

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for	)	
Approval of a Unique Arrangement	)	Case No. 18-1129-EL-AEC
between the University of Cincinnati and	)	
Duke Energy Ohio, Inc.	)	

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**COMMENTS TO PROTECT CONSUMERS FROM PAYING UNNECESSARY  
SUBSIDIES  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

In this case, the University of Cincinnati ("Applicant") wants the electric utility customers of Duke Energy Ohio, Inc. (the "Utility" or "Duke") to pay more for electricity so that it can pay less. While the role of state universities is to be appreciated, the proposed unique arrangement lacks benefits for consumers, the utility, or the state. The PUCO should deny the application.

Under the proposal, the Applicant would receive discounted electric rates from Duke with the discount being subsidized by Duke's other customers.<sup>1</sup> Customers would pay up to \$12.8 million in subsidies over the next seven years with no commensurate quantifiable benefit for the additional charges.<sup>2</sup> In exchange for such discounts, the Applicant proposes to cut its demand in times of emergency, even though the Applicant can already receive compensation for the interruption through PJM Interconnection LLC ("PJM"), the regional electric market facilitator.

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<sup>1</sup> Application for Approval of a Unique Arrangement (July 20, 2018) (the "Application").

<sup>2</sup> Application at 2 ("UC would be subject to . . . an aggregate cap of \$12.8 million over the term"); Application at 2 ("Duke Energy Ohio shall recover any credits provided to UC through the Economic Competitiveness Fund Rider ("ECF Rider").").

In these types of cases, the PUCO traditionally considers whether the claimed benefits of the arrangement justify making Ohioans subsidize the customer's electric rate discount. These types of cases also traditionally involve large commercial or industrial businesses that need a unique arrangement to maintain employment or make capital investments. In this case, however, the Applicant does not propose to make any capital investment, employment, or other commitments that would benefit the State of Ohio. Further, the Applicant has made no indication that the arrangement is necessary to maintain or support its continuing operations. The Applicant is a publicly-funded institution that now seeks to charge customers even more than what they already pay in taxes to support the Applicant.

The PUCO Staff has asserted in other cases that “in exchange for a reduced rate, the arrangement should contain provisions which (a) reflect cost savings to the utility, (b) give some value to the ratepayers who may ultimately pay for the revenue shortfall created by the arrangement, or (c) provide economic development benefits to the State of Ohio.”<sup>3</sup> These standards are appropriate because they require the arrangement to benefit customers, the utility, or the state. The unique arrangement proposed in this case however, provides none of these benefits. Accordingly, the PUCO should deny the application for a unique arrangement.

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<sup>3</sup> *In re Cleveland Board of Education*, Case No. 08-1238-EL-AEC, Staff Brief (May 20, 2009) at 5.

## II. COMMENTS

### A. Burden of Proof and Standard of Review.

The Applicant bears the burden of proving that the Application for a unique arrangement should be approved.<sup>4</sup> To meet that burden, the Applicant must demonstrate, at a minimum, that the proposed arrangement (i) is reasonable, and (ii) does not violate sections 4905.33 and 4905.35 of the Revised Code.<sup>5</sup> The PUCO Staff has argued in cases similar to this that an application for a unique arrangement should “(a) reflect cost savings to the utility, (b) give some value to the ratepayers who may ultimately pay for the revenue shortfall created by the arrangement, or (c) provide economic development benefits to the State of Ohio.”<sup>6</sup> The proposed arrangement in this case does none of these. The PUCO should deny the Application.

### B. The Applicant has not demonstrated that the proposed unique arrangement would provide any cost savings to the Utility.

As noted above, the Applicant bears the burden of proving that an Application for a unique arrangement is reasonable and should be approved. The first factor the PUCO should consider, as proposed by the PUCO Staff, is whether the arrangement would reflect cost savings to the utility. But the Applicant in this case has not demonstrated cost savings to Duke or its customers. Quite simply, the Applicant has not met its burden under Ohio Adm. Code 4901:1-38-05(B)(1). The benefits to Duke identified by the Applicant are load reduction “in times of PJM emergencies but also at times independent

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<sup>4</sup> Ohio Admin Code 4901:1-38-05(B)(1) (“Each customer applying for a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.”).

<sup>5</sup> Ohio Adm. Code 4901:1-38-05(B)(1).

