

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc., for an)	Case No. 12-1682-EL-AIR
Increase in Electric Distribution Rates.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc., for Tariff)	Case No. 12-1683-EL-ATA
Approval.)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc., for Approval)	Case No. 12-1684-EL-AAM
to Change Accounting Methods.)	

**OBJECTIONS TO THE PUCO STAFF'S REPORT OF INVESTIGATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Terry L. Etter, Counsel of Record
Kyle L. Kern
Michael J. Schuler
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Etter – (614) 466-7964
Telephone: Kern – (614) 466-9585
Telephone: Schuler – (614) 466-9547
etter@occ.state.oh.us
kern@occ.state.oh.us
schuler@occ.state.oh.us

February 4, 2013

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I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”) submits its Objections regarding the Public Utilities Commission of Ohio (“Commission” or “PUCO”) Staff’s Report of Investigation (“Staff Report”), as filed in these cases on January 4, 2013.¹ These cases involve the electric distribution charges that Duke Energy Ohio, Inc. (“Duke”) proposes to collect from its residential customers, among others. OCC is the statewide representative for all of Duke’s approximately 610,000 residential electric utility customers.

OCC’s objections identify elements of the Staff Report that are not just, reasonable or lawful. These objections meet the specificity requirement of Ohio Adm. Code 4901-1-28. The substance of many of OCC’s objections will be supplemented and/or supported with the anticipated testimony of OCC witnesses (Ibrahim Soliman,

¹ See R.C. 4909.19 and Ohio Adm. Code 4901-1-28(B).

James Gould, Bruce Hayes, Beth Hixon, Daniel Duann, Scott Rubin and David Effron) to be filed on or before February 19, 2013. OCC's objections point to matters in the Staff Report where the PUCO Staff has either made recommendations, or failed to make recommendations, that result in rates or service terms that contravene what is reasonable and lawful for Duke's residential customers. OCC also submits that the lack of an objection in this pleading to any aspect of the Staff Report does not preclude OCC from cross-examination or introduction of evidence or argument in regard to issues on which the PUCO Staff reverses, modifies or withdraws its position on any issue contained in the Staff Report.

OCC reserves the right to amend and/or to supplement its objections in the event that the PUCO Staff reverses, modifies or withdraws its position, at any time prior to the closing of the record, on any issue contained in the Staff Report. Additionally, where the PUCO Staff has indicated that its position on a particular issue is not known at the date of the Staff Report, OCC reserves the right to later supplement its objections once the PUCO Staff's position is made known.

OCC also reserves the right to file additional expert testimony, produce fact witnesses and introduce additional evidence. Moreover, OCC's witnesses will also reserve the right to amend and/or supplement their testimony in the event that the PUCO Staff reverses, modifies or withdraws its position on any issue contained in the Staff Report.

II. OBJECTIONS TO THE STAFF REPORT

A. Revenue Requirements

OBJECTION 1: OCC objects to the Staff-recommended revenue requirement and resulting revenue and rate increase recommended for Duke in Staff Report Schedule

A-1. The Staff's recommendations are unreasonable and unlawful, and the recommended revenue requirement for Duke is excessive, for a number of reasons. First, the recommendations are based on an overstated valuation of Duke's property that is used and useful in rendering public utility service. Second, the recommendations are based upon costs which are not correctly attributed to the cost to Duke of rendering service for the test period. Third, the recommendations utilize a rate of return that is not just and reasonable. The specific objections from which these overall conclusions are drawn are detailed below in OCC's objections to the Staff's recommendations regarding these matters.

Additionally, OCC objects to each component of the Staff Report's Schedule A-1 recommended revenue requirement and rate increase recommended for Duke to the extent that other OCC objections have an impact on the calculation of the recommended revenue requirement (e.g., rate base, operating income, rate of return).

B. Rate Base

1. Deferred Tax Debit Allowances

OBJECTION 2: OCC objects that the Staff improperly adopted Duke's inclusion of a net \$1.3 million deferred tax debit balance in rate base related to "Tax Interest Accrual." As the Staff did not deduct the accrued interest to which the deferred taxes relate from rate base, the deferred tax debit balance should not be included in rate base on Schedule B-6.

2. Envision Center

OBJECTION 3: OCC objects to the Staff's treatment of capital cost regarding the Envision Center.² Although the Staff excluded the date certain balance of the Envision Center, the Staff should also have excluded, but did not exclude, additional plant amounts for the Envision Center that were included in Account 390, Structures and Improvements on Schedule B-2.1. The Envision Center plant investment is not used and useful in providing electric service to Duke's Ohio customers. These additional plant amounts should be excluded from rate base to protect Ohio customers from paying for them.

