

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

|  |   |                        |
|--|---|------------------------|
| In the Matter of Aligning Electric       | ) |                        |
| Distribution Utility Rate Structure with | ) |                        |
| Ohio’s Public Policies to Promote        | ) | Case No.10-3126-EL-UNC |
| Competition, Energy Efficiency, and      | ) |                        |
| Distributed Generation                   | ) |                        |

---

**APPLICATION FOR REHEARING BY  
THE ENVIRONMENTAL LAW & POLICY CENTER**

---

**I. Introduction**

In December 2010, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) opened this docket soliciting comments regarding Ohio electric utility rate structures in order to consider “whether modifications to Ohio electric utilities’ rate structures would better align utility performance with Ohio’s desired public policy outcomes.”<sup>1</sup> The PUCO asked a number of specific questions and requested data from utilities. In an August 21, 2013 Finding and Order, the Commission concluded that Ohio utilities should utilize a straight fixed variable rate design (“SFV”) in their next filed base rate cases. The Environmental Law and Policy Center’s (“ELPC”) request for rehearing will focus on whether the Commission reached the correct conclusion in shifting more recovery of revenue to this SFV design. The Order is unlawful and unreasonable for two reasons. First, the Commission’s endorsement of SFV is not consistent with the goal of aligning rate structures with desired public policy outcomes. Second, the Order does not provide an adequate explanation for its decision and fails to properly consider stakeholder comments.

---

<sup>1</sup> See December 29, 2010 Entry.

## **II. Argument**

### **A. The Commission's Order is unreasonable because it is inconsistent with the stated policy goals of encouraging energy efficiency and distributed generation.**

Because the Commission opened this docket expressly for the purpose of considering “modifications to Ohio electric utilities’ rate structures [that] would better align utility performance with Ohio’s desired public policy outcomes,” the first question that should be asked here is what is in fact the desired public policy outcome? The goal should be to encourage energy efficiency and distributed generation. This goal is outlined in Ohio Revised Code (“R.C.”) § 4928.66 and explained in the Commission’s initial Entry: “Ohio’s policy goals [include] competition, increased energy efficiency, and encouraging distributed generation.”

In terms of encouraging efficiency, any movement toward SFV rates sends customers the wrong signal about their usage. When a utility moves revenue recovery from the usage charge to customer charge it means that customers pay more each month regardless of usage. A simple example highlights the issue. Assume, for example, a current customer has a bill of \$100 per month, with \$30 going to the fixed monthly charge and \$70 going to the usage charge (per kWh). If the consumer decides to take advantage of a utility energy efficiency program and reduces their usage, but the monthly charge increases to \$50, then this reduces the benefit of their efficiency efforts. ELPC believes that this sends customers the wrong signal and is inconsistent with the Commission’s stated purpose for opening this docket and considering changes to the rate design structure.

Another issue is that utility rates have always reflected a fairness in how costs are split between high usage customers (cost causers) and low usage customers. All customers benefit from the utility system and their connection to the grid, and they pay for that benefit in the fixed monthly service. However, the largest users generally cause higher rates because their higher

electricity usage means we need more power plants and more power at peak times.<sup>2</sup> Thus, the more kWhs customers use, the higher their bills. By moving guaranteed revenue into the fixed customer charge, the PUCO changes this balance and sends customers the signal that energy efficiency is less important.

Under the current format, utilities know in advance what their energy efficiency savings targets will be in future years, and in rate cases ELPC supports using future test years that adjust customer usage to reflect efficiency gains. Under the simple formula of taking utility capital costs and expenses and dividing that by customer usage, lowering the customer usage adjusts for the loss of revenue from efficiency. Moreover, under traditional ratemaking, utilities always have an incentive to cut their costs (in other words, become more efficient), and when they do so that increases their profits. Hence, moving more revenue into the customer charge not only sends customers the wrong signal, it reduces utilities' incentive to reduce their costs.

