BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the 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 the 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

REPLY OF DUKE ENERGY OHIO, INC., TO MEMORANDUM CONTRA ITS MOTION TO CONTINUE RIDERS

This is a straight-forward request that should be approved without delay. Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), is offering a simple solution to a problem that was unforeseen, either by it, the other parties to the above-captioned proceedings, the Public Utilities Commission of Ohio (Commission), or the Ohio General Assembly. The roadblock attempted by the Office of the Ohio Consumers' Counsel (OCC) should be ignored as both late-filed and incorrect.

<u>OCC's Memorandum Contra Is Untimely</u>

This case proceeded on a statutorily limited timeline. Under R.C. 4928.143(C)(1), the Commission had 275 days to rule on the Company's application. Knowing that limitation, the attorney examiner's first entry required parties to file memoranda contra any motions within seven calendar days.[1] OCC failed to comply. Duke Energy Ohio filed the Motion that precipitated OCC's Memorandum Contra on March 9, 2018. Under the previously ordered and

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[1] Entry, ¶5 (June 6, 2014).

expedited procedural schedule, OCC's memorandum contra was due on March 16, 2018. OCC filed it on March19, and did so with no request to excuse the late filing. It must be ignored.

<u>OCC's Designation of Current Rates as "Unlawful" Is Wrong</u>

In its memorandum contra, OCC asserts that the Company is attempting to extend its "unlawful rates." The fact that OCC filed an application for rehearing concerning the rates approved by the Commission in these proceedings – which application had not been acted upon – does not make them "unlawful." Indeed, on March 21, 2018, just two days after OCC's late filing, the Commission issued its application for rehearing, denying OCC's arguments and, thus, reaffirming the lawfulness of the current rates.[2] Therefore, OCC's dubious characterization of the Company's current rates authorized under the ESP is wrong and should be ignored.

<u>The Commission Has Authority to Grant the Company's Motion</u>

OCC argues that the Commission has no authority to extend a utility's electric security plan (ESP), under two rationales. First, OCC points to the fact that the governing statute allows an extension in two identified circumstances, neither of which covers the current situation. Duke Energy Ohio does not disagree that the statute makes no mention of the possibility that the Commission would not have concluded an ESP approval proceeding within the allowed 275 days. The Company pointed out that fact in its Motion.

Nevertheless, customers must continue to receive electric service and the Company must continue to be paid for providing that service. Although the Ohio General Assembly did not address this situation specifically, it did address similar situations. Specifically, R.C. 4928.141 states that a utility's then-existing rate plan shall continue until a standard service offer is first approved under either R.C. 4928.142 or 4928.143. Similarly, the legislature allowed for the continuation of the provisions, terms, and conditions of the utility's most recent standard service

[2] Second Entry on Rehearing (March 21, 2018).

offer until a new one is authorized, in the event a utility terminates an application or the Commission disapproves an application.[3] The Commission has previously relied upon these statutes as authority to extend an ESP in other situations:

> Although the General Assembly has not provided specific guidance in the event that an electric distribution utility were to terminate an MRO and file a new ESP, as is the case here, the Commission finds that it would be consistent with both Section 4928.141 and Section 4928.143(C)(2)(b), Revised Code, to order that the terms and conditions of the current ESP should continue until a subsequent offer is authorized.[4]

The Commission's rationale is equally applicable here. It has the authority to extend Duke Energy Ohio's current ESP and should do so.

OCC's second rationale for arguing that the Commission has no authority to extend an ESP is based on its novel idea that an ESP is not standard service offer. OCC reads into Ohio law that a "standard service offer" is only that portion of an ESP that falls under R.C. 4928.143(B)(1) – that it excludes anything approved under R.C. 4928.143(B)(2). Of course, the law provides no such distinction. Paragraph (B)(1) sets forth what must be in an ESP; paragraph (B)(2) set forth what may be included in an ESP. Nothing in that statute, or elsewhere, would suggest that the optional aspects of an ESP are not part of the utility's standard service offer.