3. Unclaimed Funds

OBJECTION 4: OCC objects that the Staff did not, on Schedule B-6, offset rate base by the unclaimed funds balance at date certain. Excluding unclaimed funds from rate base is necessary to ensure that Duke's investors do not earn a return on non-investor-supplied funds (and that customers are not asked to pay Duke a return on funds that investors did not supply). Unclaimed funds should be deducted from rate base on Schedule B-6 in recognition of the fact that the funds are not supplied by shareholders. Shareholders should not earn a return (paid by customers) on funds that investors do not provide.

C. Operating Income

1. Sales and Revenue

OBJECTION 5: OCC objects to the Staff's determination of adjusted and pro forma revenues, on Schedules C-2 and C-3, because the test year sales to customers in Rate Class DS (Service at Secondary Distribution Voltage) in the Staff Report are

² The Envision Center is "a leasehold improvement located in Kentucky." See Staff Report at 5.

understated. The Staff appropriately adjusted test year sales to residential customers, but did not make a consistent adjustment to Duke's understated level of test year sales to customers in Rate Class DS. Understating these sales would make it appear that Duke needs to collect more money from customers than it should.

2. Other Operating Revenue

OBJECTION 6: OCC objects because the Staff did not propose an adjustment to reduce test year rental revenues. The Staff should have annualized test year rental revenues to reflect the latest actual rental revenue in adjusted revenues on Schedule C-2. OCC's proposed adjustment would increase Duke's revenue and reduce what Duke needs to collect from customers.

3. Annualized Operation & Maintenance Labor Expense

OBJECTION 7: OCC objects that the Staff did not address the financial impact that resulted from employees accepting both voluntary and involuntary separation programs in its calculation of test year annualized labor expense on Schedule C-3.4. During the test year, 259 employees were separated (two Duke Energy Ohio employees and 257 Duke Energy Business Service employees). The Staff did not exclude (but should have excluded) the amount associated with the termination of the 259 employees from its annualized test year labor expense. Duke should not collect from customers any charges that are based upon costs of personnel that are no longer employed for providing utility service.

4. Pension and Benefits

a. Pension and Benefits Expense

OBJECTION 8: OCC objects that the Staff, in its calculation of test year annualized pension and benefits expense on Schedule C-3.17, did not address the

financial impact resulting from employees accepting both voluntary and involuntary separation programs. During the test year, 259 employees were separated (two Duke Energy Ohio employees and 257 Duke Energy Business Service employees). The Staff did not exclude (but should have excluded) from its annualized test year pension and benefits expense on Schedule C-3.17 the amount associated with the separation of these employees.

b. Pension and Benefits Loading Rates

OBJECTION 9: OCC objects to the Staff's acceptance of Duke's proposed loading rates in determining pension and benefits on Schedule C-3.17. The loading rates that are applied to labor expense to determine pension and benefits should be (but were not) developed using actual test year expenses.

5. Medical Cost

OBJECTION 10: OCC objects to the Staff's medical cost adjustment on Schedule C-3.27 of the Staff Report. This adjustment increases what customers will pay Duke related to Duke's medical costs. The adjustment is speculative and is not based on a known and measurable change to medical costs being incurred by Duke.

6. Payroll Taxes

a. Separation Programs

OBJECTION 11: OCC objects that the Staff, in its calculation of test year annualized payroll taxes expense on Schedule C-3.18, did not address the financial impact resulting from employees accepting both voluntary and involuntary separation programs. During the test year, 259 employees were separated (two Duke Energy Ohio employees and 257 Duke Energy Business Service employees). The Staff did not (but should) exclude from its annualized test year payroll taxes expense the amount associated

with the separation of the 259 employees. Duke should not collect from customers any charges that are based upon costs of personnel that are no longer employed for providing utility service.

b. Payroll Tax Loading Rate

OBJECTION 12: OCC objects to the Staff's acceptance of Duke's proposed payroll overhead loading tax rate of 7.65% in its calculation of test year annualized payroll taxes expense on Schedule C-3.18. There are two different loading tax rates that should be applied to the appropriate taxable wages for Duke Energy Ohio and Duke Energy Business Service to calculate test year payroll taxes. The Staff's usage of a single payroll overhead loading rate over-stated payroll tax expense and thus would result in Duke over-collecting from customers its payroll tax expense.

7. Commercial Activities Tax

OBJECTION 13: OCC objects to the Staff's calculation of Commercial Activities Tax on Schedule C-3.19, to the extent that other objections have an impact on this calculation.

