FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2010 JUL -2 PM 3:47
PUCO

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

APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
hotz@occ.state.oh.us

July 2, 2010

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 SW Date Processed JUL 02 2010

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

APPLICATION FOR REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential consumers of ("Company" or "Duke") pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A), applies for rehearing of the Entry issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on June 2, 2010. The OCC submits that the Commission's Entry in the above-captioned case is unreasonable and unlawful in the following particulars:

A. The Commission Should Reverse Its Decision To Waive Duke's Obligation To Provide Customers With A Budget Billing Option If The Commission Wants Duke's SmartGrid Program To Have An Opportunity To Include All Types Of Customers.

B. The Commission Should Reverse Its Decision To Waive Duke's Obligation To Provide A Payment Plan Option To Residential Customer Classes That Are In Great Need For This Type Of Option And Would Otherwise Benefit From The SmartGrid Program.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz /per AOL
G.J.P.

Ann M. Hotz, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
hotz@occ.state.oh.us

TABLE OF CONTENTS

PAGE

I. INTRODUCTION AND HISTORY 1

II. ARGUMENT: THE COMMISSION'S ENTRY UNREASONABLY AND UNLAWFULLY GRANTED DUKE A WAIVER OF RULE 4901-1-18-04(A) AND (D) THAT REQUIRES DUKE TO PROVIDE BUDGET BILLING AND PAYMENT ARRANGEMENTS. 1

A. The Commission Should Reverse Its Decision To Waive Duke's Obligation To Provide Customers With A Budget Billing Option If The Commission Wants Duke's SmartGrid Program To Have An Opportunity To Include All Types Of Customers. 1

B. The Commission Should Reverse Its Decision To Waive Duke's Obligation To Provide A Payment Plan Option To Residential Customer Classes That Are In Great Need For This Type Of Option And Would Otherwise Benefit From The SmartGrid Program. 4

III. CONCLUSION 5

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND HISTORY

Duke filed a motion for a waiver to various provisions of the Ohio Administrative Code in order to implement a SmartGrid pilot program on February 26, 2010. OCC filed an Opposition to the Waivers and Comments on March 10, 2010. Duke filed a Reply to the Comments filed by OCC. OCC file a memorandum in response on April 5, 2010. On June 2, 2010, the Commission issued an Entry granting in part and denying in part Duke's waiver requests. The Commission granted Duke's request to waive its requirement to provide budget billing and payment arrangements to customers on the SmartGrid pilot programs. OCC files this Application for Rehearing on the following assignment of error.

II. ARGUMENT: THE COMMISSION'S ENTRY UNREASONABLY AND UNLAWFULLY GRANTED DUKE A WAIVER OF RULE 4901-1-18-04(A) AND (D) THAT REQUIRES DUKE TO PROVIDE BUDGET BILLING AND PAYMENT ARRANGEMENTS.

A. The Commission Should Reverse Its Decision To Waive Duke's Obligation To Provide Customers With A Budget Billing Option If The Commission Wants Duke's SmartGrid Program To Have An Opportunity To Include All Types Of Customers.

Ohio Adm. Code 4901:1-18-04(D) states:

> The company shall provide an optional uniform payment plan (budget plan) on an annual basis for any customer who is not in default on a previously agreed upon extended payment plan. Arrearages need not be included in the optional uniform payment plan (budget plan).

Granting the waiver to Ohio Adm. Code 4909-1-18-04(D), which requires Duke to provide for budget billing under the SmartGrid pricing programs is contrary to R.C. 4905.22, which requires Duke to provide adequate service.

Without the option of budget billing the residential customers who need the benefits of SmartGrid pricing programs will not enroll. Customers—especially those with fixed incomes—have come to rely upon the budget plan and should be permitted to continue with the budget plan if they want to enroll in the Company's SmartGrid programs. The group of customers referred to as "Fixed-income" encompasses a more expansive group today than that category did even several years ago and is considered a sign of the hard economic times. "Fixed-income" customers can include low income, seniors or retirees at all income strata and it can include the middleclass work force that have seen their salaries either cut or reduced. If customers will not be permitted to maintain their budget billing when enrolling in the SmartGrid pricing programs, the pilot program will not be representative of the entire population of customers. The purpose of a pilot is to provide information on customer acceptance and if the pilot does not include large swaths of the population, the pilot will be of limited value and the conclusions drawn, faulty.

