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FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver of Certain Sections of the Ohio Administrative Code for SmartGrid Pilot Programs.	))))	Case No. 10-249-EL-WVR

OHIO PARTNERS FOR AFFORDABLE ENERGY'S REPLY TO THE MEMORANDUM CONTRA OF DUKE ENERGY OHIO, INC.

Ohio Partners for Affordable Energy ("OPAE") hereby replies to the Memorandum Contra filed by Duke Energy Ohio, Inc. ("Duke") in response to OPAE's protest of Duke's application for a waiver before the Public Utilities Commission of Ohio ("Commission"). Duke claims that it needs a waiver of certain Ohio administrative code rules in order to implement new pilot programs associated with Duke's deployment of smart meters.

Duke first states that there have been "lengthy discussions" of its pilot programs in the SmartGrid collaborative and complains that OPAE did not express at the collaborative meetings its intention to protest the waiver application. Although the waiver application was discussed with the collaborative participants, OPAE did not have access to the waiver application before it was filed. While Duke believes that OPAE's concerns about the waiver could have been addressed at the collaborative meetings, it is doubtful that OPAE's concerns could have been resolved. Participation in a collaborative process does not eliminate the need to bring issues, such as the need for these waivers, to the Commission's attention and to request Commission intervention on those issues that cannot be resolved collaboratively.

Duke should be well informed of OPAE's position regarding the potentially serious erosion of consumer protections that can result from the use of smart meters. In Case No. 08-723-AU-ORD, the recent review of the Credit and Disconnection Rules, Chapters 4901:1-17 and 4901:1-18, the Commission denied Duke's request to completely revamp the Rules to accommodate Duke's vision of the smart meter world, consistent with the recommendations of a coalition of consumer groups which included OPAE. The Commission rejected Duke's position, noting that it was premature to consider such changes, and that any exemptions from the rules would be considered in a separate proceeding. Case No. 08-723-AU-ORD, *Opinion and Order*, at 37.

This is the proceeding referred to by the Commission. Duke did not attempt to settle with the parties to its smart grid collaborative. It has had more than adequate notice of OPAE's opposition to the elimination of consumer protections inherent in the waiver request. These are issues of first impression that the Commission must consider. The smart meter train needs to slow down for the protection of consumers.

Rule 4901:1-10-05(I)(1-5)

With regard to Duke's request to waive Rule 4901:1-10-05(I)(1-5), which requires that the electric utility obtain actual meter readings of all its in-service customer meters at least once each calendar year, Duke claims that there is no need to provide customers with monthly usage from read-to-read because bills will provide "much richer data" and show usage on a per 15 minute time-of-use basis. Duke states that providing the same information as required by the administrative rules (i.e., monthly usage information obtained through an actual meter reading) would allow the customer to ignore the new paradigm and rely on

old habits and information. Thus, according to Duke, the pilot would lose its usefulness if the rule requiring actual meter readings were not waived.

The new paradigm is not that different from the old paradigm in many respects. The customer's bill will still be for usage for a specific amount of time, roughly a month, even if the rate is based on time-of-usage. The bill to be paid will still be a monthly bill reflecting monthly usage. Therefore, the customer should retain the right under the rule to have an actual meter reading. If the smart meter allows for much richer data, there is no reason why the poorer data, upon which the actual monthly bill is based, cannot be provided to customers upon their request. There is no reason to waive the rule.

Duke also states that the pilot is limited to customers who will opt-in and be given ample explanation prior to participation. Any customer suffering an economic hardship can be released from the pilot. Percentage of Income Payment Plan (PIPP) customers will not participate in the pilot program.

However, not all low-income customers are PIPP participants. Duke acknowledges that other low-income customers are to be targeted to participate in the pilot programs. These low-income customers need to continue to enjoy the protections and benefits of the Commission's administrative rules.

There is scant comfort in Duke's assertion that eliminating consumer protections is necessary to determine "if and how a customer can be educated to learn from a new bill format...." *Duke Energy Ohio, Inc. Memorandum Contra Protest of Ohio Partners for Affordable Energy* at 2. Substitutes education for regulatory protections is no bargain for consumers. There is no reason Duke cannot continue to follow the rules and it should be required to do so.

Rule 4901:1-10-12(K)

With regard to Duke's request to waive Rule 4901:1-10-12(K), which requires that the customer be informed that the utility is required to obtain an actual meter reading when the customer initiates or terminates service if the meter has not been read within the preceding sixty days, Duke complains that actual meter readings reduce the benefit of operational savings, which will balance the cost of SmartGrid deployment. If customer benefits are the issue, however, the Commission must recognize that the loss of important customer protections is no benefit at all. The savings associated with smart meters must not be in exchange for the loss of customers' rights as currently conferred by the Commission's consumer protection rules.

Customers with smart meters may believe that the electronic readings are incorrect; therefore, this rule is necessary so that customers are informed of their right to request an actual reading. Under such circumstances, a company employee must go to the premises to read the meter. Duke states that 100,000 customers are now receiving "old style" bills via the smart meter and are not complaining about the smart meter being inaccurate. These customers with smart meters are continuing to receive regular bills and continuing to receive the protection of the administrative rules that require actual meter readings. No rules have been waived to serve these 100,000 customers currently with smart meters. The consumer protections afforded by the rules are necessary even for customers participating in the SmartGrid pilot programs and should not be waived. OPAE noted in its original objections that there have been problems from the consumer standpoint with smart meter installations elsewhere. OPAE urges prudency on the part of the Commission and the retention of consumer protections.

