

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for an : Case No. 17-32-EL-AIR
 Increase in Electric :
 Distribution Rates. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Tariff : Case No. 17-33-EL-ATA
 Approval. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-34-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-872-EL-RDR
 to Modify Rider PSR. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-873-EL-ATA
 to Amend Rider PSR. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-874-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Authority :
 to Establish a Standard :
 Service Offer Pursuant to :
 Section 4928.143, Revised : Case No. 17-1263-EL-SSO
 Code, in the Form of an :
 Electric Security Plan, :
 Accounting Modifications, :
 and Tariffs for Generation:
 Services. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Authority :
 to Amend its Certified : Case No. 17-1264-EL-ATA
 Supplier Tariff, P.U.C.O. :
 No. 20. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Authority : Case No. 17-1265-EL-AAM
 to Defer Vegetation :
 Management Costs. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., to Establish :
 Minimum Reliability : Case No. 16-1602-EL-ESS
 Performance Standards :
 Pursuant to Chapter :
 4901:1-10, Ohio :
 Administrative Code. :

- - -

PROCEEDINGS

before Mr. Nicholas Walstra and Ms. Stacie Cathcart,
 Attorney Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-A,
 Columbus, Ohio, called at 9:00 a.m. on Wednesday,
 July 18, 2018.

- - -

VOLUME VIII

- - -

ARMSTRONG & OKEY, INC.
 222 East Town Street, Second Floor
 Columbus, Ohio 43215-5201
 (614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 Duke Energy Ohio, Inc.
3 By Mr. Rocco O. D'Ascenzo
4 Deputy General Counsel,
5 Ms. Jeanne W. Kingery
6 Associate General Counsel,
7 and Ms. Elizabeth H. Watts
8 Associate General Counsel,
9 139 East Fourth Street ML 1303 Main
10 Cincinnati, Ohio 45201

11 Duke Energy Business Services, LLC
12 By Mr. Camal O. Robinson
13 550 South Tyron Street, 45th Floor
14 Mail code: DEC45A
15 Charlotte, North Carolina 28202

16 Ice Miller, LLP
17 By Mr. Christopher Miller
18 250 West Street, Suite 700
19 Columbus, Ohio 43215-7509

20 Ice Miller, LLP
21 By Ms. Kay Pashos
22 and Mr. Michael S. Mizell
23 One American Square, Suite 2900
24 Indianapolis, Indiana 46282

25 On behalf of Duke Energy Ohio, Inc.

Bruce E. Weston, Ohio Consumers' Counsel
By Mr. William J. Michael,
Mr. Christopher Healey,
and Mr. Zachary Woltz,
Assistant Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213

On behalf of the Residential Consumers of
Duke Energy Ohio, Inc.

1 APPEARANCES:

2 Environmental Law & Policy Center
3 By Ms. Madeline Fleisher
4 21 West Broad Street, 8th Floor
5 Columbus, Ohio 43215

6 and

7 Environmental Law & Policy Center
8 By Mr. Jean-Luc Kreitner
9 35 East Wacker Drive, Suite 1600
10 Chicago, Illinois 60601

11 On behalf of the Environmental Law &
12 Policy Center.

13 Mike DeWine, Ohio Attorney General
14 By Mr. William L. Wright,
15 Section Chief
16 Mr. Steven L. Beeler,
17 Mr. Thomas G. Lindgren,
18 and Mr. Robert Eubanks,
19 Assistant Attorneys General
20 Public Utilities Section
21 180 East Broad Street, 6th Floor
22 Columbus, Ohio 43215

23 On behalf of the Staff of the PUCO.

24 IGS Energy
25 By Mr. Joseph Oliker
and Mr. Michael Nugent
6100 Emerald Parkway
Dublin, Ohio 43016

On behalf of IGS Energy.

Ohio Environmental Council
By Ms. Miranda Leppla
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212

On behalf of the Ohio Environmental
Council and Environmental Defense Fund.

1 APPEARANCES:

2 Vorys, Sater, Seymour & Pease, LLP
3 By Mr. Michael J. Settineri
4 and Ms. Gretchen L. Petrucci
5 52 East Gay Street
6 P.O. Box 1008
7 Columbus, Ohio 43215

8 On behalf of Constellation NewEnergy,
9 Inc., and Exelon Generation Company, LLC.

10 The Law Office of Robert Dove
11 By Mr. Robert Dove
12 P.O. Box 13442
13 Columbus, Ohio 43213

14 On behalf of the Natural Resources
15 Defense Council.

16 Sierra Club Environmental Law Program
17 By Mr. Tony G. Mendoza
18 Staff Attorney
19 2101 Webster Street, 13th Floor
20 Oakland, California 94612

21 On behalf of the Sierra Club.

22 Vorys, Sater, Seymour & Pease, LLP
23 By Mr. Michael J. Settineri
24 Special Assistant Attorney General
25 52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43215

On behalf of University of Cincinnati and
Miami University.

