

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for a Waiver of Rules)	Case No. 21-1209-EL-WVR
4901:1-10-24(E)(3), and 4901:1-10-33(A))	
Ohio Administrative Code.)	

OHIO POWER COMPANY APPLICATION FOR LIMITED WAIVERS

Ohio Power Company (“AEP Ohio” or the “Company”), an electric utility as defined in R.C. 4928.01(A)(11), hereby files this Application seeking clarification and/or limited waivers of Rules 4901:1-10-24(E)(3) and 4901:1-10-33(A) of the Ohio Administrative Code. For the reasons set forth below, AEP Ohio respectfully requests that the Public Utilities Commission of Ohio (“the Commission”) grant waivers of the requirements of Ohio Adm. Code 4901:1-10-22(E)(3) and 4901:1-10-33(A) in the manner described below.

I. BACKGROUND

On February 26, 2020, the Commission issued a Finding and Order setting forth various revisions to Ohio Adm. Code 4901:1-10 (the “February Order”).¹ Among other things, at the behest of AEP Ohio, the Commission amended Ohio Adm. Cod 4901:1-10-22(E)(3) “allow[ing] EDUs to disclose, for a time-of-use rate customer, the customer’s hourly usage to a CRES provider, since . . . that information may be necessary for CRES billing purposes.”¹ Declining to adopt Staff’s “outright prohibition of EDUs being able to list ‘non-commodity goods and services’ charges on consolidated bills,” in its February Order, the Commission also adopted

¹ *In Re the Commission’s Review of its Rules for Electrical safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order at ¶ 183 (February 26, 2020) (hereinafter referred to as “February Order”).

new rules for the consolidated billing of non-jurisdictional services.² To address “concern[s] about unreasonable preferences and competitive advantages,”³ and “promote competition and fairness between all parties” the Commission amended 4901:1-10-33(A) such that “[a]n electric utility cannot discriminate or unduly restrict a customer’s CRES provider from including non-jurisdictional charges on a consolidated electric bill.” As a result, “[t]he EDU must allow the customer’s CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list non-jurisdictional service charges.”⁴

II. LAW AND ARGUMENT

Pursuant to Ohio Adm. Code 4901:1-10-02(C), “[t]he commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.” The Commission’s requirements set forth in O.A.C. 4901:1-10-24(E)(3) and 4901:1-10-33(A) are not mandated by statute, and therefore may be waived for good cause shown. Good cause supports the Company’s request to waive the requirements of Ohio Adm. Code 4901:1-10-24(E)(3) and 4901:1-10-33(A).

A. AEP Ohio Requests that Ohio Adm. Code 4901:1-10-24(E)(3) be Interpreted as Intended, or in the Alternative, the Company be Granted a Waiver of the Requirement to Release Residential Customer Energy Use Data “as Required for Billing Purposes.”

To the extent necessary, AEP Ohio seeks an interpretation eliminating (or waiver of) any requirement to provide residential customer energy usage data that is more granular than the monthly historical usage data required under the prior version of Ohio Adm. Code 4901:1-10-

² February Order at ¶ 213.

³ February Order at ¶ 213.

⁴ February Order at ¶ 213.

24(E)(3). As advanced metering infrastructure is deployed throughout the AEP Ohio and other service territories in Ohio, time-of-use rates may eventually be offered by CRES providers.⁵ Accordingly, and out of an abundance of caution, AEP Ohio filed Comments in Case Number 17-1842-EL-ORD (“17-1842 Case”) seeking to amend the customer safeguards and information rules to contemplate this eventual development. The Commission adopted *AEP Ohio’s proposal* permitting electric distribution utilities (“EDUs”) to disclose residential customer energy usage data that is more granular than the monthly historical consumption data to the extent “required for billing purposes.”⁶ AEP Ohio suggested this additional language because “if a customer is on a time of use rate, disclosing a customer’s hourly usage may be necessary for CRES billing purposes.” 17-1842 Case, AEP Ohio Comments (August 16, 2019) at 18. AEP Ohio’s additional phrase was intended to expand the exception to disclosing the more granular customer data only with customer’s consent – to be able to disclose the *same data* as required for billing purposes without additional customer consent. Per Commission Entry, this rule went into effect on November 1, 2021.⁷

