BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2016 Grid Modernization Costs.	)))	Case No. 17-690-GA-RDR

THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
MEMORANDUM CONTRA DUKE ENERGY OHIO'S MOTION TO STRIKE

I. INTRODUCTION

In this proceeding, the utility, Duke Energy Ohio ("Duke") seeks to charge customers an additional $4.1 million for its 2016 gas distribution system modernization costs ("SmartGrid").[1] Duke's request means that residential customers would continue paying the costs for undepreciated, so-called obsolete equipment related to its gas SmartGrid program without the PUCO investigating the prudency of the costs.

The Office of the Ohio Consumers' Counsel ("OCC") filed comments in this proceeding objecting to Duke's plan to replace the so-called obsolete equipment—a plan that was revealed in Duke's contemporaneously-filed application to increase rates for electric service.[2] In that case, Duke told of its plan to increase electric rates charging customers an additional $45 million to replace equipment common to Duke's electric and gas SmartGrid programs.[3] Thus, Duke's residential customers would pay for the so-called obsolete equipment while, at the same time, paying for replacement equipment.

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[1] *See* Application (Mar. 24, 2017), Direct Testimony of Peggy Laub, Attachment PAL-1, Schedule 13 and Attachment PAL-2, Schedule 13.

[2] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates,* Case No. 17-32-EL-AIR, Testimony of Donald Schneider (March 16, 2017) at 10.

[3] OCC Comments at 3.

OCC asked the Public Utilities Commission of Ohio ("PUCO") to order an independent investigation of Duke's proposals, including (1) the prudence of Duke's decision to invest in SmartGrid equipment that has been fully functional for only two years, and (2) to ensure that residential customers do not pay twice for Duke's gas SmartGrid system.[4]

In response, Duke filed a "motion to strike" OCC's comments on August 11, 2017 on the basis that the comments are factually incorrect and irrelevant to this proceeding. Duke's motion is without merit and must be denied.

II. DISCUSSION

A. If Duke seeks to challenge OCC's position in this case, it must do so in response to OCC's direct testimony and not initial comments.

Now that OCC has filed testimony in this case, it is unclear what purpose Duke's motion to strike serves. Under the Attorney Examiner's April 4, 2017 procedural Entry, there will be a hearing in this case if "all of the issues raised in the comments are not resolved." If not resolved, intervenors are to file testimony and "a hearing will be held."[5]

The purpose of having intervenors file comments, and for Duke to respond through reply,[6] was for the parties to attempt to resolve their differences short of hearing. Unfortunately, the issues were not resolved and, under the Attorney Examiner's directive, OCC witness James D. Williams filed direct testimony in support of OCC's position on August 18, 2017.

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[4] OCC Comments at 3-4.

[5] Entry (April 4, 2017) at 2.

[6] Duke filed its reply comments in this proceeding on August 11, 2017.

If Duke seeks to challenge OCC's position in this case, the proper procedural method to do so is to address Mr. Williams' direct testimony through Duke's own testimony or through cross-examination of Mr. Williams at hearing. Duke's motion to strike OCC's comments should be denied on this basis alone.

B. Duke had an opportunity to file reply comments challenging the facts stated in OCC's comments, and Duke in fact did so. A factual dispute does not warrant striking comments

Duke claims that OCC's comments must be stricken in their entirety because they are factually incorrect.[7] If Duke believed that OCC's comments are factually incorrect, it had an opportunity to say so in its reply comments—and it in fact did so. Whether OCC's factual statements are true and reliable is for the Attorney Examiner or PUCO to decide, not Duke. Nearly every case before the PUCO involves a dispute of facts. The end result is that the PUCO issues an Entry or Order, stating which facts it believes to be most reliable. The PUCO does not then strike every other set of comments and every other piece of testimony. The PUCO should give OCC's comments the weight that it believes they deserve. It should not strike them simply because Duke disagrees with them.

C. OCC's comments are relevant to the issues in this case and the PUCO has the authority to grant the requested relief.

Duke also urges the PUCO to dismiss OCC's comments because they are irrelevant to the central issue of whether Duke's 2016 gas SmartGrid costs were prudently incurred.[8]

Contrary to Duke's assertion, the entire point of OCC's comments is that the costs incurred for Duke's gas SmartGrid program were not prudently incurred. OCC's

[7] Duke Motion to Strike at 3.

[8] Duke Motion to Strike at 3.

comments assert that Duke has installed equipment that may be prematurely obsolete and that Duke's plan to replace it could cause consumers to pay twice for Duke's gas SmartGrid program.[9] Based on these concerns, the PUCO clearly has the authority to grant OCC's request to investigate the prudency of Duke's decisions to have invested in what may now be obsolete equipment. The exercise of this authority is imperative to ensure that residential customers do not pay twice for the gas SmartGrid equipment.

Finally, Duke attempts to confuse the issues that OCC raises by claiming that they relate only to Duke's application to increase electric rates currently under consideration by the PUCO.[10] To be sure, even the Attorney Examiner's procedural Entry issued April 4, 2017 recognizes the interrelationship between the SmartGrid equipment in this case and the equipment that Duke proposes to replace in the electric rate proceeding. The Entry states, in paragraph 2:

> By Opinion and Order issued May 28, 2008, in *In re Duke Energy Ohio, Inc*., Case No. 07-589-GA-AIR, et al. (*Gas Distribution Rate Case*), the Commission approved a stipulation that, among other things, provided a process for filing Duke's deployment plans for the installation of an automated gas meter reading system, ***which would share the SmartGrid communications technology for the electric system,*** and a method for recovering costs associated with the plans, which was designated Rider Advanced Utility (Rider AU).[11]

The revelation in the electric rate case that Duke proposes to replace this shared equipment because it is obsolete is relevant to this proceeding. It is relevant because customers are being asked to pay for a SmartGrid system composed of so-called obsolete equipment in this proceeding, while being asked to pay again for components of the

[9] OCC Comments at 4.

[10] Duke Motion to Strike at 2-3.

[11] Emphasis added.

shared system in the electric rate case. OCC clearly has the right to assert in this case that Duke's residential customers not be forced to pay for Duke's imprudent decisions.

III. CONCLUSION

To protect consumers, the PUCO should deny Duke's Motion to Strike and proceed to hearing on the basis of the testimonies filed in this a case, as the Attorney Examiner's procedural Entry of April 4, 2017 directed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic transmission to the persons listed below, on this 28th day of August 2017.

/s/ Christopher Healey
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Summary: Memorandum The Office of the Ohio Consumers' Counsel's Memorandum Contra Duke Energy Ohio's Motion to Strike electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.