

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	Case No. 14-0841-EL-SSO
Energy Ohio for Authority to Establish a)	
Standard Service Offer Pursuant to §4928.143,)	
Ohio Rev. 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 for Authority to Amend its Certified)	
Supplier Tariff, P.U.C.O No. 20.)	Case No. 14-0842-EL-ATA
)	

INITIAL POST HEARING BRIEF OF OHIO ENVIRONMENTAL COUNCIL

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I. INTRODUCTION

In the above-captioned proceeding Duke Energy Ohio, Inc. (“Duke” or “Company”) is seeking approval by the Public Utilities Commission of Ohio (“Commission”) of its Application for Authority to Establish a Standard Service Offer Pursuant to ORC §4928.143, in the Form of an Electric Security Plan (“Application” or “ESP”). The Company suggests that the proposed ESP is consistent with the public policy of the State of Ohio and “balances the interests of customers, the state, and the Company.”¹

Pursuant to the procedural schedule established by the Attorney Examiners in this case, Ohio Environmental Council (“OEC”) respectfully submits the following initial post hearing brief. We focus this initial brief on three main areas: 1.) strenuous opposition to Duke’s proposed generation rider; 2.) recommended environmental and performance metrics for SmartGrid investment reporting; and 3.) recommended Open Data Framework to maximize the benefits of customer choice. While OEC’s brief focuses on only a few discreet issues in the ESP proceeding, we reserve the right and opportunity in our Reply Brief to argue any and all other issues discussed by the parties in this proceeding.

II. APPLICABLE LAW

Pursuant to Ohio Revised Code §4928.141, an electric distribution utility (“EDU”) shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. For the purpose of complying with §4928.141, an EDU may file an application for public utilities

¹ Duke Ex. No. 1 at p. 1.

commission approval of an electric security plan, which the Company has chosen in this proceeding.²

The commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results of a Market Rate Offer under §4928.142.³ Revised Code §4928.143(C)(1) further states that the burden of proof in an ESP proceeding shall be on the electric distribution utility. Therefore, the burden of proof in this proceeding is on Duke, and not on any intervening parties.

III. ARGUMENT

A. The Commission should deny the Company's Price Stability Rider to pay for generation services from two coal-fired power plants.

Duke proposes a non-bypassable rider, emblazoned with the moniker Price Stability Rider ("Rider PSR" or "PSR"), with a stated objective to provide to customers the net benefit of all revenues accruing to the company as a result of its ownership interest and contractual entitlement in the Ohio Valley Electric Corporation (OVEC), less all costs associated with said entitlement.⁴ OVEC, organized in the 1950's, was formed by investor-owned utilities ("Sponsoring Companies") to furnish electric service to the federal government's uranium enrichment facility in Piketon, Ohio, with excess power furnished to the Sponsoring Companies' customers.⁵ The federal government terminated its agreement with OVEC and the Sponsoring

² R.C. 4928.143.

³ R.C. 4928.142.

⁴ Duke Ex. 1 at pg 13.

⁵ Duke Ex No. 6 at p. 10.

Companies in 2003.⁶ After that agreement was terminated, the Sponsoring Companies entered into a subsequent agreement availing OVEC's entire generating capabilities, the Kyger Creek and Clifty Creek Generating Stations specifically, to the Sponsoring Customers.⁷ According to the agreement Duke is entitled to a 9.00% share of the OVEC "power participation benefits and requirements" through June 30, 2040.⁸

The Company's proposed Rider PSR would contain the revenue from Duke's share of the capacity and energy from OVEC sold into the PJM wholesale market, minus all costs associated with said OVEC entitlement.⁹ This 'benefit,' is to be facilitated by the Company proposing to sell energy, capacity, and ancillary services associated with the OVEC contract into the market.¹⁰ Duke intends not only for this entitlement to be charged to customers for the life of the ESP, but "as long as Duke Energy has contractual entitlement to energy and capacity with OVEC."¹¹ The Company also proposes that rider PSR may, in the future, also contain yet to be identified "additional contractual arrangements."¹²

While there has been much testimony from the Company on the "benefits" of the PSR for hedging (or providing an insurance policy) against the volatility of the electricity market, and protecting against another Polar Vortex, while at the same time ensuring competitive neutrality,¹³ the Company has yet to present probative evidence to meet its burden that the PSR is a permitted rider under Ohio Law as part of an ESP.

As explained below, the PSR is a generation based rider in contravention of the letter and spirit of Ohio's law and policy, and that ultimately is anti-consumer, anti-competitive, and anti-

⁶ *Id* at pg. 11.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Transcript Vol. I at pg 82

¹² *Id.*

¹³ Duke Ex. 6 at pg. 13-15.

environment. The Rider PSR requires all customers to pay the cost of Duke's generation, including a guaranteed return. Despite the 'benefits' purported to flow from this proposal, the actual function of the PSR is to insulate Duke from the risk of the market and ensure that it achieves adequate compensation to protect its investment in OVEC. The prudent action would be for the Commission to deny this rider, and order Duke to divest all of its interest in the OVEC generation stations.

