

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY, FOR APPROVAL  
OF A WAIVER OF SPECIFIC SECTIONS OF THE  
OHIO ADM.CODE.

CASE NO. 21-1209-EL-WVR

## FINDING AND ORDER

Entered in the Journal on May 18, 2022

### I. SUMMARY

{¶ 1} The Commission approves the application of Ohio Power Company d/b/a AEP Ohio for waiver of Ohio Adm.Code 4901:1-10-33(A) and agrees with AEP Ohio's interpretation of Ohio Adm.Code 4901:1-10-24(E)(3), consistent with this Finding and Order.

### II. DISCUSSION

#### A. *Procedural Background*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility (EDU), 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} Ohio Adm.Code Chapter 4901:1-10 is intended to promote safe and reliable service to consumers and the public and to provide minimum standards for uniform and reasonable practices. Ohio Adm.Code 4901:1-10-02(A)(2).

{¶ 4} On February 26, 2020, in *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 (*Rules Case*), Finding and Order (Feb. 26, 2020), the Commission issued a Finding and Order addressing the written comments filed by parties and revising certain rules within Ohio Adm.Code Chapter 4901:1-10 based on the comments.

{¶ 5} On November 1, 2021, the revisions adopted by the Commission in the *Rules Case* became effective.

{¶ 6} On December 1, 2021, AEP Ohio filed an application for waiver of Ohio Adm.Code 4901:1-10-22(E)(3) and 4901:1-10-33(A).

{¶ 7} On December 13, 2021, and January 5, 2022, Retail Energy Supply Association (RESA) and Ohio Consumers' Counsel (OCC) filed motions to intervene in this proceeding, respectively. No motions in opposition of these intervention requests were filed. The Commission finds that the motions to intervene filed by RESA and OCC are reasonable and should be granted.

{¶ 8} On December 17, 2021, Staff filed comments regarding AEP Ohio's requested waivers.

{¶ 9} By Entry issued January 4, 2022, the attorney examiner requested that motions to intervene and comments be filed no later than January 25, 2022.

{¶ 10} In accordance with the established procedural schedule, comments were filed by RESA, AEP Ohio, and OCC.

**B. Summary of the Application**

{¶ 11} In connection with the rule changes implemented by the *Rules Case*, AEP Ohio seeks temporary waiver of Ohio Adm.Code 4901:1-10-33(A), as well as requests that Ohio Adm.Code 4901:1-10-24(E)(3) be interpreted as intended, or in the alternative, AEP Ohio requests that the Commission grant a waiver of the requirement to release residential customer energy use data "as required for billing purposes." AEP Ohio notes that Ohio Adm.Code 4901:1-10-24 provides for customer safeguards and information, while Ohio Adm.Code 4901:1-10-24(E) provides the limitations and exceptions on disclosure of customer specific information. AEP Ohio states that, in the *Rules Case*, it proposed amending Ohio Adm.Code 4901:1-10-24(E)(3) such that EDUs would be permitted to disclose residential customer energy usage data (CEUD) that is more granular than the monthly historical consumption data to the extent "required for billing purposes." According to AEP Ohio, it articulated its reasoning for this amendment in the *Rules Case*, "\*\*\* if a customer is

on a time of use rate, disclosing a customer's hourly usage may be necessary for CRES billing purposes." *Rules Case*, AEP Ohio Comments (Aug. 16, 2019) at 18. AEP Ohio notes that it intended for this additional phrase to expand the exception to disclosing the more granular CEUD only with a customer's consent such that an EDU would be able to disclose the same data as required for billing purposes without additional consent. AEP Ohio further notes that the Commission adopted AEP Ohio's suggested language, verbatim. Despite the stated intent and purpose, AEP Ohio asserts that the FirstEnergy utilities and some members of the EDI Working Group have interpreted this language to impose a new obligation to require EDUs to provide residential customers' additional hourly interval data to competitive retail electric service (CRES) providers based on whether a CRES provider bills its customer for a time-of-use product. Contrarily, AEP Ohio contends that the additional language was merely sought to clarify that no additional customer consent should be required to provide the granular usage data to a time-of-use customer's CRES provider in the event time-of-use rates are offered through consolidated EDU billing. AEP Ohio requests the Commission to clarify the interpretation of this rule. In the alternative, AEP Ohio asks for a waiver of this rule and requests that the waiver align with the permissive nature of sharing granular residential CEUD as stated in AEP Ohio proposed comments in the *Rules Case*.

