BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Authority to Establish a 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.	))))))	Case No. 14-841-EL-SSO
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)))	Case No. 14-842-EL-ATA

OHIO PARTNERS FOR AFFORDABLE ENERGY'S MEMORANDUM CONTRA THE APPLICATION FOR REHEARING OF DUKE ENERGY OHIO, INC.

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May 14, 2015

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Pursuant to Ohio Administrative Code (O.A.C.) Rule 4901-1-35(B), Ohio Partners for Affordable Energy ("OPAE") herein submits to the Public Utilities Commission of Ohio ("Commission") this Memorandum Contra the May 4, 2015 Application for Rehearing filed by Duke Energy Ohio ("Duke"). The Commission should deny Duke's Application for Rehearing for the reasons set forth in this Memorandum Contra Duke's Application for Rehearing.

I. The Commission correctly found that Duke's proposed Price Stability Rider ("PSR") will not benefit customers.

Duke argues that it offered the PSR as a financial hedge to protect customers against "some" of the volatility of the cost of energy and capacity in wholesale markets. Duke Application at 6. Duke argues that just because the Commission (and no one else) has any idea what the cost to customers will be over the 30 or so years that Duke is obligated to pay OVEC costs, the Commission should not hesitate to approve the PSR. Duke claims that the Commission routinely approves riders without knowing their impact. Id. at 7. Duke also worries that the Commission may not know the meaning of the word "hedge." Id. at 9. Duke explains that a hedge is something a farmer would buy when he is getting ready to plant crops. The farmer buys a hedge to lock in the "ultimate price" for the farmer's crop before planting. Id. Once the farmer locks in his hedge, it no longer matters whether the actual market price rises or falls. The farmer has hedged the price! Duke claims that the PSR is a hedge that gives value to customers given past volatility in the wholesale market and the likelihood of increases in market prices in the later years of the PSR. Id. at 10-11.

This is nonsense. Duke is a distribution public utility with a monopoly in its state-approved certified territory. If the farmer had captive customers guaranteeing cost recovery plus a profit on his crops, the farmer's hedge analogy might have some relevance. The Commission did not approve Duke's proposed PSR because it is not clear, based on the record evidence, how much the proposed PSR would cost customers and whether customers would even benefit from the PSR, which they are forced to pay. Opinion and Order at 45. The farmer is selling crops in a market, and he might benefit from a financial hedge against falling market prices. Duke is using its noncompetitive, monopoly distribution service to force its captive distribution customers into guaranteeing the profits of unregulated generating units in the competitive market. SSO customers are already adequately protected from the volatility of wholesale markets through the laddered SSO generation purchases. The Commission saw no benefit to customers from the PSR. The benefits to Duke's competitive generation business (i.e., the farmer) are of no concern to the Commission.

The Commission found that Duke's projections for the PSR were based on data assumptions that attempted to predict OVEC costs and revenues as well as PJM prices for energy and capacity over the three-year period of the ESP and far beyond. In light of the uncertainty and speculation inherent in the process of projecting the net impact of the PSR, the Commission was unable to reasonably determine the rate impact of the PSR. Opinion and Order at 46. The Commission found that the evidence of record reflects that the PSR might result in a net cost to customers with little offsetting benefit from its intended purpose as a hedge against market volatility. There was also considerable uncertainty with respect to pending PJM market reform, environmental regulations, and federal litigation. There was also already the existing means to protect customers from market volatility, such as the laddering and staggering of SSO auctions and the availability of fixed-priced contracts in the market that provide a significant hedge against price volatility. Opinion and Order at 46.

The purpose of the PSR was to shift the business risk -- whether an asset makes a profit or produces a loss -- associated with the OVEC generating stations to Duke's distribution customers. The PSR, if approved, would have been paid by all Duke's distribution customers. To obtain generation service, all of Duke's distribution customers either shop individually or take generation through a governmental aggregation or have their generation procured through the Commission-administered SSO auctions. Under Ohio's competitive retail generation market, Duke's distribution customers cannot be required to subsidize energy and capacity produced by any particular power plants unless Duke demonstrates a need for a new plant and wins the right to build a new one. Duke has failed to demonstrate the need for additional generation beyond what the market is providing.

The PSR is simply an additional charge on a customer's distribution bill. The PSR will not provide any additional stability or reliability for customers. The shareholders of generation companies should bear the risk of a generating unit's profits or losses, not distribution ratepayers. The PSR would require distribution customers to pay for generation units that are not profitable.

The evidence demonstrated, as the Commission found, that the PSR would not provide a hedge against volatility. Ohio's SSO customers already have a sufficient hedge against volatility. The structure of SSO auctions in Ohio eliminates the need for a PSR. Ohio's SSO auctions provide whatever hedge is needed against price volatility. Staff Exhibit 1 at 12-13. A PSR cannot enhance the price stability provided through the SSO auctions. Even if SSO customers were exposed to significant price volatility, which they are not, a PSR would just as likely move in the same direction as market prices as contrary to market prices, thus doing nothing to address volatility. OCC Exhibit 43 at 12-13.

