

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Establish a)	Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to)	
Section 4928.143, Revised Code, in the)	
Form of an Electric Security Plan,)	
Accounting Modifications and Tariffs for)	
Generation Service.)	

In the Matter of the Application of Duke)	
Energy Ohio for Authority to Amend its)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O.)	
No. 20.)	

**JOINT MOTION TO REJECT DUKE ENERGY OHIO'S MAY 29, 2014
APPLICATION
AND
REQUEST TO VACATE PROCEDURAL SCHEDULE
BY
THE KROGER COMPANY,
OHIO MANUFACTURERS' ASSOCIATION,
OHIO PARTNERS FOR AFFORDABLE ENERGY,
AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The proceeding involves Duke Energy Ohio’s (“Duke” or “Utility”) request for the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to approve its proposed Electric Security Plan (“ESP”). That ESP will affect the rates that its customers pay for electric service beginning June 1, 2015. Kroger Company, Ohio Manufacturers’ Association (“OMA”), Ohio Partners for Affordable Energy (“OPAE”), and the Ohio Consumers’ Counsel (“OCC”), (collectively “Joint Movants”) file this Joint Motion¹ to urge the PUCO to reject Duke’s May 29, 2014 Application because it fails to provide

¹Pursuant to Ohio Adm. Code 4901-1-13 and 4901-1-12.

essential information required by the PUCO's regulations that set forth standard filing requirements in ESP cases.² Specifically, Ohio Admin. Code 4901:1-35-03(C)(3) requires the utility to provide "[p]rojected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any." Ohio Admin. Code 4901:1-35-03(C)(9)(g) requires detailed information related to "alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP." The rule further requires specified details of the costs and benefits of an infrastructure modernization plan. Moreover, Ohio Admin. Code 4901:1-35-04(B) requires the application to include a proposed notice for newspaper publication "that fully discloses the substance of the application, including projected rate impacts . . .[.]"

Duke's Application is insufficient and should be rejected because Duke failed to comply with the PUCO's filing requirements. Duke's failure to comply with the standard filing requirements prevents the PUCO Staff and intervenors—including Joint Movants—from fully evaluating Duke's proposals. Most importantly, by failing to identify projected rate impacts in the required public notice, Duke fails to give customers sufficient notice of how their rates will likely be impacted (as required by the PUCO's rules) so that customers are able to make an informed decision as to whether to object. Accordingly, the May 29, 2014 Application should be rejected and the procedural schedule³ established in this proceeding vacated.

²Ohio Admin. Code 4901:1-35-03 and Ohio Admin. Code 4901:1-35-04.

³ Entry of June 6, 2014.

The reasons supporting the Joint Motion are set forth in the attached
Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On May 29, 2014, Duke Energy Ohio (“Duke” or “Utility”) filed an Application seeking approval of a new electric security plan (“ESP”) that begins June 1, 2015. The Utility’s Application was supported by the testimony of ten witnesses, totaling close to 1,200 pages, including schedules and workpapers.

But despite the mass of paper filed and Duke’s request for an extremely expedited schedule, Duke failed to provide information that is required in an ESP filing under the PUCO’s filing requirements.

As explained further below, Duke’s Application should be rejected because Duke failed to comply with the standard filing requirements for an ESP. Thereafter, the PUCO should require Duke to file an ESP Application that complies with the PUCO’s rules. Such PUCO-action would toll the 275-day period until a new application is found to be in

compliance with the PUCO's standard filing requirements. Accordingly, the procedural schedule (which includes a hearing date on the Application—September 8, 2014) should be vacated and a new procedural schedule should be ordered (providing a longer review period, consistent with the Joint Movants' request for a continuance⁴) when Duke files an ESP application that complies with the PUCO's rules.

