

**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 REPLY TO
DUKE ENERGY OHIO INC.'S MEMORANDUM CONTRA
BY
THE KROGER COMPANY,
OHIO MANUFACTURERS' ASSOCIATION,
OHIO PARTNERS FOR AFFORDABLE ENERGY,
AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

In this proceeding, Duke Energy Ohio Inc. ("Duke" or "Utility") seeks approval of its proposed Electric Security Plan ("ESP") that will affect the electric rates that its customers will pay beginning June 1, 2015. But Duke's proposal should be rejected. The ESP Application at issue lacks critical information needed to evaluate Duke's

proposals for charges collected from customers. Such information is required in an ESP per the PUCO's own rules.¹

Kroger Company, Ohio Manufacturers' Association ("OMA"), Ohio Partners for Affordable Energy ("OPAE"), and the Ohio Consumers' Counsel ("OCC"), (collectively, "Joint Movants") filed a Joint Motion² to urge the PUCO to reject Duke's May 29, 2014 Application because of these shortcomings. In that Motion, the Joint Movants also asked the PUCO to vacate the procedural schedule and to toll the 275-day time period for deciding this case.

Rather than acknowledging the plain shortcomings of its filing and seeking to remedy them, Duke tries to defend its inadequate ESP III application. But, as explained further below, Duke's arguments lack merit and should be rejected. Duke's ESP Application should be rejected because it does not comply with the standard filing requirements for an ESP.

The current procedural schedule should be vacated. Any PUCO action should toll the 275-day period for considering an ESP until a new application is filed that complies with the PUCO's standard filing requirements.

¹ Ohio Admin. Code 4901:1-35-03(C).

² Pursuant to Ohio Adm. Code 4901-1-13 and 4901-1-12.

II. ARGUMENT

A. **“Illustrative Bill Impacts” Without Reasonable Projections Are Meaningless and Do Not Meet the Notice Requirements Included in the PUCO’s Rules.**

The PUCO promulgated filing requirements to ensure that the information necessary to evaluate an ESP filing would be available to interested parties and customers and that customers would be given notice of how much their bills could increase if the utility’s proposal is adopted. That information is to include “projected rate impacts by customer class/rate schedules for the duration of the ESP.”³ How the rates will impact customers is a crucial question that must be considered by the PUCO and interested stakeholders — customers. And customers need to be informed about the potential impact on the rates that they pay for electric service in order to determine whether to exercise their right to object.

Nonetheless, Duke argues in its Memorandum Contra that what is required by this provision in the PUCO rules is simply an “illustration” of rate impacts, not an estimation based upon the best available information.⁴ Further, Duke claims that “[I]llustrative information, such as was provided in the Application, is all that is available.”⁵ But Duke is wrong. Duke has failed to calculate projected rate impacts, and it should be ordered to do so as part of filing its ESP. It should not be able to shield itself by claiming that it has not done such an analysis when the rules clearly require it.

³ Ohio Admin. Code 4901:1-35-03(C)(3).

⁴ Duke Memo Contra at 3-5.

⁵ Duke Memo Contra at 4.

A significant component of ratemaking for utility services requires the use of reasonable projections. Projections are used for rate cases,⁶ they were used in developing stranded cost estimates under Senate Bill 3,⁷ and they are needed to estimate the rates that customers will pay as a result of ESP or Market Rate Offer (“MRO”) filings under Senate Bill 221. This requirement is not about illustration. It is about the provision of reasonable estimates of proposed charges on customers’ bills. Nor will illustrations give sufficient notice to customers that will enable them to determine whether to object to the Utility’s proposals. The PUCO has endorsed the use of forecasted or projected data for rate proceedings, stating:

As the Commission has suggested, forecasted results of operations provide an appropriate basis for establishing rates in that the projections, if properly performed, may provide a more representative portrayal of the company’s ongoing experience than would actual figures for the balance of the test period which might contain short-term aberrations.⁸

⁶ Under R.C. 4909.15(C)(1), utilities are permitted to use test periods for rate proceedings that include information for up to 9 months after the filing date. Natural gas companies may propose adjustments to revenues and expenses for any changes “that are, during the test period or the twelve-month period immediately following the test period, **reasonably expected to occur.**” R.C. 4909.15(D) (emphasis added).

