

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission’s Investigation of)
the Disconnection Policies and Practices of Duke) Case No. 17-2089-GE-COI
Energy Ohio, Inc.)
)

**DUKE ENERGY OHIO’S MEMORANDUM CONTRA
THE MOTION TO COMPEL RESPONSES TO DISCOVERY**

I. INTRODUCTION

The Public Utilities Commission of Ohio (Commission) initiated this case in 2017 to review Duke Energy Ohio, Inc.’s (Duke Energy Ohio or the Company) disconnection policies and practices. The Office of the Ohio Consumers’ Counsel (OCC) seeks to turn this investigation into its own fishing expedition and political bully pulpit. There is no cause for such conduct and the Commission should not permit it to do so. OCC’s motion to compel should be denied.

II. BACKGROUND AND HISTORY

OCC has persisted in its continuing effort through the course of three different proceedings to create a problem where none exists. First, OCC ineffectively complained about Duke Energy Ohio’s disconnection practices in the Company’s SmartGrid rider proceeding in 2014.¹ In that case, the Attorney Examiner struck that portion of OCC’s testimony as irrelevant to the proceeding.

Next, OCC intervened in a complaint case, and although it did not file its own complaint, the Commission permitted OCC to engage in robust and full participation in discovery, prehearing

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2013 SmartGrid Costs*, Case No. 14-1051, Opinion and Order, (April 8, 2015).

conferences, and the hearing in the *Pitzer Case*.² In the *Pitzer Case*, OCC promulgated approximately 86 interrogatories and approximately 31 document requests. Despite this extensive discovery, the Commission recognized that the evidence did not support OCC's arguments in the case simply stating, "In any event, the evidence does not support OCC's arguments on these issues."³ Thus, OCC sought again to raise problems where none existed. Despite this failure on the merits of its arguments, the OCC persists in trying to find a solution to a problem that does not exist.

Third, OCC then brought its own Complaint alleging "wrongful disconnection" without any facts upon which to proceed.⁴ Just like in this case, OCC hoped to find a basis through a fishing expedition in discovery to support its complaint after the fact. But the Commission readily recognized that the complaint was based on general statistics and allegations taken from another case. The Commission recognized that OCC's allegations did not constitute reasonable grounds for hearing.⁵

Now OCC tries, once again, to broaden the Commission's scope of inquiry in order to raise issues that are irrelevant to the proceeding. While the Company has worked to provide OCC with information that is relevant to the Commission's audit, OCC continues to revisit and re-litigate old matters that have already been considered and addressed by the Commission. For the reasons discussed further below, the Commission should not continue to support this meritless harangue.

III. DISCUSSION

To complete the Commission's audit process for this case, the Commission directed its Staff to work with an outside auditor and further directed that such auditor was to file a report with the

²*In the Matter of the Complaint of Gail Lykins v. Duke Energy Ohio, Inc.*, Case No.15-298-GE-CSS, Motion to Intervene and Memorandum in Support by the Office of the Ohio Consumers' Counsel, (May 14, 2015). This case will be referred to as the *Pitzer Case*, consistent with prior Commission Opinions.

³*Id.* at p. 24.

⁴*In the Matter of the Complaint of the Office of Ohio Consumers' Counsel and Communities United for Action v. Duke Energy Ohio, Inc.*, Case NO.15-1588-GE-CSS, Entry, (October 11, 2017) at p.3.

⁵*Id.* at p. 9.

Commission detailing the results of the audit. Beginning in November 2017, the auditor was selected by Staff and approved by the Commission. Northstar Consulting Group (Northstar) audited Duke Energy Ohio's current disconnection policies and practices and submitted a report on March 14, 2018.

While this audit was underway, OCC intervened in this proceeding and conducted discovery. OCC promulgated 96 interrogatories and 13 document requests, many of which contained multiple parts. Along with its own discovery, OCC sought and was provided copies of all data requests submitted to the auditor. Indeed, OCC issued more interrogatories than the auditor. OCC's discovery has gone far astray of the stated purpose and scope of the Commission's audit. The Commission provided that OCC would have an opportunity to participate in the Commission's investigative audit case, however, the Commission did not provide the issues raised in OCC's complaint would be incorporated into this case. Indeed, OCC's arguments have already been addressed in the *Pitzer Case*.