- i. Within the confines of an ESP Application, Ohio law does not permit the Company to demand the PSR as proposed

Electric Security Plans are statutorily permitted to contain generation related provisions under limited circumstances; however, as described below, this OVEC entitlement PPA rider fails to meet those limits.

First, under §4928.143(B)(1), an electric security plan shall include provisions relating to the supply and pricing of electric generation service. This proposed rider, however, will not be bid into the auctions to serve the generation load of the Company's customers.¹⁴ Therefore, this proposed rider is not for the supply and pricing of electric service.

Section 4928.143(B)(2)(a) allows provisions in the plan for:

“automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity . . .”¹⁵

While couched in terms of a power purchase agreement again, the “agreement” is not for power to be used for the SSO customers, and thus misses the mark under subsection (B)(2).

¹⁴ Duke Ex. 1 at pg 13.

¹⁵ R.C. § 4928.143(B)(2)(a).

Duke's proposal, if anything, more closely resembles a request for a nonbypassable surcharge under §4928.143(B)(2)(c). This section of the code concerns proposed surcharges for the life of an electric generating facility that is owned or operated by the electric distribution utility, much like the OVEC power plants.¹⁶ However, unlike the electric generating facilities envisioned by this section, the OVEC Rider PSR fails the major prerequisites for this section: that it was sourced through a competitive bid process; newly used and useful on or after January 1, 2009; and a need for the facility.¹⁷ First, the facility was not sourced by a competitive bid, but to the contrary, was sourced through a private deal among a number of utilities. Secondly, the facility is not newly used and useful, but the product of a 60-plus year agreement. Finally, and most significantly, absolutely no testimony or evidence has been offered that there is a need for these facilities to continue in operation.

Much of the Company's defense of the PSR falls on the *need* to benevolently insure on the customers' behalf against market volatility and/or that securing these coal plants through this rider is *needed* to maintain reliability in the face of future weather related grid disturbances. In order to pass this need prong under the Company's offered defense, the Company must then demonstrate and the Commission must find either or both of the following: that volatility in Ohio is such a problem for customers that the competitive marketplace cannot provide an adequate response and the alternative of a non-bypassable rider to support a generation facility must be adopted; and/or that without this non-bypassable rider to support a generation the reliability will be threatened by generation failure due to possible reemergence of the devastating polar vortex. However, Duke fell short of its burden and presented no evidence that approval of Rider PSR would improve reliability for customers.

¹⁶ R.C. §4928.143(B)(2)(c).

¹⁷ *See Id.*

Duke asserts that 24,932 megawatts of planned retirement in PJM zone between 2011 and 2019¹⁸ with an “overwhelming majority of the retirements occurring by June 15, 2015.”¹⁹ The PSR rider, as acknowledged by Witness Henning, however, will have no effect on whether those generating plants owned by other entities will or will not retire.²⁰ It was further revealed that in particular, the Kyger Creek and Clifty Creek generating units at issue in Rider PSR would not be slated for retirement if the Commission denies the proposed rider. Essentially, without this extraordinary rider the condition of the coal units in OVEC would be *status quo*.

According to Company Witness Henning’s written testimony, that the coal plants poised for retirement operated during the January 2014 polar vortex, thereby enabling Ohio’s economy to continue to function and its citizens to have access to power.”²¹ However, upon examination at hearing, Duke’s central policy witness consistent with PJM’s analysis there were different types of generation that operated reliably,” including natural gas and renewable.²² In fact, as acknowledged by Witness Henning, there is no linkage between the PSR rider approval and whether a generator may or may not be operating at a given time²³ -- during times of polar vortex, derecho, El Niño, or any weather related crisis. In fact, PJM has worked with FERC to ensure the impacts to the grid are not as dire as they may have been this past winter. As RESA Witness Campbell explains, “in response to events surrounding the January 2014 Polar Vortex , PJM has put forth a proposal for a “Capacity Performance Product” that would impart greater performance and fuel security requirements on generation resources, in particular during extreme weather events.”²⁴

¹⁸ Duke Ex. 2 at pg 4.

¹⁹ Transcript Vol. I at pg 84.

²⁰ Transcript Vol. I at pg 98.

²¹ Duke Ex. 2 at pg. 4.

²² Transcript Vol. I at pg. 183

²³ Transcript Vol. I at pg 117

²⁴ RESA Ex. 3 at 15

Yet, it is not merely that this proposed Rider does not meet the any statutory tests for a permitted generation-based rider, but that the extraordinary length and unknown breadth also spell doom for this offer. As Company Witness Henning states the Rider PSR “could be expanded to include similar financial arrangements with other generators to provide further protection for Ohio consumers,”²⁵ or as Direct Energy Witness Ringenbach suggests, it “gives Duke the option to dump additional assets into the PSR.”²⁶ Yet, no details have been offered by the Company as to the exact generation resources to be included, only that “Duke Energy Ohio would have the option to include other similar arrangements.”²⁷ It is impossible for these unnamed generation stations to pass any of the above mentioned criteria.

