

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's            )  
Review of its Rules for Electrical            )  
Safety and Service Standards                )        Case No. 22-872-EL-ORD  
Contained in Chapter 4901:1-10             )  
Of the Ohio Administrative Code.            )

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

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ASSOCIATION**

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On November 2, 2022, the Public Utilities Commission of Ohio (“Commission”) solicited comments and reply comments regarding the electric safety and service rules contained in Ohio Adm. Code 4901:1-10.<sup>1</sup> The purpose of this rulemaking is for the Commission to reduce the total number of regulatory restrictions and adverse impacts on businesses in the state of Ohio.<sup>2</sup> Ohio Power Company (“AEP Ohio”) submitted comments recommending substantively unreasonable rule amendments that would create additional regulatory restrictions and harm businesses in the state of Ohio. Further, AEP Ohio failed to recommend removal of two regulatory restrictions for any of the restrictions that it proposed. Accordingly, the Retail Energy Supply Association (“RESA”) hereby offers its Reply Comments in opposition to the rule amendments proposed by AEP Ohio.

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<sup>1</sup> Entry at 1 (Nov. 2, 2022).

<sup>2</sup> *Id.*; see also R.C. 121.951(A)(1), 121.82, 106.03(A), and 107.52.

## I. COMMENTS

### A. **The rule amendments proposed by AEP Ohio are procedurally improper as they would increase regulatory restrictions and harm businesses in the state of Ohio.**

AEP Ohio's comments should be rejected because they are procedurally improper. AEP Ohio's comments violate the underlying statutes that prompted the opening of this docket, as well as the Commission's Entry soliciting comments by creating more regulatory restrictions.<sup>3</sup> The Commission's Entry soliciting comments does not indicate that the Commission was open to entertaining new rule requirements in this docket. Further, AEP Ohio's comments create due process issues because they propose significant regulatory requirements with little time for thorough consideration. The Commission scheduled this proceeding for an abbreviated comment process that clearly did not anticipate stakeholders needing to respond to significant market issues in just a few business days. The Commission should therefore not adopt AEP Ohio's procedurally improper comments.

The Commission opened this proceeding to comply with R.C. 121.951(A)(1), 121.82, 106.03(A), and 107.52 which require state agencies to *reduce* their total number of regulatory restrictions and adverse impacts to businesses. Accordingly, comments should be focused on minimizing adverse business impacts and regulatory restrictions. However, the rule amendments proposed by AEP Ohio go in the opposite direction. AEP Ohio has proposed to create new and additional regulatory requirements. These additional regulatory requirements would have adverse impacts on Ohio businesses, particularly competitive retail electric service ("CRES") providers.

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<sup>3</sup> See R.C. 121.951(A)(1), 121.82, 106.03(A), and 107.52.

AEP Ohio's comments also violate the requirements in the Commission's Entry soliciting comments. In the Entry, the Commission required that "[i]f any stakeholders recommend keeping a restriction that is proposed to be removed, the stakeholder should recommend two other restrictions that should be removed in its place."<sup>4</sup> AEP Ohio's comments do not propose the deletion of two existing regulatory restrictions for each one that it proposes. Moreover, it is not apparent from the Commission's Entry that the Commission intended to entertain new regulatory restrictions as part of this proceeding. RESA believes the more appropriate docket for the Commission to consider any new rule requirements would be the Commission's 5-year rule reviews.

As a final procedural issue, AEP Ohio's comments should be rejected because they propose significant new regulatory requirements that are not appropriate for the abbreviated comment schedule in this proceeding. Arguments similar or identical to the arguments AEP Ohio raises here were considered and rejected by the Commission in the 5-year rule reviews in Case Nos. 17-1842-EL-ORD and 12-2050-EL-ORD, both of which were open for years before the Commission finalized its decisions. In contrast, the Commission solicited reply comments in this proceeding just 9 days after initial comments were filed; a period that included the Thanksgiving holiday weekend. The proposals made by AEP Ohio in its comments are procedurally improper and, due to their significance, deserve significantly more time for substantive consideration than was allotted for these Reply Comments.