⁷ In determining transition costs under R.C. 4928.38, utilities typically used projections of energy market prices and generating plant operating costs and output years into the future. In Duke’s transition plan proceeding, Duke’s predecessor, Cincinnati Gas & Electric, sponsored the testimony of Howard Pifer who estimated CG&E’s transition costs based on projections of market prices, fuel costs, climate change policy, and other factors through 2031. *In the matter of the Cincinnati Gas & Electric Company for approval of its Electric Transition Plan and for authorization to collect transition revenues*, Case No. 99-1658-EL-ETP, Direct Testimony of Howard Pifer, pp. 19-38 & Exh. HWP-5 (Filed December 28, 1999)

⁸ *In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of its Filed Schedules Fixing Rates and Charges for Electric Service, et al.*, Case Nos. 78-1567-EL-AIR; 78-1568-EL-AIR; 79-635-EL-AIR; 76-1067-EL-CRC; 79-568-EL-ATA, 1980 Ohio PUC LEXIS 4, at 63-64, Opinion and Order of January 30, 1980, citing *Columbus and Southern Ohio Electric Company*, Case No. 77-545-EL-AIR, March 31, 1978.

In an effort to justify its failure to follow the rules, Duke points to Ohio Power Company's ("AEP Ohio") recent ESP filing and the testimony of David Roush in that proceeding. Duke contends that Mr. Roush's "illustrations" of the rate impact was no better than it has offered in this case. In doing so, Duke improperly cites to evidence not of record in this case to support its position that "illustration" is sufficient. While AEP Ohio's application and supporting testimony in its case is not probative of whether Duke, in its own right, has complied with the filing requirement for "projected rate impacts," Duke fails to acknowledge that AEP Ohio provided significantly more data in its filing, and in multiple formats, regarding projected bill impacts for each year of the proposed ESP and for both shopping and non-shopping customers.

Nonetheless, in this case, it is Duke's ESP Application that is the subject of the instant Motion, not AEP Ohio's ESP 3 filing, and Duke's Application does not meet the PUCO's standard filing requirements.

Duke's suggestion that there is no difference between the intent of the PUCO's filing requirement for "projected rate impacts" and an "illustration" or example of potential impacts lacks merit. These are two different concepts. Merriam Webster's Online Dictionary defines the verb to "project" as "to plan, figure, or estimate for the future." To "illustrate," on the other hand, is defined as "to give examples in order to make (something) easier to understand."

And Duke's position that "where data as to future prices do not exist, the impact of the plan on customers' bills cannot be identified or measured with any degree of

certainty”⁹ is dismissive of the PUCO’s rules and the use of preparing projected rate impacts for purposes of rate-setting. If the PUCO were to agree with Duke’s argument, then the projected rate impacts used in numerous PUCO decisions would not exist, butut they do. Duke’s position is also inconsistent. On the one hand, Duke argues that the PUCO “appreciated this impossibility” [of predicting rate impacts] and, on the other hand Duke recognizes the very definition of projections as a matter of estimation – “one’s best estimate today of something that will actually materialize in the future.”¹⁰ Either it is possible to make estimates or it is not, but illustrations are certainly not estimates.

Duke also argues that market prices “are no more predictable by the local utility than they are by anyone else.”¹¹ Regardless of whether this is true or not, projections of market prices, as well as projections of revenues, expenses, and capital outlays, have long been used in utility regulation, to develop projected rates which are then used to set rates. Duke’s suggestion that it need not project rates because they are not predictable is contrary to the very manner in which Duke’s rates, based on future test years, have been established for years.