<sup>6</sup> *In re Cleveland Board of Education*, Case No. 08-1238-EL-AEC, Staff Brief (May 20, 2009) at 5.

of any PJM demand response program.”<sup>7</sup> The Applicant asserts that Duke’s “ability to reduce the demand on its system by up to 54.7 MW by calling upon [the Applicant] warrants approval of this application.”<sup>8</sup> But Duke is not a power plant owner or operator, nor does it schedule demand response.<sup>9</sup> Any power plant owner with generation capacity can participate in PJM’s markets for additional revenue. It would be unjust and unreasonable for the Applicant to charge customers more for a discount on electric service when it can receive money from the wholesale market for providing the same alleged benefits.

**C. The proposed unique arrangement would not provide any value to customers. It would instead charge customers more to subsidize an already publicly-funded institution.**

The proposed unique arrangement would charge customers more so that the Applicant can pay less for electric service. But customers already pay for the operations of the Applicant through their state taxes. The Applicant in this case is not a large commercial or industrial customer that needs a unique arrangement to stay in business; it is a publicly-funded university that has made no commitments in its Application to benefit customers or the State of Ohio.

The Applicant asks that its proposed discount be in effect for up to seven years, from approval through May 31, 2025.<sup>10</sup> Seven years is a long time for customers to pay a subsidy to a state university through a mechanism intended to support economic development. In considering the aggregate impact of these types of arrangements on

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<sup>7</sup> Application at 1.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> Excluding Duke’s peak demand reduction programs through its energy efficiency portfolio.

<sup>10</sup> Application at 6 (“The term shall end May 31, 2025.”).

utility customers, the PUCO should minimize the impact on customers who subsidize the electricity discounts. Customer funding should be a limited, short-term solution to help maintain or grow a mercantile customer's business while providing economic benefits (jobs and investment) to Ohio and Ohioans.<sup>11</sup> Customers should not be asked to subsidize a tax-funded state university for a term of seven years.

**D. The Application does not propose to provide any economic development benefit to the State of Ohio.**

The Applicant makes no commitments to increase employment or capital investment if the proposed arrangement is approved. Although these arrangements are intended to support economic development, the Applicant does not commit to any economic development. While the Applicant notes that it is a large employer in the Cincinnati area and provides a large economic impact to the city,<sup>12</sup> it does not demonstrate how this agreement will support greater employment or capital investment. Further, the Applicant has made no representation that the proposed unique arrangement is necessary for it to continue operations.

This contrasts with recent requests by mercantile customers who, in exchange for rate discounts subsidized by other customers, committed to make capital improvements and to retain or increase employees. For example, in a recent case involving Presrite Corporation, the mercantile customer committed to make capital improvements in plant facilities, and agreed to make best efforts to add a specified number of new employees.<sup>13</sup>

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<sup>11</sup> See, e.g., *In re Application of Ormet for Approval of a Unique Arrangement with Ohio Power Co. & Columbus S. Power Co.*, Case No. 09-119-EL-AEC, Entry ¶ 5 (Oct. 17, 2012) (recognizing that an economic development arrangement should reduce over time and eventually eliminate the mercantile customer's dependency on delta revenue).

<sup>12</sup> Application at 3-4.

<sup>13</sup> *In re Application for Establishment of a Reasonable Arrangement between Presrite Corporation & the Cleveland Elec. Illuminating Co.*, Case No. 17-1981-EL-AEC, Opinion & Order (Mar. 14, 2018). The

In another recent case involving Acero Junction Inc., the mercantile customer committed to invest a minimum of \$60 million in its facility and committed to a minimum employee count.<sup>14</sup> And in Acero's case, the amount of the customer's rate discount was to be reduced if it did not meet those targets.<sup>15</sup>

**E. If the PUCO approves the proposed unique arrangement, (which it should not), the PUCO should modify the arrangement so that customers are protected from paying unjust and unreasonable rates.**

The proposed unique arrangement does not provide benefits for customers or the state of Ohio. But if the PUCO decides that the Applicant should be provided a unique arrangement, then the PUCO should modify the arrangement to ensure that customers and the State of Ohio receive some benefit.