{¶ 12} Regarding Ohio Adm.Code 4901:1-10-33(A), AEP Ohio notes that, in the *Rules Case*, the Commission amended Ohio Adm.Code 4901:1-10-33(A) to include the following requirement: "[a]n electric utility cannot discriminate or unduly restrict a customer[']s CRES provider from including non-jurisdictional charges on a consolidated electric bill." AEP Ohio requests a limited waiver of 18 months to complete programming of certain consumer protections associated with offering consolidated billing that contains non-jurisdictional services. According to AEP Ohio, certain consumer protections must be mapped and coded to ensure that partial payments are posted in the proper priority under Ohio Adm.Code 4901:1-10-33(H)(1), with charges for non-jurisdictional services posting last, and AEP Ohio points out that, under Ohio Adm.Code 4901:1-18-03, failure to pay for

non-jurisdictional services is not one of the enumerated reasons permitting termination of residential utility service. Consequently, AEP Ohio states that, in addition to programming the functionality and posting priority associated with billing for non-jurisdictional services, it will need time to program its customer information system to ensure shopping customers are not disconnected for failing to pay non-jurisdictional service charges. Further, AEP Ohio notes that, since the definition of “non-jurisdictional service” is broad, each billing item will require CRES participation to ensure proper coding and tagging in the customer information system. AEP Ohio asserts that the nature of services offered by the CRES provider will not always be apparent by the name of the service alone, and AEP Ohio does not desire to be in the position to independently determine if a product or service is non-jurisdictional with the little information provided. As noted above, these determinations would have impacts on posting priority and service termination rights. Also, these determinations would have consequences on AEP Ohio’s shadow billing commitments, which require AEP Ohio to provide certain CRES billing items without “non-commodity fees” and “other service charges.” Thus, AEP Ohio states that its system 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. AEP Ohio reiterates that, to ensure consumer safeguards and compliance with Ohio Adm.Code 4901:1-10-33(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.

### *C. Summary of the Comments*

{¶ 13} In its comments, Staff first addresses AEP Ohio’s request for clarification regarding Ohio Adm.Code 4901:1-10-24(E). Staff notes that this section provides a specific prohibition to disclose residential granular CEUD without a customer’s consent and that, prior to the rule change, this section consisted of two exceptions to needing consent, namely when electronic authorization is provided and when a court or Commission directive orders disclosure. Staff argues that the rule change added a third exception to requiring customer consent to disclose granular CEUD, which is for billing purposes. Staff contends that the

rule change did not create an obligation to provide residential granular CEUD to CRES providers, rather it only added an exception to the customer consent requirement when a customer has a time of use rate product. According to Staff, the rationale for this exception is that a customer with a time of use rate product understands that the energy provider needs access to the granular data to bill. Further, Staff states that the customer understands that, by consenting to the time of use rate, the customer is also consenting to the release of granular data. Staff asserts that since all six Ohio EDUs are at differing stages of installing its advanced meter infrastructure, most customers cannot participate in time of use rates, as of yet, so it stands to reason that the rule change only applies to the exception for consent from customers on a time of use rate product. Accordingly, Staff agrees with AEP Ohio's interpretation of the rule change to Ohio Adm.Code 4901:1-10-24(E), and, therefore, believes only a clarification as to the scope of the rule by the Commission is necessary, not a waiver of the rule, as AEP Ohio requested in the alternative. Regarding AEP Ohio's 18-month waiver request of Ohio Adm.Code 4901:1-10-33(A), Staff states that it is reasonable to provide the requested additional time for AEP Ohio to take the steps outlined by AEP Ohio in its application to implement the rule change.