Customers receiving service under the SSO are served under one- and two-year full requirements contracts established through periodic auctions. Therefore, SSO customers are not exposed to substantial market price volatility under any foreseeable circumstances. This was true during the polar vortex event in the winter of 2014; SSO customers were protected from the price volatility because the auction-winning suppliers were under contract to deliver at a fixed price and had incorporated a risk premium into their bid prices to cover such an event. Thus, while the SSO auctions are a real hedge against volatility, the PSR has another true purpose. It shifts the risk of the profitability of the OVEC plants onto distribution customers and away from one of the plants' owners, Duke.

Under the PSR, customers would have paid Duke more but reliability would not be enhanced. Reliability is already assured through the capacity market authorized under the PJM tariffs approved by the Federal Energy Regulatory Commission ("FERC"). These PJM tariff charges are designed to ensure a supply of capacity to meet the region's needs. The PSR does not give Ohio customers any greater reliability than any other customer in PJM. Direct Exhibit 1 at 7.

There is no need for the PSR as a hedge against volatility in SSO prices. The SSO is not particularly volatile. The Commission-administered auction system for determining SSO prices resolves any issues of volatility in SSO rates. There are other more effective tools to stabilize rates than a PSR. In addition to the SSO auction process, the Commission has tools under the ESP to either order an electric distribution utility to build new generation or competitively bid for additional generation. If additional generation was ever needed for stability, the best available source would be through competitively bid Requests for Proposals. The RTO PJM provides stability and reliability in the wholesale power market. A PSR would add nothing.

II. If the PSR had been properly rejected, any issues regarding Duke's ownership of the OVEC assets would be irrelevant.

Duke engages in a long and tiresome discussion of what the Stipulation and Recommendation in Duke's last ESP case intended to require in terms of Duke transferring its interest in the OVEC stations. Duke Application for Rehearing at 11-17. The ownership of the OVEC stations is irrelevant in this SSO proceeding except in the context that Duke has proposed the PSR to assign the costs of its ownership share of the OVEC stations to Duke's distribution ratepayers. It is Duke itself, and only Duke, that has invited this discussion of its ownership of the OVEC generating stations. If the Commission had correctly dismissed the whole concept of a PSR tied to Duke's ownership share of the OVEC stations, which the Commission certainly should have done, we would not be engaged in this irrelevant discussion.

Under R.C. Section 4928.02(H), the Commission is to:

> avoid 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….

This is Ohio law. The PSR violates the state's policy at R.C. 4928.02(H), which declares that it is the state's policy to 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. The PSR would force all of Duke's distribution customers, including those paying directly for generation supplied by Competitive Retail Electric Service providers, to subsidize the OVEC units when under Ohio law it is OVEC's shareholders that should bear the risk of OVEC's profits or losses in the competitive market. A charge levied on all distribution customers cannot be a generation charge when all generation is procured through the competitive market. The PSR is a classic example of an anti-competitive subsidy.

Approving a PSR would directly contravene the decision of the General Assembly to ensure that generation is competitive and that there is no cross-subsidization of any competitive product or service by a noncompetitive service. A PSR would subsidize the rates Duke can charge for power from OVEC because Duke's noncompetitive distribution service customers will pay the difference between the cost of OVEC and the market. What is being described as a hedge is actually a guarantee that the OVEC plants will produce a guaranteed profit for Duke. It is a subsidy flowing from the noncompetitive distribution service to the competitive generation service. The PSR violates Ohio law. R.C. 4928.02(H).

III. The Commission should have denied Duke's Distribution Capital Investment Rider ("DCI") and Storm Damage Rider ("SD").

Duke complains that the Commission modified its Rider DCI to prohibit the inclusion of expenditures for general plant. Duke argues that the Commission permitted recovery of general plant in a distribution rider in FirstEnergy SSO proceedings in 2010 and 2012. Application for Rehearing at 18. Duke also argues that the inclusion of general plant in Rider DCI would include information technology and back-office support so that it would modernize infrastructure to improve reliability. Duke Application for Rehearing at 19.

Duke further complains about the Commission's modifications to Rider SD so that costs eligible for inclusion in the SD rider must be "incremental." Duke does not want to leave it for a subsequent proceeding to determine what is incremental. Id. at 27. Duke wants assurance as to the types of costs that are included in the $4.4 million baseline already in distribution rates and the type of costs that are not in the baseline. Duke complains that if "supplemental compensation costs" are excluded from the tracked costs, then the baseline number would have to be adjusted to remove those supplemental compensation costs so that the baseline would not be inflated for a cost that is not being tracked. Id. at 28. Duke also complains that the Commission required that the accrual of carrying costs on the tracked amounts cease once cost recovery begins. According to Duke, ending carrying costs on the day recovery begins ignores the value of money so that carrying costs should be accrued on the incremental amounts until all dollars are fully recovered. Id. at 28. .

