

**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.)

**CONSUMER PROTECTION COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case involves AEP Ohio's¹ (or "Utility") request for a waiver (meaning it will not need to comply with) of two important consumer protection rules.² Recent changes in the PUCO Electric Service and Safety Standards under O.A.C. 4901:1-10 prompted AEP Ohio to file an application for two waivers to the newly adopted rules.³

First, AEP Ohio seeks either a confirmation of AEP Ohio's interpretation of the changes made to O.A.C. 4901:1-10-24 (E)(3), or a waiver from the rule.⁴⁵ This rule requires electric distribution utilities to provide more detailed granular consumer energy usage information available from its advanced meters to marketers when this data is needed by the marketer for billing purposes.

¹ Ohio Power Company.

² Application at 1.

³ See Case No. 17-1842-EL-ORD, Finding and Order (February 26, 2020).

⁴ AEP Ohio did not request a specific period of time for this waiver, but stated it was requesting a *limited* waiver. AEP Ohio should clarify the timeframe requested for this waiver. Application at 1 ("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") (emphasis added).

⁵ Application at 1.

Second, AEP Ohio seeks an 18-month waiver of O.A.C. 4901:1-10-33(A).⁶ This rule requires the electric distribution utilities to include non-jurisdictional products or services on an electric distribution utility's consolidated electric bill. Non-jurisdictional charges can include, but are not limited to, home warranties, line insurance, and other non-regulated goods and services.

OCC supports AEP Ohio's interpretation of O.A.C. 4901:1-10-24 (E)(3) that granular consumer data should not be released without express consent from consumers. However, OCC does not support an 18-month delay to remove non-jurisdictional charges from the consolidated electric bill. The PUCO should deny AEP Ohio's request for an 18-month waiver. Instead, the PUCO should—if at all—grant only a six-month waiver as it has in other similar waiver applications with the implementation of adequate consumer protections during the waiver period.⁷

II. RECOMMENDATIONS

- A. To protect consumers, OCC recommends granular electric usage information obtained through advanced meters should not be provided to marketers for billing purposes unless the marketer is under contract with the consumer to provide a time of use product.**

Marketers are routinely provided with pre-enrollment lists that include information about consumers who are eligible to participate in the Ohio electric choice program. And unless consumers exercise their right to opt-out of having this information

⁶ Application at 5-7.

⁷ See e.g., Case No. 21-1125-EL-WVR, Application at 1 (November 1, 2021) (FirstEnergy seeks a six-month waiver to build and test an online active rate calculator for consumers); Case No. 21-1100-ELWVR, Application at 2 (November 1, 2021) (Similar to AEP's request in this case, Duke seeks a twelve month waiver to permit adequate time to remove non-jurisdictional charges from consumer bills. PUCO Staff commented and recommended a six-month waiver was appropriate—not twelve).

shared with marketers,⁸ the pre-enrollment list will include their name, address, rate schedule, load profile, meter type, interval meter indicator, types of low-income or other programs the consumer may be on, meter read date, and historical monthly consumer energy usage data for each of the most recent twelve months.⁹

O.A.C. 4901:1-10-22(E)(3) “allows EDUs to disclose, for a time-of-use rate customer, the customer’s hourly usage to a Marketer, since . . . that information may be necessary for billing purposes.” This rule refers to the consent requirements, which must be met prior to the release of consumer energy usage data (“Energy Data”) for marketing and other purposes, including billing. AEP Ohio is seeking clarification that if consumers consent to providing their energy data to marketers, the EDU is not required to later disclose to consumers that the marketer is using the data for billing purposes.¹⁰

Consumer information—including billing data—can be used by marketers for unintended purposes, such as to market additional unregulated products, goods, and services to consumers. These additional services can cost consumers real money for products, goods, and services that they do not necessarily need nor want. The PUCO should protect consumers from marketers misusing their information—including their EDU billing data. At a minimum, consumers should be provided full and frequent disclosure of all information that is shared with marketers and should be given the opportunity on-line to block the release of this information at all stages.

⁸ Ohio Adm. Code 4901:1-10-24(F)(4).

⁹ Ohio Adm. Code 4901:1-10-29(E).

¹⁰ *Id.*

Consumers should also be informed as to when and for how long the information will be shared with marketers. And consumers should be informed of the explicit purpose(s) that the consumer information will be used by marketers.

AEP Ohio stated in its application that it was concerned that given recent changes that were made to O.A.C. 4901:1-10-24 (E)(3), there could be misunderstandings about the granularity of electric usage data that it shares with the marketers without consent (i.e. on the pre-enrollment list).¹¹ Out of an abundance of caution, AEP Ohio explained that it seeks clarification that it was only permitted to disclose the granular consumer energy usage data if a consumer is under contract with a marketer for a time of use product that requires the granular energy usage data for billing purposes.¹²

OCC agrees that O.A.C. 4901:1-10-24 (E)(3) should only be interpreted as permitting an electric distribution utility to release detailed granular consumer energy usage data to marketers with consumer consent. This includes consumers who consent under a contract with a marketer for a time of use product that requires the detailed granular electric usage information as required for billing purposes by the marketer.