{¶ 14} RESA argues that, while it agrees with AEP Ohio that its customer information system should properly apply partial payments, RESA believes AEP Ohio failed to offer a reasonable explanation for the length of the proposed waiver. RESA highlights that AEP Ohio has been on notice since the date of the initial Finding and Order in the *Rules Case*, February 28, 2020, of the rule change, yet AEP Ohio still requests an additional 18 months to implement the change. RESA asserts that AEP Ohio currently must segregate supplier charges due to its shadow billing requirements, so, to the extent that AEP Ohio needs to contact competitive suppliers to identify charges for proper coding, it is unreasonable that the Company asks for an 18-month waiver to implement a process whereby it coordinates with CRES providers since it already has been working with these providers. According to RESA, Staff only repeated assertions made within the application and did not indicate whether an independent investigation of the waiver request was made

prior to filing its comments. RESA contends that Staff's investigation must be more than a summary of the application in order for the Commission to give it weight. Therefore, RESA requests that the Commission shorten the requested waiver time, that it direct AEP Ohio to file a compliance plan with a timeline explaining the steps it will take to modify its customer information system, and that it direct AEP Ohio to demonstrate it will be in compliance with the change to Ohio Adm.Code 4901:1-10-33(A) within a reasonable time.

{¶ 15} OCC agrees with AEP Ohio's interpretation of Ohio Adm.Code 4901:1-10-24(E). OCC asserts that interpreting this exception as narrow is important since customer information can be used by marketers for unintended purposes, such as to market additional unregulated products, goods, and services to consumers. OCC contends that these additional services can cost consumers money for items they do not necessarily need or want and that, at a minimum, consumers should be provided full and frequent disclosure of all information that is shared with marketers and should be given an online tool to block the release of this information at all stages. OCC also states that consumers should be informed as to when and for how long their information will be shared to marketers and informed of the explicit purpose that the consumer information will be used by marketers.

{¶ 16} Regarding the waiver pertaining to Ohio Adm.Code 4901:1-10-33(A), OCC states that it does not support AEP Ohio's 18-month waiver request. OCC does agree that AEP Ohio should modify its billing system to avoid the risk of consumers being disconnected for the non-payment of non-jurisdictional charges. However, OCC notes that the other EDUs who requested a waiver asked for a shorter period of time to implement their changes, and Staff, in those matters, recommended six months to implement such changes. OCC requests that, if the Commission were to grant the waiver, it should allow only six months for the waiver and recommends that the Commission 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} In its comments, AEP Ohio responds to arguments made by OCC within its motion to intervene.<sup>1</sup> First, AEP Ohio responds to OCC's argument regarding the clarification request for Ohio Adm.Code 4901:1-10-24(E)(3), specifically OCC's apparent request that consumers be informed as to when and how long granular CEUD will be shared with marketers and informed of the explicit purpose that the CEUD will be used by marketers. According to AEP Ohio, it seeks clarification that it would not be required to share such granular CEUD absent a customer seeking a time of use rate, which would require an implicit understanding that such information would necessarily be exchanged with the customer's marketer. Plus, since granular CEUD would only be exchanged for billing purposes, it would necessarily be limited to the period of time the customer is on the CRES provider's time of use rate. Regarding OCC's argument that AEP Ohio should not be given an 18-month waiver, AEP Ohio notes that the other EDUs' requests, which vary between 6- and 12-month waivers, are much different than AEP Ohio's request since those EDUs plan to eliminate functionality for billing non-jurisdictional services. On the other hand, AEP Ohio plans to add consumer protections to be able to perform consolidated billing for non-jurisdictional services. According to AEP Ohio, its approach, including modifying its current billing system to avoid disconnection for non-payment of non-jurisdictional charges, will require additional coding beyond what is required to eliminate the functionality. Also, AEP Ohio argues that, to the extent OCC is arguing that the Company should prevent disconnection of utility service for the non-payment of non-jurisdictional charges, this request is redundant of Ohio Adm.Code 4901:1-18-03, which does not enumerate failure to pay non-jurisdictional service charges as a permissible reason to disconnect utility service. Further, unless a CRES provider mixes non-jurisdictional service charges with jurisdictional charges, such an event should not happen, which is why AEP Ohio is requiring CRES providers not combine such differing charges as a single billing

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<sup>1</sup> The Commission notes that the arguments OCC set forth in its motion to intervene track with the arguments it ultimately made in its comments.

item. AEP Ohio reiterates that the 18-month period was not arbitrary and represents that this length of time is needed to complete the work required.

