

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc. to Adjust Rider AU for 2017 Grid) Case No. 18-0837-GA-RDR
Modernization Costs.)

**MEMORANDUM CONTRA DUKE ENERGY OHIO’S MOTION TO STRIKE
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In this proceeding, Duke Energy Ohio (“Duke”) seeks to charge customers for its 2017 gas distribution system modernization costs (“smart grid”). Duke has recognized that it “is proposing to replace grid technology to update the equipment that has now been in place since beginning in 2009.”¹ But that replacement has not occurred. Thus, Duke’s request means that residential customers would continue paying the costs for undepreciated, so-called obsolete, equipment related to its gas smart grid program without the PUCO investigating the prudence of the costs for this retired equipment.

In response to the procedural Entry in this case,² on October 26, 2018 the Office of the Ohio Consumers’ Counsel (“OCC”) filed Comments in this proceeding. OCC’s Comments recommended that the Public Utilities Commission of Ohio (“PUCO”) order Duke to file a gas distribution rate case to determine the operational benefits that consumers should receive.³ OCC expressed its concern that the costs Duke is collecting

¹ Duke Motion (November 28, 2018) at 3.

² Entry (July 3, 2018), ¶4.

³ OCC Comments at 2-3.

from customers are not prudently incurred.⁴ Also per the procedural Entry, on November 23, 2018, OCC filed the testimony of James D. Williams. In line with OCC's Comments, Mr. Williams recommended that the PUCO audit Duke's gas smart grid system to determine whether it is used and useful before customers are charged more.⁵ He also recommended that the PUCO order Duke to file a gas rate case.⁶

On November 28, 2018, Duke filed a motion to strike Mr. Williams's testimony on the basis that it is factually incorrect and irrelevant to this proceeding.⁷ Duke asked for an expedited ruling on its motion.⁸ Per Ohio Adm. Code 4901-1-12(C), OCC responds to Duke's assertions.⁹ Duke's motion is without merit and ignores the fact that similar testimony in the 2017 gas rider case was not stricken from the record of that proceeding. The PUCO should deny Duke's motion.

II. RECOMMENDATIONS

A. Duke's arguments are without merit and involve factual disputes that do not support striking Mr. Williams's testimony.

Duke does not offer any legal support for its motion to strike. That's because there is none. Instead, Duke makes supposed factual arguments regarding OCC's position and Mr. Williams's testimony. All of Duke's arguments are baseless. Instead of striking Mr. Williams's testimony, the PUCO should allow it into the record and give it the proper weight.

⁴ *Id.*

⁵ Williams Testimony at 3-4.

⁶ *Id.* at 4.

⁷ Duke also sought an extension of time to file its supplemental testimony. *Id.* at 1.

⁸ *Id.*

⁹ If OCC does not address every argument in Duke's motion, that should not be construed as OCC's acquiescence to the argument.

1. Duke's motion to strike mischaracterizes OCC's Comments filed in this case.

Duke begins its Motion by complaining that OCC's Comments do not address the details of the application because OCC was advised in discovery that labor costs are not included in the application in this case.¹⁰ But Duke's complaint is a red herring.

First, OCC's Comments are not the subject of Duke's motion to strike. Instead, the motion solely seeks to strike Mr. Williams's testimony. Thus, this portion of the motion to strike is itself irrelevant because Mr. Williams testimony did not discuss labor costs.

Second, neither OCC's Comments nor Mr. Williams's testimony discusses labor costs. Both the Comments and the testimony address the prudence of the costs sought to be collected from Duke's customers and the need for a gas distribution rate case to eliminate Rider AU. This would help ensure that consumers pay only Duke's prudently incurred costs and that consumers receive all the operational benefits they are entitled. No mention is made of labor costs in making this recommendation, either in OCC's Comments or Mr. Williams's testimony. Duke's initial argument in its motion is baseless and should be disregarded by the PUCO.

2. Other claims made by Duke in support of its motion are without merit.

In its motion, Duke does make several claims regarding Mr. Williams's testimony. None of the claims support striking the testimony, however.

Duke observes that Mr. Williams begins his testimony by "admitting" that his testimony in this case is consistent with his testimony filed in the 2016 grid

¹⁰ *Id.* at 2.

modernization rider case (Case No. 17-690-GA-RDR).¹¹ How that might support a motion to strike in this case is unclear. Mr. Williams’s testimony in the 17-690 case was not stricken, and in fact Duke did not even seek to strike it. Instead, Duke only filed a motion to strike OCC’s *comments* in that case,¹² and only OCC’s comments in that case were the subject of the PUCO’s ruling.¹³ Any reference to Mr. Williams’s testimony in the 17-690 case does not support a motion to strike his testimony here.

