

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO ESTABLISH A STANDARD
SERVICE OFFER PURSUANT TO R.C.
4928.143 IN THE FORM OF AN ELECTRIC
SECURITY PLAN, ACCOUNTING
MODIFICATIONS, AND TARIFFS FOR
GENERATION SERVICE.

CASE NO. 14-841-EL-SSO

IN THE MATTER OF APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO AMEND ITS CERTIFIED
SUPPLIER TARIFF, P.U.C.O. No. 20.

CASE NO. 14-842-EL-ATA

SECOND ENTRY ON REHEARING

Entered in the Journal on July 25, 2018

I. SUMMARY

{¶ 1} The Commission finds that the Ohio Consumers' Counsel application for rehearing should be denied and that Duke Energy Ohio, Inc.'s application for rehearing should be granted, in accordance with the Commission's modifications.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On May 29, 2014, pursuant to R.C. 4928.143, Duke filed an application for an SSO, in the form of an ESP (ESP 3).

{¶ 5} On April 2, 2015, the Commission issued its Opinion and Order approving Duke's proposed ESP, with certain modifications (ESP 3 Order). Pursuant to the ESP 3 Order, the ESP was approved for a three-year term lasting from June 1, 2015, to May 31, 2018. Further, Duke was directed to file its next SSO application by June 1, 2017. On May 1, 2015, and May 4, 2015, applications for rehearing of the ESP 3 Order were filed by numerous parties. By Entry on Rehearing dated May 28, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing. In a Second Entry on Rehearing issued March 21, 2018, the Commission granted in part and denied in part the applications for rehearing of the April 2, 2015 Opinion and Order. An Entry Nunc Pro Tunc issued March 28, 2018, clarified the Second Entry on Rehearing. A Third Entry on Rehearing was issued on May 9, 2018.

{¶ 6} On June 1, 2017, in accordance with the directives in the ESP 3 Order, Duke applied for an SSO in the form of an ESP in Case No. 17-1263-EL-SSO (ESP 4 Case). Initially, the attorney examiner scheduled the matter for hearing to begin November 13, 2017. Since that time, however, the attorney examiner granted several unopposed motions to continue the proceedings as the parties indicated there are ongoing settlement discussions. Thereafter, Duke, Staff, and several other parties filed a Stipulation that purports to resolve the issues in the ESP 4 Case, as well as other proceedings. The evidentiary hearing regarding that matter began on July 9, 2018.

{¶ 7} On December 5, 2017, and revised on December 6, 2017, Duke made a filing in the ESP 4 Case requesting to proceed with two auctions to procure generation for its SSO customers. Duke asserted that, because its application is still pending in the ESP 4 Case, the auctions are necessary in order to maintain an adequate supply of energy for its customers. By Entry on December 20, 2017, the Commission authorized Duke to go forward with the auctions.

{¶ 8} On March 9, 2018, Duke submitted a motion to continue the riders incorporated in ESP 3, including, specifically, Duke's Distribution Capital Investment Rider (Rider DCI). As to Rider DCI, Duke requested to extend the current \$35 million cap until August 1, 2018. Memorandums in response were filed by the Ohio Energy Group (OEG), Ohio Consumers' Counsel (OCC), and, jointly, the Ohio Manufacturers' Association and the Kroger Company (OMA/Kroger). Duke filed replies to memorandums filed by OCC and OMA/Kroger.

{¶ 9} On May 11, 2018, Duke filed a motion to extend the monetary cap associated with Rider DCI. Specifically, the Company asked to maintain its present average cap of \$7 million per month indefinitely until a new SSO is approved. OCC filed a memorandum contra Duke's motion on May 15, 2018, to which Duke replied on May 21, 2018.

{¶ 10} On May 30, 2018, the Commission issued an Entry granting Duke's motion to extend ESP 3. In doing so, the Commission authorized Duke to continue the provisions, terms, and conditions of its current ESP until another SSO is authorized. Regarding Rider DCI, we found that the original \$35 million cap should be extended until August 1, 2018, as initially requested by Duke. In doing so, the Commission declined to increase the hard cap that was approved in ESP 3.

III. DISCUSSION

{¶ 11} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 12} On June 7, 2018, Duke filed an application for rehearing. Memoranda contra Duke's application were filed by OMA/Kroger. By Entry on Rehearing issued on June 20, 2018, the Commission granted Duke's application for further consideration.

{¶ 13} Thereafter, on June 29, 2018, OCC filed an application for rehearing regarding the Commission's May 30, 2018 Entry. Duke's memoranda contra was filed on July 9, 2018.

