**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set Rider DSR.In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments. | ))))))) | Case No. 23-126-EL-RDRCase No. 23-281-EL-ATA |

**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC’S MOTION FOR LEAVE TO FILE SURREPLY COMMENTS (THAT IS UNAUTHORIZED)**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

 On September 7, 2023, the PUCO Staff filed its Review and Recommendations on Duke Energy Ohio’s (“Duke”) application to adjust and set distribution storm rider charges to consumers in Case No. 23-126-EL-RDR. The Distribution Storm Rider (“Rider DSR”) allows Duke to collect from consumers incremental major storm expenses that exceed the $4.3 million that it already collects from consumers in distribution base rates.[[1]](#footnote-2)

The PUCO Staff’s audit findings included three adjustments to the proposed Rider DSR. The adjustments would reduce the charges collected from consumers by $84,066.02.[[2]](#footnote-3) The adjustments included:

* Removal of $4,980.27 that was improperly included in the Rider DSR revenue requirement;[[3]](#footnote-4)
* Reducing the revenue requirement by $236.19 due to a calculation error;[[4]](#footnote-5) and
* Disallowing $79,085.75 associated with a November 5, 2022 storm that did not qualify as a major event under PUCO rules.[[5]](#footnote-6)

Duke filed Initial Comments on the PUCO Staff Review and Recommendations on September 15, 2023. In its Initial Comments, Duke did not contest the PUCO Staff’s recommendation to reduce the charges to consumers by $4,980.27[[6]](#footnote-7) due to improper inclusion of unrelated expenses. Duke did contest the PUCO Staff’s recommendation to disallow $79,085.75 in costs associated with the November 5, 2022 storm.[[7]](#footnote-8)

On September 22, 2023, OCC filed Reply Comments to Duke’s Initial Comments. In its Reply Comments, OCC recommended that the PUCO adopt the PUCO Staff’s recommendation to reduce charges collected from consumers by $84,066.02, including the $79,085.75 storm costs in Rider DSR. OCC also asked the PUCO to require the PUCO Staff to examine Duke’s practices in calculating the reliability data in Duke’s Rule 10 Reports to verify compliance with PUCO reporting requirements.

On September 26, 2023 the PUCO Staff revised its initial recommendation and recommended allowing collection from consumers the $79,085.75 in costs associated with the November 5, 2022 storm.[[8]](#footnote-9) The PUCO Staff did not explain how the November 5, 2022 storm qualified as a Major Event as defined by O.A.C. 4901:1-10-01(T) in its Revised Recommendation. The PUCO Staff’s Revised Recommendation merely recited that “Staff met with and received additional support from Duke. Staff confirms that the November storm qualifies as a Major Event and agrees with Duke that the November storm should be allowed for recovery.”[[9]](#footnote-10)

Also on September 26, 2023, Duke filed its out-of-order and wholly unauthorized self-styled Motion for Leave to File Surreply Comments to OCC’s Reply Comments. Based on the authority and argument below, to protect consumers the PUCO should reject Duke’s Motion for Leave and adopt the initial recommendation of the PUCO Staff, as recommended by OCC in its Reply Comments. That would reduce charges collected from consumers under the rider by $84,066.02.

# II. ARGUMENT

## A. To protect consumers, Duke’s Motion for Leave should be denied as contrary to governing rules and the scheduling order.

At the outset, it must be noted that neither the Ohio Rules of Civil Procedure nor the PUCO Rules contemplate or permit Duke’s self-styled Motion to File Surreply Comments. Further, under the scheduling order in this matter, the reply period closed on September 22, 2023 and briefing was complete on the same date.[[10]](#footnote-11) Duke has disregarded the governing rules and the PUCO’s scheduling order. Rules exist for reasons. The rules should be followed unless good cause can be shown as to why there should be an exception.[[11]](#footnote-12) Duke has not provided good cause.

## B. To protect consumers, Duke’s Motion for Leave should be denied because it seeks to distort and obscure, not reply.

It is readily apparent that Duke’s efforts serve no purpose other than to distort the record and obscure the fact that Duke is not reporting annual power outages in the manner required under PUCO rules. By Duke’s own admission, the “Surreply Comments do not address a matter discussed in the OCC Reply Comments.”[[12]](#footnote-13) The misguided Surreply Comments do not address anything.

Duke asserts without foundation that it is not clear whether OCC believes the November 5, 2022 storm was only a transmission outage, or if OCC is simply trying to muddy the record. Duke asserts without foundation that it is unclear if OCC believes that Duke included transmission expenses for collection from consumers in the Rider DSR.[[13]](#footnote-14) But OCC’s Reply Comments unambiguously declare that if Duke experienced a major event on November 5, 2022 as defined in the PUCO rules,[[14]](#footnote-15) the characteristics of that major event should have been reported as a major event in the annual distribution reliability report.[[15]](#footnote-16)

Given that there is no basis for the PUCO to grant Duke’s Motion for Leave, the PUCO should reject Duke’s motion. The PUCO should adopt the recommendations made in the OCC Reply Comments and instruct Duke to comply with PUCO rules and accurately report major events and other reporting characteristics in the PUCO required annual reliability reports.[[16]](#footnote-17)

The PUCO rules require Duke to file an annual reliability report by March thirty-first of each year.[[17]](#footnote-18) PUCO rules set forth the minimum specific informational requirements that must be contained in that annual report. Major events and transmission outages are to be separately reported along with other characteristics in the annual reliability report as follows:

\* \* \*

(1) Annual performance and supporting data for each service reliability index set forth in paragraph (B) of this rule both with and without exclusions *for major events and transmission outages*. Supporting data includes, for example, the number of customers served, the number of customer interruptions, the number of customer minutes interrupted, SAIFI data for a major event, CAIDI data for a major event, information concerning a transmission interruption, and a listing of distribution circuits interrupted during a transmission interruption.

