

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the)
Reconciliation Rider of Duke) Case No. 20-167-EL-RDR
Energy Ohio, Inc.)

**MEMORANDUM OF DUKE ENERGY OHIO, INC.,
CONTRA JOINT MOTION FOR A CONSOLIDATED HEARING**

Pursuant to the provisions of O.A.C. 4901-1-12(B)(1), Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby files its memorandum contra (Memorandum Contra) a motion (Motion) for a consolidated hearing in cases concerning two separate utilities. The Motion is unreasonable and unjust and should be denied.

On July 8, 2021, the Office of the Ohio Consumers' Counsel (OCC) and Ohio Manufacturers' Association Energy Group (OMAEG) jointly filed¹ the Motion, asking that the Public Utilities Commission of Ohio (Commission) hold one hearing to address issues in three cases: the above-captioned proceeding relating to Duke Energy Ohio and two other proceedings, both of which relate to Ohio Power Company (AEP).² All three of the cases relate to Commission-approved riders that address the costs and revenues stemming from the two utilities' respective ownership interests in Ohio Valley Electric Corporation (OVEC) and the Inter Company Power Agreement (ICPA) that OVEC has entered into with the two utilities and other parties. However,

¹ OCC and OMAEG may also be referred to, collectively, as the Movants.

² *In the Matter of the Power Purchase Agreement Rider of Ohio Power Company for 2018*, Case No. 18-1004-EL-RDR; *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2019*, Case No. 18-1759-EL-RDR.

the Duke Energy Ohio rider and the AEP rider are not identical, nor are the two utilities' interests in and control over OVEC.

The Motion, although identified as a motion for a "Consolidated Hearing," spends almost the entirety of its discussion on the need for a hearing in the three proceedings, as if OCC and OMAEG are somehow confused about whether a hearing would be held. They discuss the need for a "rigorous review." They discuss the "precedent" of holding hearings in outdated fuel clause cases. But they do not explain why they believe a motion is needed in order to cause the Commission to hold a hearing in any contested case. If the Commission believes that a hearing is appropriate, it will schedule one, without the filing of a motion.

The actual item of contention in the Motion—that the three cases be consolidated for hearing—only gets OCC's and OMAEG's attention for approximately half a page. That half page, not surprisingly, does not cite a single instance in which the Commission has held a single hearing for multiple utilities. Rather, OCC and OMAEG simply recite a number of unsupported and unexplained platitudes:

- Noting that O.A.C. 4901-1-27 allows the attorney examiner to take actions to ensure that hearings proceed in an "orderly" fashion, the Movants assert that "Consolidating these particular cases for hearing would be orderly for all concerned."³ Of course that is fiction. With issues relating to two separate utilities, who has the burden of proof? Can two utilities share that burden? There is no controlling precedent on such an issue and certainly consolidation would raise legal and procedural issues in that regard. Another disorderly aspect of consolidation would be the question of which

³ Motion to Consolidate, p. 8.

utility's witnesses would go first and which utility's attorneys would cross-examine opposing witnesses first. And appropriate treatment of any confidential information or testimony during a consolidated hearing would be almost impossible. Numerous other examples could easily be identified.

- Movants next state, baldly, that “consolidation should serve the achievement of justice.”⁴ They provide no explanation of why consolidation would be more likely to result in justice than hearing the cases separately would be. Indeed, Duke Energy Ohio believes that consolidation would diminish its own right to be heard, as the numerous problems that would be inherent in a consolidated proceeding have not even been contemplated.
- As a throw-away comment at the end of their first paragraph, the Movants state: “Also, R.C. 4901.13 allows the PUCO to adopt rules governing its proceedings.” That is not even relevant to the issues, as no one has mentioned the possibility of adopting any administrative rules in these proceedings.
- Most egregiously, the Movants claim that “[t]he same or similar issues . . . will arise,” noting that “[a] central issue in each case is whether AEP and Duke, as part of OVEC, followed competitive practices in how they committed the plants into the PJM Day-Ahead energy market.”⁵ Of course,

⁴ *Id.*

⁵ *Id.*

AEP and Duke Energy Ohio acted independently; neither is responsible for the acts of the other.

Although OVEC makes all energy offers to PJM on the behalf of each company, each may have its own internal process to monitor those offers. Duke Energy Ohio creates its own forward-looking 21-day margin projection to monitor the economics of the units' commitment. In addition, Duke Energy Ohio creates a backward-looking profit and loss report to monitor how the units actually economically performed.

There are also potential differences in the costs and revenues allocated to each company. Although fuel and other variable costs are allocated similarly between entities on an energy take basis and fixed costs are allocated on a Power Participation Ration (PPR) basis, certain other costs and revenues may have different allocations between individual PJM entities. First, each company participates in the PJM capacity markets independently and thus all PJM revenues and charges related to capacity will be different between companies. Additionally, in the OVEC monthly available power statement, an additional charge is allocated for PJM capacity charges payable by the PJM sponsoring companies relating to OVEC compliance with the PJM Reliability Assurance Agreement. Since each counterparty may supply a different amount of capacity to OVEC, some companies will be charged for capacity expenses on the monthly OVEC bill (the ones that didn't supply their own capacity) and others will not get billed for capacity expenses on the monthly OVEC bill (the ones that did supply their own capacity, like Duke Energy Ohio).

The scope of this proceeding should comprise Duke Energy Ohio's activities regarding management of its own interests in OVEC vis-a-vis the market. Duke Energy Ohio does not control AEP's strategy. AEP and Duke Energy Ohio participate at different levels in the OVEC management process. A few examples will illustrate this. AEP, through its services provided to

OVEC, procures coal and provides other services to OVEC. Duke Energy Ohio would have no direct knowledge of the items that AEP provides to OVEC. Although the Company is kept abreast of these activities at periodic OVEC board meetings, Duke Energy Ohio has no daily interaction or daily oversight for those AEP-provided services. Similarly, there are differences in how companies participate at various OVEC committees. The situations of AEP and Duke Energy Ohio are far from identical.

Even where utilities have co-owned generating assets in the past, the Commission has not consolidated hearings on the management and operation of those assets. And the utilities' situation is a step further apart here, as Duke Energy Ohio and AEP only have ownership interests in OVEC, not in the generating assets themselves.

Duke Energy Ohio has the right to due process. That requires a hearing on Duke Energy Ohio's processes and actions—not those of AEP. The costs at issue for Duke Energy Ohio are not of the same magnitude as those of AEP. Duke Energy Ohio's interest in the OVEC generating stations is a fraction of that of AEP. While the Commission's auditor was the same for both proceedings, the audit reports are not identical. Consolidating the proceedings will cause confusion for all parties and the auditor.

The Motion by OCC and OMAEG to consolidate that above-captioned proceedings for hearing should be denied by the Commission.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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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) or electronic mail, on this 23rd day of July, 2021, to the parties listed below.

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