

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s |) | Case Nos. | 17-1843-EL-ORD |
| Review of Ohio Adm. Code Chapters |) | | 17-1844-EL-ORD |
| 4901:1-21, 4901:1-23, 4901:1-24, |) | | 17-1862-EL-ORD |
| 4901:1-27, 4901:1-28, 4901:1-29, |) | | 17-1845-GA-ORD |
| 4901:1-30, 4901:1-31, 4901:1-32, |) | | 17-1846-GA-ORD |
| 4901:1-33, and 490:1-34 regarding |) | | 17-1847-GA-ORD |
| Rules Governing Competitive Retail |) | | 17-1848-GA-ORD |
| Electric Service and Competitive |) | | 17-1849-GA-ORD |
| Retail Natural Gas Service |) | | 17-1850-GA-ORD |
| |) | | 17-1851-GA-ORD |
| |) | | 17-1852-GA-ORD |

OHIO POWER COMPANY’S REPLY COMMENTS

Ohio Power Company (“AEP Ohio” or “Company”) respectfully submits their reply comments to some of the comments proffered by Interstate Gas Supply, Inc. (“IGS”), The Retail Energy Supply Association (“RESA”) and Office of the Ohio Consumers’ Counsel (“OCC”). This proceeding concerns amendments to the rules for Competitive Retail Electric Service (“CRES”) contained in Chapters 4901:1-21, 4901:1-23, 4901:1-24 and Competitive Retail Natural Gas Service (“CRNGS”) in Chapters 4901:1-27 to 4901:1-34 (“Chapters”), Ohio Administrative Code (“O.A.C.”). On September 8, 2021 the Commission issued an Entry seeking comments on draft rules contained in those afore-mentioned Chapters. On October 8, 2021 numerous parties submitted comments on the proposed changes as well as requested several changes of their own to those rules. AEP Ohio respectfully requests that the Public Utilities Commission of Ohio (“Commission”) consider its reply comments regarding the proposed rules and denying certain changes recommended by IGS, RESA and OCC.¹

¹ The Company’s decision not to include a reply to all comments filed in this proceeding may not be interpreted as the Company’s agreement with or acquiescence to other parties’ comments

I. REPLY TO INITIAL COMMENTS FROM IGS

The Commission should reject IGS's proposed addition to O.A.C. 4901:1-21-10. IGS recommends that the Commission add a new provision in the "Customer Information" Rule to require an electric distribution utility ("EDU") to provide a CRES provider access to a customer's interval usage data as required for billing purposes. (IGS Initial Comments at 2.) As an initial matter, placing requirements on an EDU in the CRES rules are inappropriate because the rules apply to competitive retail electric service providers not to EDUs. O.A.C. 4901:1-21-02(A)(1) provides that the rules in this chapter "[a]pply to persons offering or providing any retail electric service which has been declared competitive..." O.A.C. 4901:1-21-02(A)(2)(b) and (c) states that the rules are intended to "provide consumers with sufficient information to make informed decisions about [CRES]" and "protect consumers...." Moreover, throughout O.A.C. 4901:1-21-10, the rule states "CRES providers shall." Clearly, the Commission did not intend for this rule to place requirements on EDUs. IGS's disguised attempt to portray this as a CRES requirement ("a CRES provider will have access...") should be rejected as its proposal clearly is intended to place a requirement on an EDU.

Moreover, IGS's proposed rule is not necessary. As IGS pointed out, the Commission recently amended O.A.C. 4901:1-10-24(E)(3) to permit an EDU to disclose a customer's interval usage data "as required for billing purposes." (*Id.*) And, IGS states that three out of the four EDUs have committed to utilizing a customer's actual hourly load in the wholesale settlement process while the fourth EDU is addressing this issue in another proceeding. (*Id.* at 4.) Indeed, each EDU has different processes and systems to address interval data. A one-size-fits-all approach is not appropriate. IGS's recommendation, if implemented, assumes that all of the

EDUs will have the systems in place to implement the rule and would adversely impact businesses.

For AEP Ohio, any issues related to interval data is being addressed in the Company's gridSMART Phase 3 proceeding, which is underway right now.² AEP Ohio recently filed testimony on this issue in that case as well.³ IGS's request to add a requirement to EDUs in the CRES rules are duplicative to other past and current efforts to address this issue and it should be denied.

II. REPLY TO INITIAL COMMENTS FROM RESA

In its comments, RESA recommends several changes to the rules. First, RESA's comments generally request that the Commission amend the rules to be consistent with certain waivers and to align certain of CRES and CRNGS rules. For the most part, AEP Ohio does not have an opinion regarding the changes RESA requests. However, RESA is requesting a uniform period for rescission rights for natural gas and electric supply contracts. (RESA Initial Comments at 7.) Currently, the electric rescission rules provide that a customer may elect to rescind in seven calendar days while the gas rescission rules provide that a customer may elect to rescind in seven business days.⁴ RESA suggests that the gas rule be amended to allow seven calendar days. The Company does not oppose that part of RESA's request. As RESA pointed out, business days is not the norm and AEP Ohio's systems are already designed for the seven-calendar day rescission period. (*Id.*) Moreover, the Commission has previously held that the time period in which a customer may rescind a contract should not be changed to business days, but should remain

² See Case No. 19-1475-EL-RDR.

³ See Case No. 19-1475-EL-RDR, Testimony of Stacey Gabbard (October 15, 2021).