OCC, for its argument, relies on a misreading of the language in R.C. 4928.141, which states that the utility "shall provide consumers . . . a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service."[5] OCC reads that language as a definition and then, apparently, concludes that the required part of an ESP (addressed in paragraph (B)(1), as described above) is therefore a "standard service offer." What OCC misses is the second

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[3] R.C. 4928.143(C)(2)(b).
[4] *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, *et al.*, Entry, pg. 4 (Dec. 19, 2012).
[5] R.C. 4928.141(A).

sentence of R.C. 4928.141(A), which requires the utility to apply to the Commission "to establish the standard service offer in accordance with section 4928.142 or 4928.143 . . .." This language makes it clear that the standard service offer is whatever the Commission approves following an application under either of the two statutory provisions referenced in R.C. 4928.141. These two provisions have been identified by the legislature as the only two recognized forms of a standard service offer; namely, a market rate offer or an ESP, respectively. If the legislature had meant to define a standard service offer as something other than what the Commission approves under 4928.142 or 4928.143, or otherwise limit the "standard service offer" in some way to only the mandatory portion of an ESP, it would have done so. For example, the legislature could have easily qualified its R.C. 4928.141 to state "in accordance with section 4928.142 or paragraph (B)(1) of section 4928.143 . . .." The legislature did no such thing. OCC has no justification to read such a limitation into the law.

<u>The Company's Motion Is Neither an Application for Rehearing Nor Relitigation of the ESP</u>

OCC proposes that the Commission view the Company's Motion as if it were an application for rehearing. It also asserts that Duke Energy Ohio is attempting to relitigate its ESP. In doing so, however, OCC must ignore the fact that unforeseen circumstances often give rise to solutions that were not originally anticipated. The fact that the Company is willing to continue providing electric service under its existing ESP for a limited period of time in order to solve for a potential crisis does not mean that it is seeking any change in the terms of that ESP.

OCC must have scoured the Opinion and Order to find something to suggest was being changed as a result of this Motion, as it relies on language that is pulled entirely out of context. In the middle of its Opinion and Order, the Commission was considering appropriate auction schedule for the ESP. It specified a series of dates on which identified numbers of tranches would be auctioned. And, concerned about the blending of procurements near the end of that ESP with those near the beginning of the next standard service offer, it also laid out the appropriate auctions to be held in the event the next standard service offer had not been authorized by April 1, 2018 – two months before expiration of the ESP.[6] OCC argues that the Motion is actually seeking rehearing of this portion of the Opinion and Order, because "the PUCO did not make allowances for continuing Duke's electric security plan (and charging consumers for the 14 riders) beyond the end date . . ..."[7] But OCC ignores the fact that the topic being discussed in that portion of the Opinion and Order was the auction schedule. Of course the Commission did not throw in random language about the continuation of riders in the event the next standard service offer had not been approved by the end of the ESP. Such a situation was never contemplated. The Company should not be prejudiced because the Commission has not yet ruled upon its pending ESP application, which application is now past the statutory time period for the Commission to review and issue an order in an ESP. The Company is merely seeking to maintain the status quo, until the Commission has the opportunity to rule upon the pending new ESP. No more, no less.

The Company's Motion is not an application for rehearing and is not an attempt to relitigate the terms of the ESP.

The Commission Should Not Modify the Riders' Terms

The Company is not seeking any changes to the terms of the riders in question with its pending Motion. Nevertheless, OCC believes it is appropriate for the Commission to do so, *sua sponte*, and without any due process. Regardless of OCC's purported rationale for such an action, it is both inappropriate and untenable.

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[6] Opinion and Order, pg. 51.
[7] Memorandum contra, pg. 7.

Conclusion

For the reasons stated herein, Duke Energy Ohio respectfully requests that the Commission issue an order confirming that riders currently in effect under its existing ESP, including Rider DCI, shall continue during the pendency of the Company's pending ESP application and until the earlier of August 1, 2018, or the effective date of its fourth ESP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this 22nd day of March, 2018.

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