8. City of Cincinnati Franchise Tax

OBJECTION 14: OCC objects that the Staff did not adjust the City of Cincinnati Franchise Tax to reflect annualized test year adjusted operating revenues. The Franchise Tax included in State and Other Taxes on Schedule C-2 should be based on annualized test year adjusted operating revenues. OCC's proposed adjustment would reduce what Duke needs to collect from customers.

9. Uncollectible Accounts Expense

a. Uncollectible Expense

OBJECTION 15: OCC objects to the Staff's calculation of adjusted test year uncollectible accounts expense on Schedule C-3.16. The uncollectible accounts expense in this proceeding represents the discount rate used in the sale of accounts receivable. The Staff improperly failed to adjust the Uncollectible Expense Factor of 0.5425% used by Duke. The Staff should have used the latest known time value of money rate in the calculation of an uncollectible expense factor. The Staff's calculation of uncollectible expense would result in Duke over-collecting from customers for uncollectible expense.

b. Gross Revenue Conversion Factor

OBJECTION 16: OCC objects to the Staff's calculation of the gross revenue conversion factor on Schedule A-2 of the Staff Report in that the Staff improperly accepted the Uncollectible Expense Factor of 0.5425% used by Duke.

10. Depreciation of Intangible Plant

a. General Miscellaneous Intangible Plant

OBJECTION 17: OCC objects to the Staff's calculated depreciation expense of \$2,030,355 on General Miscellaneous Intangible Plant on Schedule B-3.2. The Staff failed to eliminate depreciation expense on plant that will be fully depreciated by the end of the test year, and the Staff failed to eliminate depreciation expense that is not properly documented.

b. Common Miscellaneous Intangible Plant

OBJECTION 18: OCC objects to the Staff's calculated depreciation expense of \$3,133,484 on Common Miscellaneous Intangible Plant on Schedule B-3.2. The Staff failed to eliminate depreciation expense on plant that will be fully depreciated by the end

of the test year. This means that the depreciation expense to be collected from customers is overstated.

11. Property Tax Expense

OBJECTION 19: OCC objects that the Staff did not perform a separate property tax expense calculation for both personal and real property in order to apply the correct tax rate to the proper property category and to apply plant specific assessment valuation percentages to the various distribution plant balances to arrive at a more accurate estimate of taxable plant value. The Staff's calculation of property tax on Schedule C-3.8 results in overstated property tax expense for customers to pay.

12. Rent Expense

OBJECTION 20: OCC objects that the Staff did not adjust test year rent expense in Schedule C-2 to exclude amounts for Atrium II building space that is no longer occupied or leased by Duke. This adjustment will protect customers from paying too much for Duke's rental expense.

13. Non-Jurisdictional Expenses

OBJECTION 21: OCC objects that the Staff did not remove certain non-jurisdictional expenses associated with corporate relations and governmental affairs from test year operating expense on Schedule C-3.14. These expenses are not necessary for the rendition of electric distribution service and do not provide a direct primary benefit to consumers. Therefore, customers should not have to pay for these expenses.

D. Income Taxes

OBJECTION 22: OCC objects to each component of the Staff's calculation of income taxes to the extent that other OCC objections have an impact on the calculation of net operating income.

E. Rate of Return

1. Methodology

OBJECTION 23: OCC objects that the Staff inappropriately increased Duke's cost of equity (return on equity) by applying different and unequal weights (0.25 and 0.75 respectively) to the results of the capital asset pricing model ("CAPM") and the discounted cash flow model. These weights applied by the Staff are contrary to the weights (0.50 and 0.50) that have been used in prior electric and gas rate cases. The Staff has not provided a reasonable explanation for the recommended change to the weights for estimating the return on equity. This proposed change in the methodology for estimating the cost of equity will unnecessarily increase the cost of electric services to Duke's residential customers.

2. Flotation Costs

OBJECTION 24: OCC objects that the Staff inappropriately increased the cost of equity by allowing an adjustment for flotation or equity issuance costs despite the fact that Duke failed to show that it incurred any flotation costs. In addition, Duke did not provide documentation of the magnitude of flotation costs it may incur in the reasonably near future. The Staff inappropriately increased the cost of equity (return on equity) by using the adjustment factor the Staff recommended in the last Duke electric rate case (Case No. 08-709-EL-AIR). However, the Staff did not provide support for this adjustment.

3. Capital Asset Pricing Model

OBJECTION 25: OCC objects that the Staff, in its CAPM estimation, used an equity risk premium that was inappropriate because it was based solely on the spread of arithmetic mean total returns between large companies' stocks and long-term government

bonds. The Staff's approach would artificially increase the common equity cost to customers.