In its Entry wherein the Commission directed Staff to retain an auditor for purposes of the investigation, the Commission provided a Request for Proposal (RFP) that details the scope of the Commission's investigation. In that RFP, the Commission provided "General Project Requirements" that specify the scope of the audit. The scope includes a thorough review of the Company's "current practices for compliance." Indeed the word "current" appears twice in the list of items to examine and all of such items are framed in the current tense. There is no mandate to review practices from the last five years as OCC now seeks to do.

OCC is engaged on an expedition all its own. OCC admits as much in its initial argument that "OCC's discovery seeks information concerning Duke's disconnection policies and practices

since 2011, when the disconnection that led to the *Pitzer Case* occurred.”⁶ In the Motion to Compel, OCC admits that its purpose is to establish if customers were harmed *between 2011 and the present*.⁷ OCC pursues this theory despite any factual cause to do so. It refers to no other record support for this unnecessary additional review and it makes no apology for its intention to turn the Commission’s audit into something other than an audit of its current practices. OCC’s inquiry goes far afield of the stated purpose of the audit unnecessarily.

After reviewing OCC’s discovery requests, the Company believed that OCC was merely seeking irrelevant information due to a misunderstanding of the scope of the proceeding. OCC’s motion now makes clear that its intentions are far more nefarious. This is clear from the fact that the only discovery responses that OCC currently pursues are the ones that seek information relating as far back as 2011. OCC is seeking to find something to justify the witch hunt it has pursued for these last four years.

Even OCC points out in its Motion to Compel, that the Commission’s discovery rules “do not create an additional field of combat to delay trials or to appropriate the Commission’s time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission’s proceedings.”⁸ This quote encompasses all that is wrong with OCC’s continual effort to remedy a problem that doesn’t exist. While OCC may certainly wish to opine on the Company’s current disconnection policies and practices, seeking to review seven years of Company history in an effort to find something about which to complain is far afield of proper discovery. The Commission should control the scope of its own audit and deny OCC’s motion.

⁶ Motion to Compel at p. 6.

⁷ See Motion to Compel at p.7, “Thus, it is likely that consumers other than the Easterlings were harmed by Duke’s flawed disconnection policies and procedures.”

⁸ Motion to Compel at p. 3, citing *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No.85-521-EL-COI, Entry (March 17, 1987) at 23.

In its motion, OCC specifically seeks responses to interrogatories that seek information that goes back to 2011. For OCC discovery requests 02-74 and 02-75, OCC asks Duke Energy Ohio to explain any changes to its disconnection policies and practices since 2011. Thereafter, OCC explains that it has posed Interrogatory 02-90 to ask whether the PUCO Staff has inquired about the Company's disconnection policies and practices since the *Pitzer* complaint was filed. OCC explains that this goes to the issue of whether the Commission Staff has properly done its job. Thus OCC is not only going afield of the purposes of the audit with respect to the Company, but now it is also auditing the Commission Staff. Again, this information can have no bearing on current disconnection policies and procedures. Moreover, it would subject the Company to undue burden in providing reports on such data, particularly when it is irrelevant to the case. Finally, Interrogatories 02-78 and 02-79 inquired about customer complaints filed since 2012 regarding disconnection. The Company has endeavored to respond to all of OCC's reasonable discovery requests as can be seen in the discovery responses provided by OCC. However, it is unreasonable to expect the Company to perform a search for data going back to 2012, when such information is irrelevant.

The Commission's rules provide for ample discovery and OCC has received ample responses to its discovery here and in three other cases. It is time to put an end to this unreasonable and unrelenting abuse of the Commission's process. The Commission should deny OCC's motion to compel.

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 delivery, or electronic mail, on this 9th day of April 2018, to the parties listed below.

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