(2) Performance on the same indices *during major events and transmission outages*, reported in separate categories with their respective supporting data.

(3) Data for the total number of sustained outages, customers interrupted, and customer minutes interrupted for each outage cause code, all of which shall be reported in the following versions:

(a) *Data excluding major events and transmission outages.*

(b) *Data for major events only*.

*(c) Data for transmission outages only.[[18]](#footnote-19)*

(Emphasis added.)

Duke’s annual reliability report for 2022 does not reflect a major event having occurred on November 5, 2022.[[19]](#footnote-20) Yet the Company is seeking collection of costs through Rider DSR for a major event that supposedly occurred that day. Duke therefore cannot collect from consumers costs associated with the November 5, 2022 storm.

It is clear Duke misapprehends the importance of the annual reliability report to its 600,000 residential consumers and their consumer advocate, the OCC. The annual distribution reliability report is intended to serve as the single source that can be relied upon by the public to determine if reliability performance conforms with the PUCO reliability standards. In other words, are consumers receiving reliable service?

Inaccurate or incomplete reporting of reliability data in the annual distribution reliability report distorts the public view of the reliability consumers are receiving. Duke’s inaccurate or incomplete reporting of reliability data contradicts Ohio policy regarding the development of performance standards to measure service quality, and to provide written reports that demonstrate the achievement against those standards in plain English.[[20]](#footnote-21)

III. CONCLUSION
 Duke’s self-styled Motion for Leave to File Surreply Comments is out-of-order and wholly unauthorized by rule and the PUCO’s scheduling order in this matter. Further, Duke’s Surreply Comments do not reply to anything in OCC’s Reply Comments. They are merely an excuse for failing to adhere to the PUCO’s rules for reporting annual power outages under PUCO rules.

 For the benefit of Duke’s 600,00 residential consumers the PUCO should reject Duke’s Motion and adopt the initial recommendation of the PUCO Staff, reducing charges collected from consumers by $84,066.02 and specifically disallowing the $79,085.75 in storm costs for Rider DSR.

Respectfully submitted,

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*/s/ William J. Michael*

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of the foregoing Memorandum Contra Duke Energy Ohio, Inc’s Motion for Leave to File Surreply Comments (That Is Unauthorized) was served via electronic transmission upon the parties this 3rd day of October 2023.

*/s/ William J. Michael*

 William J. Michael

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, Opinion and Order (September 19, 2018) at 42. [↑](#footnote-ref-2)
2. 23-126-EL-RDR, Staff Review and Recommendation Regarding the Application of Duke Energy Ohio, Inc. to Adjust and Set Rider DSR (September 7, 2023). [↑](#footnote-ref-3)
3. *Id*. [↑](#footnote-ref-4)
4. *Id*. [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. *Id*. [↑](#footnote-ref-7)
7. 23-126-EL-RDR, Initial Comments of Duke Energy Ohio, Inc. Regarding Staff Review and Recommendations(September 15, 2023). [↑](#footnote-ref-8)
8. PUCO Staff Revised Recommendation (September 26, 2023). [↑](#footnote-ref-9)
9. *Id*. [↑](#footnote-ref-10)
10. Entry at ¶ 7 (September 8, 2023). [↑](#footnote-ref-11)
11. *See, e.g.,* O.A.C. 4901-1-38(B). [↑](#footnote-ref-12)
12. Duke Surreply Comments at 2. [↑](#footnote-ref-13)
13. Duke Surreply Comments at 2. [↑](#footnote-ref-14)
14. O.A.C. 4901:1-10-01(T). [↑](#footnote-ref-15)
15. *See, e.g.,* OCC Reply Comments at 4 (“Since Duke did not report the November 5th storm as a major event, the PUCO Staff correctly excluded the expenses that were allegedly associated with the storm from consideration for collection from consumers under Rider DSR.”) [↑](#footnote-ref-16)
16. O.A.C. 4901:1-10-10(C). [↑](#footnote-ref-17)
17. *Id*. [↑](#footnote-ref-18)
18. O.A.C. 4901:1-10-10(C)(1) – (C)(3). [↑](#footnote-ref-19)
19. *See* Duke’s Annual Report of Electric Distribution System Reliability Pursuant to Rule 4901:1-10-10(C), Case No. 23-994-EL-ESS, (March 9, 2023) at 3. [↑](#footnote-ref-20)
20. R.C. 4928.02(E). [↑](#footnote-ref-21)