

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY FOR APPROVAL
TO EXPIRE ITS GRIDSMART
EXPERIMENTAL TARIFFS.

CASE NO. 13-1937-EL-ATA

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY FOR APPROVAL
TO ESTABLISH TIME-OF-USE RATES.

CASE NO. 17-1234-EL-ATA

ENTRY ON REHEARING

Entered in the Journal on September 8, 2021

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Direct Energy Services, LLC and Direct Energy Business, LLC on August 13, 2021.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} R.C. 4909.18 provides, in part, that a public utility may file an application to establish any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing.

{¶ 5} In Case No. 08-917-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for a first ESP, including the Company's proposal to establish a gridSMART Rider and initiate Phase 1 of its gridSMART program, which would focus on advanced metering infrastructure (AMI), distribution automation, and home area network initiatives. *In re Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, et al., Opinion and Order (Mar. 18, 2009) at 37-38, Entry on Rehearing (July 23, 2009) at 18-24.

{¶ 6} On August 8, 2012, the Commission approved, with certain modifications, AEP Ohio's application for a second ESP, effective with the first billing cycle of September 2012 through May 31, 2015. Among other provisions of the ESP, the Commission approved AEP Ohio's request to continue the gridSMART Phase 1 project, as well as the gridSMART Phase 1 Rider, which enabled the Company to recover its prudently incurred costs associated with Phase 1 and was subject to an annual true-up and reconciliation. The Commission also directed AEP Ohio to file an application addressing Phase 2 of the gridSMART program. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 62-63, Entry on Rehearing (Jan. 30, 2013) at 53.

{¶ 7} In Case No. 13-2385-EL-SSO, et al., the Commission approved, pursuant to R.C. 4928.143, AEP Ohio's application for a third ESP for the period of June 1, 2015, through May 31, 2018. Among other matters, the Commission approved AEP Ohio's proposal to extend the gridSMART program. The Commission also noted that, consistent with its directive in the *ESP 2 Case*, AEP Ohio should file, within 90 days after the expiration of ESP 2, an application for review and reconciliation of the gridSMART Phase 1 Rider. The Commission found that, after the review and reconciliation of the gridSMART Phase 1 costs, AEP Ohio should be authorized to transfer the approved capital cost balance into its Distribution Investment Rider (DIR), which would not be subject to the DIR caps, and should also transfer any unrecovered operations and maintenance balance into the

gridSMART Phase 2 Rider. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015) at 51-52.

{¶ 8} On September 13, 2013, in Case No. 13-1937-EL-ATA, AEP Ohio filed an application seeking to expire the experimental tariff offerings associated with the Company's gridSMART pilot. Specifically, these tariff offerings include the Experimental Residential Time-of-Day Service, Experimental Direct Load Control (DLC) Rider, Experimental Critical Peak Pricing Service, Experimental Residential Real-Time Pricing Service, and Experimental Small General Service Time-of-Day schedules.

{¶ 9} In Case No. 13-1939-EL-RDR, the Commission modified and approved a joint stipulation and recommendation (Phase 2 Stipulation) regarding AEP Ohio's application to implement Phase 2 of its gridSMART project. Among other things, the Phase 2 Stipulation established the process for a time-of-use (TOU) transition plan to be implemented by AEP Ohio, Staff, and CRES providers, which would include the development of internal systems and processes to enable CRES TOU programs, customer communications, and a review of the competitiveness of the CRES offerings available through the transition plan. The Phase 2 Stipulation also required AEP Ohio to propose a simple two-tier, non-technology TOU rate reflecting default load auction prices for AMI customers to be used only if the CRES TOU market has not evolved to be sufficiently competitive after the communication phase to inform customers of their options and to aid them in moving to CRES TOU programs. *In re Ohio Power Co.*, Case No. 13-1939-EL-RDR, Opinion and Order (Feb. 1, 2017) at ¶¶ 29-32.

{¶ 10} On May 11, 2017, in Case No. 17-1234-EL-ATA, AEP Ohio filed, pursuant to R.C. 4909.18 and the Phase 2 Stipulation, an application to establish TOU rates for certain residential and general service customers with AMI meters as an optional, bypassable offering under the Company's Generation Capacity (GENC) Rider. AEP Ohio stated that any under- or over-recovered capacity costs would be trued up through its Auction Cost Recovery Rider and that the effective date of the TOU rates would only be triggered in a manner consistent with the terms of the Phase 2 Stipulation.

{¶ 11} On various dates, motions to intervene in Case No. 13-1937-EL-ATA and Case No. 17-1234-EL-ATA were filed by Ohio Consumers' Counsel (OCC), Ohio Environmental Council (OEC), Interstate Gas Supply, Inc. (IGS), Ohio Partners for Affordable Energy, Environmental Law and Policy Center (ELPC), and Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy).¹

{¶ 12} On May 30, 2019, Staff filed its review and recommendations in Case No. 17-1234-EL-ATA.