***D. Commission Conclusion***

{¶ 18} Ohio Adm.Code 4901:1-10-02(C) permits the Commission, upon an application or motion by any party, to waive any requirement of Ohio Adm.Code Chapter 4901:1-10 not mandated by statute for good cause shown.

{¶ 19} Regarding AEP Ohio's request for waiver of Ohio Adm.Code 4901:1-10-33(A), given the reasoning offered by the Company in its application and comments, we find AEP Ohio's request for an 18-month waiver of the rule change to Ohio Adm.Code 4901:1-10-33(A) reasonable and find that it should be granted, with the waiver period to begin as of the date of this Order. We recognize that the approach AEP Ohio is taking regarding this rule change, namely allowing CRES providers access to its consolidated bill, will require updates to its technology systems that will take time to implement. Such updates include requiring CRES providers to itemize billing charges and code to ensure that the payment priority rules under Ohio Adm.Code 4901:1-10-33(H)(1) are properly followed such that customers are not improperly disconnected from utility service for failure to pay non-jurisdictional service, as required under Ohio Adm.Code 4901:1-18-03. Also, we do not believe it is necessary, as OCC suggests, to require AEP Ohio to pause all disconnections for customers who fail to pay their consolidated bills during this waiver period. As AEP Ohio mentions, Ohio Adm.Code 4901:1-10-33(H)(1) will still impact payment posting priority during this waiver period, and the purpose of the waiver is to give AEP Ohio more time to delay allowing more CRES providers access to its consolidated bill in order to develop a system where payments post in the proper priority. To aid in this endeavor, AEP Ohio is requiring that jurisdictional and non-jurisdictional CRES provider charges be listed separately on the bill. Also, at this time, we do not find it necessary to require AEP Ohio to provide the Commission with an implementation timeline, as RESA recommends, though we expect that AEP Ohio will comply with Ohio Adm.Code 4901:1-10-33(A) by the end of the waiver period.



{¶ 20} Regarding AEP Ohio's request for clarification of Ohio Adm.Code 4901:1-10-24(E)(3), we agree with AEP Ohio's and Staff's interpretation of this rule change in that the amendment only created a third exception to the customer consent requirement to disclose granular CEUD, specifically for billing purposes. The rule amendment did not impose a new obligation requiring EDUs to provide residential customers' additional hourly interval data to CRES providers based on whether a CRES provider bills its customer for a time-of-use product, rather it only added an exception to the customer consent requirement in instances when a customer has a time of use rate product. We note that, in the *Rules Case*, we agreed with AEP Ohio's suggested amendment to the rule, which included similar reasoning it provided here, and that we supported Interstate Gas Supply, Inc.'s suggestion, which emphasized that the amendment was a new exception to the rule. *Rules Case*, Finding and Order (Feb. 26, 2020) at ¶¶ 183-184. Further, OCC believes that consumers should be informed as to when and for how long their residential CEUD will be shared to marketers and informed of the explicit purpose that the consumer information will be used by marketers. However, as AEP Ohio noted above, since granular CEUD would only be exchanged for billing purposes, it would necessarily be limited to the period of time the customer is on the CRES provider's time of use rate, as well as used for implementing the customer's time of use rate product. Therefore, OCC's recommendations are unnecessary.

### III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the motions for intervention filed by RESA and OCC be granted. It is, further,

{¶ 23} ORDERED, That AEP Ohio's waiver application be approved, consistent with this Finding and Order. It is, further,

{¶ 24} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record in this matter.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJS/hac

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Summary: Finding & Order approving the application of Ohio Power Company d/b/a AEP Ohio for waiver of Ohio Adm.Code 4901:1-10-33(A) and agreeing with AEP Ohio's interpretation of Ohio Adm.Code 4901:1-10-24(E)(3), consistent with this Finding and Order electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio