

**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.	)	

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**DUKE ENERGY OHIO, INC.'S  
MEMORANDUM CONTRA APPLICATION FOR REHEARING  
OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

With the filing of the application in this proceeding, Duke Energy Ohio, Inc., (Duke Energy Ohio) complied with a regulation from the Public Utilities Commission of Ohio (Commission) contained in Rule 4901:1-10-05(J)(5)(a), Ohio Administrative Code (O.A.C.). After testimony and extensive hearings, the Commission has determined that the application should be approved, with modifications based upon the record that was developed at hearing. In each instance, the Commission explained its reasoning and the details in the record that support its conclusions.

The Office of the Ohio Consumers' Counsel (OCC) seeks rehearing by arguing incorrectly that the Commission's decision is unreasonable and unlawful. The OCC believes that customers should not be required to pay for opting to have a traditional meter. However, the OCC's arguments were considered and dismissed in the context of the rulemaking that established Rule 4901:1-10-05(J) and in this case. The Commission directed electric distribution utilities to create an opt-out option for customers and made provision for allowing companies to

recover the costs of implementing such programs. The outcome in this case is consistent with the record and well within the Commission's discretion. The OCC merely disagrees with the decision. The Commission's Opinion and Order was supported by the record in this case and OCC's application should be denied.

## II. DISCUSSION

### A. **The Commission correctly determined service charges in this case and need not do so in a base rate proceeding.**

The OCC's first assignment of error incorrectly claims that the Commission should have waited until Duke Energy Ohio next files a base rate proceeding in order to establish charges in this case. OCC cites to testimony of Staff witness Marchia Rutherford, wherein Ms. Rutherford recommended that the charges be *reviewed* in the next base rate case.<sup>1</sup> OCC fails to recognize that Ms. Rutherford's testimony recommended that charges set in this proceeding be *reviewed* in a subsequent base rate case, as opposed to set to zero in this case pending initial determination in a future distribution rate case. Thus Staff did not agree with OCC's argument, despite OCC's claim to the contrary.

OCC further argues that charges in this proceeding should be reviewed in a rate proceeding due to the fact that "many of the figures presented in this proceeding are estimated and contested... ."<sup>2</sup> However, the determination of the cost of offering this new service necessarily required reliance on estimations. In this proceeding, all the matters in dispute – including reliance on estimates – were fully litigated, including the opportunity for full discovery and vetting of the application over a period of 16 months between the filing of the application on June 14, 2014, and the hearing that was held on October 15, 2015. OCC had ample opportunity

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<sup>1</sup> Staff Ex. 2, Direct Testimony of Marchia Rutherford, at p. 8, and Application for Rehearing of the Office of the Ohio Consumers' Counsel, at p. 4.

<sup>2</sup> Application for Rehearing of the Office of the Ohio Consumers' Counsel, at p. 4.

to seek discovery related to all the charges and to depose Duke Energy Ohio witnesses, as required. But instead of conducting useful analysis of the proposed fees, OCC simply proposed that the Commission ignore the rule requiring that opt-out customers bear the costs caused by their decision. Contrary to OCC's claim, there would be no advantage to OCC or any other party by vetting these same issues in a distribution rate proceeding. The relevant charges would still be based upon estimates. Moreover, there is nothing unreasonable or unlawful in the Commission's decision, which was based upon a full and complete record. The OCC's first assignment of error is unsupported and must be denied.

**B. The Commission correctly established a rate for Metering Services based upon the Company's application and testimony and the evidence of record.**

The rule directing the Company to file an opt-out tariff likewise established that the Company could establish both a one-time charge and a recurring, cost-based fee for residential customers who choose the traditional meter option. The OCC argues that the Commission wrongly determined the proper amounts to be applied with respect to these charges, but in doing so the OCC incorrectly interprets the record upon which the Commission relied. Duke Energy Ohio witness Justin C. Brown testified at hearing that Duke Energy Ohio would incur costs in three categories: a one-time cost for Information Technology (IT) system changes, Metering Services, and Distribution Services.<sup>3</sup> With respect to Metering Services, Mr. Brown explained that the Company would incur costs to conduct repairs of, test, store, and purchase traditional meters.<sup>4</sup> Although the OCC correctly notes that the Company has estimated that approximately 725 customers will elect opt-out service, OCC fails to understand that the costs associated with maintaining and servicing traditional meters is not tied to that number of customers but is rather

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<sup>3</sup> Direct Testimony of Justin C. Brown, at p. 4.