Ohio Partners for Affordable Energy
By Ms. Colleen L. Mooney
P.O. Box 12451
Columbus, Ohio 43212

On behalf of Ohio Partners for
Affordable Energy.

1 APPEARANCES:

2 Boehm, Kurtz & Lowry
3 By Mr. Michael L. Kurtz
4 and Ms. Jody Kyler Cohn
5 36 East Seventh Street, Suite 1510
6 Cincinnati, Ohio 45202

7 On behalf of the Ohio Energy Group.

8 Calfee, Halter & Griswold LLP
9 By Mr. N. Trevor Alexander,
10 Mr. Mark T. Keaney
11 and Mr. Steven D. Lesser,
12 1200 Huntington Center
13 41 South High Street
14 Columbus, Ohio 43215

15 On behalf of the City of Cincinnati.

16 Bricker & Eckler, LLP
17 By Mr. Devin D. Parram
18 100 South Third Street
19 Columbus, Ohio 43215-4291

20 On behalf of the Ohio Hospital
21 Association.

22 Bricker & Eckler, LLP
23 By Ms. E. Nicki Hewell
24 100 South Third Street
25 Columbus, Ohio 43215-4291

On behalf of People Working
Cooperatively.

Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
and Mr. Brian W. Dressel
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Ohio Manufacturers'
Association Energy Group.

1 APPEARANCES: (Continued)

2 Carpenter Lipps & Leland LLP
3 By Ms. Angela M. Paul Whitfield
4 280 North High Street, Suite 1300
5 Columbus, Ohio 43215

6 On behalf of The Kroger Company.

7 McNees, Wallace & Nurick LLC
8 By Mr. Frank P. Darr
9 and Mr. Matthew R. Pritchard
10 21 East State Street, 17th Floor
11 Columbus, Ohio 43215

12 On behalf of Industrial Energy Users -
13 Ohio.

14 Whitt Sturtevant LLP
15 By Mr. Mark A. Whitt
16 and Ms. Rebekah J. Glover
17 The KeyBank Building, Suite 1590
18 88 East Broad Street
19 Columbus, Ohio 43215

20 On behalf of Retail Energy Supply
21 Association and Direct Energy Business,
22 LLC.

23 Spilman, Thomas & Battle, PLLC
24 By Ms. Carrie M. Harris
25 110 Oakwood Drive, Suite 500
Winston-Salem, North Carolina 27103

On behalf of Wal-Mart Stores East, LP,
and Sam's East, Inc.

- - -

1393

INDEX

- - -

WITNESS

PAGE

Michael Murray

Direct Examination by Ms. Leppla

1394

Cross-Examination by Mr. Olier

1396

Cross-Examination by Ms. Watts

1400

Redirect Examination by Ms. Leppla

1408

- - -

OEC/EDF EXHIBIT

IDENTIFIED ADMITTED

3 - Direct Testimony of
Michael Murray

1395

1409

- - -

1394

1 Wednesday Morning Session,
2 July 18, 2018.

3 - - -

4 EXAMINER WALSTRA: We'll go back on the
5 record.

6 We're here for Day 8 of In Re: Duke
7 Energy Ohio, Incorporated, regarding their global
8 stipulation.

9 Ms. Leppla, would you like to call your
10 witness.

11 MS. LEPPLA: Yes. We would like to call
12 Michael Murray.

13 (Witness sworn.)

14 EXAMINER WALSTRA: Thank you. Please
15 take a seat. Please turn your mic on.

16 - - -

17 MICHAEL MURRAY
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Leppla:

22 Q. Mr. Murray, can you state your name and
23 address for the record.

24 A. Michael Murray, 1752 Northwest Market
25 Street, No. 1513, Seattle, Washington.

1 Q. And by whom are you employed and what's
2 your title?

3 A. Mission:data Coalition, and I'm the
4 President.

5 MS. LEPPLA: And, your Honors, I will --
6 if I can approach, I will pass out what we have
7 marked as OEC/EDF Exhibit 1.

