

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Authority to Establish a)
Standard Service Offer Pursuant to Section)
4928.143, Revised Code, in the Form of) Case No. 14-841-EL-SSO
an Electric Security Plan, Accounting)
Modifications and Tariffs for Generation)
Service.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.)

**DUKE ENERGY OHIO'S MEMORANDUM CONTRA
JOINT MOTION TO REJECT APPLICATION
AND VACATE PROCEDURAL SCHEDULE**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby files its memorandum contra (Memorandum Contra) a joint motion filed with the Public Utilities Commission of Ohio (Commission) on July 9, 2014. Such motion was filed by the Kroger Company, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy, and the Office of the Ohio Consumers' Counsel (collectively, Movants) and was entitled "Joint Motion to Reject Duke Energy Ohio's May 29, 2014 Application and Request to Vacate Procedural Schedule" (Motion).

Duke Energy Ohio respectfully submits that the Commission should deny the Motion and proceed with consideration of the Company's Application filed in these proceedings.

I. INTRODUCTION

As the Commission is aware, Duke Energy Ohio is currently operating under the terms of an electric security plan (ESP) that provides for the Company to obtain retail energy and capacity supply through a competitive bidding process comprising a series of wholesale auctions. In the present proceedings, as contemplated by the parties to the Company's current ESP,¹ Duke Energy Ohio has again applied for approval of an ESP, under which one hundred percent of the energy and capacity for its standard service offer (SSO) customers is provided through the competitive market. Indeed, as previously agreed by the Movants, for the term of ESP proposed in these proceedings, Duke Energy Ohio will hold SSO load auctions and the retail prices that its SSO customers are charged will be based on the results of those auctions. Despite their prior appreciation of the market-based procurement and pricing strategy for Duke Energy Ohio's SSO customers, the Movants now challenge the market-based rates discussed in the Company's Application and testimony in support therefore. Also relevant to the Motion is the Company's request for approval of a rider to enable proactive investment in distribution reliability – a proposal the description of which complies with applicable rules and which has not previously been opposed by the Movants.

The Movants allege that Duke Energy Ohio failed to meet filing requirements and argue that, therefore, its Application should be rejected entirely. Regardless of their various veiled insults (*e.g.*, “despite the mass of paper filed” and “all Duke can muster”),

¹ See *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Stipulation and Recommendation, at pg. 5. The Movants herein signed the Stipulation and Recommendation, thereby expressly contemplating the reliance upon subsequent events to determine a portion of the overall rates for a standard service offer.

the Movants are *wrong* on the substance of their claim and *wrong* on the remedy they claim to be appropriate.

II. THE MOVANTS' SUBSTANTIVE ARGUMENTS

A. Customer Bill Impacts

The Movants first point to the Commission's rules, as well as dicta from the orders promulgating those rules, to assert that the Company's disclosure of customer bill impacts of its proposed ESP is deficient. But their argument fails on its face.

As if to justify their desire for more or different information concerning customer bill impacts, the Movants note that, in the proceeding to adopt rules governing ESPs, the Commission pointed out the complexity of ESPs and the consequent need for information.² But the Movants fail to realize that this Commission comment related to an argument over the need for filing of pro forma financial projections of an ESP's implementation, including the bases for such projections. The comment had absolutely nothing to do with bill impacts. Context is critical; the Movants cannot simply lift words from Commission orders. The Movants' efforts to misuse this quoted comment should be ignored.

It is also noteworthy that the Movants base much of their argument on a few words from that Commission comment: "all available information." But these words do not help their cause. The Movants attempt to show that Duke Energy Ohio has not provided all available information. But in making that attempt, all that the Movants can muster is to undermine their own position. Duke Energy Ohio provided illustrative bill

² Motion, at 2-3 (citing to *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by amended [sic] Substitute Senate Bill No. 221, Case No. 08-777-EL-ORD, Opinion [sic] and Order at 10-11 [sic] (Sept. 17, 2008)*).

impacts in the testimony of Duke Energy Ohio witness James E. Ziolkowski. And, as the Movants so ably quoted from a discovery response, the “Company cannot provide typical bill comparisons for the entire ESP term because SSO supply auctions have not been held for any part of the ESP term . . .”³ If the Company has not yet held the auctions that will determine the price of service, it has no information available upon which to base calculations of bill impacts. Illustrative information, such as was provided in the Application, is all that is available. The level of information desired by the Commission is thus included in the filing.