A. *Duke's Application for Rehearing*

{¶ 14} In its application for rehearing, Duke seeks clarification regarding the Commission's order. Duke notes, in the Entry, that the Company was permitted to continue Rider DCI until August 1, 2018, and that the Commission would consider future requests to recover capital investments made after August 1, 2018. According to Duke, this would create a gap for recovery of investments that have already been made by the Company. Duke states that the rates for Rider DCI are updated quarterly to reflect the previous quarter's distribution rate base. For example, Duke avers that its current Rider DCI rates became effective April 1, 2018, and recovers the difference in total distribution capital revenue requirement between the level established in base rates on March 31, 2012 (in Duke's last rate case), and the revenue requirement based on distribution rate base as of December 31, 2017. Thus, according to the Company, there is a three-month lag. If Duke can no longer recover Rider DCI after August 1, 2018, the Company maintains it will only be able to recover on investments made through March 31, 2018. Duke asks that the Commission clarify its Entry such that Duke is permitted to recover for already-invested capital as to account for the three month lag between investment and recovery.

{¶ 15} In arguing against Duke's application, OMA/Kroger submit that the original \$35 million cap should be maintained. According to OMA/Kroger, that cap was the result of a fully-litigated proceeding and should not be amended without a similar process. OMA/Kroger aver that the set cap is a hard cap, and if Duke exhausts the \$35 million cap, whether in February or in August, then Rider DCI recovery should be zero. OCC also requests that Duke's application for rehearing be denied. OCC similarly states the \$35 million cap was already litigated and asserts that Duke's application for rehearing on this issue should have been filed after the Commission's original decision in 2015.

B. OCC's Application for Rehearing

{¶ 16} OCC argues three points of error in its application for rehearing. OCC first submits that the Commission lacks statutory authority to extend an ESP. OCC maintains that R.C. 4928.143 only describes two scenarios in which a previously-approved SSO may be continued beyond its expiration date: when the Commission disapproves an SSO application or when a utility withdraws an application that has been modified by the Commission. According to OCC, it is thus unlawful to extend an SSO unless it falls under one of those two scenarios. While precedent exists for the Commission to extend an SSO, in *In re Dayton Power & Light Co.*, Case No. 12-426-EL-SSO, OCC avers that case was significantly different and, further, the Commission's decision was similarly unlawful. OCC additionally states that, because the Commission did not promptly rule on applications for rehearing regarding the initial approval of Duke's SSO, the Commission is then partially responsible for the current SSO expiring without a new SSO in place.

{¶ 17} OCC next argues that continuing the ESP beyond the expiration date is unlawful because it causes irreparable harm to customers. OCC affirms that customers lack an effective legal remedy against monetary charges associated with the ESP because the Supreme Court of Ohio has disallowed refunds of costs. Because customers would be unable to recover costs later found to be unlawful, OCC avers that the Commission should find the ESP extension unreasonable. OCC's third assignment of error asserts that, specifically, the continuation of Rider DCI is unjust and unreasonable because the rider is failing to improve reliability and align the expectations of Duke and its customers. OCC reasons that, pursuant to R.C. 4928.143(B)(2)(h), provisions that relate to distribution service such as Rider DCI must improve reliability as well as align with the expectations of Duke and its customers. OCC notes that since Rider DCI came into effect in 2015, Duke has not met reliability standards. For these reasons, OCC argues it is inappropriate to continue a rider that is not meeting expectations.

{¶ 18} In its memorandum contra, Duke asks that OCC's application for rehearing be denied. Regarding OCC's argument that the Revised Code only describes two

instances where the Commission can continue an SSO, Duke responds that the General Assembly did not contemplate a situation where an SSO expires without an approved SSO to replace it. Duke notes that R.C. 4928.143(C)(1) directs that an SSO application be approved within 275 days. Because that did not occur, Duke maintains the Commission appropriately and reasonably continued the previous ESP. The Company also disagrees with OCC's assertion that the extension causes customers irreparable harm and is thus unlawful. Duke states that whether the filed rate doctrine would apply is irrelevant to the lawfulness of the Commission's decision and that the Commission lacks authority to address OCC's concerns. Finally, Duke avers that OCC is wrong in asserting that Duke's history of meeting reliability standards is relevant to the Company's request to continue Rider DCI. Duke submits that R.C. 4928.143(B)(2)(h) is only applicable when approving a new ESP application and that, further, Rider DCI's effect on reliability has not been determined.

