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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke :
Energy Ohio for Approval of a Market :
Rate Offer to Conduct a Competitive :
Bidding Process for Standard Service :
Offer Electric Generation Supply, :
Accounting Modifications, and Tariffs :
for Generation Service. :

Case No. 10-2586-EL-SSO

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REPLY BRIEF
OF
DOMINION RETAIL, INC.

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I. INTRODUCTION

Dominion Retail, Inc. (“Dominion Retail”) prefaced its initial brief with the observation that the central issue in this proceeding is whether the MRO-based SSO proposed by Duke Energy Ohio (“Duke”) in its application conforms to the statutory requirements governing the establishment of an MRO, and, more specifically, to the “blending” requirement set forth in Section 4928.142(D), Revised Code.¹ However, Dominion Retail indicated that it would leave this debate to others, and, rather than weighing in on this issue, addressed certain riders proposed in Duke’s application that were of particular concern to CRES providers attempting to compete in the Duke retail market.

As one would expect, the initial briefs submitted by the other participants in this proceeding focused overwhelmingly on the issue of whether the Duke’s proposed MRO-based

¹ Section 4928.142(D), Revised Code, provides that, in the first application for an MRO-based SSO by an electric distribution utility that owned generation as of July 31, 2008, the competitively-bid portion of the SSO cannot exceed certain specified annual percentage limitations during the first five years, with the remainder of the SSO load to be served from the EDU’s own power supply portfolio. Thus, the statute contemplates that, during this period, the SSO price will be a proportionate blend of the last SSO price (subject to certain permitted adjustments) and the price established as a result of wholesale auction.

SSO met the statutory ‘blending’ requirement, and had relatively little to say with respect to the various riders proposed in the application beyond parroting the portions of the pre-filed written testimony of their respective witnesses that addressed the rider-related issues. As a result, there are no arguments regarding these riders in the first-round briefs of the other parties that Dominion Retail did not anticipate in its initial brief. However, because an appropriate resolution of these issues is critical to furthering Ohio’s stated policy of encouraging retail electric competition,² Dominion Retail will respond to the limited discussion of these issues contained in the briefs of the other parties to clarify its position on these issues.

II. ARGUMENT

A. PROPOSED RIDER UE-GEN SHOULD BE EXPANDED TO COVER THE UNCOLLECTIBLE EXPENSE GENERATED BY SHOPPING CUSTOMERS AND, IF SO EXPANDED, SHOULD APPLY BOTH TO SSO AND SHOPPING CUSTOMERS.

As a part of its application, Duke proposed a rider – Rider UE-GEN – to recover incremental increases in uncollectible expense created by SSO customers that default on the generation component of their bills.³ In its initial brief, Dominion Retail provided a detailed history of the Commission’s position with respect to uncollectible expense riders generally and Duke uncollectible expense riders in particular. As Dominion Retail pointed out, every Ohio gas distribution company that offers a residential Choice program (and even some that do not⁴) have Commission-approved bad debt trackers applicable to both the distribution and commodity components of defaulting customer arrearages, including defaulting shopping customer commodity arrearages. In approving these uncollectible expense riders, the Commission

² See Section 4928.02, Revised Code.

³ Application, Duke Ex. 3, at 37.

⁴ See, e.g., Glenwood Energy of Oxford, Inc., P.U.C.O. No. 1, Sheet No. 19.1.

necessarily concluded, whether explicitly or implicitly, that uncollectible expense riders are reasonable and appropriate revenue recovery mechanisms and that they violate no important regulatory principle. Otherwise, these riders would not have been approved.

Not only does Duke have such a rider on the gas side, but, as a result of the stipulation approved by the Commission in its last electric distribution rate case, Duke also now has an electric uncollectible expense rider in place that recovers the distribution component of defaulting customer arrearages, including CRES customer distribution arrearages.⁵ Although the Commission approved this element of the rate case stipulation without comment,⁶ the Commission certainly would never have approved Rider UE-ED if it believed that uncollectible expense riders violated any important regulatory principle, which, of course, is one prong of the familiar three-prong test the Commission employees in evaluating stipulations.