This rider further fails to pass statutory muster with the Company’s proposal to allow the rider to extend beyond the life of the ESP in question. This extended period for this extraordinary rider is supported by Company Witness Henning under two dubious theories. When asked during hearing Witness Henning suggested that the grounds the Company based its proposal that the PSR be extended beyond the ESP is the fact that the PUCO has approved it for the advanced energy rider and because of the suggested benefit it provides to customers.²⁸ Furthermore, as requested, the unprecedented extension of the Rider will encapsulate Duke from Commission review over the lifetime of the OVEC deal. As outlined by Staff experts, the fixed and variable costs associated with the PSR will be components of a wholesale contract between the Company and the entity managing Duke’s interest in OVEC generating stations, and thus

²⁵ Duke Ex. X at Pg. 10.

²⁶ Direct Energy Ex. 1 at pg. 5

²⁷ Transcript Vol I at pg. 57.

²⁸ See Transcript Vol. I at pg 87

will be out of the jurisdiction of the Commission and in the realm of FERC. Any questions of prudence by the Commission will require action by the Commission before the FERC.²⁹

Even discounting the lack of any statutory basis for this type of rider, the proposed PPA rider is bad for customers, bad for the environment, and circumvents more than a decade's long effort to achieve a statewide competitive electric market.

ii. The Rider PSR is Anti-Competitive, and looks to negate legislature's decreed statewide move to a competitive retail electricity market

Ohio's decade-plus move toward a competitive electricity market was forged to drive prices of electricity down by having distribution utilities, not own, but purchase generation at a low cost. Yet, this PSR rider removes that incentive to manage the costs at the subject generation stations by shifting all of the risk to its distribution customers. Thus the Company's proposal to charge these generation costs to all of its customers unreasonably and unlawfully stands in the way of the state's policy to move toward competition.

Ohio law and Ohio Administrative Rules govern corporate separation requirements, and create the cornerstone of customer choice and market innovation. Ohio Revised Code §4928.17 (A) states that "Except as otherwise provided in sections 4928.142 or 4928.143 or 4928.31 to 4928.40 of the Revised Code and beginning on the starting date of competitive retail electric service, no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities

²⁹ See Staff Ex. 1 at pg. 14-15.

commission under this section...”³⁰

Revised Code §4928.17 (A) thus places a blanket restriction on electric utilities from supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service. Duke Energy has not been in the business of selling electric generation service since January 1, 2012.³¹ Further to the point, Staff Witness Choueiki points out that with a filing before FERC on September 11, 2014 for Duke Commercial Asset Management’s Generators to Dynegy Resource I, expanding rider PSR is no longer an option for the Company.³² A 100% wires-only company has no need for agreements like this to purchase power, nor does it have the need to own coal-fired baseload generation.

However, the Company tries to defend this plan against Ohio’s corporate separation law, engages in a battle of semantics. This we suggest, however, is a fruitless battle. Company Witness Wathen testified that Duke Energy Ohio does not “directly” own the OVEC generation stations.³³ Witness Wathen further suggests that there “cannot be a subsidy because at the time of the ESP Duke will have no generation business of its own.”³⁴ The Witness makes this point to assert that because the OVEC units are not “directly” owned by the Company, that it does not have to transfer its equity interest, and thus is not afoul of the corporate separation laws. Nonetheless, as flatly countered by a Commission Staff Witness, that “whether the Company owns directly a generating asset or owns an equity stock in a generating asset, the Company still owns entitlement to the energy and capacity that comes with it.”³⁵ The Company’s mere assertion, however, does not change the plain truth of what their PSR proposal does. The rider

³⁰ R.C. §4928.17 (A).

³¹ Staff Ex. 1 at pg. 10.

³² *Id.* at pg. 4-5.

³³ Duke Ex. 6 at pg 11

³⁴ Duke Ex. 6 at pg 15

³⁵ Staff Ex. 1 at pg 6.

imposes non-bypassable charges or credits from the sale of electric generation. Further, the mere assertion that it is not a subsidy does not jibe with the letter of the law – that distribution utilities are prohibited from selling generation service.

Put simply by RESA Witness Campbell, “requiring customers who purchase electricity from CRES providers to pay Duke for generation losses is contrary to Ohio law, fundamentally unfair, and anti-competitive.”³⁶ OEC concurs with RESA’s Witness’s apt summation.