F. Approval of a Change in Accounting Methods – Storm Cost Deferral

OBJECTION 26: OCC objects that the Staff did not recommend that the Commission deny Duke's request for approval of a change in accounting methods to allow deferral of storm costs. The Staff presented a general description of the storm cost deferral request (Staff Report at 1), however, the Staff made no recommendation on that request. Duke seeks to "establish a deferral mechanism to track storm costs against a base amount to be established in these proceedings" and to "amortize the balance of the regulatory asset, positive or negative, over a period of time." (Staff Report at 1.)

Among the reasons that the Staff should have recommended that the Commission reject Duke's request is that the proposed deferral allows Duke to track changes in only one expense element of its total revenue requirement and does not consider changes (including potentially offsetting changes) that may occur in other elements. Duke's storm cost deferral proposal, as presented in its testimony, also lacks sufficient, specific and clear details such as indicating that Duke will have the burden of proof demonstrating that costs were prudently incurred and reasonable and that Duke will provide detailed accounting and records to the Commission and others for audit of the storm costs.

G. Rates and Tariffs

1. Facilities Relocation – Mass Transportation Rider (Rider FRT)

OBJECTION 27: OCC agrees with the Staff's recommendation that Duke's proposed Rider FRT should not be authorized for Duke to collect dollar amounts from customers. However, OCC objects that the Staff did not include (but should have included) in its rationale for not supporting Rider FRT the following public policy

implications: 1) Rider FRT unfairly discriminates among customer classes by giving members of one class – governmental entities – preferential treatment in paying the costs associated with their requests for relocation of facilities; 2) utility company riders should not be used as a means for governmental entities to fund public works projects, as governmental bodies have other means for paying the costs of relocating facilities; and 3) to the extent that the citizens of the governmental entity would not pay their electric bill, the Rider FRT portion of that bill would be collected from all other Duke customers through the uncollectible rider.

2. Residential Rate Design

a. Residential Customer Charge

OBJECTION 28: OCC objects to the Staff's residential customer charge determination (Staff Report at 35-39), which is a departure from the Commission's traditional methodology for determining a residential customer charge. Duke proposes to increase the Rate RS customer charge from \$5.50 under the present rate structure to \$6.79 under Duke's proposed revenue requirement – an increase of 23%. The major driver of the increase in the customer charge is Duke's proposed inclusion of a minimum sized transformer in the calculation of the customer charge. The Staff recommends a slight modification in Duke's customer charge calculation, but also recommends accepting the inclusion of a minimum sized transformer in the customer charge calculation. The Staff departed from the Commission's traditional methodology and precedents for determining a residential customer charge, which does not include any costs associated with transformers. Transformer-related costs should be removed from the calculation of the Rate RS customer charge and residential customers should thus be provided a lower customer charge.

b. Residential Energy Charge

OBJECTION 29: OCC objects to the Staff's residential energy charge determinations (Staff Report at 35-39). The Staff proposes higher summer rates for Rate ORH (electric space heating) than are paid by typical residential customers (Rate RS). The Staff also proposes a greater percentage increase in time-of-day rates (Rate TD) than the average residential class increase. There is no cost justification for either rate change.

3. Rights of Way Tariff

OBJECTION 30: OCC objects to the Staff's acceptance of overly broad language in Duke's proposed rights of way tariff. Duke's proposal, that the Staff accepted, could result in Duke obtaining unreasonable and unfettered access to customers' entire property without Duke adequately compensating its customers for use of their property.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter
Terry L. Etter, Counsel of Record
Kyle L. Kern
Michael J. Schuler
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Etter – (614) 466-7964
Telephone: Kern – (614) 466-9585
Telephone: Schuler – (614) 466-9547
etter@occ.state.oh.us
kern@occ.state.oh.us
schuler@occ.state.oh.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Objections to the Staff's Report of Investigation has been served upon the below-stated counsel, via electronic service this 4th day of February 2013.

/s/ Terry L. Etter

Terry L. Etter
Assistant Consumers' Counsel

PARTIES SERVED

Amy.Spiller@duke-energy.com
Rocco.DAscenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Elizabeth.Watts@duke-energy.com
trent@theoec.org
cathy@theoec.org
tobrien@bricker.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com
bojko@carpenterlipps.com
odonnell@carpenterlipps.com

John.jones@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
Ryan.orourke@puc.state.oh.us
dhart@douglasshart.com
cmooney2@columbus.rr.com
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
vparisi@igsenergy.com
mswhite@igsenergy.com
callwein@wamenergylaw.com
tsiwo@bricker.com
mwarnock@bricker.com
mchristensen@columbuslaw.org
mhpetricoff@vorys.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 12-1682-EL-AIR, 12-1683-EL-ATA, 12-1684-EL-AAM

Summary: Objection Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.