Under R.C. 4905.31, the PUCO can change, alter, or modify a proposed unique arrangement. The PUCO should (1) require the Utility to share the cost of the arrangement with customers and (2) require the Applicant to participate in PJM's demand response programs and offset the subsidy by the money received, (3) prohibit the Applicant from banking credits to future months, and (4) require the Applicant to pay a minimum monthly bill. Regardless of these proposed modifications, the Applicant has still failed to demonstrate that the proposed unique arrangement is reasonable or should be approved.

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specific capital improvement amount and employee increase are deemed confidential in that case, so the numbers have not been provided here.

<sup>14</sup> *In re Joint Application for Approval of an Economic Development Arrangement between Ohio Power Co. & Acero Junction Inc.*, Case No. 17-2132-EL-AEC, Joint Stipulation & Recommendation (Feb. 16, 2018).

<sup>15</sup> *Id.*

**1. If the PUCO determines the Applicant should receive a unique arrangement (which it should not), the PUCO should require the utility to share the costs of the unique arrangement with customers.**

Cost-sharing is consistent with the law governing these types of mercantile customer arrangements. Under the law, an arrangement "may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program."<sup>16</sup> This permissive statutory language means that the PUCO has the authority to determine whether the utility should be authorized to collect costs from customers, and if so, how much. Indeed, the PUCO has recognized that it can deny the collection of costs from customers for the utility altogether: "[The utility] mistakenly believes that it is entitled to receive specific amounts from all customers, reasoning that money it doesn't get from one customer it must get from another. This is not now, and never was, the law. R.C. 4905.31 requires no adjustment at all."<sup>17</sup>

If the PUCO approves some version of this request, it makes sense for the Utility to share the costs with customers. As the PUCO has previously stated: "The Commission believes that a 50/50 split properly recognizes that both the company and its customers benefit from the company's policy of providing economic incentive rates to certain customers to retain load, encourage expansion, or attract new development in the company's service territory."<sup>18</sup> The PUCO Staff has similarly recommended a 50/50 split

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<sup>16</sup> R.C. 4905.31.

<sup>17</sup> See *In re Application of Ormet Primary Aluminum Corp.*, Ohio Supreme Court Case No. Ohio-2009-260, Brief of the Public Utilities Commission at 12 (March 3, 2010).

<sup>18</sup> *In re Application of Ohio Edison Co. for Authority to Change Certain of its Filed Schedules Fixing Rates & Charges for Elec. Serv.*, Case No. 89-1001-EL-AIR, Opinion & Order at 40-41 (Aug. 16, 1990). See also

in the past.<sup>19</sup> If approved by the PUCO, Duke and the Applicant should not be authorized to pass all of the costs resulting from this arrangement on to customers. The PUCO should instead conclude that a 50/50 split of the subsidy is more equitable than asking consumers to pay 100% of the subsidy.

- 2. If the PUCO determines the Applicant should receive a unique arrangement (which it should not), the PUCO should offset any rate discount with the market revenues from PJM. Alternatively, any compensation that the Applicant receives from participating in PJM demand response programs should be used to reduce the subsidy that other customers pay for rate discount.**

The Applicant proposes that in addition to any discounts it receives under the proposed unique arrangement, it be permitted to retain any compensation it receives from PJM from participating in PJM demand response programs through a curtailment service provider.<sup>20</sup> This approach is unfair to customers who are being asked to fund the arrangement. The PUCO should not allow the Applicant to receive subsidized electric service while being double-compensated for providing interruptible power. Any additional customer-funded support, over what the Applicant receives from PJM, is unnecessary because PJM markets for energy and capacity will determine the fair market value of the demand response offered to PJM's regional grid customers by the Applicant intended to enhance reliability.

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*In re Application of Columbus S. Power Co. for Authority to Amend its Filed Tariffs to Increase the Rates & Charges for Elec. Serv.*, Case No. 91-418-EL-AIR, Opinion & Order at 48 (May 12, 1992).

<sup>19</sup> *In re Application of the Cincinnati Gas & Elec. Co. for an Increase in its Rates for Gas Serv. to all Jurisdictional Customers*, Case No. 95-656-GA-AIR, Opinion & Order at 28 (Dec. 12, 1996) ("For economic development contracts in electric cases, the staff has traditionally recommended a 50/50 sharing of identified delta revenues between the company and customers.").