- iii. The Rider PSR is an unlawful generation subsidy that will have consequences for electric competition, customers, and the environment

Ohio Revised Code §4928.02(H) outlines the policy of the state of Ohio with regard to competitive service:

It is the policy of this state to do the following throughout this state: [...] (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;³⁷

The Company, in addressing this state policy as required in its ESP Application, states that “there will be no subsidies flowing from non-competitive retail electric service to competitive retail electric generation services” nor generation-related costs recovered through distribution or transmission rates.³⁸ To support this, Company Witness Wathan suggests that the PSR is competitively neutral, and no CRES provider is impacted in anyway by the approval of the rider.”³⁹ However, testimony on behalf of many customer class-representative intervenors, question such a result. The crux of these arguments focus on the fact that unlike the rest of the

³⁶ RESA Ex. At pg. 11

³⁷ R.C. §4928.02(H).

³⁸ Duke Ex. 2 at pg. 20.

³⁹ Duke Ex. 6 at pg 15

generation units producing electricity for Ohio's distribution utilities, these Company-owned units will cost customers and only benefit the Company's shareholders. As Witness Hamilton aptly states, if the OVEC assets are uneconomic, then the result is a Duke customer subsidy of Duke's out-of-market interest in OVEC, or if PSR were a credit, the PSR would require a competitive service to subsidize distribution customers.⁴⁰ No matter the result of success of this PSR hedge, a subsidy will be realized

Not only will this proposed Rider deal a massive blow to the concepts of corporate separation and competitive markets, but will deal a significant blow to the actual success of the marketplace. CRES providers' main witness, Witness Campbell, points out that "Rider PSR will prohibit customers from being able to choose the lowest cost source of generation service and could mean higher costs for electricity customers . . ."⁴¹ As delineated in testimony, the output of Duke's 9% share in OVEC generating stations, some 200 MW of economic generation, will be excluded from competitive supply auctions.⁴² Such a giant sucking sound of generation out of the SSO, it is feared, will discourage other wholesale suppliers from bidding for tranches because they would be competing with subsidized generation.⁴³ Such results are the antithesis of the intent of the Ohio General Assembly in codifying Revised Code §4928.02(H), and the converse of the state's statutorily stated policy to ensure effective competition, and

The Company should not use the Commission as a vehicle to change the letter of the law and as acknowledged by Direct Energy Witness Ringenbach, the PSR would ultimately "require customers to pay twice for generation service without receiving any additional benefit."⁴⁴ If the Company truly believes in the virtues of its proposal, a proposal that wishes to forsake the

⁴⁰ See IGS Ex. 12 at pg 7

⁴¹ RESA Ex. 1 at pg 11

⁴² See Staff Ex. 1 at pg. 15-16.

⁴³ See *Id.*

⁴⁴ Direct Energy Ex. 1 at pg. 5

current codified policies of the state and take the state in the opposite direction from full customer generation choice, they should be forced to ask the legislature to make that change.

- iv. Despite the Company's rhetoric, the proposed PSR will not provide an appropriate hedge

To support its Rider PSR, the Company claims it is enabling retail rate stability and providing a hedge against market volatility through the sale of capacity and energy from the OVEC generating stations. However, the hedge to shopping customers is none of the Company's business and the shopping customers are not asking for it, and simply that R.C. §4928.143 does not authorize it. Nevertheless, for argument's sake, acknowledging that the Company could or should be able to offer generation-based insurance to volatility, OEC suggests (and backed by intervenor testimony on the issue) the proposed rider is an ineffective hedge.

Through this proceeding, customers have demonstrated the patent deficiencies of the PSR as an effective hedge. Sierra Club's expert Witness Jackson clearly states that the PSR is "not an appropriate mechanism for Duke to hedge market price volatility on behalf of its customers."⁴⁵ OEC concurs with this sentiment and Witness Jackson's analysis. She explains that it would shift all costs from Duke's portion of the OVEC generation onto customers and require customers to pay for generation that they are not directly using and that is not competitively bid into the SSO auction.⁴⁶ Consumers' Counsel Witness Wilson adds to this opinion of the proposed PSR by explaining that it is an example of a "cost tracker". Such a "cost tracker," he suggests, is a regulatory mechanism reserved for extraordinary circumstances, and this, however, is not an appropriate mechanism for regulating OVEC costs. Treating OVEC costs in this manner would eliminate the Company's incentive to manage and minimize these costs and to maximize the operation of the resource and the net revenues it earns, ultimately increasing the cost to

⁴⁵ Sierra Club Ex. 4 at pg 22.