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<sup>4</sup> Entry at ¶ 6 (Nov. 2, 2022).

**B. AEP Ohio’s comments are substantively unreasonable.**

While the Commission should not consider AEP Ohio’s comments because they are procedurally improper, the Commission should also reject AEP Ohio’s proposals because they are substantively unreasonable.

**1. 4901:1-10-22 electric utility customer billing and payments.**

The Commission should deny AEP Ohio’s proposed amendments to Ohio Adm.Code 4901:1-10-22. AEP Ohio has proposed that all CRES provider charges be itemized on customer bills with an explanation for each item, a totaled sum, and with one price per kWh. The Commission has already rejected AEP Ohio’s proposed amendment to Ohio Adm.Code 4901:1-10-22. In 2020, the Commission held that it “agrees with the CRES providers in that any rule regarding CRES charges does not belong in Ohio Adm.Code 4901:1-10-22, which specifically addresses EDU-only billing. Therefore, AEP Ohio’s recommendation is rejected.”<sup>5</sup> Similarly, in that same 2020 decision, the Commission stated that it “agrees with RESA/Direct regarding its concern about requiring one price per kWh since not all CRES suppliers charge a volumetric rate for all products and services. Therefore, AEP Ohio’s recommendation is rejected.”<sup>6</sup> AEP Ohio has not identified any basis for the Commission to deviate from its prior decision.<sup>7</sup> The

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<sup>5</sup> *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 (Feb. 26, 2020) at ¶ 149, 227-228.

<sup>6</sup> *Id.* at 227-228.

<sup>7</sup> *In re the East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) at ¶ 79 (“The Commission is obligated to follow its precedent”); *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975), superseded on other grounds by statute as recognized in *Babbitt v. Pub. Util. Comm.*, 59 Ohio St.2d 81, 89, 391 N.E.2d 1376 (1979).

Commission should follow its prior decision and again reject AEP Ohio's proposed rule change.

**2. 4901:1-10-24 customer safeguards and information.**

The Commission should deny AEP Ohio's proposed amendments to Ohio Adm.Code 4901:1-10-24. AEP Ohio has proposed that the Commission amend Ohio Adm.Code 4901:1-10-24 to allow an electric utility to place a lock on a residential customer's account to prevent the customer from shopping with a CRES provider. As previously demonstrated by RESA in Case No. 17-1842-EL-ORD, such a restriction is unnecessary, would be confusing and burdensome to customers, would be discriminatory and anticompetitive, and unlawful.<sup>8</sup> The Commission agreed with RESA and rejected the regulatory restriction as part of its 5-year rule review. In rejecting the switching block, the Commission found that "[e]xhaustive procedures are already in place to prevent CRES provider abuses, such as slamming (e.g., R.C. 4928.10; Ohio Adm.Code 4901:1-10-21(H) and 4901:1-21-08(C))."<sup>9</sup> In rejecting the regulatory restriction, the Commission also noted that:

...consumers can register for the national "Do Not Call Registry" to prevent unwanted telemarketing calls from CRES providers or can request that the electric utility exclude their names from mass customer lists made available to CRES providers. Finally, and in response to AEP Ohio's, OCC's, and OPAE's concerns, we have already provided consumers with several layers of protections designed to prevent unwanted CRES provider switching during different stages of the sales process, such as third-party verification following in-person sales and contract rescission periods. The above regulations were specifically targeted towards the protection of vulnerable

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<sup>8</sup> *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, Joint Initial Comments of The Retail Energy Supply Association and Direct Energy Business, LLC/Direct Energy Services, LLC at 3-8 (Aug. 16, 2019).

<sup>9</sup> *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 (Feb. 26, 2020) at ¶ 178.

populations, such as the elderly and disabled, and we believe the rules strike an adequate balance between protecting these populations and allowing for fair competition.<sup>10</sup>

The Commission should again reject the switching block restriction that AEP Ohio proposes in this matter.