In view of this history, Dominion Retail searched the record in this proceeding for reasons why there should be a distinction between the applicability of the uncollectible expense riders of gas and electric distribution utilities, why the applicability of an electric uncollectible expense rider should be limited to the distribution component of defaulting customer arrearages, and why the applicability of Duke's proposed generation-related uncollectible expense rider should be limited to SSO service. Not surprisingly, this proved to be a vain effort, because there plainly is no rational basis for any of these distinctions. Indeed, Duke witness Ziolkowski was quick to acknowledge that he could see no reason why Duke should have different types of uncollectible expense riders for gas and electric sides of its business.⁷ Not only do these

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 08-709-EL-AIR (Stipulation dated March 31, 2009, at 9-10).

⁶ See Case No. 08-709-EL-AIR (Opinion and Order dated July 8, 2009).

⁷ Ziolkowski Cross, Tr. III, 702-703.

disparities produce an anomalous result for Duke customers, most of which are likely both gas and electric customers, but, as explained at length in Dominion Retail's initial brief, these disparities also have an adverse impact on CRES providers.

Duke, like all other gas distribution utilities with residential Choice programs, purchases the accounts receivable of competitive natural gas providers to which it provides consolidated billing service at zero discount. This would have been the result on the electric side as well had the Commission not modified its finding and order in the Cinergy merger case on rehearing.⁸ The initial order in the merger case required Duke to purchase the receivables of CRES suppliers at no discount and authorized Duke to implement uncollectible expense riders for both gas and electric. However, on rehearing, the Commission withdrew its approval of the electric uncollectible expense rider based, indicating that its approval had been based on its mistaken impression that Commission staff had recommended approval of an electric rider.⁹ The fact that the requirement that Duke purchase the receivables of CRES providers at no discount evaporated when the Commission reversed its approval of the electric uncollectible expense rider clearly demonstrates that the Commission correctly viewed the uncollectible expense rider as a necessary condition to the approval of a zero discount for the purchase of CRES provider receivables. Accordingly, expanding proposed rider UE-GEN to cover the receivables of shopping customers would bring things back to where they stood as a result of the initial order in the merger case. Gas and electric would be on the same footing – *i.e.*, mandatory purchase of supplier receivables with no discount and an uncollectible expense rider applicable to all

⁸ See *In the Matter of the Joint Application of Cinergy Corp. on behalf of The Cincinnati Gas & Electric Company and Deer Holding Corp. For Consent and Approval of Change of Control of The Cincinnati Gas & Electric Company*, Case No. 05-732-EL-MER, *et al.* (Finding and Order dated December 21, 2005, at 18-19).

⁹ Case No. 05-732-EL-MER, *et al.* (Entry on Rehearing dated February 6, 2006, at 12-13)

distribution and commodity service customers – an outcome that Duke witness Ziolkowski indicated is acceptable to the company,¹⁰ an outcome that Staff witness Turkenton agreed would “(c)ertainly” promote competition,¹¹ and an outcome supported by the testimony of Retail Energy Supply Association (“RESA”) witness Ringenbach,¹² whose recommendation that Rider UE-GEN be expanded in this fashion was not challenged by any party to the proceeding.

Apart from Dominion Retail and RESA, the only parties to address proposed Rider-GEN on brief were the Commission staff and Ohio Partners for Affordable Energy (“OPAE”). Neither offered any rationale for Duke having different uncollectible expense riders for the gas and electric sides of its business, or for Duke having an electric uncollectible expense rider that applied only to the distribution component of defaulting customer arrearages. Indeed, the Commission staff devotes only three sentences to Rider-GEN wherein it restates, without attribution, Staff witness Turkenton’s assertion that because an uncollectible expense rider for generation is not one of the adjustments specifically listed in, or contemplated by, Section 4928.142(D), Revised Code, the Commission cannot approve this rider in the context of an MRO proceeding.¹³ OPAE goes only slightly farther, adding to its reference to its Ms. Turkenton’s testimony the comment that “(g)eneration costs should not be passed through to customers in distribution rates or riders” and the pronouncement that “(it) is the policy of the state of Ohio that competitive services not be subsidized through non-competitive services.”¹⁴

¹⁰ Ziolkowski Redirect, Tr. III, 711.