Despite the stated intent and ostensible purpose of AEP Ohio in suggesting the language (which the Commission adopted verbatim), some members of the EDI Working Group, including the FirstEnergy utilities⁸ have seemingly interpreted this new language out of context in a way to

⁵ *In Re the Application of Ohio Power Company to Initiate Phase 2 of its gridSMART Project and to Establish the gridSMART Phase 2 Rider*, Case No 13-1939-EL-RDR, Stipulation and Recommendation at pp. 7-9 (April 7, 2016); *In Re the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company Application for Approval of a Distribution Platform Modernization Plan*, Case No. 17-2436-EL-UNC, Stipulation and Recommendation at pp. 17-18 (November 9, 2018); *In Re the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, Stipulation at p. 11 (October 23, 2020) (AES Ohio will “[p]ropose time-of-use (‘TOU’) rates and implementation plan through an EL-ATA case on a pilot basis during SGP Phase 1”).

⁶ O.A.C. 4901:1-10-24(E)(3).

⁷ Case No. 17-1842-EL-ORD, Entry at ¶11 (October 6, 2021).

⁸ FirstEnergy Utilities refers collectively to Ohio Edison Company, The Cleveland Electric Illuminating Company,

impose a new obligation to *require* the EDUs to provide residential customers' additional hourly interval data to CRES providers based on whether a CRES bills its customer for a time-of-use product. By contrast, the stated intent of AEP Ohio's suggested language was to provide the same data but without additional customer consent if the more granular data was required for billing purposes.⁹ AEP Ohio's proposal, however, did not suggest a new requirement to disseminate and bill based upon more granular residential usage data. Rather, AEP Ohio explained that the additional language was merely sought to clarify that no additional customer consent should be required in order to provide the granular usage data to a time-of-use customer's CRES provider in the event time-of-use rates are ever offered through consolidated utility billing.¹⁰ In light of other interpretations, however, the Commission should clarify the intent of the language added to Ohio Adm. Code 4901:1-10-24(E)(3), which refers to the consent requirement and does not create an additional EDU obligation to disclose data whenever a CRES determines that it is needed for billing purposes.

Alternatively, to the extent the Commission reads the rule to require disclosure of granular usage information, the Commission should grant AEP Ohio a waiver of the requisite nature of Ohio Adm. Code 4901:1-10-24(E)(3) while still retaining the permissive nature of

and The Toledo Edison Company.

⁹ See, *In Re Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for a Limited Waiver of Rules 4901:1-10-22(C), 4901:1-10-24(E)(3), and 4901:1-10-33(A)*, Case No. 21-1125-EL-WVR, Application for Limited Waiver at pp. 2-3 (stating that “**compliance** will require development of a method for CRES providers to notify the Companies about which of their customers are participating in a time of use product and internal IT changes by the Companies” (emphasis added)).

¹⁰ *In Re the Commission's Review of Ohio Adm. Code Chapter 4901:1-10*, Case No. 17-1842-EL-ORD, Initial Comments of Ohio Power Company at p. 18 (August 16, 2019) (stating “**if** a customer is on a time of use rate, disclosing a customer's hourly usage **may be necessary** for CRES billing purposes”) (emphasis added); see also, February Order at ¶183 (“AEP Ohio also recommends amending subsection (E)(3), **which would allow EDUs to disclose**, for a time-of-use rate customer, the customer's hourly usage to a CRES provider, since, as AEP Ohio claims, that information may be necessary for CRES billing purposes.” (emphasis added)).