It is noteworthy that, where SSO load is procured via prospective auctions, other Ohio electric utilities have followed this same approach. Indeed, in its pending application for approval of an ESP, AEP-Ohio offered testimony from David M. Roush on the topic of, among other things, proposed rate changes. In his testimony, Mr. Roush expressly acknowledged that provided values were “for illustration purposes only” as the competitive auctions for SSO supply had not yet occurred. Additionally, Mr. Roush indicated that, in preparing his testimony on rate changes, he relied upon prior auctions held in the Duke Energy Ohio service territory,⁴ which admittedly cannot determine future rates for AEP-Ohio customers. Yet, this submission by AEP-Ohio was not contested by the Movants (which were also parties in that case) in response to a procedural schedule and a presumably amenable hearing date. .

It is evident that, where data as to future prices do not exist, the impact of the plan on customers’ bills cannot be identified or measured with any degree of certainty. In

³ Motion, at pp. 4-5.

⁴ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, *et al.*, Direct Testimony of David M. Roush, at pp. 3-4 (December 20, 2013).

fact, the Commission appreciated this impossibility when it created the requirement to provide *projected* rate impacts.⁵ A projection necessarily reflects one’s best estimate today of something that will actually materialize in the future. Here, Duke Energy Ohio provided rate impact information as contemplated under Commission rule. The Company cannot be held, alone, to an unattainable standard. Ohio’s electric industry is now based on market prices – an outcome that Movants, among others, have long demanded. Market prices are no more predictable by the local utility than they are by anyone else.

In another prong of this unsupportable attack, the Movants contend that the proposed public notice included in the Application is deficient, as it “fails to advise customers of how [the Company’s] proposed ESP will affect them” and is supposedly “contradictory.” The Movants seemingly forget that the Commission generally prepares its own version of public notice, regardless of the precise text submitted by an applicant. Indeed, the Commission itself has recognized this fact with regard to another utility’s ESP proceeding. Granting a waiver request by the FirstEnergy utilities, the Commission pointed out that it “has developed a consistent format for the published notice” and “anticipates that the notice in this proceeding will be consistent with the notice used in the prior SSO proceedings.”⁶ The Commission is perfectly capable, without the Movants’ meritless filing, of modifying the proposed public notice as it sees fit.

B. Support for Distribution Capital Investment Rider

The Movants attempt to argue that the Application is also deficient with regard to support for the proposed Distribution Capital Investment Rider (Rider DCI). From the

⁵ O.A.C. 4901:1-35-03(C)(9)(g) (emphasis added).

⁶ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Entry at ¶ 11 (Apr. 6, 2010).

outset, their objection is misplaced, as the detail identified in Commission filing requirements has been provided. But before addressing compliance with the filing requirements, Duke Energy Ohio first observes that none of the Movants have executed a confidentiality agreement with the Company, an undertaking that would enable disclosure of confidential information. As evident from the public testimony submitted in support of the Company's Application, there is confidential information that provides detail as to the proposed DCI. Although Movants acknowledge this fact, they intentionally ignore their unwillingness to enter into a confidentiality agreement and instead urge the Commission to reject, in its entirety, Duke Energy Ohio's allegedly defective filing. Such a tactic must fail.

The Movants identify twenty specific areas in which they wrongly allege a lack of information. The Company will address each of those areas.