⁴⁶ *Id.*

customers.⁴⁷ Staff Witness Choueiki further asserts that a more effective approach for mitigating volatility would be to conduct the SSO procurement auctions as the Commission has adopted for past auctions: through staggering and laddering.⁴⁸ OEC agrees that the procurement auctions already provide customer protections, and furthermore, agrees that an approach that an approach that does not violate state policies is much more preferred.⁴⁹ Simply, Duke's unregulated affiliates should be able, like all other generation and electricity service companies, to compete for consumer business by developing a hedge that meets the needs of the public as determined by the Commission. As Sierra Club Witness Jackson explains the clearest the auctions themselves "are designed to insulate customers from price volatility through elements such as the use of staggered procurement and multiple products of varying durations . . . and therefore are more stable than rates."⁵⁰ Simply, "the PSR may be adverse to the public interest and contrary to the state of Ohio's transition to a competitive market."⁵¹

This so-called hedge is an inferior and likely ineffective, and shown even more so as alternatives are presented. For instance, the Company could have presented a hedge proposal where the Commission could permit the Company to offer a hedge product to customers through its standard service offer as an elective option. In this scenario, customers would be given information on the hedge and its terms, and could affirmatively elect to participate in the hedging opportunity. Alternatively the Commission could allow Duke to offer the hedge as a competitive product to all customers, shopping and SSO, on an elective affirmative basis allowing CRES providers to also compete with this hedge by offering their own customer solutions to volatility. This is the exact method that insurance companies provide services to customers that do not feel

⁴⁷ OCC Ex. 43 at pg 11.

⁴⁸ Staff Ex. 1 at pg.

⁴⁹ See Staff Ex. 1 at pg. 12-13.

⁵⁰ *Id.*

⁵¹ Sierra Club Ex. 4 at pg 3.

there is a volatility problem could continue with business as usual, and customers that feel differently would be able to customize a solution. However, these and other more logical, more reasonable, and more lawful proposals were not offered by the Company.

- v. The proposed PSR poses impediments to the state's ability to comply with environmental laws, while possibly shifting costly pollution prevention costs to distribution customers

Another “alternative” approach that would have the semblance of creating a more effective hedge *was*, however, acknowledged by the Company’s main policy witness. Company Witness Henning suggested that the greater resource diversity there is the less volatility there is on the market price.⁵² However, despite this acknowledgement, there is no proposal for more energy efficiency, demand side management, or renewable generation⁵³ even though the influx of such diverse resources into the market could have an even greater hedging benefit if coupled with the coal plants. This omission of actual resource diversity is no accident, but the revelation that Duke’s hedge is not about an insurance policy for customers, but for shareholders who would otherwise be holding the bag for the cost of an aging coal fleet – a fleet that is facing a future of upward turning costs in the face of environmental regulation.

From an environmental perspective, it is OEC’s position that Duke’s proposed PSR is a patent attempt to utilize its customers’ electric bills to pay for aging coal plants and insulate its shareholders from the risks of the competitive market and the costs of impending carbon restraints and pollution controls on electric generating units. Testimony has alluded to the fact

⁵² Transcript Vol. I at pg 99.

⁵³ See Transcript I at pg 118-119.

that the OVEC generation units are “fairly well controlled from a criteria pollutant standpoint and appear to be in the process of upgrading water and waste controls.”⁵⁴

While the two plants in question may be in compliance under current pollution standards, they are far from environmentally benign and are questionable as to whether they will be in compliance with the environmental laws over the life of this ESP or the life of the “entitlement”. A number of current and proposed EPA regulations will require pollution-intensive power plants to cut emissions, through the installation of controls or shut down. For example, the Cross State Air Pollution Rule (CASPR) was finalized in 2011 to reduce emissions of NO_x and SO_x contributing to fine particulate and ozone pollution. While this rule was vacated in August of 2012, the Supreme Court reinstated the rule this past Spring and it is expected to be reissued soon. Expected higher standards for fine particulate and ozone pollution may put the counties where Clifty Creek and Kyger Creek are located into non attainment for these pollutants. This will require, as Sierra Club’s expert states, “rigorous NO_x controls at the units to meet the standards.”⁵⁵ Furthermore, if the interstate transport rule is reinstated, these plants will be required to either purchase pollution allowances or install additional pollution controls. Sierra Club Witness Jackson’s analysis of expected compliance estimates a cost for a needed post-combustion control for Clifty Creek Unit 6 at \$136 million.⁵⁶ The need for such controls is not merely conjecture from environmental group intervenors, but acknowledged by OVEC in its *own* 2013 annual report, stating that “additional NO_x allowances or additional NO_x controls may be

⁵⁴ Sierra Club Ex. 4 at pg 14.

⁵⁵ *Id.* at pg 21.

⁵⁶ *Id.*

necessary for Clifty Creek Unit 6.”⁵⁷ Such potential costs will undermine any ability for the aging OVEC coal plants to serve as a volatility hedge in the manner proposed.

Not the least of these regulations is the EPA’s proposed regulation to curb the nation’s contribution to climate change by regulating greenhouse gas pollution from coal-fired power plants. These plants not only contribute to climate impacts from carbon pollution, the customer subsidy of these plants could have dire consequences for Ohio’s plan to comply with USEPA’s carbon regulations under §111(d) of the Clean Air Act, and its ultimate ability to comply. While it may be years before Ohio fully determines its compliance path with USEPA’s standards for Carbon Dioxide pollution, it is quite possible that the OVEC plants could be forced to co-fire, incur costly efficiency upgrades, or other environmental retrofits. Unlike other coal-fired generating units that must competitively offer its power, and therefore are subject to the market forces, combined with the environmental protection policies that may force those plants to retire, the PSR artificially shields these plants from those market forces. The result could be forcing other plants in the state to retire, displacing, perhaps cleaner fuels, and limiting Ohio’s flexibility to reach its targets. Furthermore, because the OVEC coal plants face considerable uncertainty risks from pending GHG rules, they the PSR rider is likely to create more, not less volatility for customers.