B. Duke’s Inadequate Notice To Customers Is Not Cured By PUCO Review.

Continuing with its argument that it is impossible to project rate impacts, Duke argues that the failure of its published notice to include projected rate impacts, even though specified by the PUCO’s regulations, is a matter of PUCO review and approval.

⁹ Duke Memo Contra at 4.

¹⁰ Duke Memo Contra at 5.

¹¹ Duke Memo Contra at 5.

This argument does not cure the fact that the notice does not comply with the PUCO's requirements for ESP applications.¹²

The draft notice is prepared in the first instance by Duke, and while the PUCO may make some wording changes in the notice, the structure and the substance of notices are prepared by utilities as required by the PUCO's rules.¹³ If the notice and Application do not include essential information required by the PUCO's regulations, then no effort by the PUCO can cure that deficiency. And Duke's defense of blaming the PUCO Staff for failing to demand that it produce a notice that includes projected rate impacts as required by the PUCO's regulations-- should be rejected.

Duke also points to the waiver granted to FirstEnergy to include a proposed notice in its 2010 ESP application as indicative that Duke need not produce a notice that meets the filing requirements.¹⁴ Duke points to the PUCO's statement that the Commission "has developed a consistent format for the published notice" and "anticipates that the notice in this proceeding will be consistent with the notice used in the prior SSO proceedings."¹⁵

¹² Ohio Admin. Code 4901:1-35-04(B)

¹³ *Id.*

¹⁴ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Entry at ¶11 (Apr. 6, 2010).

¹⁵ *Id.*

Again, Duke points to the record in another case in an effort to draw attention away from its responsibility in this case. The FirstEnergy case does not relieve Duke of its duty to comply with the PUCO's rules, regardless as to whether the circumstances surrounding the FirstEnergy case are even the same. Moreover, unlike Duke in this case, FirstEnergy actually requested a waiver of this filing requirement and was granted such in that instance after other parties had an opportunity to respond to the waiver request. It is also important to note that FirstEnergy did not request a waiver of the requirement to provide "projected rate impacts." That information was available to the PUCO at the time it prepared the notice for publication.

In contrast, in this case, Duke's overly broad waiver request amounts to no waiver at all.¹⁶ It is inappropriate for Duke to blame PUCO Staff for failing to produce a proper notice. And it is alarming that Duke would ask the PUCO to approve its ESP application without providing the PUCO with information that would allow it to determine the projected rate impacts of Duke's numerous ESP proposals.

C. Duke's Claim That "The Detail Identified In Commission Filing Requirements Has Been Provided" Regarding Duke's Proposed Distribution Infrastructure Modernization Program And Rider DCI Is Not Accurate.

Despite Duke's claims to the contrary, Duke failed to provide critical information necessary to evaluate the reasonableness of its claims supporting its proposed \$272 million in investments in distribution infrastructure modernization, and its proposed Rate

¹⁶ On page 21 of Duke's Application in this proceeding, it requested a "any waivers of any provisions of O.A.C. 4901:35-03 necessary to support the findings requested herein."

DCI (“Distribution Capital Investment”).¹⁷ Prior to Duke discussing what it provided in the 20 different areas that Joint Movants pointed to as having insufficient information, Duke argues that some of the information that is the subject of dispute is confidential and that Joint Movants have been “unwilling” “to enter into a confidentiality agreement,” thus preventing access to this information.¹⁸

Duke’s claim that Joint Movants have been unwilling to enter into a confidentiality agreement is disingenuous and simply not true as Joint Movants have expressed their concerns with Duke’s proposed confidentiality agreement and/or have attempted to negotiate a reasonable agreement practically since the commencement of this proceeding. It is Duke which has been unwilling to move off of its unreasonable demands and positions and execute the same agreements utilized by Duke and intervenors time and again in proceedings before the PUCO. These arguments have recently been addressed in numerous pleadings presently before the PUCO, including OCC’s most recent Memorandum Contra Duke’s Motion for Protective Order, filed on July 14, 2014.