8 EXAMINER WALSTRA: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 EXAMINER WALSTRA: Wait, it's 3.

11 MS. LEPPLA: Sorry. Just kidding. It's
12 3.

13 MS. WATTS: OEC/EDF?

14 MS. LEPPLA: Yes. OEC/EDF Exhibit 3.

15 Q. (By Ms. Leppla) And, Mr. Murray, do you
16 have in front of you what's been marked as OEC/EDF
17 Exhibit 3?

18 A. Yes.

19 Q. And is this your prefiled testimony?

20 A. It is.

21 Q. And was this prepared by you or at your
22 direction?

23 A. Yes.

24 Q. Have you reviewed it prior to taking the
25 stand today?

1 A. Yes.

2 Q. Do you have any corrections, amendments,
3 or changes?

4 A. No.

5 Q. If I were to ask you these same questions
6 contained in the document here today, would your
7 answers be the same?

8 A. Yes.

9 MS. LEPPLA: Your Honors, OEC and EDF
10 move for the admission of Exhibit 3, pending
11 cross-examination.

12 EXAMINER WALSTRA: Thank you.

13 Mr. Oliker.

14 MR. OLIKER: Thank you, your Honor. Just
15 a few questions.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Oliker:

19 Q. Good morning, Mr. Murray. My name is Joe
20 Oliker. I'm with IGS Energy.

21 Regarding your testimony, am I correct
22 you're recommending access to interval data for third
23 parties?

24 A. That's correct.

25 Q. Would some of those third parties include

1 entities that are not certified to provide
2 competitive retail electric service in Ohio?

3 A. Yes, absolutely.

4 Q. And under your recommendation, would any
5 of those entities be subject to Public Utilities
6 Commission of Ohio jurisdiction?

7 A. I do not believe so.

8 Q. And what safeguards would exist to
9 prevent third parties, that are not regulated by the
10 Commission, from misusing consumer data?

11 A. There are several -- several safeguards.
12 At the federal level, the Federal Trade Commission
13 under the Federal Trade Commission Act can
14 investigate companies for misleading or deceptive
15 business practices, and so a company that has a
16 stated privacy policy and then violates the terms of
17 those policies could be subject to FTC investigation.

18 There's also the possibility that the
19 Public Utilities Commission of Ohio could require a
20 utility to turn off access to that third party if the
21 third party had violated the law.

22 Q. So, am I correct then, the Commission
23 would have no direct ability to oversee the
24 activities of third parties?

25 A. I'm not a lawyer, but I do not believe

1 so.

2 Q. Okay. Under your proposal, would third
3 parties pay any historical usage fees to Duke Energy
4 Ohio to obtain data?

5 A. No. My recommendation is that the
6 service be freely available.

7 Q. Okay. Are you familiar with the existing
8 fees for historical usage data that exists today?

9 A. I am. I believe it's something like \$5,
10 a \$5 charge.

11 Q. And what fee is that that you are
12 referring to?

13 A. I believe it's the fee that -- for
14 historical data that CRES providers need to pay the
15 utility for accessing 12 months of historical usage.

16 Q. Okay. Let's -- maybe let's put the
17 dollar amount of the fee aside.

18 Let's assume for purposes of this, let me
19 ask you a hypothetical, let's assume it's \$32. If
20 CRES providers have to pay \$32 for historical usage,
21 and that level -- that rate continues at that level
22 during the term of this ESP, would you agree it would
23 be reasonable for third parties to have to pay the
24 same level of fee?

25 A. I'm sorry. CSP?

1 Q. This ESP.

2 A. Sorry. ESP. I thought you said CSP.

3 Q. Sorry.

4 A. Could you restate the question?

5 Q. Sure.

6 First, are you familiar with what an ESP
7 is?

8 A. Yes.

9 Q. If, during the term of this ESP, there is
10 a \$32 historical usage fee for 12 months, applicable
11 to CRES providers, if that fee does not change, would
12 you agree it would be reasonable for third parties
13 that are not CRES providers to pay the same level of
14 fee?

15 A. It does make sense for CRES providers and
16 non-retail third parties to be on an equal footing.
17 But my recommendation is that neither should have to
18 pay a fee.

19 MR. OLIKER: Okay. Thank you, your
20 Honor. Those are all the questions.

21 Thank you, Mr. Murray.

22 EXAMINER WALSTRA: OCC?

23 MR. HEALEY: I don't think I have
24 anything, but if I could defer until after Duke.

25 EXAMINER WALSTRA: Ms. Watts.

CROSS-EXAMINATION

By Ms. Watts:

Q. Good morning, Mr. Murray.

A. Good morning.

Q. My name is Elizabeth Watts, and I am here on behalf of Duke Energy.

Sir, you testified -- I don't know if "testify" is the proper word. You made a presentation to the Public Utilities Commission in respect of its PowerForward Initiative, correct?

