

**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.)	

**REPLY TO DUKE’S MEMORANDUM CONTRA MOTION TO AMEND
PROCEDURAL SCHEDULE
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In these cases, Duke Energy Ohio, Inc. (“Duke”) is proposing two new charges to residential customers for **not** having an advanced electric meter at their homes. Duke seeks to establish a one-time charge of \$1,073.10 to remove an advanced meter that was already installed and to replace it with a non-advanced meter.¹ Duke also proposes a monthly meter reading charge of \$40.63, regardless of whether the customer’s meter is actually read in a given month.²

On August 5, 2015, the Public Utilities Commission of Ohio (“PUCO”) issued an Entry establishing a procedural schedule for these cases. Among other things, the Entry requires Duke and intervenors to file testimony by September 18, 2015.³ The PUCO

¹ Application (June 27, 2014) at 3. If Duke is granted the deferral authority it seeks, the charge would be \$126.70. *Id.* at 4.

² See *id.*

³ Entry (August 5, 2015) at 2.

Staff's testimony is due two weeks later, on October 2, 2015, and the hearing is scheduled for October 15, 2015.⁴

On August 19, 2015, the Office of the Ohio Consumers' Counsel ("OCC"), filed a motion asking the PUCO to amend the procedural schedule. OCC asked the PUCO to move the due date of intervenor testimony to the same date that the PUCO Staff's testimony is due, i.e., October 2, 2015. OCC noted that Duke has the burden of proof in this case, but did not file testimony with the Application.⁵ OCC stated that intervenors should have an opportunity to fully examine Duke's claims before filing testimony of their own, which would assist the PUCO in having a more complete and better-informed record.⁶ Allowing intervenors to file their testimony after Duke would also be consistent with other cases.⁷ OCC does not ask for the start of the hearing to be delayed.

Duke filed a Memorandum Contra OCC's Motion on August 25, 2015. Duke asserts that OCC has not been precluded from fully examining the costs at issue in this case.⁸ Duke also contends that granting OCC's motion would allow intervenors to file the equivalent of reply or rebuttal testimony.⁹ In addition, Duke claims that OCC is

⁴ Id.

⁵ OCC Motion, Memorandum in Support at 2.

⁶ Id. at 2-3.

⁷ Id. at 3.

⁸ Memorandum Contra at 2-3.

⁹ Id. at 3.

asking for more time to write testimony.¹⁰ All these assertions are untrue, as discussed below.¹¹

II. REPLY

A. Duke mischaracterizes what is being sought in OCC's Motion to Amend.

Duke asserts that OCC “requires more time for discovery, and if necessary, depositions of Duke Energy Ohio’s witness(es).”¹² Duke does not cite to the portion of the Motion to Amend where OCC asks for additional for discovery. In fact, OCC did not make such a request. Duke has mischaracterized the nature of OCC’s Motion to Amend.

OCC does not seek additional time for discovery. There is no discovery cut-off date in these proceedings, hence Ohio Adm. Code 4901-1-17 applies. That rule allows, except in long-term forecasting cases, that “discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.” Thus, parties may conduct discovery in these proceedings at any time so long as it is completed by the hearing date.

OCC’s Motion to Amend merely asks that intervenors be allowed to file their testimony after Duke has filed its testimony. Duke has not yet filed support, in the record of these proceedings, for the alleged costs it intends to collect from customers who do not have an advanced meter. That support will not be filed until September 18, 2015, the day

¹⁰ Id. at 3, 4.

¹¹ If OCC does not address an argument raised by Duke in its memorandum contra, that should not be construed to mean OCC acquiesces to the argument.

¹² Id. at 3. See also id. at 4.

intervenors must file their own testimony under the current procedural schedule.

Although OCC has conducted discovery on the Application as filed, OCC cannot be certain that its discovery has addressed all the issues Duke may raise in its testimony.

In order to assist the PUCO in compiling a complete and well-informed record, intervenors should have the opportunity to further explore Duke's testimony *before* they must file their own testimony. That is best done through depositions, but at the moment Duke has submitted no witness testimony on which to base depositions. That is the reason for OCC's Motion to Amend, and the PUCO should grant the Motion.

B. Until Duke files testimony in this proceeding, intervenors can only guess at the actual basis for Duke's claimed costs for removing/replacing an advanced meter and for reading a non-advanced meter each month.

Duke filed its Application on June 27, 2014. Two months later and on its own initiative, OCC filed Initial Objections to the Application.¹³ OCC's Initial Objections observed that Duke has not provided sufficient documentation in the record of this proceeding to support its claim regarding the costs it would incur to implement the opt-out service.¹⁴ OCC also noted that Duke's proposed per-customer charges are based on unsupported assumptions regarding the number of customers who would choose not to have an advanced meter at their homes.¹⁵ In addition, OCC stated that Duke has not

¹³ Initial Objections to Duke's Proposal to Charge Residential Customers up to \$1,073.10 as a One-Time Fee Plus \$40.63 in Monthly Charges for Declining a Smart Meter in Their Home and to Other Proposals in the Application by the Office of the Ohio Consumers' Counsel (August 27, 2014).

¹⁴ Id. at 2.

¹⁵ Id.

explained the details concerning its proposal to defer information technology costs and that has not offered details of the annual costs or how the annual costs were calculated.¹⁶

A year has passed since OCC filed its Initial Objections and Duke has yet to provide any documentation in the record of these proceedings in response to OCC's objections or in support of the Application. The record support for Duke's Application is as inadequate today as it was when the Application was filed.

Duke has the burden of proof in these cases regarding the alleged costs and the calculations for the customer charges.¹⁷ Yet Duke has not explained its costs or its calculations in the record. Intervenors should not have to only guess what Duke will include in its testimony before filing their own testimony. Duke should be required to file its testimony first, so the record may contain an explanation of the alleged costs at issue in these proceedings before intervenors file their testimony.

C. Duke's assertions about the nature of intervenors' testimony and the need for Duke to file supplemental testimony are baseless.

Duke claims: "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 permitted to do so, it would then become necessary to allow the Company to file supplemental testimony to respond."¹⁸ Duke is wrong.

¹⁶ Id. at 2-3.

¹⁷ Despite Duke's claims regarding OCC's opportunity for discovery (see Memorandum Contra at 3), Duke has the burden of justifying the costs it alleges.

¹⁸ Id.

The focus of OCC's testimony – and indeed this entire proceeding – is not only the inadequate Application, but also Duke's support for the alleged costs. Intervenors cannot examine the costs included in the Application without knowing the justification for the costs that Duke will have in the record. That justification has not yet occurred, but is supposed to be included in Duke's testimony to be filed on September 18, 2015 (nearly 15 months after the Application was filed).

Intervenors' testimony – even if filed after Duke's testimony – should not be considered to be reply or rebuttal testimony, but instead is initial direct testimony that examines what hopefully will be the justification for the costs involved. As discussed above, that examination cannot occur until after Duke files its initial testimony. Further, Duke should not be allowed to file supplemental testimony, as it requests.¹⁹ Supplemental testimony is usually allowed only when the applicant has filed supporting testimony with the application.²⁰ Duke has had ample opportunity to justify its costs in the record and has not done so. Any issue regarding rebuttal testimony should be raised at hearing.²¹

¹⁹ Id.

²⁰ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2014 Grid Modernization Costs*, Case No. 15-883-GE-RDR, Entry (July 1, 2015) at 2 setting a procedural schedule calling for a comment period, and if no settlement is reached, PUCO Staff and intervenor testimony is due November 6, 2015 and Duke supplemental testimony is due November 13, 2015. But Duke filed supporting testimony with its application in that case. See id., Application (June 4, 2015); id., Direct Testimony of Donald L. Schneider Jr. (June 4, 2015); id., Direct Testimony of Peggy A. Laub (June 4, 2015).

²¹ Duke also asserts that "it is well-settled procedure that Staff file their testimony last – not at the same time as intervenors." Memorandum Contra at 4. As discussed in footnote 20 above, that is not always the case. Further, under the August 5 Entry there are nearly two weeks between the current October 2 deadline for PUCO Staff testimony and the hearing date. This is ample time to accommodate the PUCO Staff, if necessary.

III. CONCLUSION

Duke's arguments against OCC's Motion to Amend are baseless and mischaracterize the nature of OCC's Motion. OCC's proposal that intervenors file testimony in these cases by October 2, 2015 would not delay the hearing and would not disadvantage any party. The PUCO should grant OCC's Motion to Amend the Procedural Schedule in these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served on the persons stated below via electronic service this 31st day of August 2015.

/s/ Terry L. Etter

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Summary: Reply Reply to Duke's Memorandum Contra Motion to Amend Procedural Schedule by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.