With respect to Duke’s discussion of the 20 areas that Joint Movants have identified as insufficient, a review of Duke’s response corroborates the deficiencies that the Joint Movants have identified. With respect to how Duke’s proposal “addresses any cost savings to the utility, Duke’s response points to a vague discussion of a “holistic approach” “to better manage costs by addressing known system challenges” and that

¹⁷ Duke Memo Contra at 5-6.

¹⁸ Duke Memo Contra at 6-13.

“O&M savings will be achieved through improved reliability.”¹⁹ Duke points to additional detail in a confidential attachment.

Duke’s claim that Mr. Arnold’s testimony on these vague points is responsive to the filing requirement lacks any merit. The PUCO’s filing requirements require “a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings . . .” Duke has not provided any such analysis in its Application as required.

For example, in OCC Interrogatory OCC-INT-04-085, attached as Exhibit 1, OCC requested Duke to identify any cost savings expected to be achieved from Rider DCI, requesting, among other things, when the savings would be achieved, how the savings would be achieved, and which of the 19 programs would produce cost savings. With respect to the question—“[h]ow the cost savings will be achieved”—Duke responded that the “analysis has not been performed.” That same answer was given by Duke in response to a request to identify which of the 19 programs will produce cost savings. Specifically, Duke states that “[t]here was no analysis done to quantify the amount and timing of the savings.”²⁰ These responses to discovery are indicative of the underlying problem: Duke does not have information (required by the PUCO’s rules) to support the DCI.

Furthermore, with respect to Duke’s 19 distribution infrastructure modernization programs, OCC requested (through OCC-INT-04-088) that Duke provide the specific

¹⁹ Duke Memo Contra at 6.

²⁰ Exhibit 1.

information set forth in Ohio Admin. Code 4901:1-35-03(C)(9)(g)(i) and (g)(2) (Exhibit 2), including number of circuits impacted, number of customers impacted, timing of the impact, etc. Duke responded that these could not be provided currently because Duke has not completed a final planning schedule. This begs the question why Duke proposed Rate DCI in this case rather than waiting until it had a final planning schedule, which it states will depend upon “other projects including, but not limited to road projects, municipal projects, and customer projects.”²¹

Despite the fact that the PUCO rules require a description of the benefits of the infrastructure modernization plan “in total and by activity or type,”²² Duke’s response (included in its Memo Contra) is simply to give the same general description – that these programs affect all of Duke’s customers and all of Duke’s territory.²³ But the point of the filing requirement is to provide the detail that allows parties to assess the reasonableness of the modernization program. Duke apparently does not want the PUCO or parties to have the information necessary to assess whether Duke’s infrastructure modernization plan is reasonable. Duke’s argument (suggesting it has met these filing requirements) falls flat on its face when its Application is void of any detailed information by “activity or type” of any alleged benefit of its proposed infrastructure modernization plan.

Furthermore, Duke’s claim that “[i]f more information is desired by the Movants, they are able to request it through discovery”²⁴ is dispelled by a review of its responses to

²¹ Exhibit 2.

²² Ohio Admin. Code 4901:1-35-03(C)(9)(g)(ii).

²³ Duke Memo Contra at 9-10.

²⁴ Duke Memo Contra at 10.

discovery. Moreover, Joint Movants shouldn't have to submit discovery requests to obtain information required under PUCO rules as part of the Utility's filing requirements.

In its response to the filing requirement mandating an "implementation schedule by geographic location and/or activity," Duke states (in its Memo Contra) that it "does not have a confirmed or approved implementation schedule," arguing that it plans to work with PUCO Staff toward this purpose.²⁵ Again, Duke points to a confidential data response, claiming that "[C]oupled with the annual capital budget," this provides a "potential implementation schedule." But Joint Movants, and likely other parties to this case, have not been able to view the "implementation schedule," as it has been filed under seal, and is subject to a pending motion for protection. As discussed earlier, Duke has been unwilling to enter into a reasonable protective agreement that Joint Movants can sign. Joint Movants are not alone in this respect either. To Joint Movants' knowledge, no party has been able to negotiate a reasonable protective agreement with Duke.

