

**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)	Case No. 14-841-EL-SSO
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.)	

**THE UNIVERSITY OF CINCINNATI AND MIAMI UNIVERSITY'S
JOINT MEMORANDUM IN RESPONSE TO
THE APPLICATIONS FOR REHEARING
OF
DUKE ENERGY OHIO, INC. AND OHIO ENERGY GROUP**

Pursuant to Rule 4901-1-35(B), Ohio Administrative Code, the University of Cincinnati and Miami University (collectively "Universities") jointly file this memorandum in response to the application for rehearing filed by Duke Energy Ohio, Inc. ("Duke") with respect to Duke's first two assignments of error regarding the Price Stabilization Rider ("Rider PSR") and the application for rehearing filed by the Ohio Energy Group ("OEG") with respect to the phase-out of the Load Factor Adjustment Rider ("Rider LFA"). These proceedings involve the terms of Duke's third electric security plan ("ESP III"), which commences in short order on June 1, 2105.

The Universities first request that the Public Utilities Commission of Ohio ("Commission") deny the rehearing arguments from Duke as to Rider PSR on the ground that Duke, in contravention of the Commission's rules on rehearing, has raised nothing new for

consideration. As to the rehearing application of OEG, the Universities request that the Commission grant the request and clarify that the phase-out of Rider LFA will take place over all three years of the Electric Security Plan and there will be rider credits during all three years of the plan's term as detailed below.

II. The Commission should reject Duke's claims of error regarding Rider PSR.

Duke's first two assignments of error involve Rider PSR:

Assignment of Error #1: The Commission's conclusion with regard to Rider PSR unreasonably prohibits the Company from offering its customers a hedge against volatile wholesale prices, even though the Commission agrees that the proposed rider would act as a hedge.

Assignment of Error #2: The Commission's conclusion that Rider PSR should be approved, but that it should remain at zero until such time as the Company provides additional evidence, is unreasonable, in that sufficient evidence is currently available in the existing record.

The Commission correctly determined that Duke's proposed Rider PSR should not be approved and that, before Duke can actually charge customers under such a rider, further relevant evidence must be presented and evaluated. Rider PSR was the issue that garnered the most attention during these proceedings, and the Commission examined the issue extensively. A fair review of that portion of the Commission's decision clearly shows that the Commission considered the facts and legal arguments. Despite the lengthy summary and conclusion in the April 2nd Opinion and Order,¹ Duke is asking the Commission to reverse itself and approve Duke's proposed Rider PSR. Duke however has not presented in its application for rehearing any new argument to support approval of its Rider PSR based in the hearing record. Actually, Duke raises the same points it raised earlier in the proceedings.² Duke is entitled to take issue

¹ Opinion and Order at 13-48.

² Compare Duke's Application for Rehearing at 6-11 with its earlier evidence and arguments – Duke Ex. 2 (Henning Direct Testimony) at 4-5, 8-11; Duke Ex. 6 (Wathen Direct Testimony) at 12-15; Duke Initial Brief at 21-24; and Duke's Reply Brief at 43-44, 54-55, 58, and 67.

with the Commission's finding that Rider PSR has not been shown to be of benefit to customers, but it is not entitled to a reversal of that decision without evidence from the record which shows error in the manner in which the Commission weighted the evidence. Duke has the burden of proof in this case to demonstrate that it proposed Rider PSR is of benefit. The Commission's determination was the contrary: "the Commission is **not persuaded**, based on the evidence of record in these proceedings, that Duke's PSR proposal would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that is commensurate with the rider's potential cost."³ (Emphasis added.)

While Duke also claims error with regard to the Commission's inclusion of guidance for a future PSR application (if Duke seeks to establish a rider rate at some point in the future), there was no error. The Commission has the discretion to include such information in its decisions, and it chose to exercise that discretion because Duke did not convince the Commission that its proposed Rider PSR should be adopted. Nothing presented by Duke in the first two assignments of error in its application for rehearing demonstrates that the Commission unjustly and unreasonably weighed the Rider PSR evidence. Accordingly, Duke's first two assignments of error should be rejected.

III. The Commission should clarify that the phase-out of Rider FLA will occur during all three years of the ESP III term, as described by OEG in the second option presented in its application for rehearing.

OEG explains in its application for rehearing that there are two ways in which to interpret the Commission's decision to phase-out Rider LFA "over the term of the ESP" and calculate the

³ Opinion and Order at 46. *See, also*, the Commission's earlier statement on that same page: "the Commission agrees with OCC, IEU, and other intervenors that the evidence of record reflects that the rider may result in a net cost to customers, with little offsetting benefit from the riders intended purpose as a hedge against market volatility."

credit levels. The options described by OEG are as follows:⁴

Option 1

ESP Year	Calculation	Resulting Rider LFA Credit
1	33% of \$8.00/kVa = \$2.64	\$5.36/kVa
2	33% of \$8.00/kVa = \$2.64	\$2.72/kVa
3	34% of \$8.00/kVa = \$2.72	\$0/kVa

Option 2

ESP Year	Calculation	Resulting Rider LFA Credit
1	33% of \$8.00/kVa = \$2.64	\$5.36/kVa
2	33% of \$5.36/kVa = \$1.77	\$3.59/kVa
3	34% of \$3.59/kVa = \$1.22	\$2.37/kVa

OEG also pointed out that either manner of calculation will be revenue-neutral to Duke.⁵ The Universities agree that there are two ways to interpret the ruling and find OEG's use of the kVa cost as representative of the amount of money available for load factor credits is fair. The Commission should clarify now the proper calculation for Rider LFA. The Universities agree with the OEG that the second methodology will avoid rate shock to high-load factor customers, and yet will also accomplish a phase-out throughout the entire ESP III term as the Commission stated. For these reasons, the Universities support OEG's request that the Commission grant the OEG request and clarify that the phase-out of Rider LFA will take place over all three years of the ESP III and, using the second calculation option set forth above, there will be rider credit amounts during all three years of the plan's term.