Other environmental regulations aside from CASPR and GHG rules that are likely to impose significant, additional costs on the OVEC coal plants include: coal combustion product (i.e., coal ash) regulations expected by December 2014 under the terms of a settlement; and effluent limitation guidelines that will restrict discharge of water pollutants from coal plants. These regulations are part of the national and global wave that cleaner and more efficient

⁵⁷ *Id.* at pg 22.

generation of electricity is better for human health, environmental health, and economic health at the micro and macro scale. The market in response to this wave is speaking loudly. The 24,932 megawatts of planned retirement in PJM zone referenced by the Company⁵⁸ are planned for retirement do to the increased cost for coal and potential costs for pollution.

For the benefit of customers, the environment, and the competitive market of this state, OEC, therefore, urges the Commission to deny this proposed rider as unlawful.

B. Commission should require Duke Energy Ohio to utilize Environmental and Performance Metrics to measure the Company's performance

As part of its initial ESP, Duke obtained approval to deploy its SmartGrid advanced energy infrastructure.⁵⁹ The Company is continuing its SmartGrid program in this Application, unchanged.⁶⁰ Duke avers that its SmartGrid investments are a major part of how and why the proposed ESP advances the state policy to encourage innovation and market access for cost-effective supply- and demand-side electric service.⁶¹ Company Witness Henning extolled the virtues of Duke's SmartGrid distribution modernization program that it "continues to be a cornerstone of the Company's efforts toward improving its electric delivery infrastructure and for providing new service and pricing opportunities for customers in southwest Ohio through advanced metering technology."⁶² OEC agrees with Witness Henning on this point. Further, it must be highlighted, from the environmental protection perspective, Duke's continued SmartGrid investment will achieve cleaner air emissions in several areas, such as: (1) fewer truck rolls to read meters, and to disconnect and reconnect electric service; (2) energy savings from the

⁵⁸ Duke Ex. 2 at pg. 4.

⁵⁹ See *In the matter of the application of Duke Energy Ohio for approval of an Electric Security Plan* Case No. 08-0920-EL-SSO, Opinion and order, (December 17, 2008).

⁶⁰ Company Ex. 2 at pg 16

⁶¹ *Id.*

⁶² *Id.* at pg 25-26.

Volt VAR Optimization program; and (3) energy savings from energy efficiency and demand response programs enabled by the smart grid deployment.

However, as Company Witness Henning also points out, “customer expectations are ever-increasing when it comes to reliability.”⁶³ OEC suggests that these same customer expectations are ever-increasing when it comes to the utility’s role in curbing costs and curbing pollution. These curbing benefits are products of full SmartGrid deployment that should be fully reported and recognized. OEC, therefore, recommends that Duke perform annual reporting of performance metrics on the results of its SmartGrid investment moving forward. This reporting would help the Commission, Duke customers, and other stakeholders to determine: (1) the performance of Duke’s AMI and smart grid deployment program; and (2) the program’s cost-effectiveness. The annual rider updates are summary proceedings, conducted without a hearing. It would be reasonable for Duke to self-report, with each annual rider update filing, on various performance metrics related to how the implementation is proceeding. As an example, OEC recommends that Duke to report on the types of metrics that Commonwealth Edison Company agreed to report on in its smart grid deployment case.

OEC Witness Dick Munson, in his testimony, outlines OEC’s recommendation that the Company report on twenty-one metrics covering a range of issues, including: numbers of customers enrolled in smart grid programs, technical difficulties with smart grid enabled technology, peak load reductions, environmental benefits from the smart grid deployment, and enabled distributed generation.⁶⁴ These Measures and Metrics are similar to those agreed to be

⁶³ Duke Ex. 2 at pg 7.

⁶⁴ See OEC Ex. 1 at DM-2.

reported by Commonwealth Edison and Ameren in Illinois, as well as those recommended by OEC in the AEP gridSMART Phase II docket⁶⁵ this past year.

Specifically, OEC's proposed framework would require reporting on administrative, cost-related, and environmental result metrics. Administratively, we recommend that the Company report on: the number of advanced meter malfunctions where customer electric service is disrupted, such as those malfunctions unrelated to tampering that causes the meter to become inoperable; the number of advanced meters replaced annually before the end of their expected useful life; and the number of formal complaints, informal complaints, and complaints escalated to the utility's customer relations department related to AMI Meter deployment, broken down by type of complaint and resolution. Cost calculating reporting would include, tracking response time to a distributed resource project application, and time from receipt of application until energy flows from project to grid, which has a direct relation to costs to the distribution utility, as well as tracking the actual cost of the AMI deployment costs that the utility has incurred, including both one-time costs and on-going operating costs. Additionally, Peak load reductions enabled by demand response programs; reduction in Greenhouse Gas Emissions enabled by smart grid; the number of locations and total MWs of customer owned distributed generation connected to the transmission or distribution system, broken down by connection to transmission and distribution system; and any improvement in line loss reductions enabled by smart grid technology.