Duke's Riders DCI and SD should not have been approved. Duke will now recover distribution costs and investments from customers through pre-approved riders instead of through base distribution rates set in distribution base rate cases. The move to cost recovery through distribution riders approved in ESP cases allows the distribution utility to recover costs and investments on an immediate basis without the Commission's consideration of all factors that would be considered in a base rate case. This move is harmful to distribution ratepayers who are forced to pay the higher rates through the riders, without any consideration whether the higher rates reflect the actual cost of distribution service. Cost of service is supposed to be the basis of regulated distribution service rates. The purpose of the distribution riders approved in ESP cases is to detach the cost of distribution service from the amount paid by customers for distribution service.

Riders provide for the automatic collection of certain costs from customers outside the context of a base rate proceeding where all elements of the cost of service are examined. OCC Ex. 45 at 3. This is contrary to sound ratemaking principles. When the utility is permitted to collect costs through a rider, the incentive for the utility to control costs that pass through the rider is reduced. The existence of riders can cause the utility to incur costs that are allowed through the riders and avoid incurring costs that remain recoverable only in base rates.

To the extent that riders are approved, they should be limited to cost items that are substantial, unpredictable, and beyond the utility's control. Riders are also used when essential to protect a utility from dire financial situations. Duke presented little evidence that the costs it is seeking to collect through the riders meet these criteria. Duke has also not shown that its financial integrity would be compromised if the costs were collected through base rates established in base rate proceedings, where costs are subject to closer scrutiny. The collection of costs through riders can lead to increases in utility rates and revenues even when the utility does not have a revenue deficiency. Under normal circumstances, a regulated utility should be able to implement rate increases only after a comprehensive base rate proceeding where all costs and revenues under present rates are taken into consideration. OCC Ex. 45 at 5-6.

Duke's Rider DCI will recover a return on incremental capital investment and the associated depreciation and property taxes for the distribution-related investment that is not otherwise recovered through existing base rates and riders. Duke did not demonstrate that it is necessary to increase rates through this rider to maintain the present level of service reliability. OCC Ex. 45 at 9. Duke did not demonstrate that the rider was necessary to avoid putting Duke in a dire financial situation. Duke presented no evidence that reliance on a base rate proceeding as authorized under Ohio law would impact the reliability of its distribution system to the detriment of its customers. Utilities are already required to maintain distribution facilities under R.C. 4905.22. Current distribution rates already compensate Duke for this responsibility. Duke already has met or exceeded reliability standards for each year since 2011. OCC Ex. 47 at 21. In fact, the reliability of Duke's distribution system has been increasing under the base rate setting process. OCC Ex. 45 at 10-11. The evidence demonstrated that Duke was already dedicating sufficient resources to the reliability of its distribution system. Id. at 17. Duke presented no evidence that the reliability of its distribution system will improve if the rider is approved.

Duke did not claim there will be a reliability benefit to customers associated with Rider DCI. OCC Ex. 47 at15-16. The rider is only meant to maintain the existing system. Rider DCI will fund a maintenance program rather than an infrastructure modernization program that might qualify for incentive ratemaking through an ESP rider. OCC Ex. 47 at 17-19. While R.C. 4928.143(B)(2)(a) may permit distribution expense to be collected as part of an ESP if the distribution expense relates to infrastructure modernization, the statute does not permit expenses associated solely with maintaining a distribution system to be collected through an ESP rider. Duke did not demonstrate that Rider DCI will fund an infrastructure moderation program as required by law.

There was also no evidence that the storm damage ("SD") rider was necessary. Duke's current distribution base rates include $4.4 million per year for major storm expense recovery. Duke proposed to establish a regulatory asset account to defer the costs above or below this baseline amount in each year. Duke proposed to recover the balance of this deferral in the next distribution base rate case unless the balance exceeds $5 million at the end of a calendar year and then Duke would collect or return to customers the balance through the storm damage rider with carrying costs. OCC Ex. 45 at 22-23.

As with the Rider DCI, Duke did not demonstrate that base rate proceedings for storm damage expenses have threatened Duke's financial integrity. A full review of storm damage costs would more likely occur in a separate proceeding, if necessary, or in a base rate case. The storm damage rider also lowers Duke's business risk. No Duke witness demonstrated that the 9.84% ROE approved in the last base rate case is appropriate for the rider.

The Commission should not have approved the distribution cost riders and instead should have relied on base rate proceedings to determine distribution rates. Given that the Commission approved these riders, the Commission should have adopted the recommendations of OCC witnesses Mierzwa, Kahal and Yankel to mitigate the basic unfairness of these riders. The issue here is not cost recovery but the method of cost recovery. Simply put, distribution service cost recovery is best accomplished through base rate proceedings. Riders frustrate the public policy inherent in base rate proceedings.

Wherefore, the Commission should deny Duke's application for rehearing for the reasons set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra the Application for Rehearing of Duke Energy Ohio was served by electronic transmission this 14th day of May 2015 upon the following persons.

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