1. How the proposal "addresses any cost savings to the electric utility."

Throughout the direct testimony of Marc W. Arnold, he describes specific programs that are part of the Company's Rider DCI proposal. And, in doing so, Mr. Arnold explains that certain of the programs should strengthen the delivery system, result in fewer outages and, by extension, a reduction in operating and maintenance (O&M) costs. He also discusses the holistic approach incorporated into Rider DCI; that is, the ability to better manage costs through proactively addressing known system challenges.⁷ He addresses the fact that O&M savings will be achieved through improved reliability,⁸

⁷ See, e.g., Arnold Testimony, at pg. 17 ("Nonetheless, the programs selected by the Company are designed to address those issues that are predictable and controllable, such as replacement of obsolete and aging infrastructure that becomes less reliable as it approaches the end of its useful life. Proactively addressing vulnerable spots on the distribution system is the most effective way to attempt to improve reliability and will provide benefits to customers.").

⁸ *Id.*, at pg. 22.

the practical effect of which mitigates against recurring base rate cases. Additional detail is further provided in Confidential Attachment 7 to Mr. Arnold's testimony. It goes without saying that O&M cost savings should, through base rate cases, result in savings to customers. Cost savings and controls, therefore, have been addressed.

2. How the proposal "avoids duplicative cost recovery."

As noted in the testimony filed in support of these proceedings, the programs contemplated for inclusion under Rider DCI are not the types of grid modernization programs subject to the Company's current Rider DR-IM. The Company will keep these programs, and associated costs, separate, thereby eliminating any risk of duplicative cost recovery for distribution-related investment. Furthermore, as explained by Mr. Arnold, Rider DCI will track and recover only incremental capital investment in electric distribution plant, and will recover the associated property tax and depreciation expenses from the date certain of Duke Energy Ohio's last electric distribution rate case.⁹ Therefore, by definition, the costs to be recovered are incremental to and not duplicative of those currently included in the Company's last base rate case.

3. How the proposal "aligns electric utility and consumer interests."

Mr. Arnold's testimony details how the Company measures customer interests and expectations and how each of the programs proposed is designed to proactively address known issues that are within the control of the Company to positively impact performance.¹⁰ Mr. Arnold explains that identifying these issues and employing the necessary resources presents challenges from a budgeting perspective when the source of O&M capital is limited to base rates established through base rate proceedings. He also

⁹ *Id.*, at pg. 16.

¹⁰ *Id.*, at pp. 9-35.

explains that the existing programs and current level of capital deployment is not sufficient to maintain reliability and continue to meet customer expectations.¹¹ Mr. Arnold explains that the distribution infrastructure plans proposed in this filing and the associated recovery mechanism, Rider DCI, “are designed to balance the needs of the Company to maintain its financial stability with its commitment to customers to minimize costs and continue to provide safe, reliable, and reasonably priced service.”¹²

4. Implementation schedule by geographic location and/or type of activity.

As stated in the direct testimony of Company witnesses, Rider DCI was modeled after the distribution investment riders previously approved by the Commission for AEP-Ohio. That program includes annual submissions by the utility, which detail anticipated programs to be implemented in the next calendar year. These programs are subject to modification, given technological advances and changes in field conditions.¹³ It is important to note that the Commission has required AEP-Ohio to work with Commission Staff, each year, to determine which components will be improve or maintain reliability.¹⁴ Duke Energy Ohio has identified probable annual capital deployment to the extent possible, but is not no presumptuous as to think that the Commission would not want its Staff to work with the Company on an annual basis.

As such, anticipating additional work with Commission Staff for a yearly schedule, the Company does not have a confirmed or approved implementation schedule. However, the geographic areas are identified in the testimony and in Confidential

¹¹ *Id.*, at pg. 15.

¹² *Id.*, at pg. 16.

¹³ *Id.*, at pg. 18.

¹⁴ *See, e.g., In the Matter of the Commission's Review of Ohio Power Company's Distribution Investment Rider Plan, Finding and Order*, at ¶ 24.

Attachment MWA-7. Coupled with the annual capital budget, a potential implementation schedule has been provided.

5. Description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation or other applications that may be supported by this communication infrastructure.