As described during hearing, Mr. Munson explained that the OEC proposed framework outlines a series of metrics by which consumers would realize the savings that are being

⁶⁵ *In the matter of the application of Ohio Power Company to Initiate Phase 2 of its gridSMART Project and to Establish the gridSMART Phase 2 Rider*, PUCO Case No. 13-1939-EL-RDR.

achieved associated with investments in AMI.⁶⁶ The goal is simple: it is important for customers to know how much specific reliability improvement . . . as a result of investment in SmartGrid.⁶⁷ However, under the current framework, customers are without necessary information provided in a concise and readily cognizable manner.

This reporting is important for two reasons. First, it allows Duke to demonstrate additional benefits arising from its smart grid deployment, not currently captured or disseminated to customers. Second, the results will be useful for helping the Company comply with new regulations that will be forthcoming from the U.S. Environmental Protection Agency next year relating to greenhouse gas emissions from existing coal plants. Under Section 111(d) of the Clean Air Act⁶⁸, states must develop compliance plans for air quality for existing sources of pollutants for which there is no national ambient air quality standard. Although the regulations will not be promulgated until next year, some experts have opined that the EPA may allow states to adopt a portfolio approach where, for compliance purposes, energy efficiency and renewable energy that improve air quality can be used to offset the greenhouse gas emissions from existing coal plants. Because of the potential benefits in using improved air quality to comply with Section 111(d) of the Clean Air Act, Duke should report on the improved air quality resulting from the energy efficiency and demand response programs enabled by its successful smart grid and AMI deployment.

Such reporting metrics are becoming more common in the electric energy distribution industry. As discussed by OEC Witness Munson, Department of Energy required utilities who received smart grid deployment grants to report on these types of metrics, including Duke. This

⁶⁶ Transcript Vol. XII pg 3351 lines 4-7.

⁶⁷ Transcript Vol. XII pg 3351 lines 9-13.

⁶⁸ 42 U.S.C. §7411.

type of reporting has also been required in Illinois⁶⁹ and Maryland.⁷⁰ Massachusetts has opened a grid modernization docket⁷¹ where these types of metrics are being developed.

Duke Energy, because it received \$204 million grant from the Federal Government with Stimulus funds, was required to provide reports to the Department of Energy relative to a series of performance. With that being recognized, OEC's recommended metrics are complementary to what the Department of Energy is (or was) requiring. Since, as it is OEC's understanding that Duke did similar reporting to the Department of Energy relating to the smart grid investment grant, it should not be overly burdensome for Duke to do this reporting, and thus has the IT system and management practices already in place – adding few relative costs onto the Company.

While OEC recommends these metrics as Witness Munson made clear in response to cross examination, OEC's recommendations are meant to be a starting point for the Commission, and would be happy to engage with all stakeholders to negotiate a series of metrics.⁷²

Furthermore, OEC believes that such reporting metrics can and should, in time, extend beyond SmartGrid investments, and be applied to other aspects of the distribution system. For example, Duke seeks approval for a cost recovery “tracker” mechanism, in the form of its Distribution Capital Investment Rider, which would allow them to annually update their distribution rates to reflect new capital investment. Pursuing such an option allows Duke to avoid filing general distribution base rate cases for a prolonged period of time. Parties may seek to intervene and comment in the annual distribution rider audit cases, but these proceedings are

⁶⁹ 220 ILCS 5/16-108.6(c)(4).

⁷⁰ See Baltimore Gas and Electric Company and Potomac Electric Power Company - Advanced Metering Infrastructure Performance Metrics Reporting Plan. Maryland Public Service Commission Case Nos. 9208 and 9207 (ML 131260).

⁷¹ See *Investigation by the Department of Public Utilities on its own Motion into Modernization of the Electric Grid*, D.P.U 12-76-A, Order, at pp. 29-31 (December 23, 2013).

⁷² Transcript Vol. XII pg 3353 lines 4-7

more streamlined than rate cases and do not always provide the same opportunities for discovery and hearing. If adopted, environmental and performance metrics, similar to those recommended by OEC vis-à-vis SmartGrid investments under Rider DR-IM, would require Duke to proactively report on certain areas, which would help establish that Duke is managing these distribution system investments prudently. If Duke proactively reports on these items, this would avoid repetitive discovery during the annual tracker updates, resulting in more efficient proceedings.

C. Commission should modify the Company's Application to make customer electricity usage data available to customers and third parties

Under Commission rules, the initial filing for an ESP shall include a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.⁷³ Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP.⁷⁴ Among these state policies are goals to ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers, and encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service.