The Commission's Order does not reflect that efficiency programs have reduced utility revenues to the point that they are under-recovering and need a rate case. However, if in fact they are under-recovering they should file for a rate case and the PUCO can adjust the projected demand accordingly. If the Commission believes that more action should be taken to adjust for efficiency, then decoupling is a preferable adjustment to straight fixed variable rates. Under decoupling the PUCO would conduct a true up every year to adjust the utility revenues for any loss from lower sales. However, and this is the key factor, it would also adjust if customer usage increases because of weather or other factors. For example, if Ohio experiences greater than average summer temperatures, usage may rise despite all efficiency efforts; if that is the case, then under a decoupling structure customers would be entitled to a refund. Under straight fixed

---

<sup>2</sup> We acknowledge that some large usage commercial customers have a consistent load that does not increase at peak times and makes them easy to serve. The current rates reflect that as well.

variable rates, customers would pay both a higher monthly charge and a higher usage charge. Hence, while ELPC favors the current ratemaking framework with adjustments for anticipated lower usage to reflect increased efficiency, it supports decoupling over straight fixed variable rates.

**B. The Order is unreasonable because the Commission did not adequately consider stakeholder comments or explain its decision.**

In concluding that utilities should utilize the SFV rate design, the Commission ignores the arguments made by many of the commenters in this case. As explained by the Commission, the Ohio Consumer and Environmental Advocates (“OCEA”) “argue[d] that the SFV rate design should not be adopted because it would have an adverse effect on the objective of increasing energy efficiency, would . . . have a detrimental effect of the use of environmentally-friendly distributed generation, and would decrease customers’ investments in energy efficiency.”<sup>3</sup> FirstEnergy agreed, explaining that “an SFV rate design diminishes the customer incentive for EE/PDR participation [and] will result in shifting of costs from higher-usage customers to lower-usage customers.”<sup>4</sup> Other commenters, such as Duke and AEP-Ohio, also recognized the potential cost-shifting problems associated with SFV.

Despite these well-supported comments in opposition to SFV, the Commission determined in the Order that, “given the comments filed in this proceeding, as well as recent experience by the natural gas utilities, the rate structure that may best accomplish these policy goals is the SFV rate design.”<sup>5</sup> The Order does not respond to the many concerns of commenters regarding SFV, nor does it provide sufficient explanation for its conclusion. As explained above

---

<sup>3</sup> Finding and Order at 7.

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

<sup>5</sup> *Id.* at 19.

and in the comments of stakeholders, SFV is inconsistent with Ohio's policy goals of energy efficiency and distributed generation.

### **III. Conclusion**

For the reasons set forth above, ELPC respectfully requests that the Commission grant rehearing and reconsider its endorsement of the SFV rate design.

Respectfully submitted,

/s/ Nicholas McDaniel

Nicholas McDaniel

Environmental Law & Policy Center

1207 Grandview Avenue, Suite 201

Columbus, OH 43212

P: 614-488-3301

F: 614-487-7510

[NMcDaniel@elpc.org](mailto:NMcDaniel@elpc.org)

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Application for Rehearing*, submitted on behalf of the Environmental Law & Policy Center, was served by electronic mail upon the following Parties of Record, this 20<sup>th</sup> day of September, 2013.

/s/ Nicholas McDaniel

---

Nicholas McDaniel

David Meyer  
Keating Muething Klekamp  
One East 4th Street Suite 1400  
Cincinnati OH 45202  
Phone: 513-579-6532  
Fax: 513-579-6457  
[dmeyer@kmklaw.com](mailto:dmeyer@kmklaw.com)

Kenneth Kreider  
Keating, Muething, & Klekamp PLL  
One East Fourth Street, Suite 1400  
Cincinnati, OH 45202  
Phone: 513-579-6579  
Fax: 513-579-6457  
[kpkreider@kmklaw.com](mailto:kpkreider@kmklaw.com)

Michael Lavanga  
Brickfield, Burchette, Ritts, & Stone P.C.  
1024 Thomas Jefferson Street, NW  
8<sup>th</sup> Floor West Tower  
Washington, D.C. 20007  
[mkl@bbrslaw.com](mailto:mkl@bbrslaw.com)