II. ARGUMENT

A. **The May 29, 2014 Application Should Be Rejected Because It Does Not Comply With The PUCO's Standard Filing Requirements (Ohio Admin. Code 4901:1-35-03(C)(3) And 4901:1-35-04(B)) Which Require Electric Security Plans To Identify The Projected Impacts To Customers' Bills And Include The Proposed Impacts In The Notice To Customers.**

Following the implementation of S.B. 221, the PUCO completely rewrote Chapter 4901:1-35, Ohio Admin. Code, and its incorporated appendices.⁵ These provisions of the Ohio Administrative Code include procedural requirements for filing applications for a Market Rate Offer ("MRO") and ESP as well as filing requirements for such applications in accordance with S.B. 221. In formulating the detailed filing requirements, the PUCO acknowledged the need for utilities to provide it and the public **with all available information**: "[a]n ESP is quite complex, with many aspects to be decided, and these decisions should be made in the context of all available information. The Commission, throughout its history, has been charged with consideration and balancing of the competing interests of various stakeholders, a process which requires knowledge and

⁴ June 18, 2014.

⁵ See *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD.

understanding of the possible effects of decisions on various parties.”⁶ It rejected, inter alia, arguments that would have limited the filing of certain information (including the pro forma effects of the ESP on the utility over its term) after concluding that without such information “the Commission, and the public, [would be] flying blind in this regard, and [it] could jeopardize the sense of fairness and legitimacy of the process.”⁷

In keeping with the PUCO’s recognized need to have all available information on the effects of the ESP on various parties, the PUCO established standard filing requirements for ESPs that require parties to be apprised of the impact of an ESP filing on a utility’s customers. Ohio Admin. Code 4901:1-35-03(C)(3) requires that electric utilities filing ESPs state, with respect to an ESP, the following:

(3) Projected rate impacts by customer class/rate schedule for the duration of the ESP, including post-ESP impacts for deferrals, if, any.

The PUCO has previously denied waivers of the filing requirement specified in Ohio Admin. Code 4901:1-35-03(C)(3).⁸ Filing requirements may only be waived “for good cause shown.”

⁶ Id., Opinion and Order at 10-11 (Sept. 17, 2008).

⁷ Id.

⁸ *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, 2012 Ohio PUC LEXIS 398 *11-13, Entry of April 25, 2012 at 6; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan; In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case No. 11-346-EL-SSO et al., 2012 Ohio PUC LEXIS 403 *4-5, Entry of April 25, 2012.

However, Duke did not file a specific request for a waiver of this filing requirement (or any filing requirement) and has not shown good cause for such a waiver. Rather, in its Application, in one sentence, Duke summarily states that it “respectfully seeks any waiver of any provision of Ohio Admin. Code 4901:35-03 necessary to support the findings requested herein.”⁹ While this request is so broad as to be meaningless, it suffers from another inescapable flaw: Duke fails to plead good cause for waiving any of the provisions of Ohio Admin. Code 4901:35-03.

Duke alleges that it complied with Ohio Admin. Code 4901:1-35-03, when it directs parties to the Direct Testimony of James E. Ziolkowski.¹⁰ However, a review of Mr. Ziolkowski’s testimony reveals that Duke did not provide projected rate impacts by customer class for the duration of the ESP. Instead, Mr. Ziolkowski simply prepared “illustrative” numbers of initial rates that do not reflect actual projected rates or rate impacts for the duration of the ESP.

This was confirmed in Duke’s response to OCC-POD-02-19, when OCC sought to discover that information:

REQUEST: Please provide a typical bill comparison for all schedules of rates for the entire ESP term, in the form shown on Witness Ziolkowski Schedule JEZ-3.

RESPONSE: OCC-POD-02-19 Attachment.xlsx is a modified version of Attachment JEZ-3 that includes the initial estimated Rider DCI, Distribution Capital Investment Rider, rates that were filed in these proceedings.

The Company cannot provide typical bill comparisons for the entire ESP term because SSO supply auctions have not been held

⁹ Application at 20.