The communication infrastructure referenced in the regulation is only relevant to the Company's grid modernization efforts, which are not at issue in these proceedings. As described by Mr. Arnold, the only communication improvements proposed through this filing are the updating of existing equipment to provide real-time data to monitor the Company's underground network in downtown Cincinnati and updating mobile equipment for field use to provide real time communication during outage restoration and construction.¹⁵

6. Impacts on current reliability.

Mr. Arnold states in testimony that "[a]lthough Duke Energy Ohio cannot guarantee that system reliability or customer satisfaction will improve in terms of specific reliability index scores or a particular level of performance from implementing its infrastructure improvement plans, doing nothing is sure to erode both."¹⁶ Nonetheless, he describes the anticipated positive impact to reliability resulting from each program, throughout his testimony.

7. Number of circuits impacted.

Confidential Attachment MWA-7 includes a chart that lists the area of the Company's service territory where each program will be implemented. Most of the programs are to be implemented throughout the Company's service territory. Several of

¹⁵ Arnold Testimony, at pp. 23, 31.

¹⁶ *Id.*, at 17.

the programs are targeted for the Company's underground network in downtown Cincinnati. Mr. Arnold also describes each program and the area of impact throughout his testimony. If more information is desired by the Movants, they are able to request it through discovery.

8. Number of customers impacted.

As noted in the direct testimony of Mr. Arnold and Peggy Laub, all of Duke Energy Ohio's approximately 700,000 distribution customers are impacted by Rider DCI through the anticipated enhanced system reliability, a reduced need for more frequent base rate cases, and reductions in O&M costs. Further, all customers are subject to the rider and thus financially impacted.

9. Timing of impacts.

Reliability impacts are realized after programs have been implemented and, as Duke Energy Ohio witness Peggy A. Laub discusses, the financial impacts are realized after Rider DCI is adjusted.

10. Whether the impact is on the frequency or duration of outages.

This rule has been addressed in Mr. Arnold's testimony. Details and resulting benefits have been provided, with benefits identified, where applicable, as a reduction in either frequency or duration.¹⁷ Additional detail is also provided in Confidential Attachment MWA-7.

¹⁷ *Id.*, *passim*.

11. Whether the infrastructure modernization plan addresses primary outage causes.

Program descriptions provide this detail. Indeed, Mr. Arnold's testimony speaks to a main reason for outages as being equipment failure.¹⁸ As Rider DCI extends to replacing outdated equipment, it addresses the primary causes of outages.

12. Resulting dollar savings.

See item number 1, above. The exact level of savings is not known at this time. As Mr. Arnold explains, there are factors impacting reliability that are beyond the Company's control.¹⁹ The Company acknowledged and identified the types of savings that would result (O&M, rate case, etc.) and explained how any such savings would be passed through to customers, going forward, as contemplated by the rule.²⁰

13. Activities affected and related accounts.

Throughout his testimony, Mr. Arnold discusses the affected activities. Ms. Laub references the FERC accounts proposed to be included in Rider DCI.²¹

14. Timing of savings.

See item number 9 above. In addition, it should be noted that the impact on base rates will only occur after the prosecution of base rate cases through the Commission.

15. Breakdown of capital costs and O&M expenses net of any related savings.

Rider DCI would only recover costs related to capital programs, as described in the Application and the testimony of Mr. Arnold and Ms. Laub.²² A breakdown is thus unnecessary. See also Confidential Attachment MWA-7.

¹⁸ *Id.*, at pg. 9.

¹⁹ *Id.*, at pg. 17.

²⁰ *Id.*, at pg. 16; Confidential Attachment MWA-7; Wathen Testimony, at pp. 7-8.

²¹ Laub Testimony, at pg. 3.

²² Arnold Testimony, at pg. 16; Laub Testimony, at pg. 5.