⁴ OEG Application for Rehearing at 3.

⁵ *Id.*

IV. Conclusion

For the foregoing reasons, the Commission should reject Duke's first two assignments of error, which relate to Riders PSR. Those assignments of error have no merit and should be denied. Additionally, the Commission should grant OEG's application for rehearing and clarify the phase-out for Rider LFA, such that it will take place over all three years of the ESP III and, using the second calculation option set forth above, there will be rider credit amounts during all three years of the ESP III term.

Respectfully Submitted,

MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO



M. Howard Petricoff (0008287)
Special Assistant Attorney General
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5414
mhpetricoff@vorys.com

*Attorneys for the University of Cincinnati and
Miami University*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on 14th day of May 2015 upon all persons/entities listed below.



M. Howard Petricoff

Duke Energy Ohio, Inc.

Amy B. Spiller
Rocco O. D'Ascenzo
Jeanne W. Kingery
Elizabeth H. Watts
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, OH 45201-0960
amy.spiller@duke-energy.com
rocco.dascenzo@duke-energy.com
elizabeth.watts@duke-energy.com
jeanne.kingery@duke-energy.com

Ohio Energy Group

David Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

Office of the Ohio Consumers' Counsel

Maureen R. Grady
Joseph P. Serio
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
maureen.grady@occ.ohio.gov
joseph.serio@occ.ohio.gov

Dane Stinson
Dylan F. Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
dstinson@bricker.com
dborchers@bricker.com

FirstEnergy Solutions Corp.

Mark A. Hayden
Jacob A. McDermott
Scott J. Casto
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

Ohio Manufacturers' Association

Kimberly W. Bojko
Jonathan Allison
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus OH 43215
bojko@carpenterlipps.com
allison@carpenterlipps.com

The Energy Professionals of Ohio

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, OH 43215
schmidt@sppgrp.com

Direct Energy Services, LLC and Direct Energy Business, LLC

Joseph M. Clark
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Ave., N.W., 12th Floor
Washington, DC 20006
ghull@eckertseamans.com

Industrial Energy Users-Ohio

Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

IGS Energy

Joseph Olikier
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com

The Dayton Power and Light Company

Judi L. Sobecki
1065 Woodman Drive
Dayton, OH 45432
judi.sobecki@aes.com

Staff of the Public Utilities Commission of Ohio

Steven Beeler
Thomas Lindgren
Ryan O'Rourke
Attorney General's Section
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, OH 43215
steven.beeler@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
ryan.orourke@puc.state.oh.us

Duke Company

Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
American Electric Power Service Corp.
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

People Working Cooperatively, Inc.

Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter LPA
65 East State Street
Columbus, Ohio 43215-4294
asonderman@keglerbrown.com
mkinbrough@keglerbrown.com

Ohio Environmental Council

Trent Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

Constellation NewEnergy Inc. and Exelon
Generation Company LLC

David I. Fein
Exelon Corporation
10 South Dearborn Street, 47th Floor
Chicago, IL 60603
david.fein@exeloncorp.com

Cynthia Fonner Brady
Exelon Business Services Company
4300 Winfield Road
Warrenville, IL 60555
cynthia.brady@constellation.com

Lael Campbell
Exelon
101 Constitution Avenue, NW
Washington, DC 20001
lael.campbell@constellation.com

Sierra Club

Christopher J. Allwein
Kegler Brown Hill & Ritter Co. LPA
65 E. State Street, Suite 1800
Columbus, Ohio 43215-4295
callwein@keglerbrown.com

The Greater Cincinnati Health Council

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasschart.com

Wal-Mart Stores East LP and Sam's East Inc.

Donald L. Mason
Michael R. Traven
Roetzel & Andress LPA
155 East Broad Street, 12th Floor
Columbus, Ohio 43215
dmason@ralaw.com
mtraven@ralaw.com

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd, Suite 400
Oklahoma City, OK 73105
rdc_law@swbell.net

The Kroger Company

Rebecca L. Hussey
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus OH 43215
hussey@carpenterlipps.com

Natural Resources Defense Council

Samantha Williams
20 N Wacker Drive, Suite 1600
Chicago, IL 60606
swilliams@nrdc.org

Environmental Law & Policy Center

Justin Vickers
33 East Wacker Drive, Suite 1600
Chicago, IL 60601
jvickers@elpc.org

Ohio Development Services Agency

Dane Stinson
Dylan Borchers
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
dstinson@bricker.com
dborchers@bricker.com

Ohio Partners for Affordable Energy

Colleen L. Mooney
231 West Lima Street
Findlay, OH 45839-1793
cmooney@ohiopartners.org

EnerNOC, Inc.

Gregory J. Poulos
471 E. Broad St., Suite 1520
Columbus, OH 43054
gpoulos@enernoc.com

Joel E. Sechler
Carpenter Lipps & Leland LLP
280 North High Street – Suite 1300
Columbus, OH 43215
Sechler@carpenterlipps.com

City of Cincinnati

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/14/2015 5:04:49 PM

in

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

Summary: Memorandum in Response to the Applications for Rehearing of Duke Energy Ohio, Inc. and Ohio Energy Group electronically filed by Mrs. Gretchen L. Petrucci on behalf of University of Cincinnati and Miami University