¹¹ Turkenton Cross, Tr. V, 1018-1019.

¹² Ringenbach Direct, RESA Ex. 1, at 10-11.

¹³ Staff Brief, 19-20.

¹⁴ OPAE Brief, 9.

As explained in Dominion Retail's initial brief, Staff witness Turkenton's conclusion that Section 4928.142(D), Revised Code, precludes the approval of uncollectible expense rider in the context of an MRO proceeding is based on the faulty premise that the uncollectible expense associated with the generation arrearages of defaulting customers is a cost of generation. Although the statute does identify four circumstances in which the legacy ESP-based SSO piece of the blended MRO-based SSO price can be adjusted, these permitted adjustments all relate to costs associated with the production of the electricity generated or otherwise procured to meet the generation requirements of SSO customers. Uncollectible expense is not a cost of providing generation service. Rather, uncollectible expense, whether associated with distribution or generation service, is a cost incurred by virtue of the fact that Duke is the entity that bills for the service. Duke would continue to incur this expense even in the scenario where the blending requirement has expired and the SSO price is set based entirely on the results of the wholesale auction. Clearly, the legislature did not intend that an electric distribution utility would be precluded for all time from recovering incremental increases in uncollectible expense (or flowing through the benefit of incremental decreases in uncollectible expense), yet this is precisely where the Staff argument takes us. Further, the staff interpretation is clearly at odds with the goal of encouraging retail electric competition. If Duke continues to apply a discount rate to the purchase of receivables, CRES suppliers will be forced to continue to build this discount into their offer prices. Under Duke's discount rate formula, the discount increases as uncollectible expense increases. If, as staff would have it, uncollectible expense recovery is forever frozen at some historical level, Duke's SSO generation service would always have a built-in price advantage over the CRES service.

Frankly, Dominion Retail is at a loss to understand what OPAE intends by its comments. Whether limited to the recovery of the generation arrearages of defaulting SSO customers as proposed by Duke , or expanded to cover the generation arrearages of defaulting shopping customers as proposed by Dominion Retail and RESA, Rider UE-GEN is not a distribution rider. Further, no one has suggested that, if Rider UE-GEN is expanded to recover generation arrearages of defaulting shopping customers, it should be bypassable. It goes without saying that if the rider is expanded in this fashion, it would apply to both SSO and CRES end-user customers.

B. PROPOSED RIDERS RECON AND SCR SHOULD BE FULLY BYPASSABLE BY SHOPPING CUSTOMERS.

As Dominion Retail observed in its initial brief, because the two existing riders that Rider RECON is intended to reconcile are bypassable, it is difficult to imagine a rationale that would support Duke's proposal that Rider RECON should be unavoidable. Like its witnesses before it, Duke does not even attempt to defend this proposal in its brief. Similarly, Duke offers nothing new to defend its proposal regarding Rider SCR being only conditionally bypassable. Thus, consistent with the recommendation of Staff witness Turkenton,¹⁵ Riders RECON and SCR should be fully bypassable by shopping customers.

III. CONCLUSION

For those reasons set forth above and in Dominion Retail's initial brief, the Commission should approve Rider UE-GEN, but should expand its applicability to cover uncollectible expense associated with the generation component of defaulting shopping customer arrearages.

¹⁵ See Turkenton Direct, Staff Ex. 1, 4-5,8.

The Commission should also make proposed Riders RECON and SCR unconditionally bypassable by CRES customers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. E. Royer', written over a horizontal line.

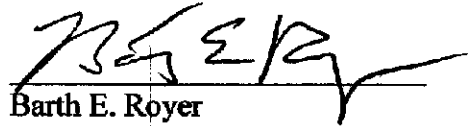
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I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 3rd day of February 2011.


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