



FILE

RECEIVED-DOCKETING DIV

2007 JUN 14 PM 12:06

PUCO

VIA OVERNIGHT MAIL DELIVERY

June 13, 2007

Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

Re: Case No. 07-625-EL-ATA

Case No. 07-626-EL-ATA

Dear Docketing Division:

Enclose please find an original and twelve copies of the Reply Comments of Duke Energy Ohio. Please date-stamp the two extra copies and return in the envelope provided.

Should you have any questions, please contact me at (513) 287-3842.

Very truly yours,

Anita M. Schafer  
Senior Paralegal

Enclosures

cc: Parties of record

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician 2 Date Processed 6-14-07

Anita M. Schafer  
Senior Paralegal

DUKE ENERGY CORPORATION  
139 East Fourth Street  
P. O. Box 960  
Cincinnati, OH 45202

513.287.3842

513-287-3810 fax

anita.schafer@duke-energy.com

BEFORE

2007 JUN 14 PM 12: 06

## THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Application of DE-Ohio )  
 For Approval of its RS3P, Residential ) Case No. 07-625-EL-ATA  
 Three Phase Tariff. )

In the Matter of the Application of Duke Energy )  
 Ohio, Inc. for Approval of Changes to its Retail ) Case No. 07-626-EL-ATA  
 Electric Service Tariff (P.U.C.O. No. 19) to add )  
 New Residential Three-Phase Service )

**REPLY COMMENTS OF  
DUKE ENERGY OHIO**

**I. INTRODUCTION AND BACKGROUND:**

Now comes Applicant, Duke Energy Ohio, Inc. (DE-Ohio) and hereby respectfully submits these Reply Comments to the Comments filed by the Ohio Consumers' Counsel (OCC). While DE-Ohio does not oppose OCC's intervention in this proceeding, DE-Ohio feels that given OCC's apparent misunderstanding of the characteristics of three-phase service in a residential application, a Reply to OCC's Comments is necessary for this Commission's consideration in the matter.

The above captioned proceedings arise out of a Stipulation approved in settlement of several customer Complaint cases involving a billing dispute over an electrical engineering anomaly where a multi-unit residential condominium complex known as the American Building, was constructed using three-phase service at the load side of the consumer meter.<sup>1</sup> Due to the three-phase at the meter wiring configuration, the tenants did not qualify to receive service under DE-Ohio's Residential Service Rate (RATE RS), which expressly and exclusively applies to

<sup>1</sup> See *In re the Complaints of James Byerly et al., v. Duke Energy*, Case Nos. 07-196-EL-CSS et al..

single-phase use and was not designed to recover the incremental costs of providing and metering three-phase service to a residential dwelling. Instead, DE-Ohio charged these tenants under the appropriate rate for small load, three-phase service. In the spring of 2007, many of the tenants of the building, as well as, the developer, filed complaints with the Commission over the applicability of the three-phase rate.

In response to these Complaints and recognizing a potential urban redevelopment opportunity in DE-Ohio's downtown network, the Company proposed a three-phase residential tariff (Rate RS3P) in settlement of the cases.<sup>2</sup> This proposal resulted in a Stipulation that was approved by the Commission on or about May 16, 2007.<sup>3</sup> In the Stipulation, DE-Ohio agreed to develop a three-phase residential rate that captures the incremental cost difference in providing three-phase residential service over single-phase residential service, and file an application with the Commission for approval of the rate.<sup>4</sup> DE-Ohio agreed to charge the American Building under the three-phase residential rate upon Commission approval.<sup>5</sup> On or about May 23, 2007 the Company filed the above captioned cases, requesting Commission approval of Rate RS3P.<sup>6</sup>

DE-Ohio respectfully requests this Commission approve Rate RS3P as filed so that the American Building tenants and future developers in DE-Ohio's service territory may take advantage of the tariff.

---

<sup>2</sup> See *In re the Complaints of James Byerly et al., v. Duke Energy*, Case Nos. 07-196-EL-CSS et al., (Stipulation)(April 30, 2007).

<sup>3</sup> *In re the Complaints of James Byerly et al., v. Duke Energy*, Case Nos. 07-196-EL-CSS et al., (Entry at 2)(May 16, 2007).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *In re DE-Ohio's Application for Approval of Rate RS3P*, Case No. 07-625-EL-ATA and Case No. 07-626-EL-ATA, (May 23, 2007). Due to a clerical error and a miscommunication, the Company inadvertently filed two identical proceedings. After realizing the inadvertent duplication of Applications, on May 31, 2007, the Company filed a Motion to withdraw Case No. 07-626-EL-UNC. The Application for approval of Rate RS3P remains through Case No. 07-265-EL-ATA.