C. *Commission Conclusion*

{¶ 19} Initially, the Commission finds that OCC's application for rehearing should be denied. As discussed in the initial May 30, 2018 Entry, the Commission was presented with a situation where an SSO was expiring without a new, authorized SSO to replace it. The Revised Code is silent regarding the protocol in such an event. Accordingly, it was prudent for the Commission to take action. Thus, we looked to other, similar situations in the Revised Code for guidance. In those situations, similarly regarding an interim period between SSOs, the Commission is directed to extend the previous, expired SSO. *See* R.C. 4928.143(C)(2)(b). We do not find an extension of an SSO is strictly limited to those events and find it is appropriate to maintain the previous ESP. We also find no merit in OCC's assertion that our decision will cause residential customers irreparable harm and is thus unlawful. Under OCC's logic, any rate established by the Commission under these circumstances is by default unlawful because it would be subject to Supreme Court review and, if the Commission's decision was reversed, the filed rate doctrine would prevent a refund for consumers. This is an argument that the filed rate doctrine is unlawful, not

that any particular note that the Commission establishes is unlawful. Obviously, such an argument is untenable. Accordingly, OCC's assignment of error is rejected. The Commission also declines to adopt OCC's position that, because Duke has not met recent reliability standards, Rider DCI is therefore ineffective and should not be continued. Here, we are continuing the previously-approved ESP until another SSO comes into effect. Our objective is to maintain safe, reliable, and affordable electric service for this interim period. In approving ESP 3, the Commission found that Rider DCI, as modified in the Order, would allow Duke to have a more proactive maintenance program and would "facilitate improved service reliability and further align the Company's and its customers' expectations." ESP 3 Order at 71-72. The May 30, 2018 Entry is a temporary continuation of the ESP approved in the ESP 3 Order and our finding that Rider DCI is reasonable, as affirmed in the March 31, 2018 Second Entry on Rehearing, also naturally continues.

{¶ 20} Regarding Duke's request to reconsider the cap for Rider DCI going forward, the Commission will grant rehearing and provide further modifications. Upon our first review of Duke's requests to continue Rider DCI, in the May 30, 2018 Entry, we granted the Company's initial request to extend the original \$35 million cap from May 31, 2018, to August 1, 2018, but denied Duke's second request for an ongoing \$7 million per month cap. However, upon further consideration, the Commission is persuaded by the Company's more extensive arguments in its application for rehearing. Therefore, as we previously extended the other components of ESP 3 until a new SSO is approved, the Commission finds it also appropriate to continue Rider DCI beyond August 1, 2018. As Duke discusses in its application, the Company has not recovered the revenue requirement for already-invested capital made during this ESP. We further recognize, as pointed out by Duke, that there is a three-month lag between when the Company makes its investment and when it can adjust rates to collect on those investments. Thus, if the rider ends on August 1, 2018, then Duke will have only recovered one month of distribution investment made up to March 31, 2018, through rates which went into effect on July 1, 2018. Additionally, as Duke demonstrates in the attachments to its application,

if Rider DCI concludes before a new SSO is approved, the Company's return on equity would be reduced from the approved 9.84 percent to 1.90 percent. In our May 30, 2018 Entry extending ESP 3, we stated that the "continuation of the ESP and Rider DCI allows the Company to maintain essential electric service and continue proactive investment in the electric grid, as previously discussed by the Commission. ESP 3 Order at 72." However, upon additional review, the Commission finds that in order to preserve those objectives the continuation of Rider DCI should not sunset on August 1, 2018. Duke is thus authorized to keep Rider DCI until a new SSO is put in place. The arguments put forth by OCC and OMA/Kroger restate their previous arguments addressed in the May 30, 2018 Entry and remain unconvincing. In extending the cap associated with Rider DCI, we are extending ESP 3 as a whole, which is necessary to maintain essential electric service during this temporary period. In doing so, we will maintain our initial cap of \$35 million through the first seven months of the year, concluding on August 1, 2018, as initially requested by Duke. Thereafter, Rider DCI will have a monthly cap of \$5 million, which is a continuation of the monthly average instituted by the \$35 million cap through August 1, 2018.

IV. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That OCC's application for rehearing be denied. It is, further,

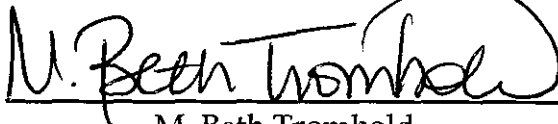
{¶ 23} ORDERED, That Duke's application for rehearing be granted, in accordance with paragraph 20. It is, further,

{¶ 24} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson



Daniel R. Conway

Lawrence K. Friedeman

NJW/mef

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Barcy F. McNeal
Secretary