

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)
Ohio Power Company for Authority to)
Establish a Standard Service Offer) Case No. 23-23-EL-SSO
Pursuant to Section 4928.143, Revised)
Code, in the Form of an Electric Security)
Plan.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 23-24-EL-AAM
Accounting Authority.)

**REPLY BRIEF
OF
DIRECT ENERGY**

Bryce A. McKenney (0088203)
Counsel of Record
3060 Kent Road
Silver Lake, OH 44224
330-730-4941
Bryce.mckenney@nrg.com

Counsel for Direct Energy

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**REPLY BRIEF
OF
DIRECT ENERGY**

I. Introduction

Direct Energy respectfully requests that the Commission approve the Joint Stipulation and Recommendation (“Stipulation”) without modification.¹ Along with Direct Energy, the Stipulation is signed by a diverse group of parties representing a wide range of interests, including the utility, suppliers, Staff, environmental advocates, industrial/manufacturing customers, and commercial customers.² Together, these parties have demonstrated that the Stipulation meets the Commission’s three-part test for evaluating the reasonableness of a stipulation. Each party in this case is capable, knowledgeable, and experienced in Commission proceedings; the Stipulation will benefit ratepayers and the public interest; and the Stipulation is consistent with all important regulatory principles and practices. For these reasons, the Commission should approve the Stipulation without modification.

Direct Energy advocated for provisions in the Stipulation that will provide meaningful benefits to customers and further the policies of the state of Ohio. Specifically, the Stipulation includes (1) a new Smart Thermostat Demand Response Program, (2) improvements to the functionality of AEP Ohio’s Customer Information System (CIS), and (3) the creation of a working group to discuss time-of-use rates. These new programs and system improvements will allow

¹ Direct Energy Business LLC and Direct Energy Services LLC have both intervened in this case but are referred to in this Reply Brief simply as “Direct Energy.”

² The Stipulation is signed by PUCO Staff, AEP Ohio, the Retail Energy Supply Association, Interstate Gas Supply, Ohio Partners for Affordable Energy, the Environmental Law & Policy Center, Ohio Environmental Council, Ohio Manufacturers’ Association Energy Group, Ohio Energy Group, Ohio Energy Leadership Council, The Kroger Company, Walmart, Enel North America, the Ohio Hospital Association, Armada Power, and Citizens Utility Board of Ohio. The Ohio Telecom Association signed as a non-opposing party.

competitive retail electric service (“CRES”) providers to better provide products and services to customers. The Ohio Consumers’ Counsel (“OCC”) is the only party that opposes the Smart Thermostat Demand Response Program and improvements to AEP Ohio’s CIS, and no party opposes the creation of the working group to discuss time-of-use rates. As explained in more detail below, OCC’s arguments lack merit. Accordingly, Direct Energy respectfully requests that the Commission approve the Stipulation without modification.

II. Argument

A. The Commission should reject OCC’s argument that the Smart Thermostat Demand Response Program violates Ohio law and regulatory principles.

First, OCC alleges that the Smart Thermostat Demand Response Program violates R.C. 4928.02(H) because it may force SSO customers to pay for smart thermostats that will be used to help suppliers market and sell their products.³ However, SSO customers pay for a lot of things that benefit customers, the utility, and suppliers. Just because a program benefits suppliers and helps them sell electricity does not mean it violates the policy set forth in R.C. 4928.02(H). For example, all customers pay for advanced meters even though they are used to help suppliers market and sell their products. In fact, the entire electric distribution system is used by suppliers to help market and sell their products. By OCC’s logic, AEP Ohio’s entire electric distribution system is in direct violation of R.C. 4928.02(H). The Commission should reject OCC’s argument that the Smart Thermostat Demand Response Program violates R.C. 4928.02(H) simply because suppliers can use it to help sell their products and services. Further, OCC fails to recognize that the \$5 million per year in funding will be paid by all customers and split between the utility and suppliers, commensurate in part by the benefits they provide to customers. There is no anticompetitive

³ OCC Initial Brief at 37.

subsidy here. The Commission should reject OCC's argument that the Smart Thermostat Demand Response Program violates R.C. 4929.02(H).

Next, OCC argues that the Smart Thermostat Demand Response Program violates R.C. 4928.02(D).⁴ In fact, the very opposite is true, the Smart Thermostat Demand Response Program *promotes* the policy set forth in R.C. 4928.02(D). R.C. 4928.02(D) states it is the policy of this state to:

Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.

The Smart Thermostat Demand Response Program is a demand-side management program. The program will provide customers with a smart thermostat that can be used in combination with advanced metering infrastructure for additional smart grid programs. The program is much more than just the provision of a smart thermostat to customers, it is a demand response program that will improve distribution reliability while also allowing CRES providers to offer a more diverse array of products and services to customers. The provision of a smart thermostat is just one small part of the program. Instead of violating R.C. 4928.02(D), the Smart Thermostat Demand Response Program appears to be the type of program envisioned by the General Assembly when it passed this policy.

Finally, OCC argues that the Smart Thermostat Demand Response Program violates R.C. 4928.02(G). R.C. 4928.02(G) states that it is the policy of the state to “[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of

⁴ OCC Initial brief at 37-38.

flexible regulatory treatment.”⁵ Once again, OCC’s argument not only lacks merit, but also defies the apparent intent of the policy. The Smart Thermostat Demand Response Program allows for the continuing emergence of competitive electricity markets by allowing AEP Ohio to call demand response for distribution reliability while prohibiting AEP Ohio from bidding that demand response into PJM markets. Meanwhile, customers and CRES providers can bid the demand response into PJM. These provisions specifically further the continuing emergence of competitive electricity markets and flexible regulatory treatment by essentially allowing AEP Ohio to implement a short-term program to additional demand response while keeping AEP Ohio out of the competitive marketplace. Additionally, regarding flexible regulatory treatment, the program includes a working group that will evaluate ways to improve the program and ensure customer participation. This working group supports flexible regulatory treatment because instead of a regulatory directive on how to implement the program and ensure customer participation, it allows the collaborative to iron out the details in a manner that will provide the most benefit to customers and the state of Ohio.

OCC’s arguments that the Smart Thermostat Demand Response Program violate the policies set forth in R.C. 4928.02 lack merit. In actuality, the program furthers the policies of this state. The smart thermostats themselves are just a small part of a demand response program that has been designed to improve distribution reliability and spur demand response while prohibiting the utility from interfering with Ohio’s competitive retail electric market. R.C. 4928.02 is full of policies to give consumers more options, promote the competitive market, prohibit distribution utility interference with competitive markets, encourage innovation, and encourage market access. The Smart Thermostat Demand Response Program further these policies. Accordingly, the

⁵ R.C. 4928.02(G).

Commission should approve the Stipulation without modifying the Smart Thermostat Demand Response Program.

B. The Commission should reject OCC’s argument that improvements to AEP Ohio’s Customer Information System violate important regulatory principles and practices.

OCC argues that improvements to AEP Ohio’s CIS violate important regulatory principles and practices. Again, OCC’s arguments lack merit. The CIS improvements will provide meaningful benefits to consumers by allowing both AEP Ohio and CRES providers to improve their product and service offerings. As allowed by R.C. 4928.143 and the other provisions in R.C. Chapter 4928, AEP Ohio will recover a return on and of its prudently incurred capital investment in the new CIS and its incremental operation and maintenance expenses associated with the new CIS through its next base distribution rate case. AEP Ohio will also be entitled to defer incremental operation and maintenance expenses and, if applicable, capital carrying charges on any CIS plant in service prior to the date certain in the next base distribution rate case. AEP Ohio may recover the deferral either through base distribution rates or a future rider, subject to demonstration that the CIS contains the agreed upon functionality. The amount of CIS expenditures for future recovery will also be subject to a reasonableness and prudence review.⁶

OCC argues that a “demonstration that the new CIS may meet some limited functionality requirements” is insufficient.⁷ OCC’s argument is misplaced. The functionalities of the CIS identified in the Stipulation are not the extent of the benefits that the CIS will contain but are instead the minimum functionalities agreed to between AEP Ohio and the parties as part of the settlement package. The functionality requirements negotiated in the settlement are not “limited”

⁶ Jt. Ex. 1 at 6.

⁷ OCC Initial Brief at 41.

as represented by OCC but are important improvements for both AEP Ohio and CRES providers to improve their products and services for customers. Further, such functionality may be considered as part of the reasonableness and prudence review. The CIS system improvements and related funding agreed to in the Stipulation are consistent with Ohio law and do not violate any important regulatory principles. Therefore, the Commission should approve the Stipulation without modifying the provisions regarding improvements to AEP Ohio's CIS.