## II. GENERAL COMMENTS:

Generally, DE-Ohio does not agree with OCC's proposed modifications to DE-Ohio's proposed Rate RS3P. OCC's comments show a misunderstanding of the nature of three-phase service in a residential setting. As more fully explained below, DE-Ohio's distribution system is designed to provide adequate service at the least cost to serve. The majority of OCC's proposals take DE-Ohio's ability to design its distribution out of the hands of the experts, namely the Company.<sup>7</sup> DE-Ohio is in the best position and clearly has the requisite experience and expertise to determine the capabilities of its distribution network and what constitutes adequate service at the least cost for all consumers. OCC's proposal obligates DE-Ohio to rearrange its distribution system at the whim of a residential consumer, and will ultimately cost consumers more. Consumer installations should meet the specifications of DE-Ohio's system, not the reverse. Further, DE-Ohio's Line Extension Policy, as reflected in its Commission approved Rider X, already provides the terms under which DE-Ohio will modify its distribution system to meet individual consumer needs and the level of incremental costs the consumer must pay for any such extensions. Accordingly, OCC's concerns are unnecessary and the Commission should disregard any proposal that will limit DE-Ohio's ability to maintain the integrity of its distribution system in the most efficient and cost effective manner.

Similarly, the Commission should disregard OCC's proposals to change DE-Ohio's single-phase residential tariff, Rate RS. DE-Ohio's Rate RS is not at issue. The terms of Rate RS are reasonable and have been in place and unchanged for many years. Any proposal to change or

---

<sup>7</sup> See e.g. *In re DE-Ohio's Application for Approval of Rate RS3P*, Case No. 07-625-EL-ATA et al., (OCC's Comments at Attachment 2, pg 4 of 3)(June 4, 2007). OCC proposes to delete the phrase stating, "the Company is not obligated to extend, expand, or rearrange its distribution system if it determines that existing distribution facilities are adequate to serve the customer's load."

amend Rate RS is beyond the scope of this proceeding and the Commission should ignore any such request.

In its Comments, OCC does make one valid change to DE-Ohio's proposed Rate RS3P. As OCC points out in its proposed amendment to Rate RS3P, under the section entitled "Type of Service," the sentence should read "Alternating current 60Hz, *three-phase* at Company's standard secondary voltage."<sup>8</sup> In DE-Ohio's application, the proposed tariff mistakenly refers to single-phase service. DE-Ohio agrees with this proposed change to Rate RS3P.

### III. SPECIFIC COMMENTS

#### A. The Applicability of Three-Phase Service in a Residential Setting.

In its Initial Comments, OCC alleges that DE-Ohio's proposed Rate RS3P is discriminatory because other residential consumers who do not meet the three requirements outlined in the proposed rate will not be able to avail themselves of Rate RS3P.<sup>9</sup> OCC proposes that the Company install three-phase service wherever a residential consumer desires the service, providing the consumer pays the incremental costs.<sup>10</sup> OCC's allegation and proposed cure in that regard, as well as proposed changes throughout its Comment, shows a misunderstanding of the applicability of three-phase power in a residential setting. Three-phase service, especially in a residential setting, is not a matter of want, but is a matter of need. Buildings, homes, apartments and condominiums that are truly residential in nature and which do not contain some form of commercial enterprise, do not need three-phase service. DE-Ohio's distribution system is designed to provide adequate service, at the least cost to all consumers. Delivering three-

---

<sup>8</sup> *In re DE-Ohio's Application for Approval of Rate RS3P*, Case No. 07-625-EL-ATA et al., (OCC's Comments at 8 and Attachment 2 page 1 of 3)(June 4, 2007).

<sup>9</sup> *In re DE-Ohio's Application for Approval of Rate RS3P*, Case No. 07-625-EL-ATA et al., (OCC's Initial Comments at 6) (June 4, 2007).

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

phase service to a residential dwelling simply because a residential consumer wants three-phase service conflicts with this philosophy.

Residential dwellings, whether condominiums, apartments, or single family homes in the suburbs, do not need three-phase power. Residential grade appliances, HVAC units, and even furnaces, do not and cannot use three-phase service. The cost differential in providing three-phase service in a residential setting and under rate RS3P only makes sense when, due to the total building load, three-phase service is needed; three-phase service is usable; the distribution facilities are adjacent to the building; and if there is an existing grid with available capacity. Otherwise, single-phase service is the least cost both for installation purposes and for the tenants/consumers who would take service under DE-Ohio's Rate RS.

The circumstances which resulted the three-phase wiring in the American Building were unique. DE-Ohio believes the three-phase wiring used in a residential setting is feasible and replicable where; (1) a former commercial building is being refurbished into a multi unit/ multi floored residential dwelling and as a result, the building load requires the delivery of a voltage that can only be accomplished by three-phase service; (2) the building is already adjacent to distribution facilities that can provide such service, and (3) the building is located in such an area where the grid is capable of providing the service. When those three circumstances are present, there may be an initial economic advantage to the developer to install three-phase service at the meter.