<sup>4</sup> *Id.*, at p. 5.

based on the Company's estimate of costs related to maintaining traditional meter stock.<sup>5</sup> The Commission, citing to the testimony of Staff witness Rutherford, found it appropriate to reduce the Company's cost estimates by one-third, because the Company would not be required to purchase meters to hold in reserve, since it maintained an inventory of traditional meters.<sup>6</sup> Additionally, the Commission explained that it found this number appropriate because it would simplify customer bills and further noted that the charge is related primarily to meter removal and replacement.<sup>7</sup> Thus, OCC's argument that the one-third reduction in costs should only relate to the cost of inventory of 218 meters is nonsensical in this context and overlooks the costs incurred for other work related to meter maintenance and replacements. The OCC is simply misunderstanding the record that was established.

OCC next argues that the Commission failed to explain its reasons for determination of the cost of Distribution Services. But the Commission's Opinion and Order is abundantly clear and detailed. First, the Commission pointed to the Company's proposal as contained in the testimony of Duke Energy Ohio witness Brown, and then it explained, based upon its understanding of Staff witness Rutherford's testimony, how it adjusted the Company's application.<sup>8</sup> Explicitly, the Commission explained that it was accepting three adjustments to the Company's charges, including those for mesh network costs, certain meter reading costs, and revenue assurance (theft) costs.<sup>9</sup> After evaluating the facts established at hearing, the Commission determined that the estimated costs should be subject to a twenty-five percent

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at p. 8.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

reduction and concluded that the Company should be permitted to charge customers \$30.00 per month for advanced meter opt-out service.<sup>10</sup>

The Company's application and testimony in this proceeding are based upon estimates that were developed by those within the Company with the best experience and knowledge of the work involved and related costs. But no one at hearing disputed that all of the numbers involved estimates. Thus, the Commission's Opinion and Order, which is likewise based upon the testimony and facts established and hearing, is a fair and reasonable estimate of costs that will be incurred. Indeed, it is impossible to know with specificity how many customers will take advantage of the option to maintain a traditional meter. Thus, the Commission's rationale, which is abundantly explained in its Opinion and Order, represents a fair and reasonable interpretation of the facts before it and is well within its discretion.

Lastly, with respect to assignment of error number two, the OCC argues that the Commission erred in permitting deferral authority for the costs incurred by the Company for IT system improvements. OCC's argument is a reiteration of its oft-repeated and consistently denied position that all costs must be determined in the context of a standard base rate proceeding. OCC's argument consistently overlooks the fact that the Company was directed to file a proposed tariff and was explicitly permitted to request cost recovery pursuant to the Commission's Rule 4901:1-10-05(J). Moreover, as explained above, this case was fully litigated and OCC had the benefit of ample discovery.

The Commission's Opinion and Order recognizes that the costs to be incurred by the Company were imposed upon it by the Commission's adoption of O.A.C. 4901:1-10-05(J), and that these costs met with Staff's criteria for recovery of deferrals in respect of being atypical and infrequent. Moreover, the Commission explained that the costs herein are consistent with the

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<sup>10</sup> *Id.*

Commission's desire to encourage electric utilities in the state of Ohio to modernize their systems, including IT system improvements.<sup>11</sup> Such determinations are well within the Commission's discretion and, in this instance, are abundantly supported by the record as well.

The OCC's second assignment of error merely represents its disagreement with the Commission's ultimate determination. Nothing cited by the OCC constitutes a violation of R.C. 4903.09 and the Commission's ultimate decision in this case is supported by the record and well within the Commission's discretionary authority. For these reasons, OCC's second assignment of error must be denied.

**C. The Commission correctly determined costs associated with monthly meter reading.**

In its assignment of error number three, OCC argues that the Commission's ultimate findings and conclusions in this proceeding, based upon testimony in the record, result in incorrect calculations. In doing so, OCC again misunderstands the record and arrives at faulty conclusions. The Commission explicitly recognizes that the Company's calculations in this case were based upon a combination of actual costs incurred and estimates of the number of customers expected to enroll in advance meter opt-out service.<sup>12</sup> The Commission understands that the Company's proposal represents an estimate of costs based upon experience and anticipated response to the program. Taking that into consideration, and also explicitly recognizing Staff's recommendations in its Opinion and Order, the Commission then detailed the adjustments to the Company's proposal.<sup>13</sup> In respect of the monthly costs incurred by the Company in providing this new service, the Commission determined it appropriate to reduce the Company's proposed charge by twenty-five percent. In doing so, the Commission explained that

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<sup>11</sup> *Id.*, at p. 7.

<sup>12</sup> *Id.*, at p. 3.

<sup>13</sup> *Id.*, at p. 8.

the charge of an even \$30.00 was appropriate in order to simplify customer bills and likewise could be reviewed in the future.<sup>14</sup>

OCC also argues that the Commission's decision is inadequate because the Company allegedly failed to meet its burden of proof. In making this argument, the OCC reaches some somewhat fanciful conclusions. Duke Energy Ohio witness Brown explained and supported all of the costs related to opt-out service. With respect to Distribution Services in particular, Mr. Brown detailed costs related to purchasing, locating, and installing extra communication devices to read meters that may become stranded because of communication gaps caused by redeployment of traditional meters. OCC attempts to support its argument by pointing to one of the Company's discovery responses wherein the Company stated that no such gaps have been caused by traditional meters.<sup>15</sup> But of course this is true since the opt-out option has not yet been put into action. The gaps that may be occurring as a result of first deployment are solved as deployment occurs. When customers are given an option to opt-out pursuant to these new service, new gaps will occur. Thereafter, OCC argues again that customers should not be charged on a monthly basis for opt-out. But disagreement with the Commission's ultimate conclusions does not form a basis for rehearing.

The Commission's decision is based upon the Company's application, and adjusted to reflect partial acceptance of Staff's recommendations. The Commission reached a conclusion well within its discretion and as detailed in the Opinion and Order. The OCC's third assignment of error should be denied.

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<sup>14</sup> Opinion and Order, at p. 9.

<sup>15</sup> Application for Rehearing of the Office of the Ohio Consumers' Counsel, at p. 15.

**D. The OCC's arguments were accorded proper weight by the Commission.**

In its fourth assignment of error, OCC argues that the Commission neglected to address one of OCC's least compelling arguments. OCC had argued that the Company should work with customers to provide alternatives to opting out, where appropriate. But Company witness Brown testified that the Company does exactly that. Indeed, OCC excerpted a relevant portion of the testimony at hearing wherein Mr. Brown explained that one option for customers is to relocate a meter base elsewhere on the customer's property. OCC nevertheless inexplicably states that the Company has not shown a willingness to work with customers who have concerns about the communication functions of advanced meters. OCC failed to produce any evidence to suggest otherwise and indeed has no independent knowledge of such facts.<sup>16</sup> Moreover, the OCC raised these same arguments in their initial post-hearing brief.<sup>17</sup> The fact that the Commission did not address these unsupported arguments in its Opinion and Order seems to suggest that OCC failed to make a compelling argument. For these reasons, OCC's fourth assignment of error is without merit and should be denied.

**III. CONCLUSION**

Arguments raised by OCC in its application for rehearing amount to little more than disagreement with the outcome explained by the Commission in its Opinion and Order. OCC believes that customers should not be required to pay for opting to have a traditional meter. However, OCC's arguments have been considered and dismissed in the context of the rulemaking that established Rule 4901:1-10-05(J) and in this case. The Commission directed electric distribution utilities to create an opt-out option for customers and made provision for allowing companies to recover the costs of implementing such programs. The outcome in this

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<sup>16</sup> Transcript, at p. 202.

<sup>17</sup> Initial Post-hearing Brief of the Office of the Ohio Consumers' Counsel, at p. 23.



case is consistent with the record and well within the Commission's discretion. For the reasons stated herein, the Commission should deny OCC's application for rehearing.

Respectfully submitted,  
DUKE ENERGY OHIO, INC.

A handwritten signature in blue ink that reads "Elizabeth H. Watts" followed by a small, stylized mark that appears to be "per".

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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 6th day of June, 2016, to the following parties.

  
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Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra Application for Rehearing of the Office of the Ohio Consumers' Counsel electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.