In furtherance of these policies of competitive market development and informed customer choice, OEC maintains that the Company, through this ESP, needs to facilitate customer access to all of the information necessary to analyze his or her electricity use, and customer freedom to share that information with third parties. As OEC Witness Munson

⁷³ OAC §4901:1-35-03(C)(8)

⁷⁴ *Id.*

suggests, by providing access to their data electric consumers are empowered, and as numerous studies would suggest, that information leads them to reduce their energy costs.⁷⁵

The principal owner of retail electric consumption data is, and must always be, the individual customer. The utility should serve only as the guardian of that data and must allow access to third parties when the customer has authorized it.⁷⁶ As described during hearing by OEC Witness Munson, any data relating to demand, power quality, availability, voltage, frequency, current, power factor, or other information generated by a meter should be made available to both the customer and the utility.⁷⁷ What would flow back to customers is data associated with the customers' own energy usage, and with that data, consumers become empowered to be able to reduce their costs.⁷⁸

OEC, therefore, recommends the adoption of an Open Data Access Framework similar to that prepared for Illinois,⁷⁹ and offered in OEC Witness Munson's testimony. As outlined in OEC Witness Munson's proposed Open Data Access Framework,⁸⁰ the utility, Duke in this instance, would serve as the guardian of retail electric consumption data, and allow access to the customer (the principal owner of the data) as well as allow data to be accessed by third parties at the authorization of the customer.

Duke is in a position to provide this power to its customers, to CRES providers, and to furtherance of the policy of the state. Most specifically, Duke has fully deployed its advanced smart meters, and the Company has benefitted from, among other things, reduced meter reading

⁷⁵ See Trans. Vol XII at pg 3359-3360.

⁷⁶ OEC Ex. 1 at pg. 3

⁷⁷ Transcript Vol. XII pg 3361.

⁷⁸ Id.

⁷⁹ As background, the Illinois Commerce Commission approved smart grid deployment plans for Commonwealth Edison and for Ameren. The companies, presently, are well on their way to implementing the plans and already are obtaining substantial savings associated with reduced meter readings and increased grid stabilization. Yet customers will not receive the full value from the smart grid deployments unless they and their third-party contractors receive timely access to customer usage information.

⁸⁰ OEC Ex. 1 (Exhibit DM-1)

costs.⁸¹ The notion of OEC's recommendation is that customers must also benefit by being able to have access to the data coming out of those same smart meters.⁸²

OEC's recommended framework relies on two major aspects detailed below and in Witness Munson's Exhibit DM-1: stated customer ownership of and access to data; and the customer's ability to permit share this information with third parties.

i. Customer must be the principal owner of retail electric consumption data

Ohio's Electric Service and Safety standards ("ESSS") and Ohio Administrative Code §4901-1-10-12, require utilities to provide access to certain customer usage information to said customers. The includes the right to obtain, without charge, up to twenty-four months of electric usage history, payment history, and detailed consumption data and time of use data if applicable. OEC proposes that as a companion to the information already flowing to customers under the ESSS, the customer should be provided consumption and power data at regular intervals, as well as access to any and all price and rate data at the time they are being charged that rate.

To be useful for customers, and to keep customers fully and adequately informed of their usage, customers should be able to access their retail electricity consumption data in a summary format that is intended to influence specific or general customer behavior. Further, customers should be able to see all the components of their retail electricity consumption data used for billing on their monthly billing statement.

One of the most important aspects of the consumer data issue is the timing of the accessed information and data. Witness Munson's Open Data Access Framework recommends that consumption data to customers in real-time to the extent practical. Although 15 minute intervals is our recommended standard, within at most one hour from the conclusion of an

⁸¹ Transcript Vol XII pg 3356.

⁸² Id.

interval period, when accessed directly from the internet or alternate communications network. The authorization process (and the de-authorization process for that matter) must be simple, practical, and fast for the customer.

ii. Upon customer authorization, Duke shall authorize third party data access

As owner of this data, the customer should have the right to permit third parties to also access this information from the utility, but only upon the customer's affirmative authorization. When such authorization is granted, third parties should receive interval usage data as it becomes available to customers who have already authorized the same. When data is provided to a CRES provider the customer authorization should last until the customer leaves the service of that RES, unless a customer affirmatively de-authorizes access to data. For all other third parties, the authorization should last for a term of 24 months, unless a customer affirmatively de-authorizes access to data.

Allowing access to customer data by third parties will spark the innovation in retail electric services and products envisioned by the policies of the State of Ohio. This innovation saves money, saves energy, and saves jobs. Thus, OEC urges the Commission to encourage the Company to adopt an Open Data Framework for customer data access.

IV. CONCLUSION

Ohio Environmental Council urges the Commission to modify the Company's Application for Electric Security Plan in this proceeding based on the recommendations outlined in this Initial Post Hearing Brief.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 15th day of December, 2014.

/s/ Trent Dougherty

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