A. That's right.

Q. And when you testified at that forum, were you representing OEC/EDF or were you representing your business entity?

A. I was representing my nonprofit.

Q. Okay. And you are employed by Mission:data, correct?

A. That's correct.

Q. And you had previously led a coalition of companies. In your testimony I think you talk about that on page 3 at line 10. Do you see that?

A. Yes.

Q. Is that coalition, that you described as "an unincorporated coalition of innovative companies," is that coalition a precursor to

1 Mission:data?

2 A. Yes, it was.

3 Q. So many of those same companies that you
4 had represented previously then became incorporated
5 and part of the Mission:data entity, correct?

6 A. Several of them, yes.

7 Q. And many of these technology companies
8 market and sell behind-the-meter products to
9 customers for use in their home, correct?

10 A. Uh-huh, yes.

11 Q. And in order for these companies to be
12 able to sell their various products to customers in
13 Ohio, they would need access to customer usage data.

14 A. Some businesses, for some products, that
15 is a requirement. Others it's not a requirement.

16 Q. And on your company web page there is a
17 bio about you.

18 A. Uh-huh.

19 Q. And, among other things, one of the
20 statements there is that you have "over 15 years of
21 experience with building automation, sub-metering,
22 and liberating data from utilities for energy
23 management applications." Did I quote that
24 correctly?

25 A. That's right.

1 Q. Okay. And in your testimony on page 3,
2 you talk about your efforts to intervene at Public
3 Utilities Commissions in other states in respect of
4 advanced meters, data privacy, and benefits to
5 ratepayers, correct?

6 A. Uh-huh, yes.

7 Q. Are you familiar with what data is
8 available to Duke Energy Ohio customers currently
9 with respect to their daily usage?

10 A. I am.

11 Q. And are you aware of any of the details
12 regarding Duke Energy Ohio's customer systems?

13 A. I'm generally familiar with the -- with
14 the consumer web portal where they can log in and
15 access billing and usage information.

16 Q. So that would -- so I'm understanding
17 your response, that would be the web portal that an
18 individual consumer or customer of Duke Energy, what
19 they can do when they go to the Duke Energy portal.

20 A. Correct.

21 Q. Are you familiar with what a supplier can
22 obtain currently from Duke Energy?

23 A. I am familiar only via some of the
24 prefiled testimony from CRES providers.

25 Q. Okay. Again, just to be clear, when I

1 say "supplier," I mean a competitive electric retail
2 energy supplier.

3 A. Yes.

4 Q. Okay. On page 14 of your testimony, you
5 discuss a study related to the results achieved by
6 customers from load-shifting or conservation,
7 correct?

8 A. Are you referring to the Faruqui study?

9 Q. Yes.

10 A. Yes.

11 Q. Are you aware of any time-of-use rate
12 pilots that Duke Energy Ohio has undertaken?

13 A. Not in detail, no.

14 Q. Does Mission:data, itself, conduct any
15 consumer surveys?

16 A. No, we do not.

17 Q. With respect to access to real-time
18 pricing for customers, what information would you
19 expect customers to see if they were looking at
20 real-time pricing in Ohio?

21 A. To clarify, my recommendation is not for
22 real-time pricing. It's twofold. One, access to
23 real-time consumption data in kilowatt-hours; and
24 then, No. 2, publishing the rate in a
25 machine-readable form. So real-time pricing along

1 the lines of what's available in the wholesale market
2 is not part of my recommendation.

3 Q. And do you know what customers are able
4 to see in terms of usage on a daily basis in the Duke
5 Energy Ohio system right now?

6 A. Yes.

7 Q. And are you familiar with the
8 Commission's rules in Ohio with respect to customer
9 authorization to provide competitive retail energy
10 service providers with customer usage information?

11 A. I'm generally familiar with it, yes.

12 Q. And is it your testimony that Duke Energy
13 should be required to provide that customer data to
14 third parties using that same method of
15 authorization?

16 A. My recommendation is that there be a
17 convenient online method for initiating that
18 authorization. If the -- there's a sort of
19 separation discussion to be had regarding the
20 requirements of that authorization. So, for example,
21 is there certain language in the authorization to
22 make consumers aware of their choice and the fact
23 that the utility, you know, may not have any control
24 over what the third party does with that information.
25 There may be certain necessary disclosures in the

1 customer protection realm that may very well be part
2 of it. My recommendations are about the ease of use
3 and an online process for facilitating that
4 authorization.