Yazen Alami  
American Electric Power Company  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
Phone: 614-716-2920  
Fax: 614-716-2950  
[yalami@aep.com](mailto:yalami@aep.com)

Carys Cochern  
Duke Energy  
155 East Broad St 21st Floor  
Columbus OH 43215  
Phone: 614-222-1330  
Fax: 614-222-1337  
[carys.cochern@duke-energy.com](mailto:carys.cochern@duke-energy.com)

Nolan M Moser  
The Ohio Environmental Council  
1207 Grandview Ave. Suite 201  
Columbus OH 43212  
Phone: (614) 487-7526  
Fax: (614) 487-7510  
[NMoser@theoec.org](mailto:NMoser@theoec.org)

Teresa Orahood  
Bricker & Eckler LLP  
100 South Third Street  
Columbus OH 43215-4291  
Phone: (614) 227-4821  
Fax: (614) 227-2390  
[torahood@bricker.com](mailto:torahood@bricker.com)

Terry Etter  
Ohio Consumers' Counsel  
10 W. Broad Street, Suite 1800  
Columbus, OH 43215  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)

Tyler A. Tuescher  
The Dayton Power and Light Company  
1065 Woodman Dr.  
Dayton OH 45432  
Phone: 937-259-7184  
[Tyler.teuscher@dplinc.com](mailto:Tyler.teuscher@dplinc.com)

Mark Yurick  
Taft Stettinius & Hollister LLP  
65 E. State Street, Suite 1000  
Columbus, OH 43215  
Phone: 614-221-4000  
Fax: 614-221-4012  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)

Joseph Meissner  
Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, OH 44113  
Phone: 216-687-1900, Ext. 5672  
Fax: 216-687-0779  
[meissnerjoseph@yahoo.com](mailto:meissnerjoseph@yahoo.com)  
[JPMeissn@laslev.org](mailto:JPMeissn@laslev.org)

Trent A Dougherty  
Ohio Environmental Council  
1207 Grandview Ave. Suite 201  
Columbus OH 43212  
Phone: 614-487-7506  
Fax: 614-487-7510  
[trent@theoec.org](mailto:trent@theoec.org)

Elizabeth Watts  
Associate General Counsel  
Duke Energy Ohio, Inc.  
139 E Fourth Street, 1303-Main  
P.O. Box 961  
Cincinnati, OH 45201  
[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)

James Burk  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
Phone: 330-384-5861  
Fax: 330-384-3875  
[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)

Colleen Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45839-1793  
[Cmooney2@columbus.rr.com](mailto:Cmooney2@columbus.rr.com)

Matthew Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)

Theodore Robinson  
Citizen Power  
2121 Murray Avenue  
Pittsburgh OH 15217  
Phone: 412-421-7029  
Fax: 412-421-6162  
[robinson@citizenpower.com](mailto:robinson@citizenpower.com)

Michael L. Kurtz  
David Boehm  
Boehm Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[dboehm@BKLLawfirm.com](mailto:dboehm@BKLLawfirm.com)

Judi L. Sobecki  
The Dayton Power and Light Company  
1065 Woodman Dr.  
Dayton OH 45432  
Phone: 937-259-7184  
[Judi.sobecki@dplinc.com](mailto:Judi.sobecki@dplinc.com)

J. Thomas Tsiwo  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tsiwo@bricker.com](mailto:tsiwo@bricker.com)

Matthew J. Satterwhite  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215-2373  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

Henry Eckhart  
1200 Chambers Road, Suite 106  
Columbus, OH 43212  
Phone: 614-461-0984  
Fax: 614-221-7401  
[henrveckhart@aol.com](mailto:henrveckhart@aol.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/20/2013 4:55:45 PM**

**in**

**Case No(s). 10-3126-EL-UNC**

Summary: Application for Rehearing by the Environmental Law & Policy Center electronically filed by Mr. Nicholas A. McDaniel on behalf of Environmental Law and Policy Center