{¶ 13} On May 1, 2020, AEP Ohio filed an amended application and updated proposed tariffs in Case No. 17-1234-EL-ATA in response to Staff's recommendations. Regarding its application in Case No. 13-1937-EL-ATA, AEP Ohio stated that it intended to update its proposed tariffs in that case to provide for a transition plan for customers currently served under certain schedules.

{¶ 14} On June 16, 2020, AEP Ohio filed an amended application and updated proposed tariffs in Case No. 13-1937-EL-ATA.

{¶ 15} By Entry dated June 17, 2020, the attorney examiner established a procedural schedule to assist the Commission in its review of AEP Ohio's amended applications in the above-captioned cases.

{¶ 16} On July 10, 2020, initial comments were filed in these dockets by OCC, Direct Energy, IGS, and ELPC/OEC. Reply comments were filed by AEP Ohio, Staff, ELPC/OEC, and Direct Energy/IGS on July 24, 2020.

{¶ 17} On June 15, 2021, AEP Ohio filed correspondence in Case No. 17-1234-EL-ATA, providing an update regarding its position as to the DLC Rider.

¹ Environmental Defense Fund also moved to intervene in Case No. 13-1937-EL-ATA, but subsequently filed a notice of withdrawal from the proceeding on October 16, 2020.

{¶ 18} By Finding and Order dated July 14, 2021, the Commission approved AEP Ohio's applications to include TOU rates in its GENC Rider tariffs and to expire its gridSMART experimental tariffs, with the exception of the DLC Rider.

{¶ 19} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 20} On August 13, 2021, Direct Energy filed an application for rehearing of the July 14, 2021 Finding and Order. AEP Ohio filed a memorandum contra the application for rehearing on August 23, 2021.

{¶ 21} The Commission has reviewed and considered all of the arguments raised in the application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Consideration of the Application for Rehearing

{¶ 22} Direct Energy raises two grounds for rehearing. First, Direct Energy asserts that the approved tariffs provide an unreasonable preference and advantage to AEP Ohio and subject CRES providers to an undue and unreasonable prejudice and disadvantage, in violation of R.C. 4928.02, 4928.06, and 4905.35. More specifically, Direct Energy claims that the July 14, 2021 Finding and Order disregards the state policy specified in R.C. 4928.02(B), (D), (H), (O), and (P) to ensure the availability of unbundled and comparable retail electric service; to encourage innovation and market access for cost-effective supply- and demand-side retail electric service; to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies; to encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization; and to ensure that a

customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers. In addition, Direct Energy contends that the July 14, 2021 Finding and Order does not comply with R.C. 4928.06(E)(1), which requires the Commission to exercise its authority to resolve abuses of market power by any electric utility that interfere with effective competition in the provision of retail electric service. According to Direct Energy, the Commission has enabled AEP Ohio to remain the exclusive provider of TOU offerings and implicitly encouraged the Company to keep the necessary AMI data to itself. Finally, Direct Energy asserts that, because the Commission has allowed AEP Ohio to not disclose the necessary AMI data, CRES providers will experience undue or unreasonable prejudice or disadvantage in the offering of TOU products, which is contrary to R.C. 4905.35(A).

{¶ 23} AEP Ohio responds that the July 14, 2021 Finding and Order is not in conflict with R.C. 4928.02, 4928.06, or 4905.35 and that the statutory violations alleged by Direct Energy are merely a veiled attempt to argue again about the Company's compliance with the Phase 2 Stipulation. AEP Ohio states that, contrary to Direct Energy's position, CRES providers have access to the AMI data that they need to provide TOU rates, even if a manual process is required. AEP Ohio adds that the Commission reasonably addressed Direct Energy's concerns by directing that the issue of improving the wholesale settlement process be addressed in the Company's pending gridSMART Phase 3 proceeding, Case No. 19-1475-EL-RDR. Regarding Direct Energy's allegation of anticompetitive behavior, AEP Ohio notes that it does not profit from TOU products. AEP Ohio also notes that its TOU offerings are intended to be temporary in nature and only provided until sufficient TOU products are available in the competitive market. Finally, AEP Ohio contends that, consistent with the Phase 2 Stipulation, the Company put in place the necessary systems for CRES providers to begin to offer TOU products and that, contrary to Direct Energy's claim, the Company was not required to provide real-time automated data.