<sup>20</sup> Application at 8 ("Participation in this arrangement does not preclude UC from also participating in other PJM demand response programs through a curtailment service provider. UC will be permitted to retain any compensation received by PJM for its participation in those programs.").



The PUCO should note when reviewing this application that Duke (the local distribution company) is no longer in the business of securing generation capacity and energy products to secure regional reliability services, such as demand response. Demand response is a generation service that participates in PJM's wholesale market for capacity. A demand response provider, such as the Applicant in this case, should not be subsidized by local distribution utility customers.

The PUCO should require the Applicant, which is a power plant owner, to participate in PJM's markets. Further, the PUCO should require that any corresponding compensation to the Applicant from the PJM capacity market be used as an offset to the subsidies that other customers must pay for the Applicant's rate discount. The PUCO has already recognized as much, finding regarding Duke's large customer interruptible load program that the utility "should also bid the additional capacity resources associated with the program into PJM's BRAs held during the ESP term, with any resulting revenues credited back to customers through Rider DR-ECF."<sup>21</sup>

**3. If the PUCO determines the Applicant should receive a unique arrangement (which it should not), the PUCO should prohibit the Applicant from banking credits for future months.**

The Applicant proposes that it be allowed to offset its entire bill, and if the amount of the rate credit exceeds its charges for a given month, it be permitted to "bank"

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<sup>21</sup> *In re Duke*, Case No. 14-841-EL-SSO, Opinion and Order (Apr. 2, 2015) at 78; *See also In re Duke*, Case No. 17-1263-EL-SSO, Stipulation (Apr. 13, 2018) at 24 (Stipulation recommending that Rider DR-ECF continue for costs associated with unique arrangements).

the extra savings and apply them to future months.<sup>22</sup> If the PUCO determines that the Applicant should receive a unique arrangement (and it should not), it should prohibit the Applicant from “banking” credits.

If the Applicant carries over rate credits from month to month, it would reduce its distribution and transmission charges in months unrelated to the interruptible credit. The PUCO should instead find that to the extent the Applicant’s rate credits in any given month would exceed its total charges, it should pay the minimum monthly charge. If the PUCO approves some form of this request, the Applicant should not be allowed to “bank” additional credits for future use. The unique arrangement proposed by the Applicant is unjust and unreasonable. The Applicant has not met its burden of demonstrating otherwise.

**4. If the PUCO determines the Applicant should receive a unique arrangement (which it should not), the PUCO should require the Applicant to pay a minimum monthly bill.**

If the PUCO determines that the Applicant should receive a unique arrangement, the PUCO should protect consumers from paying unjust and unreasonable utility rates by requiring the Applicant to pay a minimum monthly bill. That is, the Applicant should not be permitted to reduce its monthly bill to \$0 because of the discount it receives under the unique arrangement. The PUCO came to this conclusion in 2009 when it established a policy strongly favoring such a limit: “The Commission agrees ... that, generally, unique arrangements must contain a floor, a minimum amount that the party seeking a unique

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<sup>22</sup> Application at 2.

arrangement should be required to pay...”<sup>23</sup> The Application appears to contemplate that the discounts the Applicant receives under the proposed arrangement could be large enough to offset its entire transmission and distribution service bill.<sup>24</sup> Consistent with the PUCO’s conclusion in the *Ormet* case, the PUCO should at least establish a minimum monthly charge that the Applicant must pay.

### **III. CONCLUSION**

In this case, a publicly-funded state university is asking Ohio electric utility customers to subsidize discounts for its electric service. While the role of state universities is to be appreciated, the proposed unique arrangement lacks benefits for customers, the utility, or the State of Ohio. The PUCO should not approve the unique arrangement.

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<sup>23</sup> See *In re Application of Ormet Primary Aluminum Corp.*, Case No. 09-119-EL-AEC, Opinion and Order at 9 (June 15, 2009).

<sup>24</sup> Application at 2.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
Comments have been served upon the below-named persons via electronic transmission  
this 9<sup>th</sup> day of August 2018.

/s/ Bryce McKenney

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**8/9/2018 5:20:33 PM**

**in**

**Case No(s). 18-1129-EL-AEC**

Summary: Comments Comments to Protect Consumers From Paying Unnecessary Subsidies  
by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on  
behalf of McKenney, Bryce