The integrity of consumer energy usage data must be protected against unauthorized disclosure. It should only be provided to the marketer with express consumer consent and only when the marketer needs the consumer data for billing purposes where it is under contract with a consumer to provide time of use rates, and where generation charges could change depending upon the day and time when usage

¹¹ Application at 3-4.

¹² *Id.* at 4-5.

occurs. Accordingly, the PUCO should confirm and adopt AEP Ohio's interpretation of O.A.C. 4901:1-10-24 (E)(3).

- B. To protect consumers, the PUCO should not grant AEP Ohio's 18-month waiver request for implementing necessary consumer protections under O.A.C. 4901:1-10-33(A) regarding removing non-jurisdictional charges on consolidated bills. But if it does grant the waiver, the PUCO should limit the waiver to six-months and require that AEP Ohio cease disconnecting consumers if it is unable to verify that current consolidated bills do not include non-jurisdictional marketer charges that if unpaid could result in consumers being disconnected for non-payment.**

AEP Ohio requested an 18-month waiver from O.A.C. 4901:1-10-33 (A). Under AEP's waiver request it would not have to comply with the PUCO's directive that it not "...discriminate or unduly restrict a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill."¹³ And additionally that "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 [marketer]."¹⁴ ¹⁵

AEP Ohio asserts that 18-months is needed to implement programming changes that are necessary to prevent electric service from being unlawfully disconnected for nonpayment of marketer non-jurisdictional products and services.¹⁶ AEP Ohio further explained that marketers will—in the future—need to identify and classify the nature of each billing item on the consolidated bill and if the good or services are non-

¹³ Application at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 5-7.

¹⁶ *Id.*

jurisdictional.¹⁷ But short of itemizing each marketer charge on the consolidated bill to disclose each non-jurisdictional charge, there is no assurance that electric utility services could not be disconnected for non-payment of the non-jurisdictional charges. This could happen when a marketer charges a bundled rate commodity (jurisdictional) and non-commodity (non-jurisdictional) charges.

Non-jurisdictional charges can include, but are not limited to, home warranties, line insurance, and other non-regulated goods and services. To avoid the risk of consumers being disconnected for the non-payment of such charges it is necessary for AEP to modify its billing system to segregate these charges. Those billing system modifications will take some time. However, the time that AEP has requested is much longer than other utilities in Ohio.¹⁸ PUCO Staff has recently recommended that six months is sufficient to make similar changes.¹⁹ During the waiver period, consumers should be protected from potential disconnection of utility service for the non-payment of non-utility charges.

To protect consumers during the waiver period, OCC recommends that the PUCO require AEP Ohio to cease disconnecting consumers for non-payment of consolidated bills unless and until any non-jurisdictional marketer charges are clearly itemized and disclosed on the bill.

¹⁷ *Id.*

¹⁸ See e.g., Case No. 21-1125-EL-WVR, Application at 1 (November 1, 2021) (FirstEnergy seeks a six-month waiver to build and test an online active rate calculator for consumers); Case No. 21-1100-EL-WVR, Application at 2 (November 1, 2021) (Similar to AEP's request in this case, Duke seeks a twelve-month waiver to permit adequate time to remove non-jurisdictional charges from consumer bills. PUCO Staff commented and recommended a six-month waiver was appropriate—not twelve).

¹⁹ *Id.*

III. CONCLUSION

The PUCO should protect consumers by clarifying that O.A.C. 4901:1-10-24 (E)(3) requires an electric distribution utility may only release detailed granular consumer energy usage data to marketers with consumer consent. The PUCO should not, however, approve the AEP Ohio's request for 18-months to implement important consumer protections under O.A.C. 4901:1-10-33 (A). AEP Ohio should not be permitted to disconnect consumer for non-payment of consolidated bills unless non-jurisdictional charges are itemized on the bill, and the PUCO should limit the waiver to do so to six-months as it has done in other waiver applications.

Respectfully Submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone: [Wilson]: (614) 466-1292
Telephone: [O'Brien]: (614) 466-9575
ambrosia.wilson@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Consumer Protection Comments was served on the persons stated below via electronic transmission, this 25th day of January 2022.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

Jodi.Bair@OhioAGO.gov
Sarah.Feldkamp@OhioAGO.gov
Fdarr2019@gmail.com

stnourse@aep.com
mjschuler@aep.com

Attorney Examiner:
Matthew.sandor@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/25/2022 4:55:00 PM

in

Case No(s). 21-1209-EL-WVR

Summary: Comments Consumer Protection Comments by Office of the Ohio
Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of
Wilson, Ambrosia E.