{¶ 24} The Commission finds that Direct Energy's first ground for rehearing lacks merit and should be denied. In the July 14, 2021 Finding and Order, the Commission fully considered the parties' comments and concluded that, given the limited TOU offerings available to customers, AEP Ohio should maintain a TOU rate program. July 14, 2021 Finding and Order at ¶ 36. As recommended by Staff, we also determined that the pending gridSMART Phase 3 proceeding is the appropriate forum for resolution of the wholesale settlement system and process issues identified by Staff, Direct Energy, and IGS, in order to continue the development of the Ohio retail market and to ensure that customers benefit from AMI deployment. We, therefore, directed AEP Ohio to amend its pending gridSMART Phase 3 application by filing supplemental testimony that addresses a timeline to update the wholesale settlement systems and processes needed to calculate and settle individual total hourly energy obligation, network service peak load, and peak load contribution values for all customers with AMI meters, as well as the estimated cost of implementation. July 14, 2021 Finding and Order at ¶ 38. We note that the expectation to file the supplemental testimony in a timely and reasonable manner is implicit, and if AEP Ohio is not being diligent, the Commission intends to revisit that directive.

{¶ 25} Direct Energy has failed to show that the Commission's decision to direct AEP Ohio to address the wholesale settlement issue in the pending gridSMART Phase 3 proceeding is unlawful or unreasonable. In particular, no aspect of the July 14, 2021 Finding and Order is counter to the state policy set forth in R.C. 4928.02, enables the exercise of market power as prohibited in R.C. 4928.06, or causes undue or unreasonable prejudice or disadvantage in violation of R.C. 4905.35. Rather, the July 14, 2021 Finding and Order is a reasonable next step in furthering the competitive market through the availability of TOU offerings. As AEP Ohio emphasizes, CRES providers currently have access to AMI information through the Company's data portal and are not precluded from billing for TOU products through a manual process. Our decision to thoroughly evaluate, in the currently pending gridSMART Phase 3 proceeding, the automation of this process through ready access to wholesale settlement data, including cost considerations, is intended to continue

to advance the accessibility of TOU offerings and to do so in a manner that is consistent with state policy, which, among other things, requires the Commission to ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers. R.C. 4928.02(P).

{¶ 26} In its second ground for rehearing, Direct Energy contends that the Commission violated R.C. 4903.09 by failing to explain its reasoning for continuing the DLC Rider. Direct Energy notes that the Phase 2 Stipulation explicitly provides for the expiration of the DLC Rider regardless of the Commission's determination with respect to the sufficiency of the CRES TOU market. Direct Energy adds that both Staff and AEP Ohio indicated that they do not oppose the termination of the DLC Rider. Direct Energy asserts that, nonetheless, the Commission directed, without explanation, that the DLC Rider should continue.

{¶ 27} AEP Ohio replies that Direct Energy's argument is flawed, as the Commission provided a sufficient explanation for its decision, in accordance with R.C. 4903.09. In AEP Ohio's view, the Commission addressed the parties' comments, and based on those comments, as well as the fact that the DLC pilot rate program is pending review in the Company's rate case proceedings, the Commission appropriately deferred resolution of that issue for those proceedings, which was explained by the Commission in the July 14, 2021 Finding and Order.

{¶ 28} In the July 14, 2021 Finding and Order, the Commission approved AEP Ohio's amended application to expire its gridSMART experimental tariffs, as filed in Case No. 13-1937-EL-ATA, with the exception of the DLC Rider. As to its exclusion, we specifically noted that the stipulation and recommendation in AEP Ohio's rate case proceedings, Case No. 20-585-EL-AIR, et al., remains pending at this time. As one component of that proposed settlement, AEP Ohio agreed to eliminate the DLC Rider upon approval of the stipulation by the Commission. We, therefore, concluded that resolution of that issue should be

deferred to those proceedings. July 14, 2021 Finding and Order at ¶¶ 21, 36. Accordingly, the Commission finds no merit in Direct Energy's argument that the basis for the exclusion of the DLC Rider was not adequately explained in the July 14, 2021 Finding and Order. We also note that Direct Energy appears to have overstated AEP Ohio's position on this issue. In its June 15, 2021 correspondence, AEP Ohio indicated that, in light of the pending stipulation in Case No. 20-585-EL-AIR, et al., the Company's updated position was that the DLC experimental tariff program could either be terminated subject to the stipulation being adopted by the Commission in the rate case proceedings or that the issue could be deferred for resolution in the rate case proceedings. For these reasons, Direct Energy's second ground for rehearing should be denied.

III. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That Direct Energy's application for rehearing be denied. It is, further,

{¶ 31} ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

SJP/mef

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9/8/2021 2:31:53 PM

in

Case No(s). 13-1937-EL-ATA, 17-1234-EL-ATA

Summary: Entry ordering that Direct Energy's application for rehearing be denied electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio