

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review of)
the Purchase of Receivables Implementation) Case No. 15-1507-EL-EDI
Plan for Ohio Power Company.)

**REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

RESA submits these Reply Comments in response to AEP Ohio’s Initial Comments on the POR program.¹ The Commission should reject AEP Ohio’s continued attempts to make POR mandatory for utility-consolidated billing suppliers as well as its efforts to delay the implementation of POR.

First, the Public Utilities Commission of Ohio (the “Commission”) has firmly and repeatedly told AEP Ohio that the POR program must provide suppliers using consolidated billing with the flexibility of either electing POR or not electing POR.² Second, AEP Ohio cannot now collaterally attack the Commission’s ruling in the *ESP III* proceeding or otherwise reopen that issue in this proceeding. Third, flexible billing options are critical for the development of the competitive markets and those options must include not only non-mandatory POR but other options like supplier-consolidated billing. Fourth, delaying POR by returning it to the MDWG or holding it during the two-year supplier-consolidated billing pilot (which has yet to start) will continue to leave suppliers with limited billing options in AEP Ohio’s service territory.

¹ RESA notes that AEP Ohio did not file a motion to intervene in this proceeding, and therefore AEP Ohio’s comments should not be considered.

² *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al., Opinion and Order at 80-82 (February 25, 2015), Second Entry on Rehearing at 35-47 (May 28, 2015), and Fourth Entry on Rehearing at 53-57 (November 3, 2016) (hereinafter referred to as the “*ESP III*” case).

For those reasons, the Retail Energy Supply Association (“RESA”)³ urges the Commission to require that POR *not* be mandatory for suppliers using consolidated billing and to expedite not only the implementation of POR but the implementation of other billing options like supplier-consolidated billing. The development and advancement of the competitive market warrants multiple billing options and flexibility, not policies and programs that force suppliers into billing options that impair product offerings and dictate supplier business models. POR and supplier-consolidated billing are two important billing options and *both* should be expedited and implemented for the benefit of the customers and the competitive retail market.

Therefore, AEP Ohio should either allow suppliers to elect to participate in utility-consolidated billing with or without POR, or in the alternative, AEP Ohio should design its POR program to have the ability to isolate and exclude charges associated with non-commodity charges. If this flexibility is not included in the POR program, we would rather not move forward with POR at this time and dedicate time and resources to the deployment of supplier consolidated billing market wide.

II. The Commission has repeatedly ordered in the ESP III proceeding that the POR program should not be mandatory for suppliers using consolidated billing.

AEP Ohio argues in its initial comments that the POR program be mandatory for any supplier that uses consolidated billing. The Commission, however, expressly ordered in the *ESP III* proceeding that the POR program *not* be mandatory for suppliers that use consolidated billing. Specifically, the Commission stated in its orders:

- February 25, 2015 Opinion and Order at 80: “* * * [t]he Commission finds that a POE program should be approved for the Company, with the implementation

³ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

details to be determined in a subsequent proceeding. Specifically, as discussed further below, we authorize AEP Ohio to establish a POR program that complies with the following requirements: * * * (3) *participation in the POR program by CRES providers that elect consolidated billing must not be mandatory* * * *.”

- May 28, 2015 Second Entry on Rehearing at 39: “We, thus, concluded that CRES providers should maintain the flexibility to participate in consolidated billing, without being required to participate in the POR program. We clarify, however, that it was not our intention to enable CRES providers, if they elect to participate in the POR program to include some customers but not others. With this clarification, AEP Ohio's third and fourth grounds for rehearing should be denied.”
- November 3, 2016 Fourth Entry on Rehearing at 56-57: “In its application for rehearing, AEP Ohio argues that the Commission should have empowered the MDWG with broad discretion to propose a POR program that the Company deems feasible. * * * Although the Commission clarified certain POR program issues in the Second Entry on Rehearing at the request of the parties, we made no substantive modifications to our authorization of a POR program in the ESP 3 Order. *More importantly, the Commission emphasizes that the ESP 3 Order enumerated a number of requirements for any POR program proposed by the MDWG. ESP 3 Order at 80-81. The Commission set forth requirements, not guidelines, for the MDWG* * * *.”

The Commission has ordered that the POR program be implemented so that suppliers electing consolidated billing have the option to use POR or to not use POR (and be charged accordingly). AEP Ohio may wish to relitigate the Commission’s directives on the POR program, but that took place in the *ESP III* proceeding and AEP Ohio’s arguments were rejected. The Commission should continue to support the development of the competitive retail market, and it is critical for that development that AEP Ohio’s POR program *not* be mandatory for suppliers electing consolidated billing.

III. AEP Ohio is collaterally estopped from arguing that POR should be mandatory for all suppliers using consolidated billing.

The Commission should also apply collateral estoppel to reject AEP Ohio’s attempt to make POR mandatory for suppliers using consolidated billing. In Ohio, collateral estoppel, otherwise known as issue preclusion, “ ... serves to prevent relitigation of any fact or point that

was determined by a court of competent jurisdiction in a previous action between the same parties or their privies.” *O’Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007 Ohio - 1102, 862 N.E. 2d 803, ¶7 (2007). Indeed, the Commission as recently as December 14, 2016, applied collateral estoppel when parties sought to relitigate a rider.⁴

The Commission should apply collateral estoppel in this proceeding to stop AEP Ohio’s attempt to relitigate the mandatory POR program issue. AEP Ohio argued that POR must be mandatory for suppliers using utility-consolidated billing in the *ESP III* proceeding and, as noted earlier, the Commission ruled on that issue against AEP Ohio. AEP Ohio’s Initial Comments in the matter at bar demonstrate that AEP Ohio is once again attempting to relitigate the issue:

- AEP Ohio Initial Comments at 5: “AEP Ohio only supports building, supporting, and maintaining a single POR system in which all suppliers who would not be under Supplier Consolidated Billing would either be under AEP Ohio’s POR program, or would be dual billing their customers.”
- AEP Ohio Initial Comments at 7: “AEP Ohio defines a workable program as one that utilizes the DSO as a payment trigger (as recommended by Staff), but also an all-in program, meaning if consolidated utility billing is used then the POR program is used.”
- AEP Ohio Initial Comments at 7-8: “AEP Ohio will only implement one POR Program due to the cost and effort which is an opt-in program only; therefore suppliers would still have three choices: POR Opt-in, Supplier Consolidated Billing (pilot), or dual billing.”

Given that the same issue is being litigated before the Commission and that the same parties – AEP Ohio, RESA and the Ohio Consumers’ Counsel – were involved in the *ESP III* proceeding as in this proceeding,⁵ the Commission should apply the doctrine of collateral

⁴ See, *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, Third Entry on Rehearing at ¶31-35 (December 14, 2016).

⁵ Calpine Energy Solutions LLC also filed Initial Comments in this proceeding, but did not take a position on the mandatory POR issue.

estoppel and conclude that AEP Ohio is precluded from relitigating in this proceeding the issue of whether its POR program should be mandatory.

IV. Flexible and multiple billing options are critical to the development of the competitive retail market.

RESA emphasizes that flexible and multiple billing options are critical to attract new suppliers and new products to the competitive retail market. As this Commission recently stated, “R.C. 4928.02(G) provides that it is the policy of the state of Ohio to recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.”⁶ That flexible regulatory treatment includes billing options such as POR *and* supplier-consolidated billing. But AEP Ohio seeks to limit that flexibility by requiring POR be mandatory for any supplier using consolidated billing. That is exactly the inflexible regulatory treatment that should be avoided under Ohio policy.

It is critical to suppliers that POR not be mandatory for those using consolidated billing. The Commission has recognized that a POR program attracts suppliers to the market.⁷ These new suppliers would likely offer many products in AEP Ohio’s service territory. Mandating that both new and existing suppliers must participate in the POR program if they use consolidated billing would result in less product offerings and force suppliers into more restrictive business models. For example, a supplier may use dual billing to provide non-commodity products to its customers, while wanting to use consolidated billing for customers that only elect a commodity product. If that supplier does not want to participate in POR, it would then be forced to drop consolidated billing and revert to dual billing for all customers. Alternatively, by not having flexibility in billing options, the supplier may elect to not develop non-commodity products and

⁶ See, *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, Third Entry on Rehearing at ¶18 (December 14, 2016).

⁷ *ESP III*, Opinion and Order at 81.

instead focus only on commodity products through utility-consolidated billing. The end result of less optionality is that the supplier will be forced to make decisions on its business model and products rather than picking the billing option that best fits its business model and product choices.

That result can be avoided by continuing to develop a flexible regulatory framework for supplier billing options. That framework must include POR on a non-mandatory basis as well as the development of supplier-consolidated billing and any other billing options that promote the continuing emergence of competitive markets in Ohio. Suppliers should be able to elect the billing options that fit their businesses rather than using billing options (or a lack thereof) to dictate what business model a supplier should use. The Commission should continue to support the competitive market and not require that AEP Ohio's POR program be mandatory for suppliers electing consolidated billing.

V. Delaying the POR program is not the answer.

AEP Ohio also recommended in its Initial Comments that either the MDWG have follow-up discussions to determine if the POR program is desired or the POR program be placed on "hold" until the effects of a supplier-consolidated billing pilot are known.⁸ Both of these recommendations would unnecessarily delay the implementation of POR.

First, a return to the MDWG will simply result in another consensus failure. AEP Ohio filed its POR proposal in December 2013 and participated in the MDWG in 2015 to discuss implementation details. Those discussions did not result in a consensus, and AEP Ohio is no closer to implementing POR today than it was in December 2013. A return to the MDWG will simply lead to a repeat of what happened in 2015.

⁸ AEP Ohio Initial Comments at 3.

Second, putting POR on “hold” until after the supplier-consolidated billing pilot ends will create even more delay for POR. The supplier-consolidated billing pilot will not be discussed between AEP Ohio and the eligible participating suppliers until after a final order by the Commission in Case No. 14-1693-EL-RDR, et al. Per the stipulation in that proceeding, AEP Ohio has up to 6 months after a final order issues on rehearing to develop parameters with Staff and the participating suppliers.⁹ Then AEP Ohio has another 6 months to implement the two-year pilot.¹⁰ That means the pilot will likely not start until 2018 and run into 2020. If POR is delayed until 2020 after the pilot ends and is evaluated, that would put the implementation of POR over seven years after AEP Ohio first proposed the program in its ESP III.

Notably, if the PUCO’s desire is to arrive at a supplier consolidated billing pilot program that has the greatest likelihood of producing meaningful data as well as the greatest likelihood of producing a workable supplier consolidated billing program for all CRES suppliers in AEP’s service territory, then the opportunity to participate in discussions surrounding the mechanics of how the pilot will work should be expanded to include all interested CRES suppliers and the opportunity to participate in the pilot should be expanded beyond the limited number of CRES suppliers currently identified by AEP. RESA is concerned that the more limited approach to implementing and testing supplier consolidated billing could result at best in less than useful data and at worst the creation of an ultimate supplier consolidated billing process that only meets the needs of a subset of CRES suppliers in AEP’s service territory.

Thus, rather than delaying or restricting POR, the Commission should require AEP Ohio to either allow suppliers to elect to participate in utility-consolidated billing with or without POR, or in the alternative, AEP Ohio should design its POR program to have the ability to

⁹ See December 15, 2015 Joint Stipulation and Recommendation, Case No. 14-1693-EL-RDR, at p. 17.

¹⁰ *Id.*

isolate and exclude charges associated with non-commodity charges. If this flexibility is not included in the POR program, we would rather not move forward with POR at this time and dedicate time and resources to the deployment of supplier consolidated billing market wide.

VI. Conclusion

Suppliers need billing options and flexibility to ensure the continuing emergence of competitive electricity markets in Ohio. The Commission should continue to support that policy by retaining its *ESP III* ruling that POR not be mandatory for suppliers using consolidated billing, rejecting AEP Ohio's attempt to collaterally attack that ruling and rejecting AEP Ohio's attempt to further delay the implementation of POR in its service territory. POR should be implemented as required by the Commission *and just as important*, other billing options such as supplier-consolidated billing be expedited and put in place.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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