¹⁰ Application, Attachment A, page 5 of 24.

for any part of the ESP term beginning June 2015. The numbers provided in Attachment JEZ-1 and OCC-POD-02-019 are merely illustrative.¹¹

Although it is true that the SSO auctions referenced above have not yet taken place, that fact should not be an excuse for Duke's failure to provide projections of rate impacts for customers over the ESP term. To Joint Movants' knowledge, other electric distribution utilities have uniformly provided such projections in their ESP filings, regardless of the fact that at the time of the ESP filing, the SSO auctions have not yet been held.

Duke's failure to provide customer bill impacts for the ESP term carries over into the proposed public notice. Instead of advising customers of the essential nature of its proposal and its likely impacts, all Duke can muster is: "[i]t is anticipated that overall rates for all customer classes under the proposed ESP will remain approximately the same as they are currently."¹² At the same time, however, Duke acknowledges that it "proposes to recover other costs through riders during the ESP period," but that such costs and the rate impacts are unknown.¹³ Therefore, not only is this notice insufficient under the law as it fails to advise customers of how Duke's proposed ESP will affect them, it is unsupported by the record and Duke's own statements. Customers cannot make an informed decision as to whether to object to an application that is insufficient

¹¹ See Exhibit 1 to this Motion attached.

¹² Application Attachment I. If Duke's response to OCC POD02-19 is accepted, the illustrative results do not support the statement in the proposed public notice that overall rates for all customer classes will remain the same as they are currently.

¹³ OCC notes that this is a curious statement since Duke has, in fact, proposed some \$272 million in additional revenues over the ESP associated with its Distribution Capital Investment Rider. OCC-INT-02-010.(Attached as Exhibit2).

and seemingly contains contradictory statements. *See e.g. Committee Against MRT v. Pub. Util. Comm.*, 52 Ohio St. 2d 231, 371 N.E.2d 547 (1977); *Ohio Assn. of Realtors v. Pub. Util. Comm.*, 60 Ohio St. 2d 172, 398 N.E.2d 784 (1979).

Duke would have the PUCO and the public flying blind with respect to the potential impact of the ESP on customer rates. That would not be fair, nor would it contribute to the transparency of the ESP process. Additionally, understanding the possible effects of the utility's proposal on customer rates is essential for the PUCO to fulfill the duty it has recognized to balance the competing interests of various stakeholders, including customers who are to pay the rates proposed. Consequently, the PUCO should reject Duke's filing and require Duke to file a complete application as set forth in the PUCO's rules. The 275-day time period for the PUCO to decide whether to approve Duke's next proposed ESP would commence upon the date of a new completed application. That application must include projected rate impacts, by customer class, for the entire ESP term. Additionally, Duke should be required to file a revised legal notice to specify such projected rate impacts.

The tolling of the ESP Application period until Duke files an application that complies with the SFRs is consistent with the PUCO's decision in Duke's 2010 MRO case. In that case, the PUCO found that Duke's filing of a 3-year, rather than a 5-year blending plan mandated by the PUCO's standard filing requirements, was found to be

fatal to the application.¹⁴ The PUCO should apply the same rule of law to Duke's fatally flawed application in this proceeding.

B. The May 29, 2014 Application Should Be Rejected Because It Fails To Identify Essential Details Associated With Its Distribution Capital Improvement Plan That Customers Pay For As Required By Ohio Admin. Code 4901:1-35-03(C)(9)(G).

Duke proposed a Distribution Capital Improvement Rider ("Rider DCI") at an anticipated cost to customers over the ESP period of \$272 million. Despite this huge price tag, however, Duke failed to provide specific information about Rider DCI which is required under Ohio Admin. Code 4901:1-35-03(C)(9)(g). That subsection provides detailed filing requirements for a utility seeking to collect distribution costs related to infrastructure and modernization incentives. The rules consist of five subparts detailing the information to be submitted.