sharing granular residential customer usage data as aligned with AEP Ohio's stated purpose in proposing the additional language. In addition to the plain language of AEP Ohio's suggested edits, subsequent events lend themselves to a waiver. As part of its gridSMART Phase 3 Stipulation and Recommendation, AEP Ohio has agreed to implement certain EDI enhancements and "make the residential customer energy usage data available to authorized CRES providers, in a manner consistent with Ohio Adm.Code 4901:1-10-24."¹¹ This additional commitment, made by AEP Ohio as part of a settlement package, would have no value if it is merely implementing what the rule already required. Moreover, the Commission should not apply AEP Ohio's proposed edits to Ohio Adm. Code 4901:1-10-33(A) in a way that imposes a requirement prior to approving AEP Ohio's gridSMART Phase 3 Stipulation. That being said, the Company remains fully committed to all aspects of the gridSMART Phase 3 Stipulation (provided that the Commission fully adopts the uncontested settlement) even where Ohio Adm.Code 4901:1-10-24(C)(3) is interpreted or waived in this proceeding as requested.

B. AEP Ohio Requests a Limited Waiver of Ohio Adm. Code 4901:1-10-33(A) to Complete Consumer Protection Programming for Non-Jurisdictional Services.

AEP Ohio seeks a limited waiver of 18 months to complete programming of certain consumer protections associated with offering consolidated billing that contains non-jurisdictional services. Per the February Order, Ohio Adm. Code 4901:1-10-33(A) was amended to add that "[a]n electric utility cannot discriminate or unduly restrict a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill."¹² But certain

¹¹ *In Re the Application of Ohio Power Company to Initiate its gridSMART Phase 3 Project*, Case No. 19-1475-EL-RDR, Stipulation and Recommendation at p. 7 (October 27, 2021).

¹² 17-1842-EL-ORD, Finding and Order at ¶79 (February 26, 2020)

customer protections must be mapped and coded to ensure that partial payments are posted in the appropriate priority – first applied to CRES provider charges, then to distribution, SSO, and transmission charges, with charges for “non-jurisdictional services” posting last.¹³ Failure to pay for non-jurisdictional services, however, is not one of the enumerated reasons permitting termination of residential service.¹⁴ Thus, in addition to programming the functionality and posting priority associated with billing for non-jurisdictional services, AEP Ohio will need time to program its customer information system to ensure that shopping customers are not disconnected for failure to pay for non-jurisdictional services subscribed to from their CRES.

To ensure appropriate coding and tagging in the customer information system, each billing item will require CRES participation. As set forth in the new rules adopted by the Commission, “‘non-jurisdictional services’ means services which do not meet the definition of ‘retail electric service’ set forth in division (A)(27) of section 4928.01 of the Revised Code.”¹⁵ Given this broad definition, the nature of services offered by CRES providers will not always be apparent by the name of the service alone. This would leave AEP Ohio in the untenable position of independently determining if a product or service is non-jurisdictional with little to no information. These determinations would then have a flow through impact on payment priority and service termination rights. Such determinations would have further consequences on AEP Ohio’s recently approved shadow billing commitments, which requires the Company to provide certain CRES billing items but exclude “non-commodity fees” and “other services charges.”¹⁶

¹³ O.A.C. 4901:1-10-33(H)(1).

¹⁴ See, O.A.C. 4901:1-18-03; *See also*, February Order at ¶ 135 (stating “payments would be applied to charges that could lead to disconnection before being applied to nonregulated charges”).

¹⁵ O.A.C. 4901:1-10-01(W).

¹⁶ Case No. 20-585-EL-AIR, Joint Stipulation at p. 11 and Attachment D (March 12, 2021).

For that reason, AEP Ohio's IT programming structure will require CRES providers to identify and classify the nature of each billing item, including whether each good or service is non-jurisdictional. Furthermore, in order to ensure adequate customer safeguards and compliance with Ohio Adm. Code 4901:1-33(H)(1) and 4901:1-18-03, CRES providers will not be able to offer or seek to combine jurisdictional and non-jurisdictional services for billing as a single item.

III. CONCLUSION

The Company respectfully requests the Commission grant the clarification and/or requested waivers of Ohio Adm. Code 4901:1-10-24(E)(3) and 4901:-10-33(A).

Respectfully submitted,

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