⁴ See O.A.C. 4901:1-21-06(D)(1)(e) and 4901:1-29-06(D)(5).

calendar days in order to prevent customer confusion.⁵ If both of the rules were changed to seven business days, however, it would cause IT/computer system changes for the utility, additional labor resources to create the change, as well as a longer lead time for a customer to switch resulting in many switches occurring now in the following month. In sum, the gas rule should be amended to mirror the electric rule – not the other way around.

RESA also recommends that the Commission amend the definition of “small commercial customer” contained in O.A.C. 4901:1-21-01(JJ) to “a commercial customer that consumes 45,000 KWh or less annually at a single or multiple location.” (*Id.* at 11-13.) The current rule defines a small commercial customer as not a mercantile commercial customer. RESA argues that the current definition “unnecessarily treat[s] as unsophisticated a large range of customers.” (*Id.* at 12.) RESA concludes that these customers do not require the additional protections that apply to smaller customers. (*Id.*)

AEP Ohio opposes this amendment. First, the Company’s system is designed to recognize customers as either residential, small commercial or mercantile customers. Adopting this definition would add another class of customers that would require new electronic data interchange.⁶ Moreover, a customer’s usage level varies from month to month and year to year. The EDU and the CRES provider may not know from one month to the next whether a customer qualified as a “small commercial customer” or not. A new customer who does not have the usage history with the particular EDU would not be able to be defined as a small commercial customer or not a small commercial customer until after a year. For those reasons, AEP Ohio recommends that the Commission reject this amendment.

⁵ *In the Matter of the Commission’s Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24*, Case No. 12-1924-EL-ORD, Finding and Order at ¶40 (December 18, 2013).

⁶ RESA suggestion would make for a fourth tier of customer – a customer whose usage is over 45,000 KWh but not a mercantile customer.

III. REPLY TO INTIAL COMMENTS FROM OCC

In their extensive comments, OCC recommends several amendments to the current rules. OCC recommends expanding the CRES and CRNGS rules to prohibit certain practices such as “robo-calling” and “spoofing. (Initial Comments at 4-6.) AEP Ohio supports additional clarity in the CRES rules to outlaw anti-consumer practices like spoofing and robo-calling or to prohibit taking advantage of vulnerable customers. Indeed, the Company often spends time and resources addressing complaints from customers regarding suppliers “spoofing” the utility’s phone number. Moreover, AEP Ohio has attempted to promote fair and transparent pricing through its own bill format, in order to assist customers with accurate and helpful pricing information to compare the SSO with CRES offers.⁷

However, OCC has made other recommendations that inappropriately expand the CRES and CRNGS rules to EDUs and take some so-called consumer protections too far. OCC also attempts to regulate the rates of CRES and CRNGS providers by requesting that the Commission prohibit certain types of variable contracts. (*See id.* at 7, 21.) Second, OCC misconstrues the corporate separation audit of the FirstEnergy Ohio EDUs⁸ to assert that the Commission in these CRES rules should regulate what logos providers may use. (*Id.* at 10-12.) This is inappropriate because it would address matters pending in separate company-specific cases as part of a rulemaking and would restrict commercial speech through general prohibitions on using

⁷ See *In the Matter of the Application of Ohio Power Company for Approval of a Change in Bill Format*, Case No. 20-1408-EL-UNC.

⁸ The quote cited by OCC and contained in the audit report merely state that the names of the FirstEnergy EDUs should be removed – the auditor said nothing about the name or logo of the parent – OCC leaves the first sentence out of its quote. See *In the Matter of the Review of the [FirstEnergy Ohio EDUs’] Compliance with R.C. 4928.17 and Ohio Admn. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC, Corporate Separation Audit Report at 76.

parent/corporate names.⁹ Moreover, the recommendation that the Commission prohibit “same or similar” names or logos is vague and ambiguous.

Finally, OCC is attempting to insert corporate separation obligations into the CRES and CRNG rules that would essentially regulate the EDUs. (*Id.* at 26-30). As discussed above, the Chapters relevant to this case only apply to CRES and CRNGS providers – not the utilities. Adding rules in these Chapters that require utilities to perform a function is inappropriate. The corporate separation statute R.C. 4928.17 applies to the EDUs as does the code of conduct and other requirements contained in Chapter 4901:1-37. Those concepts belong in those rule-making proceedings and the individual audits and cases that are currently addressing them.¹⁰ This is not within the scope of the Chapters in this rule-making review. Therefore, the Commission should reject OCC’s recommendation to expand corporate separation principles in this docket.

IV. CONCLUSION

AEP Ohio appreciates the opportunity to provide reply comments in this case and requests that the Commission consider them in finalizing the rules.

Respectfully submitted,

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⁹ See e.g. *Central Hudson Gas & Electric v. PSC of New York*, 100 S.Ct. 2343 (1980) (U.S. Supreme Court struck down NYPSC’s blanket prohibition on utility marketing as an infringement on the utility’s commercial speech rights).

¹⁰ See e.g. *In re Application of Suvon, LLC d/b/a FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator in Ohio*, 2021-Ohio-3630 (remanding case to the Commission to determine certification issue including managerial structure).

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 22nd day of October, 2021, via electronic transmission.

/s/ Steven T. Nourse _____

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Summary: Reply Reply Comments electronically filed by Mr. Steven T. Nourse on
behalf of Ohio Power Company