BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company to Amend Its Tariffs	**)** **)** **)**	**Case No. 17-1234-EL-ATA**
In the Matter of the Application of Ohio Power Company to Establish An Expiration for its gridSMART Experimental Tariffs.	**)** **)** **)** **)**	**Case No. 13-1937-EL-ATA**

OHIO POWER COMPANY'S MEMORANDUM CONTRA TO APPLICATION FOR REHEARING OF DIRECT ENERGY BUSINESS, LLC AND DIRECT ENERGY SERVICES, LLC

I. INTRODUCTION

Direct Energy Business, LLC and Direct Energy Services, LLC's (collectively, "Direct") Application for Rehearing ("Application") of the Commission's July 14, 2021 Order ("Order") is a veiled attempt to again allege that Ohio Power Company ("AEP Ohio" or "Company") did not perform its obligations under the gridSMART Phase 2 Stipulation. (Memorandum in Support at 1.) Based on that flawed premise, Direct argues that the Commission erred by requiring AEP Ohio to maintain its Time of Use ("TOU") and Direct Load Control ("DLC") tariffs. The Commission should deny Direct's Application as Direct has failed to demonstrate, as it must, that the Order was unreasonable or unlawful.

First, the Commission's Order does not violate R.C. 4909.35, 4928.02 or 4928.06. On the contrary, as part of the gridSMART Phase 2 Stipulation, AEP Ohio agreed, and the Commission adopted, to offer a simple TOU tariff until the market becomes competitive. *See* gridSMART Phase 2 Stipulation at 7. In its Order, the Commission reasonably found

that there are limited TOU offerings available to customers and agreed with Staff that AEP Ohio should be required to continue offering a TOU rate program. Order at ¶36. This finding does not preference AEP Ohio in any way. Direct is simply not satisfied with the data AEP Ohio provides to Competitive Retail Electric Service ("CRES") under the gridSMART Phase 2 Stipulation. Direct's dissatisfaction does not render the Order unreasonable or unlawful.

Second, the Commission sufficiently explained that AEP Ohio should continue the DLC tariff pending a resolution of the Company's stipulation and recommendation in Case No. 20-585-EL-AIR. The Commission has the discretion on how it may conduct its proceedings and appropriately chose to handle this issue in that case. The temporary continuation of the DLC program for customers does not harm CRES providers.

As Direct has failed to demonstrate that the Order is unreasonable or unlawful, the Commission should deny its Application.

II. ARGUMENT

A. The Commission's Order does not conflict with R.C. 4909.35, R.C. 4928.02 or R.C. 4928.06

In its first assignment of error, Direct argues that the Commission gave an "unreasonable preference and advantage" to AEP Ohio by requiring the Company to continue its TOU and DLC rate programs. (Memorandum in Support at 5.) However, behind the cloak of an alleged statutory violation, Direct is simply complaining that AEP Ohio is not providing it with AMI data in the manner in which Direct wants it. Contrary to Direct's allegation, AEP Ohio's actions to date have always been to further the policies in R.C. 4928.02 to assist in fostering effective competition in the market.

First, Direct has the data it needs to provide TOU rates. AEP Ohio provides CRES providers access to 15-minute interval AMI data through the CRES Business Partner Portal ("BPP") on an approximately day-after basis. It does not "keep the necessary metering data to itself" as Direct contends. (Memorandum in Support at 6.) CRES providers have access to the data and can bill from the data – even if it is a manual process. In addition, once a customer is on a TOU rate program, AEP Ohio annually calculates the PLC and NSPL values and provides CRES providers those values via electronic data interchange ("EDI"). CRES providers have had access to this data and still have "limited TOU offerings" as the Commission reasonably found. Order at ¶36. There was no error in that determination.

Second, addressing the concerns raised by Direct, the Commission reasonably deferred those issues to the Company's gridSMART Phase 3 proceeding, which is underway right now. *See* Case No. 19-1475-EL-RDR; Order at ¶38. In gridSMART Phase 3, AEP Ohio proposes to expand via EDI. And, as the Staff recommended and the Commission approved, the wholesale settlement process improvement will be addressed in that proceeding so that "CRES providers will be able to develop TOU products and services for the competitive market." Order at ¶38. In the meantime, the Commission reasonably determined that AEP Ohio should continue offering its TOU tariffs while the market and those processes continue to develop "to maximize the benefits of AEP Ohio's AMI deployment." *Id.* This approach is consistent with the sequence established in the gridSMART Phase 2 decision and the Commission enjoys "wide discretion" over its order of business. *Office of Consumers' Counsel v. Pub. Util. Comm.*, 56 Ohio St.2d 220, 227, 383 N.E.2d 593 (1978); *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122

Ohio St. 473, 475, 172 N.E. 284 (1930). There is nothing unreasonable or unlawful about the Commission resolving this issue in the gridSMART Phase 3 proceeding.