Rule 4901-1-18-04

With regard to Rule 4901-1-18-04, which requires payment plans and budget billing, Duke states that its billing system currently does not have the ability to support payment plans with the smart meter. Duke also states that customers who opt in to the pilot and subsequently experience financial difficulties can be removed from the pilot. As for budget billing, Duke believes that budget billing is inconsistent with the goals of the smart meter pilot. According to Duke, the customer must experience usage changes and cost consequences in order to respond and make use of time-of-use functionality. Therefore, budget billing undermines its premise of the pilot and makes no sense. Duke also argues that the pilot involves only a limited number of customers and a limited period of time.

However, waiver of the rule is not necessary. The rule states that customers are eligible for such payment plans and budget bills, but obviously many customers currently do not have payment plans or budget bills without any waiver of the administrative rules that require such plans be available. The customer is still eligible for a budget bill or a payment plan; he would just agree not to have such a bill or plan if he were a participant in the pilot program. Duke itself states that if a customer needs such a plan, the customer can be removed from the pilot program. There is no reason to waive the rule, which requires that such plans be offered.

OPAE questions the logic of Duke's assertion that budget billing is inconsistent with the pilot. The impact of customer responses to time of use rates registers through the monthly bill. If the customer is on budget billing, the impact occurs during the true-up months or earlier if the reductions are significant. In addition, responsiveness to price signals will be reflected in the next year's budget billing amount. It is delayed gratification either way. It would be useful to know, given that this is a pilot, whether those on budget billing do respond to price signals.

Budget billing is a fiscal management tool utilized by a significant number of customers. A metering and pricing system that eliminates this consumer tool is of questionable value.

Rules 4901:1-18-05(A)(2) and (A)(5)

With regard to Rules 4901:1-18-05(A)(2) and (A)(5), which require that customers receive proper notice of disconnection of service, Duke states that there is no need to protect the customer from service termination as it is very unlikely that termination will occur. Duke states that it will closely monitor customer usage and experience at every step. Duke also states that it will be sensitive to customer needs and that a customer who opts in to such a pilot is unlikely to end up with unpaid bills and will hopefully have an acute interest in each month's bill. Duke states that it will communicate to the customer when disconnection will occur so that the customer can be present at the premises and make a payment to avoid disconnection. Reconnection will be accomplished remotely and within hours of payment. Duke also states that it is willing to work with the collaborative to find approach to disconnection so consumers are "not unduly startled". *Duke Energy Ohio, Inc. Memorandum Opposition to Waiver and Comments of the Ohio Consumers' Counsel* at 3.

The disconnection rules must remain in effect. Disconnection of electric service is a serious matter that requires the full protections of the disconnection rules. Duke understands this; it has committed $700,000 per year to prevent disconnections. It is not obvious that a pilot participant, if he is facing disconnection for financial reasons, will still have electronic service through e-mail, text messaging, or a phone call available. A customer facing disconnection of electric service could easily have lost those services already. Waiving the

disconnection rules could easily mean that a pilot participant receives no notice of disconnection at all. Moreover, it is not possible that waiver of the disconnection rules is necessary to the functioning of the SmartGrid pilot programs. Duke itself argues that participants are unlikely to be disconnected. If this is true, why waive the disconnection rules? The rules are necessary to protect customers facing disconnection.

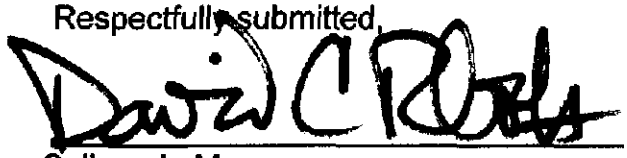
Conclusion

The Commission should be concerned when any public utility seeks a waiver of the rules providing basic and fundamental consumer protections such as those contained in Ohio Adm. Code Chapters 4901:1-10 and 4901:1-18. Duke claims that waiver of the rules is necessary for SmartGrid deployment and that if the rules are not waived, Duke will have no baseline from which to learn and that learning from customer experience is basic to moving forward. Duke, however, has not made its case that the waiver of the rules is necessary for the functioning of the pilot programs. How could a pilot participant's request for an actual meter reading or use of a payment plan possibly deprive Duke of the opportunity to learn about smart meter deployment? In fact, a participant's request for a meter reading or a payment plan might provide Duke with vital information about the benefits, of lack thereof, of its smart meters.

The protections afforded by the administrative rules are necessary even in the case of small pilot programs, especially if, as here, those pilots will be marketed to customers in vulnerable payment circumstances. Certainly, the Commission should not waive these rules when the waiver is not necessary to the functioning of the pilot programs. The continued applicability of several of the rules that Duke seeks to waive will enhance the pilot programs by providing

additional information while maintaining consumer protections for those who are participating in the pilot programs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to the Memorandum Contra was served by regular U.S. Mail upon the following parties identified below in this case on this 31st day of March 2010.

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