Additionally, although Duke claims that it intends to eventually make its SmartGrid pricing programs available to customers who rely upon budget billing,[1] its

[1] Application at 6.

billing system constraints make it difficult to incorporate customers with budget billing on the SmartGrid pricing program.[2] However, Duke failed to explain exactly how its budget billing is incompatible with the time-of-use rate. Rather than asking for further explanation, the Commission accepted Duke's allegation at face value and granted the waiver.[3] The Commission should reconsider this decision. Accordingly, the Commission should grant rehearing on this issue and deny the waiver for budget billing under the SmartGrid pricing programs.

OCC recognizes that it may be necessary to accumulate some usage history to determine an appropriate budget amount, however, that will be the case for any new customer signing up for price responsive rates. That fact should not obviate the requirement for a budget plan to help customers spread payments over a year. Duke has taken considerable effort to educate and demonstrate the benefits of SmartGrid and one would have expected better from Duke than its filings before the Commission. SmartGrid will not work unless there is customer support. SmartGrid will not work unless customers understand how to use the rate design programs correctly. And many customers will resist if they believe that by voluntarily participating in these programs, they will lose hard fought -- and won -- consumer protections that this Commission recognized decades ago were vital to consumer protection. Duke's filing plays into the fears and concerns of customer groups who oppose SmartGrid because they worry that this brave new world will leave customers worse off. Duke should not have ever made

---

[2] *Id.*

[3] Entry at 6.

this filing, should not have sought to back away from the pact of consumer protections and the Commission ought not to have approved *any* of the waivers.

B. The Commission Should Reverse Its Decision To Waive Duke's Obligation To Provide A Payment Plan Option To Residential Customer Classes That Are In Great Need For This Type Of Option And Would Otherwise Benefit From The SmartGrid Program.

Granting Duke's waiver request for the requirements of Ohio Adm. Code 4901:1-18-04(A), which requires Duke to provide payment arrangements when requested by customers violates two statutory provisions; R.C. 4933.121(E) and R.C. 4933.122(C). R.C.4933.121(E) requires the Company to provide payment arrangements to residential customers who have been on active duty and have been unable to pay their electric bills in their absence. The Commission should not allow the Company to exclude citizens who have been sacrificing so much for this country from the SmartGrid pricing programs, especially when they are likely to benefit from SmartGrid pricing programs.

Under R.C. 4933.122(C) the utility must provide payment arrangements to customers with medical certificates or to those customer for which the "termination of service would be especially dangerous to health" or would make the "operation of medical equipment impossible or impracticable." Here again another population of customers who would be likely to benefit from the SmartGrid pricing programs are being denied the opportunity to participate. Denying such populations of customers the opportunity to benefit in win-win programs such as the peak-time rebate program is contrary to the intent of the SmartGrid investments and should not be permitted as these customers as well as all others will be paying for the SmartGrid infrastructure.

Payment Plans are an opportunity that increasing numbers of customers will have to rely upon given the economic crisis in the state of Ohio. Because the SmartGrid pricing programs are designed to allow customers to save by timing their use of electricity prudently, customers who are more likely to need payment arrangement will benefit a great deal from the SmartGrid pricing program. This is particularly true of the peak-time rebate program Duke is proposing.[4] For that reason, the Commission should not grant Duke its waiver to Ohio Adm. Code 4901:1-18-04(A) for any of the SmartGrid pricing programs.

Again, for a pilot program to be successful, it must provide for a cross-section of the population and by not allowing for payment plans, this will exclude many customers. There may be customers who would be willing to sign up for price responsive rates, but want to know that there is a safety net in the event they fall behind. Without the payment plan safety net, many may not sign up. Limitations on the available pool of potential customers that will result from the Commission's ruling is akin to a sign that states "only the rich need apply" – which is hardly reflective of the diverse population in the Duke service territory. Moreover, if the end goal is make SmartGrid ubiquitous, then the totality of the program must appeal and protect all customers.

III. CONCLUSION

Pursuant to R.C. 4903.10, the PUCO should grant rehearing and modify its decision in this case and deny Duke's request for a waiver of Ohio Adm. Code 4901:1-18(04)(A) and (D).

[4] In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Tariff for Rate PTR, Case No. 10-455-EL-ATA.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz / Per Auth G.P.

Ann M. Hotz, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
hotz@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Application for Rehearing by the Office of the Ohio Consumers' Counsel,* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 2nd day of July 2010.

Ann M. Hotz /per GJP

Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Duane W. Luckey
Section Chief
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

Elizabeth Watts
Anita Schafer
Duke Energy Ohio, Inc.
139 East Fourth Street 25 Atrium II
P.O. Box 960
Cincinnati, Ohio 45202

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793