>17</sup> AEP's Initial Brief at p. 24.

Witness Rinebolt was identifying that the benefits, including the numbers in Mr. Roush's testimony are correct, but only temporarily. Therefore the "benefits" calculated and the corresponding rate impacts are illusory. The snapshot provided included riders that are set at \$0 such as the DIR.<sup>18</sup> Obviously, a \$0 rider will increase as will the impact that rider has on rates. The more demand related charges are collected through fixed charges the less the customer can lower their bill through adjusting their usage. Further, it is logically consistent that the more fixed charges grow the larger the percentage bill impact will be for low-use customers.

The Commission should protect both low-use and low-income customers by ensuring demand related charges are collected volumetrically and not through fixed charges. This will empower customers to control their bill through their usage and further the state policies of ensuring efficient service, protecting at-risk populations, and encouraging innovation and market access for demand-side retail electric service as codified in R.C. 4928.02.

#### **IV. The delayed implementation of the Delayed Payment Charge is not a benefit for customers.**

As mentioned above, the delayed implementation of the Delayed Payment Charge, **which currently does not exist for AEP's residential customers**, is not a benefit. The charge itself is purely punitive, as discussed in OPAE's Initial Brief, because it does not compensate AEP for any costs. There are no costs associated with recovery during the first 21 days after a bill is rendered. The first 'cost' is in the form of a disconnection notice on the bill that is received roughly a month after the rendering of

---

<sup>18</sup> Joint Exhibit 1 at p. 8



the initial unpaid bill. A disconnection notice also appears on the bill of a customer who has missed two monthly payments. At that point, collections activities may begin on an individual account, but the cost of those activities is already included in base rates.<sup>19</sup>

AEP provided no analysis supporting the position that the delayed payment charge will improve customer behavior. The only evidence in the record regarding the impact of a delayed payment charge, OPAE's Exhibit 13, is on AEP's commercial customers. The Exhibit shows no material change to payment behavior after the implementation of the fee with the next year's on time payments improving by an average of less than half of a day.

The Commission should modify the Stipulation to deny the imposition of the delayed payment charge because there is no evidence in the record that will incent on-time payment and it does not collect any currently uncollected costs. Therefore, a delayed payment charge is unjust and unreasonable especially for AEP's most vulnerable customers. Simply delaying the implementation of an unjust and unreasonable charge that is not currently approved by the Commission in no way constitutes a benefit for customers.

## **V. Conclusion**

The Stipulation, as currently drafted, violates important regulatory principles, state law, fails to achieve state policies, and results in unjust and unreasonable rate for AEP's customers, specifically their low-income customers. OPAE respectfully requests that the Commission make the modifications outlined above to ensure the Stipulation's

---

<sup>19</sup> See Application Vol. 2 at 74, Schedule C-2.1, page 2 of 5; Transcript Volume II page 260 lines 10-13.

just and reasonableness and compliance with Ohio laws and regulatory principles, or reject the Stipulation.

/s/ Robert Dove

Robert Dove (0092019)  
Kegler Brown Hill + Ritter Co., L.P.A.  
65 E State St., Ste. 1800  
Columbus, OH 43215-4295  
Office: (614) 462-5443  
Fax: (614) 464-2634  
rdove@keglerbrown.com

*Attorney for OPAE*

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on July 6, 2021. A courtesy copy has also been sent via electronic mail to all persons identified below.

/s/ Robert Dove

### **SERVICE LIST**

stnourse@aep.com  
cmblend@aep.com  
egallon@porterwright.com  
christopher.miller@icemiller.com  
dborchers@bricker.com  
kherrnstein@bricker.com  
eakhbari@bricker.com  
mfleisher@dickinsonwright.com  
cpirik@dickinsonwright.com  
wvorys@dickinsonwright.com  
todonnell@dickinsonwright.com  
whitt@whitt-sturtevant.com  
fykes@whitt-sturtevant.com  
mpritchard@mcneeslaw.com  
rglover@mcneeslaw.com  
bmckenney@mcneeslaw.com  
bethany.allen@igs.com  
joe.oliker@igs.com  
michael.nugent@igs.com  
Evan.betteron@igs.com  
Fdarr2019@gmail.com  
paul@carpenterlipps.com  
mjsettineri@vorys.com  
glpetrucci@vorys.com  
angela.obrien@occ.ohio.gov  
christopher.healey@occ.ohio.gov  
john.finnigan@occ.ohio.gov  
mkurtz@BKLawfirm.com;  
kboehm@BKLawfirm.com;

rmains@bricker.com  
Bojko@carpenterlipps.com  
Donadio@carpenterlipps.com  
John.Jones@ohioattorneygeneral.gov  
Steven.Beeler@ohioattorneygeneral.gov  
Werner.margard@ohioattorneygeneral.gov  
cgrundmann@spilmanlaw.com  
dwilliamson@spilmanlaw.com  
Stephen.Chriss@walmart.com  
mjsettineri@vorys.com  
glpetrucci@vorys.com  
dromig@armadapower.com  
little@litohio.com  
hogan@litohio.com  
dstinson@bricker.com  
mwarnock@bricker.com  
ktreadway@oneenergylc.com  
jschlesinger@keyesfox.com  
azaloga@keyesfox.com  
lmckenna@keyesfox.com  
rkelter@elpc.org  
ccox@elpc.org  
jkylercohn@BKLawfirm.com;  
mleppla@theOEC.org;  
tdougherty@theOEC.org;  
ctavenor@theOEC.org;  
dparram@bricker.com;

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/6/2021 4:10:22 PM**

**in**

**Case No(s). 20-0585-EL-AIR, 20-0586-EL-ATA, 20-0587-EL-AAM**

Summary: Reply Brief electronically filed by Mr. Robert Dove on behalf of Ohio Partners for Affordable Energy