

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Approval of a Grid)	Case No. 14-1160-EL-UNC
Modernization Opt-Out Tariff and for a)	Case No. 14-1161-EL-AAM
Change in Accounting Procedures Including)	
a Cost Recovery Mechanism.)	

**MEMORANDUM CONTRA THE MOTION TO AMEND THE PROCEDURAL
SCHEDULE BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
BY DUKE ENERGY OHIO, INC.**

I. Introduction

Pursuant to the Commission's Finding and Order in Case No.12-2050-EL-ORD, and Rule 4901:1-10-05(J)(5), O.A.C., Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) initiated the above-captioned case proposing a modernized grid opt-out tariff that would allow customers seeking to maintain a traditional meter to do so.

On August 5, 2015, the Public Utilities Commission of Ohio (Commission) issued an Entry establishing a procedural schedule for these cases. Among other things, the Entry required Duke Energy Ohio and intervenors to file testimony by September 18, 2015.¹ The Staff of the Public Utilities Commission of Ohio (Staff) testimony is due two weeks later, on October 2, 2015, and the hearing is scheduled for October 15, 2015.² On August 19, 2015, The Office of the Ohio Consumers' Counsel, (OCC) moved the Commission to amend the procedural schedule, more specifically, to move the due date of intervenor testimony to the same date the Staff's testimony is due, i.e., October 2, 2015.³ This request should be denied; it is procedurally improper, organizationally unnecessary, and substantively inequitable.

¹ Entry (August 5, 2015) at p.2.

² Id.

³ Motion (August 19, 2015) at p.1.

II. Discussion

In seeking to justify its motion, OCC asserts three complaints. OCC complains first that Duke Energy Ohio did not file testimony with the application. Therefore, OCC argues that it requires more time between the Company's filing of its testimony and the deadline for filing OCC's own testimony. And OCC asserts that the time (in excess of a year) that it has had to prepare for this hearing is insufficient and it therefore requires more time for discovery, and if necessary, depositions of Duke Energy Ohio's witness(es). All of these purported justifications should be rejected.

a. Duke Energy Ohio's Application

Duke Energy Ohio filed its Application over a year ago, on June 27, 2014. The filing was to be anticipated since it was submitted pursuant to Commission order and was necessitated as a result of the changes in regulations concerning advanced meter opt-out service. Duke Energy Ohio was required to offer its customers the opportunity to refuse an advanced meter at a time when the Company was nearly complete with deploying its Advanced Metering Infrastructure. The Commission expressly held that customers who wish to exercise the option to use a traditional meter should be required to pay for that service. Accordingly, the Commission directed electric distribution utilities with advanced meters to submit a tariff providing for such a program, for approval by the Commission

In its motion, OCC claims that "the testimony to be filed by Duke on September 18 may be the first, and possibly only, time that Duke offers more than superficial information regarding the costs at issue in these proceedings."⁴ However, OCC has had over a year leading up to this hearing, wherein it has had the opportunity to seek discovery from the Company and to develop its case. The lack of testimony in a docket has never been an impediment to discovery in the past

⁴ Motion (August 19, 2015) at p.2.

and it was not in this case. OCC seeks to “fully examine Duke’s claims” before filing its testimony. However, OCC has never been precluded from doing so.

To solve this nonexistent problem, OCC seeks a change in the procedural schedule to permit it to file its testimony after the Company has filed its own testimony. The focus of OCC’s testimony is necessarily upon the Company’s original application. Allowing OCC to file testimony later in the proceeding will permit OCC to submit the equivalent of reply testimony or rebuttal testimony. If OCC were to be permitted to do so, it would then become necessary to allow the Company to file supplemental testimony to respond. Instead, the filing of testimony simultaneously will permit each party to state its position fairly and equitably and to maintain the existing schedule leading into the hearing.

Further, OCC’s reference to “practice” is misleading.⁵ The OCC cites to specific filing requirements that mandate what a utility must file with its initial application in an electric security plan proceeding. Such requirements do not apply to this proceeding and do not justify a change in the procedural order.

b. Time to Prepare Testimony

OCC’s purpose in submitting testimony in this case, is not to rebut Duke Energy Ohio’s witnesses’ testimony. What the OCC is proposing actually provides it an unfair advantage that is not otherwise permitted in this type of case - a case in which an application is filed and testimony submitted after the filing of comments or objections and the opportunity for discovery. The OCC has had the opportunity to discover the information needed to form an opinion as to the Company’s application. Indeed, OCC has issued three sets of discovery requests to date.

⁵ Motion (August 19, 2015) at 2.

Furthermore, the OCC also ignores that it is well-settled procedure that Staff file their testimony last – not at the same time as intervenors. They are looking to re-define practice and procedures as they wish it to be, not as it is.

c. Time for Discovery

Much like the assertion that OCC needs more time to write testimony, OCC argues that it needs more time for the discovery process. And much like that assertion, this one should also be rejected. The Company has provided information on those topics that the OCC chose to address in discovery. As such, OCC has had ample time to engage in discovery on the limited issues raised herein. To suggest now that OCC needs additional time to conduct discovery before filing testimony in this case is wasteful of the parties' respective resources and fails to explain why the OCC did not engage in the necessary discovery during the pending year.

WHEREFORE, Duke Energy Ohio respectfully requests the Commission deny the motion by OCC to amend the procedural schedule in this proceeding.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 25th day of August, 2015, to the following parties.

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Summary: Memorandum Memorandum Contra the Motion to Amend the Procedural Schedule by The Office of the Ohio Consumers' Counsel by Duke Energy Ohio, Inc. electronically filed by Ms. E Minna Rolfes on behalf of Duke Energy Ohio, Inc. and Elizabeth H. Watts and Amy B. Spiller