Third, Direct's cries of "anticompetitive behavior" and AEP Ohio's "desire to corner the market for TOU products" ignores the reality that the Company does not profit or gain anything financially by offering TOU products. (Memorandum in Support at 6.) The fact that a customer has to be on the Standard Service Offer ("SSO") in order to take advantage of the TOU product makes no financial difference because AEP Ohio merely passes through the generation cost and does not reap any benefit by having customers on its SSO rate. Direct's concerns that the Company will have a "head start in the market for TOU products" and "it will be too late" for CRES suppliers to compete in the TOU market is misplaced. (Memorandum in Support at 2.) Direct ignores that the TOU offerings from EDUs are temporary—the Commission requires electric distribution utilities ("EDUs") to provide TOU rates only until sufficient offerings are available in the competitive market. *See* Case No. 12-3151-EL-COI, March 26, 2014 Finding and Order at 27-38, Par. 40.) Once the market takes over, the customers will be transitioned away from the utility TOU tariff. Thus, the Commission's Order was not unlawful as it did not give AEP Ohio any undue preference or advantage.

Finally, as has been discussed *ad nauseum*, contrary to Direct's assertion, the Company fulfilled its obligations in the gridSMART Phase 2 Stipulation. Direct fails to substantiate its claims. The gridSMART Phase 2 Stipulation required the Company to "complete the development of the necessary systems and processes *to enable CRES TOU programs similar to the existing gridSMART TOU and Consumer Programs*" and "*for time of use rates offered by CRES providers that meet the same criteria of AEP Ohio's SMART*

Shift and SMART Shift plus." *See* gridSMART Phase 2 Stipulation at 7 (emphasis added). The Company provided several updates on its progress toward setting up the systems agreed to in the gridSMART Phase 2 Stipulation as well as communication with the customers on CRES TOU offerings. Through that collaborative process and consistent with the gridSMART Phase 2 Stipulation, it was confirmed in a timely fashion that the systems were in place for CRES to begin to offer TOU offerings that meet the same criteria of AEP Ohio's SMART Shift and SMART Shift Plus.

Contrary to Direct's claim, the systems were set up in a timely manner and appropriate communications were provided to the participating CRES providers. The Company's data portal allows access to the data but Direct desires real time automated data that is used for billing and marketing competitive programs. That is not what the Stipulation required. The Commission addressed this issue in its Order, appropriately resolved it, and found no hearing was necessary. Order at ¶36 and 38. Its findings were not unreasonable or unlawful.

This case was to determine whether or not AEP Ohio should offer a TOU program while the transition into more robust AMI deployment occurs. It was not an opportunity to insinuate that the Company did not meet its obligations of the gridSMART Phase 2 Stipulation or about the larger desire to build functionality for wholesale settlement. Direct's attempt to disguise its issues as a statutory violation does not prevail and the Commission should summarily reject Direct's Application.

B. The Commission's Order provides sufficient explanation for requiring the Company to continue the DLC rider

Direct's second assignment of error is likewise flawed. Direct argues that the Commission violated R.C. 4903.09 by failing to provide a sufficient explanation for

requiring the Company to continue the Experimental Direct Load Control (DLC) Rider. (Memorandum in Support at 9.) The Supreme Court of Ohio has held that, as long as there is a basic rationale and record supporting the Order, no violation of §4903.09, Ohio Rev. Code, exists. *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St. 3d 486, 493 (Ohio 2008 990 ¶ 30) quoting *MCI Telecommunications Corp. v. Pub. Util. Comm*. (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337; *Tongren v. Pub. Util. Comm*. (1999), 85 Ohio St. 3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St. 3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372. The Commission's Order satisfies the R.C. 4903.09 standard of providing a sufficient explanation for its decision.

In its Order, the Commission adequately addressed the continuation of the DLC Rider. It discussed comments provided in this proceeding. Based on those comments, and the fact that the DLC pilot rate program is pending Commission review in AEP Ohio's rate case proceeding, the Commission appropriately deferred resolution of that issue for that proceeding. Order at ¶36. As Staff recommended, the Commission required AEP Ohio to continue the DLC pilot as a TOU offering. *Id.* Again, the Commission enjoys "wide discretion" over its order of business. *Office of Consumers' Counsel v. Pub. Util. Comm*., 56 Ohio St.2d 220, 227, 383 N.E.2d 593 (1978); *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122 Ohio St. 473, 475, 172 N.E. 284 (1930). The Commission's decision to defer the resolution of the DLC pilot to the rate case proceeding was reasonable, lawful, and fully explained. The Commission should reject Direct's second assignment of error.

III. CONCLUSION

For all of these reasons, the Commission should deny Direct's Application in its entirety.

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* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 23rd day of August, 2021, via electronic transmission.

/s/ Steven T. Nourse
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Summary: Memorandum Memo Contra Direct AFR Final electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company