The American Building was a former commercial enterprise rehabbed into multi-unit condominiums. The American Building sits in DE-Ohio's downtown network, and due to the building's entire load required the delivery of three-phase electric service. Although the need for three-phase service is not unusual for multi-unit/ multi-floored dwellings, typically, however,

three-phase is brought to the building, and when the internal wiring is performed, the phases are separated into legs of single-phase power at the meter to serve the individual residential units. In the case of the American Building, the wiring installation was different. The chosen installation design incorporated large HVAC units, installed remote from the conditioned space, and a single utility room with a single multi-meter pack installation in the basement of the building. The developer chose to install three-phase on the load side of the meter to keep the meter installations in a self contained multi-meter pack and avoid the expense of individual meter installations. The use of the larger HVAC units, and the single utility room in the basement to serve the entire building created the opportunity for alleged cost savings to the developer by using three-phase service.

The result of this construction was that consumers who would typically receive single-phase service and be billed under DE-Ohio's Residential Service rate (Rate RS) did not qualify under the terms of the Commission approved tariff and instead took service under an appropriate three-phase service rate. DE-Ohio's position was and is that this wiring configuration was against the recommendation of the Company. In fact, DE-Ohio has copies of plans initially submitted by the electric engineer who performed the wiring showing an entirely different wiring configuration with single-phase delivered at the meters with multiple meter installations on several floors. If the engineers installed the wiring as initially submitted and as DE-Ohio recommended, there would be no issue regarding the rates charged to the tenants.

DE-Ohio's Rate RS3P is not discriminatory but recognizes a new class of consumers in an age of downtown redevelopment. DE-Ohio designed RS3P to accommodate installations that are similar to those of the American Building, where a building, formerly used as a commercial enterprise, is refurbished into multi-unit/ multi-floored condominiums and/ or apartments and

three-phase service was necessary due to the total building load and there was an economic advantage to developers in installing three-phase at the load side of the meter. Three-phase residential use is only feasible where the distribution lines are available to provide three-phase service, the building load requires three-phase service, and the company has an existing network grid with the capability to provide the service. In those instances, there may be a cost savings to a developer in installing three-phase service at the residential meter.

In all other instances, three-phase electrical service is simply not needed for a pure residential use, and the costs of constructing and delivering three-phase service far outweigh any efficiency gained over single-phase service. Residential grade appliances and heating/cooling equipment are incompatible with three-phase service. Unless a residential home installs a commercial grade HVAC unit, or other commercial grade equipment, three-phase service is simply not even usable. DE-Ohio is unaware of any residential dwelling in its service territory that requires or is receiving three-phase service that is not operating a commercial enterprise out of their home. A commercial enterprise operating out of a residential dwelling, regardless of whether or not it needs a three-phase service drop, would not qualify for a residential rate structure. The consumer is non-residential by definition and would be billed under the appropriate non-residential rate. If separate metering is possible, the "residential" portion of the home is provided single-phase service and billed under Rate RS. The commercial enterprise however is billed on the appropriate non-residential tariffed rate. Accordingly, OCC's concern that the rate is not available at the whim of a residential consumer is unwarranted.



- B. Residences that have more than two rooms for rental purposes are a commercial enterprise.

In its Comments, OCC also criticizes the fact that DE-Ohio's current Rate RS and proposed Rate RS3P is limited to situations where "[r]esidences where not more than two rooms are used for rental purposes."<sup>11</sup> In OCC's opinion, there should be no such limitation, and a consumer should have the ability to rent an infinite number of rooms and still qualify to take service under a Residential Rate Structure. Again, OCC's comment misses the point. Tenants of apartments and leased private residences are eligible for Rate RS. This provision provides a distinction a single family home that rents out one or two bedrooms (not separately metered), and a dwelling such as a Bed and Breakfast that rents out multiple rooms on a frequent basis. Buildings that offer rooms to the general public for relatively short durations, such as hotels and B&B's, are subject to non-residential rates. Leased private houses, condominiums, and apartments that are utilized as primary residences by the tenants receive service under residential rates. A residential type dwelling such as a bed and Breakfast, that is used primarily for rental purposes is no longer a residential use, but rather is a commercial enterprise. This provision makes a reasonable distinction between a dwelling that is purely residential and one that in fact is a commercial enterprise. This distinction has been part of DE-Ohio's Rate RS for many years and is consistent with utility tariffs throughout the Country. The Commission should not change this language in either DE-Ohio's Rate RS or in its proposed Rate RS3P.

---

<sup>11</sup> *Id.* at 8.

## CONCLUSION

For all the foregoing reasons, DE-Ohio requests this Commission approve Rate RS3P as filed with the change in Type of Service and as discussed herein, as soon as practicable so that the American Building tenants and future developers in DE-Ohio's service territory may take advantage of the tariff.

Respectfully submitted,



Rocco O. D'Ascenzo (0077651)  
Counsel


Paul A. Colbert (0058582)  
Associate General Counsel  
DUKE ENERGY OHIO, INC.  
139 East Fourth Street  
ATII, Suite 2500  
Cincinnati, OH 45201

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. Mail, postage prepaid, this 13<sup>th</sup> day of June 2007, upon the following:

Duane W. Luckey, Esq.,  
Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215-3793

Richard C. Reese Esq.,  
Office of Consumers' Counsel  
10 W. Broad Street, Suite 1800  
Columbus, OH 43215



Rocco O. D'Ascenzo (0077651)  
Counsel