With respect to "communication infrastructure," Duke interprets this reference as applying only to "grid modernization efforts."²⁶ But there is no limitation in the filing requirement to grid modernization improvements. This is another reason why Duke's Application should be rejected.

Particularly troubling are Duke's responses to that portion of the filing requirements that request dollar savings of the infrastructure modernization plans. The fact that "[t]he exact level of savings is not known at this time" is not a sufficient basis for providing no response beyond stating that savings in O&M and rate case costs are

²⁵ Duke Memo Contra at 8.

²⁶ Duke Memo Contra at 9.

expected and identifying the mechanism for pass-through of cost savings.²⁷ The PUCO, in considering the merits of an infrastructure modernization plan, must be able to evaluate whether and the extent to which it is likely to have a net benefit to customers. Without detailed analysis of savings, it is not possible to perform such an assessment.

And while Duke has provided estimates of its anticipated spending for distribution infrastructure modernization, it did not provide a customer bill impact analysis. The PUCO's filing requirements mandate that Duke perform such analysis. Furthermore, Mr. Arnold's generalized statements regarding the benefits of infrastructure modernization plans simply do not address the detail that the PUCO requires.

The PUCO should reject Duke's claims that it has substantially complied with the PUCO filing requirements regarding distribution infrastructure modernization plans under Ohio Admin. Code 4901:1-35-30(C)(9)(g). A review of the filing requirements – and discovery responses – indicate that Duke has substantially failed to comply, providing only vague discussion and few details necessary to address the filing requirements.

D. Because Duke's May 29, 2014 Application Fails to Comply with the PUCO's Standard Filing Requirements, It Should Be Rejected, The Procedural Schedule Vacated, And the Statutory Time Period for Review of Electric Security Plans Should Be Tolled Until Duke Files A New Application That Complies With the PUCO's Requirements..

Duke takes issue with Joint Movants' proposed remedy that the PUCO 1) require Duke to file a new application, 2) vacate the current procedural schedule, and 3) toll the

²⁷ Duke Memo Contra, *citing* to Arnold Testimony at 16 and Confidential Attachment MWA-7 and Wathen Testimony at 7-8.

275-day time period for review until Duke files a new application that complies with the PUCO's requirements.²⁸ Duke focuses on the case cited by Joint Movants where the PUCO denied Duke's first MRO Application. Duke argues that the rationale for rejecting Duke's MRO filing "is entirely irrelevant to the instant situation."²⁹

While the circumstances under which Duke's MRO application was rejected may not be exactly the same, the fact that Duke's prior MRO Application and the current ESP Application are both inadequate under the law is exactly the same and should be a basis for rejection. The absence of critical information that is required to be included in an application, and the absence of proper notice to customers are appropriate bases for rejection. Additionally, Duke's claim that Ohio Admin. Code 4901-7-01 does not give the PUCO specific authority to reject insufficient ESP applications should be rejected. Clearly, the PUCO can reject an MRO or ESP Application, as it did with Duke's MRO Application and should now do to its ESP Application.

It would be meaningless to have filing requirements if the PUCO had no authority to enforce them by requiring them to be met before considering an application. Here, the information is insufficient. It cannot provide proper notice to customers, which is essential for them to be able to exercise their rights to object to the ESP.

²⁸ Duke Memo Contra at 13-14.

²⁹ Duke Memo Contra at 14.

III. CONCLUSION

The Joint Motion should be granted. Duke's Application should be rejected and the PUCO should vacate the hearing schedule, tolling the 275-day consideration period for an ESP until Duke files an ESP Application that complies with the PUCO's rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Reply* has been served electronically upon those persons listed below this 17th day of July 2014.

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7/17/2014 4:40:53 PM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

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