### **3. 4901:1-10-28 net metering.**

The Commission should deny AEP Ohio's proposed amendments to the net metering rules in Ohio Adm.Code 4901:1-10-28. AEP Ohio has proposed that the Commission amend its rules to require CRES providers to provide net metering credits to customer-generators they serve at a rate based on the energy component of the electric distribution utilities ("EDU") standard service offer ("SSO") price. Like AEP Ohio's other proposals in this case, the Commission has already rejected a similar proposal by AEP Ohio in a separate rulemaking proceeding.

In Case No. 12-2050-EL-ORD, the Commission recognized that until the EDUs deploy advanced metering infrastructure and upgrade their billing systems, the EDUs should be required to continue to offer their net metering tariffs to all customers.<sup>11</sup> AEP Ohio does not demonstrate or allege that either itself or any other EDU in the state has in place the net metering infrastructure or billing systems necessary for the Commission to revisit its prior ruling. The Commission should therefore follow its precedent and reject AEP Ohio's proposal.

Moreover, even if the necessary infrastructure was in place, there is no evidence to suggest that CRES providers should provide a net metering credit based on the SSO

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<sup>10</sup> *Id.*

<sup>11</sup> *In re Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 12-2050-EL-ORD, Seventh Entry on Rehearing (Feb. 27, 2019) at ¶ 18.

price. As explained in the 12-2050-EL-ORD docket, once utilities have the infrastructure in place, a very possible outcome for a customer-generator served by a CRES provider would be the generation being accounted for as excess energy that would be generally valued to the supplier through the PJM settlements process at the locational marginal price (“LMP”) based on the specific time intervals that the customer-generator produced excess energy.<sup>12</sup> Of course, there are other potential outcomes that would depend on how exactly an EDU implements its metering and billing systems, and then how the excess energy is accounted for. Accordingly, until an EDU has the necessary infrastructure in place, it is premature to discuss or hardcode into a rule any specifics regarding how a CRES provider could or should provide credits to a net-metering customer.

#### **4. 4901:1-10-33 consolidated billing requirements.**

The Commission should deny AEP Ohio’s proposed revisions to Ohio Adm.Code 4901:1-10-33, just as it did in 2020 in Case No. 17-1842-EL-ORD.<sup>13</sup> In this case, AEP Ohio proposes that suppliers be required to change their billing formats, potentially pay for the costs of billing changes, and provide additional bill messages. AEP Ohio has failed to explain how revising the requirements for customer bills meets the requirements of R.C. 121.951(A)(1), 121.82, 106.03(A), and 107.52. Additionally, AEP Ohio has not identified the costs of the bill format changes, identified the statutory authority for its

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<sup>12</sup> *In re Commission’s Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 12-2050-EL-ORD, Memorandum Contra of IGS Solar, LLC, IGS Generation, LLC, IGS Interstate Gas Supply, Inc., Direct Energy Business, LLC and Direct Energy Services, LLC. To Application for Rehearing of Ohio Power Company and Dayton Power & Light Company at 4-5 (Jan. 28, 2019).

<sup>13</sup> *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 (Feb. 26, 2020) at ¶ 211-244.

proposed rule amendments, or offered evidentiary support for its proposed amendments. Further, AEP Ohio has failed to recommend removal of two other regulatory restrictions for each one it has proposed. The Commission should deny AEP Ohio's proposed amendments to Ohio Adm.Code 4901:1-10-33.

## II. CONCLUSION

For the foregoing reasons, RESA respectfully requests that the Commission deny each of the rule amendments proposed by AEP Ohio.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

In accordance with Ohio Adm. Code 4901-1-05, 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 *Reply Comments of the Retail Energy Supply Association* was sent by, or on behalf of, the undersigned counsel for RESA to the following parties of record this November 30, 2022, via electronic transmission.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

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