16. Recovery of stranded investment related to replacement of undepreciated plan with new technology, if any.

Mr. Arnold explains that the majority of the programs are replacing infrastructure and equipment that is at or nearing the end of its useful life.²³ Therefore, these programs do not include any stranded investments. The equipment that will be retired from service is near the end of its useful life and the remaining net book value is immaterial.²⁴

17. Impact on customer bills.

Duke Energy Ohio has provided, through testimony, both the projected investment and the design for Rider DCI. As such, customer bill impact is available. See the direct testimony of William Don Wathen Jr. and Ms. Laub, as well as Confidential Attachment MWA-7 and Attachment PAL-1.

18. Service disruptions associated with plan implementation.

While service disruptions are possible as a result of the proposed program, Duke Energy Ohio will, as always, work to minimize such events. However, no specific disruption estimation is possible at this time.

It must also be recognized, as discussed previously, that the Company anticipates working with Commission Staff to determine annual implementation plans. The schedule that results from such efforts will necessarily influence service disruptions.

²³ Arnold Testimony, at pg. 17.

²⁴ Note that the OCC has issued, and the Company has responded to, data requests on this very issue. See Attachment OCC INT-04-89, 90, and 91.

19. Description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement, and description of efforts made to mitigate such stranded investment.

Mr. Arnold discusses, at length, the nature of the equipment being replaced and explains that the equipment is aged and in need of replacement. Because the equipment that will be retired from service is near the end of its useful life, the remaining net book value, in any, is immaterial. Thus, the programs do not include any stranded investment.

20. A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.

This issue is discussed at length, throughout the testimony of Mr. Arnold. It is also noteworthy that the Company's description of such alignment, and of the power quality expectations of customers, corresponds to the approach taken by Commission Staff, as set forth in the testimony of Staff witness Peter Baker, in the pending AEP-Ohio ESP proceedings.²⁵

III. THE MOVANTS' PROPOSED REMEDY

The Movants propose that the proper remedy for failing to comply with all filing requirement is to reject the entire Application. They attempt to support this conclusion on the basis of Commission precedent. Their effort is for naught.

The first attempted analogy is to the Commission's consideration of Duke Energy Ohio's proposed market rate offer (MRO), in 2010.²⁶ As the Movants and the Commission know, MROs are filed under a different statute than ESPs. In R.C. 4928.142, authorizing MROs, the Ohio General Assembly required an electric utility's

²⁵ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, *et al.*, Direct Testimony of Peter G. Baker (May 20, 2014).

²⁶ Motion, at pp. 6-7.

first MRO application to include provisions that would blend the prior generation rates with market rates determined by auction. Thus, once a utility has filed an MRO application, the blending requirement is no longer effective. Thus, when the Commission denied the Company's proposal to move to an MRO, it had to find the proposal did not qualify as an "application" under the law. While the Movants are correct that the Commission found that the Company's proposal was rejected for failure to meet a requirement, the rationale behind that conclusion is entirely irrelevant to the present situation. The statute applicable to MROs is simply of no consequence here.

Similarly, the Movants point to a number of traditional rate cases in which the Commission found that standard filing requirements had not been met. In those cases, the Commission concluded that the applications would not be accepted for filing and the time period for the Commission's consideration of the applications would not begin until the deficiencies had been corrected.²⁷ But, as with the MRO precedent, the treatment of traditional rate cases is inapposite. Rate cases are governed by specific statutes and rules, including O.A.C. 4901-7-01. That rule gives the Commission specific authority to reject any filing that fails to comply with the requirements set forth for application for rate increases. No similar provision exists with regard to applications for approval of ESPs.

Indeed, Commission entries in prior ESPs would not support the rejection of an application where filing requirements have not been met. The Movants themselves cite two such entries and in both of those circumstances, the Commission merely ordered the utilities to supplement their applications.²⁸ In no ESP case has the Commission taken the draconian action espoused by the Movants.

²⁷ Motion, at pg. 7 (footnote 14).

²⁸ Motion, at pg. 3 (footnote 8).

IV. CONCLUSION

The Motion is legally and factually incorrect. Duke Energy Ohio respectfully submits that the Commission should deny the Motion and consider the Application on the timeline currently in place.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 14th day of July, 2014, to the parties listed below.


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