C. The Commission should reject proposals to reduce market risks faced by SSO suppliers where such market risks are also faced by mass market suppliers.

Constellation and OCC have proposed numerous changes to AEP Ohio's competitive bid process (CBP) for obtaining SSO supply for SSO customers.⁸ The Commission should reject any proposals that would reduce market risks faced by SSO suppliers where such market risks are also faced by mass market suppliers. Suppliers that serve the SSO are perfectly capable of managing risk and properly bidding in the CBP process. Constellation's proposals are inherently anti-competitive by essentially proposing to subsidize the SSO as compared to the competitive offers made by suppliers to mass market customers. While certain suppliers have the opportunity to supply both the SSO and mass market customers, the SSO should be on equal footing with other competitive offers, with the SSO price established through the Commission's traditional CBP process. If SSO prices are increasing, it is because market prices are increasing. That is simply how markets and the market-based SSO are designed to work. Further, if the Commission determines that changes to the CBP should be considered, the Stipulation provides an avenue for such future considerations. The Commission should reject the anti-competitive proposals in this case because they are designed to limit the risk faced by SSO suppliers while leaving suppliers that primarily serve shopping customers fully exposed to market risks. Constellation's proposals

⁸ Constellation Initial Brief at 15; OCC Ex. 2 at 2.

would be bad for customers, bad for suppliers, and bad for competition. Accordingly, the Commission should approve the Stipulation without modifying the provisions regarding AEP Ohio's current CBP process for procuring SSO supply.

III. Conclusion

Direct Energy respectfully requests that the Commission approve the Stipulation without modification. The arguments raised by OCC in opposition to the Smart Thermostat Demand Response Program and CIS improvements lack merit. Both of these provisions of the Stipulation will benefit customers, the utility, and suppliers. Further, the Commission should approve the continuation of the existing CBP process for procuring SSO supply. The Stipulation as a package contains numerous benefits to ratepayers and the public interest. Accordingly, the Commission should approve the Stipulation without modification.

Respectfully submitted,

/s/ Bryce A. McKenney
Bryce A. McKenney (0088203)
Counsel of Record
3060 Kent Road
Silver Lake, OH 44224
330-730-4941
Bryce.mckenney@nrg.com

Counsel for Direct Energy

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 was sent by, or on behalf of, the undersigned counsel to the following parties of record on December 1, 2023, via email.

/s/ Bryce A. McKenney
Bryce A. McKenney

Email Service:

mpritchard@mcneeslaw.com
awalke@mcneeslaw.com
William.michael@occ.ohio.gov
angela.obrien@occ.ohio.gov
connor.semple@occ.ohio.gov
Donald.kral@occ.ohio.gov
Alana.Noward@occ.ohio.gov
Bojko@carpenterlipps.com
Easley@carpenterlipps.com
rkelter@elpc.org
emcconnell@elpc.org
paul@carpenterlipps.com
wilcox@carpenterlipps.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouthy@bakerlaw.com
pwillison@bakerlaw.com
ctavenor@theOEC.org
knordstrom@theOEC.org
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
Alex.Kronauer@walmart.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
sean.mcglone@ohiohospitals.org
dparram@brickergraydon.com
rmains@brickergraydon.com
jlaskey@norris-law.com
rdove@keglerbrown.com
nbobb@keglerbrown.com
jlang@calfee.com
dromig@armadapower.com
trent@hubaydougherty.com

brian.gibbs@nationwideenergypartners.com
dborchers@brickergraydon.com
KHerrnstein@brickergraydon.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
little@litohio.com
hogan@litohio.com
cynthia.brady@constellation.com
jesse.rodriquez@constellation.com
mjsettineri@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com
Fdarr2019@gmail.com
dstinson@bricker.com
gkrassen@nopec.org
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
werner.margard@ohioattorneygeneral.gov
ambrosia.wilson@OhioAGO.gov
ashley.wnek@OhioAGO.gov
stnourse@aep.com
mjschuler@aep.com
egallon@porterwright.com
christopher.miller@icemiller.com
matthew@msmckenzieltd.com
Stacie.e.cathcart@igs.com
Joe.oliker@igs.com

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