5 Q. So the process that you're proposing,
6 would it require any amendment to the Commission's
7 current rules?

8 A. I do not believe so.

9 Q. So is it your expectation then that the
10 third parties would provide the specified
11 authorization, as currently required under the rules,
12 to the utility company?

13 A. I believe so. If I may clarify, the
14 exception being that -- and again, I'm not a lawyer,
15 there may or may not be an exception required, but my
16 recommendation is that non-CRES third parties be
17 allowable recipients of customer data with customer
18 authorization.

19 Q. And again, the customer authorization
20 would be identical to the current process?

21 A. Identical in terms of substance, yes. In
22 terms of process and making it a simple online
23 transaction, it may be different.

24 Q. And would your member companies consent
25 to be audited by the Commission in order to determine

1 if they are properly complying with the authorization
2 requirements?

3 A. Our position is that a -- an audit is --
4 is unnecessary and there may be jurisdictional
5 limitations on the Commission's authority in that
6 department.

7 Q. On page 25 of your testimony, you
8 describe a service which is called "Chai Basic."

9 A. Yes.

10 Q. And you describe a number of services
11 that are provided within that -- within that service?

12 A. Yes.

13 Q. Do you know if Duke Energy provides any
14 of those services presently?

15 A. My understanding is that Duke provides
16 customers with access to their own usage and billing
17 information. And there may be certain bill alerting
18 or, you know, bill payment due notices that Duke
19 sends. But beyond that I'm not aware of -- well,
20 actually, I am aware of a pilot program under which
21 Duke Energy provided a home energy bridge to some
22 number of customers for providing access to some of
23 their usage information.

24 Q. And, sir, do you know if that pilot
25 program was conducted in Ohio or elsewhere?

1 A. I don't know.

2 Q. On page 26, you have a reference to
3 something called "Dr. Power (Home Energy Analytics)."
4 Do you see that?

5 A. Yes.

6 Q. Do you know if Duke Energy provides any
7 of the services that are provided under that program?

8 A. To my knowledge, Duke does not.

9 Q. And on page 28 you describe OhmConnect,
10 and you state OhmConnect has paid customers more than
11 \$2 million for their participation in a demand
12 reduction program; is that correct?

13 A. Yes.

14 Q. And do you know if OhmConnect then
15 monetizes that demand reduction by selling it to San
16 Diego Gas & Electric?

17 A. They do.

18 MS. WATTS: That's all I have. Thank
19 you.

20 EXAMINER WALSTRA: Thank you.

21 MR. HEALEY: Nothing, your Honor.

22 EXAMINER WALSTRA: Staff?

23 MR. LINDGREN: No questions, your Honor.

24 EXAMINER WALSTRA: Any redirect?

25 MS. LEPPLA: Just one question.

REDIRECT EXAMINATION

By Ms. Leppla:

Q. Mr. Murray, you mentioned FTC and the PUCO in relation to a question about who can penalize or otherwise correct misuse of data. Are you aware of any other states where the Attorney General is able to take action against parties who misuse data?

A. Yes, I am. Again, I'm not a lawyer, but I know that in the State of Illinois, as part of the customer authorization process to share data with a third party, there is a specific disclosure regarding the Attorney General's contact information where they can file complaints against third parties and seek some sort of redress with the Attorney General.

MS. LEPPLA: No further questions, your Honor.

EXAMINER WALSTRA: Any follow-up?

MS. WATTS: No.

EXAMINER WALSTRA: Thank you, Mr. Murray.

THE WITNESS: Thank you.

EXAMINER WALSTRA: Move your exhibit?

MS. LEPPLA: Yes. Exhibit 3, please, your Honor.

EXAMINER WALSTRA: Any objections?

Hearing none, it will be admitted

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER WALSTRA: We can go off the
record.

(Discussion off the record.)

(Thereupon, at 9:29 a.m., the hearing was
adjourned.)

- - -

1410

CERTIFICATE

We do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by us in this matter on Wednesday, July 18, 2018, and carefully compared with our original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

Carolyn M. Burke, Registered
Professional Reporter.

(KSG-6583)

- - -

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/1/2018 5:12:55 PM

in

Case No(s). 17-0032-EL-AIR, 17-0033-EL-ATA, 17-0034-EL-AAM, 17-0872-EL-RDR, 17-0873-EL-ATA, 1

Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 07/18/18 - Volume VIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.