Further, in striking the comments in the 17-690 case the PUCO noted that Duke had filed an electric rate case addressing the issues raised in OCC’s comments.¹⁴ The PUCO stated: “Consistent with the traditional framework of a rate case, that docket, rather than the present case, is the proper venue for the discussion of issues relating to Duke’s proposal to implement new or updated AMI technology. OCC should, therefore, raise its concerns for the Commission’s review in the *Duke Electric Rate Case*.”¹⁵ However, there is no gas rate case to address the issues raised in Mr. Williams’s testimony – a fact Mr. Williams addressed in his testimony. Thus, there is no other venue for the issue to be raised. The issue of a gas rate case is properly raised in this case.

Duke also alleges that filings in its electric base distribution rate case have a bearing on this case. Duke asserts that “OCC’s opposition” to “this plan” has been “fully

¹¹ *Id.* at 3.

¹² Case No. 17-690-GA-RDR, Duke’s Motion to Strike Comments of OCC (August 11, 2017).

¹³ *Id.*, Entry (September 14, 2017), ¶17.

¹⁴ *Id.*, ¶18.

¹⁵ *Id.*

briefed” in the electric rate case and need not be addressed here.¹⁶ Duke is also wrong about the nature of the two cases.

The issues under consideration in this case have some similarities to the issues in the electric case, but they also have some differences. For one, the very reason for the *electric* rate case – the full deployment of Duke’s smart grid – has not been broached by the PUCO on the *gas* side. The electric base rate case was triggered by a PUCO Staff determination in October 2015 that Duke’s smart grid deployment was complete.¹⁷ There is no such triggering event for a gas base rate case. But similar to electric, a *gas* rate case is necessary to ensure that consumers receive the full operational benefits they are entitled to in return for the millions of dollars they have paid Duke for gas smart grid technology. Duke’s argument that ultimately opposes the need for a natural gas rate case a full three years after the deployment was completed is without merit.

Duke also asserts that Mr. Williams’s testimony somehow delays passing the rate reductions in the application on to consumers.¹⁸ But Mr. Williams’s testimony was timely filed according to the procedural schedule set by the PUCO in this case. The only delay in this case is due to Duke’s request for a two-week extension of the procedural schedule *in order for the PUCO to rule on Duke’s motion to strike*.¹⁹ Duke thus created the very delay in the procedural schedule that it complains about and tries to place the blame on Mr. Williams’s testimony. The PUCO should reject Duke’s argument.

¹⁶ Duke Motion at 3. Duke inserted a footnote after the sentence conveying this assertion, but the footnote is blank, so it is difficult to determine what Duke’s assertion is referring to.

¹⁷ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case 10-2326-GE-RDR, Notice of Staff Determination (October 22, 2015).

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 1.

Further, whether the application reduces the rate collected from consumers through the rider is not the issue. The issue is whether the charges to consumers are prudently incurred and are just and reasonable under the law.²⁰ Consumers could in fact be due a larger rate decrease than what Duke has proposed. A gas rate case is needed to make that determination. Considering that the smart grid deployment was completed over three years ago, delaying a rate case would harm consumers by withholding from them any gas smart grid savings they should be receiving.

Duke's arguments in support of its motion to strike are without merit. The PUCO should deny Duke's motion to strike and keep Mr. Williams's testimony in the record of this case.

B. A factual dispute does not warrant striking testimony because Duke has an opportunity to file supplemental testimony giving its own interpretation of the facts. The PUCO then can determine the weight to be given each testimony.

Duke claims that Mr. Williams's testimony must be stricken in its entirety because it makes assertions that are factually incorrect.²¹ But this is not a basis for a motion to strike.

If Duke has issues with the facts presented in Mr. Williams's testimony, it has an opportunity to present its own interpretation of the facts in supplemental testimony.²² Whether the factual statements in Mr. Williams's testimony are true and reliable is for the Attorney Examiner or the 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

²⁰ R.C. 4905.22.

²¹ Duke Motion at 3.

²² Duke's supplemental testimony originally was due on November 30, 2018, but Duke has asked for a two-week extension of that deadline. *Id.* at 1.

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 Mr. Williams's testimony the weight that it believes the testimony deserves. Mr. Williams's testimony should not be stricken simply because Duke disagrees with it.

III. CONCLUSION

Duke's arguments to strike Mr. Williams's testimony have fatal flaws. To protect consumers, the PUCO should deny Duke's motion to strike. The PUCO should proceed to hearing in this case as envisioned in the Attorney Examiner's procedural Entry of July 3, 2018, with the delay prompted by Duke's motion to strike.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Terry L. Etter

Terry L. Etter (0067445)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [Etter]: (614) 466-7964
Telephone [O'Brien]: (614) 466-9575
terry.etter@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(will accept service via email)

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 5th day of December 2018.

/s/ Terry L. Etter
Terry L. Etter
Assistant Consumers' Counsel

SERVICE LIST

Thomas.lindgren@ohioattorneygeneral.gov Elizabeth.watts@duke-energy.com
rocco.dasceenzo@duke-energy.com

Attorney Examiner:
Kerry.sheets@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/5/2018 4:37:26 PM

in

Case No(s). 18-0837-GA-RDR

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