Duke alleges that it has complied with these detailed filing requirements, and refers to the testimony of various witnesses including James P. Henning, William Don Wathen Jr., James E. Ziolkowski, Peggy A. Laub, and Marc W. Arnold. A review of the

¹⁴ *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order (February 23, 2011). Similar to this case are several cases where the PUCO found that utility rate applications would not be accepted for filing and the time for consideration of such applications commence until the utility had amended its application or had corrected deficiencies in the application. *See, e.g., In the Matter of the Application of Consumers Ohio Water Company to Increase the Rates to be Charged for Water Service in the Lake Erie East District*, Case No. 95-1076-WW-AIR, Opinion and Order at 3-4 (December 19, 1996).; *In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Increase its Rates for Electric Service to all Jurisdictional Customers*; *In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Increase its Rates for Gas Service to all Jurisdictional Customers*, Case No. 83-1528-EL-AIR, Opinion and Order at 5 (November 20, 1984); *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in its Rates for Electric Service to Jurisdictional Customer*, Case No. 82-485-EL-AIR, Opinion and Order at 4 (March 30, 1983).

testimony of these Duke witnesses, however, reveals that their testimony does not provide the required information, except to the extent that such information may be reflected in Mr. Arnold's MWA-7, which is being treated as confidential and has not yet been provided to a number of the Joint Movants. In particular, the information provided by Duke does not address the following items, which are required by the standard filing requirements:

- (1) How the proposal "addresses any cost savings to the electric utility." Ohio Admin. Code 4901:1-35-03(C)(9)(g).
- (2) How the proposal "avoids duplicative cost recovery." Ohio Admin. Code 4901:1-35-03(C)(9)(g).
- (3) How the proposal "aligns electric utility and consumer interests." Ohio Admin. Code 4901:1-35-03(C)(9)(g).
- (4) Implementation schedule by geographic location and/or type of activity. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(i).
- (5) Description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation or other applications that may be supported by this communication infrastructure. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(i).
- (6) Impacts on current reliability. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (7) Number of circuits impacted. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).

- (8) Number of customers impacted. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (9) Timing of impacts. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (10) Whether the impact is on the frequency or duration of outages. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (11) Whether the infrastructure modernization plan addresses primary outage causes. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (12) Resulting dollar savings. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (13) Activities affected and related accounts. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (14) Timing of savings. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).
- (15) Breakdown of capital costs and O&M expenses net of any related savings. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(iii).
- (16) Recovery of stranded investment related to replacement of undepreciated plan with new technology, if any. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(iii).
- (17) Impact on customer bills. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(iii).
- (18) Service disruptions associated with plan implementation. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(iii).
- (19) Description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement, and description of efforts made to mitigate such stranded investment. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(iii).

- (20) A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class. Ohio Admin. Code 4901:1-35-03(C)(9)(g)(v).

There are numerous shortcomings to Duke's ESP Application, which fail to satisfy the PUCO-mandated filing requirements related to its proposed distribution infrastructure modernization plan and Rider DCI. Due to these numerous deficiencies, the PUCO should reject Duke's ESP Application. Duke should be ordered to file a new application that complies with the standard filing requirements related to its Rider DCI. The PUCO should toll the 275 day period until that application is filed and found to be in compliance with the PUCO's standard filing requirements.

III. CONCLUSION

The PUCO should reject Duke's May 29, 2014 ESP Application and require it to file an ESP Application that satisfies all of the PUCO's filing requirements. Additionally, the PUCO should reject the proposed legal notice as insufficient under the law. The notice, as currently written, fails to apprise customers of the nature of Duke's proposed ESP and how it will affect them. Because the notice is inadequate customers cannot make an informed decision as to whether to object.

The PUCO should toll the 275 day period for issuing its decision on Duke's next ESP until Duke files a new application that is in compliance with the PUCO's standard filing requirements. Accordingly, the procedural schedule requiring an evidentiary hearing commencing on September 8, 2014 should be vacated.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Motion* has been served electronically upon those persons listed below this 9th day of July 2014.

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Summary: Motion Joint Motion to Reject Duke Energy Ohio's May 29, 2014 Application and Request to Vacate Procedural Schedule by The Kroger Company, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy, and the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.