

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In The Matter of the Transmission)	
Rates Contained in the Rate Schedules)	
Of Duke Energy Ohio and Related)	Case No. 05-727-EL-UNC
Matters.)	
)	
In the Matter of the Application of Duke)	
Energy Ohio for Authority to Modify)	
Current Accounting Procedures for Certain)	Case No. 05-728-EL-AAM
Transmission Costs.)	

COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Pursuant to the Public Utilities Commission of Ohio's ("Commission") Finding and Order issued on October 5, 2005 ("October 5 Order"),¹ the Office of the Ohio Consumers' Counsel ("OCC") hereby files comments in the above-captioned proceeding on behalf of the approximately 600,000 residential electric utility customers of Duke Energy Ohio ("Duke Energy"). October 5 Order at 8. In the October 5 Order, the Commission established a process whereby interested persons would have twenty days to comment, after a Transmission Cost Recovery ("TCR") filing by Duke Energy. Id. Upon consideration of comments, the Commission will either suspend Duke Energy's requested modification to its TCR riders or allow the modified TCR riders to become effective on the 46th day after the TCR filing. Id. at 8-9.

¹ An Entry Nunc Pro Tunc was issued on December 7, 2005 to modify the implementation date of the TCR rider for residential customers.

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I. HISTORY

On May 15, 2006, Duke Energy filed revised tariffs to reflect its semi-annual update to its TCR riders.² Through the May 15th filing, Duke Energy sought authority to increase its TCR riders to recover transmission and ancillary service rates and charges assessed by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO"). One of the items delineated on Duke Energy's schedules as "Other Includable MISO Costs" were Uplift Charges, which Duke Energy intended to collect through the TCR riders.³ Two of these Uplift Charges were identified as Revenue Sufficiency Guarantee ("RSG") charges. Market participants must pay a RSG charge to the Midwest ISO when they withdraw energy from the real-time energy market. The Midwest ISO in turn makes payments to generators that make generation resources available for dispatch in the real-time market.

On June 5, 2006, OCC filed comments on Duke Energy's May 15th filing ("June 5 Comments"). In its June 5 Comments, OCC explained that the Federal Energy Regulatory Commission ("FERC") issued an order on April 25, 2006 questioning the Midwest ISO's assessment of RSG charges and RSG allocations.⁴ FERC directed the Midwest ISO to recalculate RSG charges since April 1, 2005 based upon FERC's findings, and ordered the Midwest ISO to make refunds, with interest, reflecting the

² Duke Energy initially filed its semi-annual updated tariffs and supporting schedules on May 2, 2006; however, its revised tariff schedules filed on May 15, 2006 modified the effective date of the proposed TCR riders to June 29, 2006.

³ See Schedule B attached to the tariff filing of May 2, 2006. Duke Energy filed revised tariff sheets on May 15, 2006 that affected the timing of the new transmission rates; however, Duke Energy did not file revised schedules.

⁴ *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶61,108 (April 25, 2006) ("RSG Order").

corrected RSG allocations.⁵ FERC also ordered the Midwest ISO to revise the RSG provision of its tariff to eliminate double-counting of certain transactions.⁶ The Midwest ISO filed a stay in the implementation of the RSG Order until rehearing was sought and a subsequent order on rehearing was issued.⁷ On May 17, 2006, FERC extended the time for compliance with its RSG Order pending the issuance of its order on rehearing.⁸

In light of the FERC RSG Order requiring refunds of certain RSG charges, OCC raised numerous questions in its June 5 Comments as to the appropriateness of the Midwest ISO's RSG charges assessed to Duke Energy. OCC also expressed concern over the appropriateness of the level of such costs and collecting those costs from customers through the TCR riders. OCC requested that the Commission suspend approval of Duke Energy's proposed modifications to its transmission riders until the issue was resolved or that the RSG charges be excluded from the calculation of the proposed TCR riders until such time as the correct RSG costs and level of costs are determined.

In its June 5 Comments, OCC also requested that if the RSG costs were allowed to be recovered from customers, then any refunds ordered by FERC for excessive RSG charges be credited, with interest, against Duke Energy's TCR riders in the next semi-annual filing.

⁵ Id. at P26.

⁶ Id. at P85.

⁷ The Midwest ISO filed a Motion to Stay on May 11, 2006 and an Application for Rehearing on May 25, 2006 in FERC Docket No. ER04-691-065 (see also FERC Docket No. ER04-691-074).

⁸ See FERC Docket No. ER04-691-065.

On June 14, 2006, the Commission issued an Entry in the above-captioned proceeding suspending Duke Energy's Application and request for modification of its TCR riders, citing to the questions raised by OCC in its comments as well as concerns raised by the Industrial Energy Users-Ohio regarding RSG charges in the FirstEnergy transmission rider proceeding, Case No. 04-1932-EL-ATA ("June 14 Entry"). June 14 Entry at 3. The Commission also directed Staff to "continue to investigate this matter and report back to the Commission when it has completed its review of this matter and of all costs included in rider TCR." Id. The Entry also stated that "[u]ntil such time as the Commission has made a determination regarding the appropriateness of Duke's proposed rider TCR update, Duke's current rider TCR shall remain in effect, subject to future true-up." Id.

To date, there has not been a determination made by the Commission regarding the appropriateness of Duke Energy's May 15th TCR rider update. Additionally, to OCC's knowledge, Staff has not issued a report to the Commission or otherwise documented its results of an investigation into this matter.

II. CURRENT TCR RIDER FILING

On October 16, 2006, Duke Energy filed updated TCR riders and requested that the suspension be lifted and that Duke be permitted to establish new, revised TCR riders.⁹ In its Letter, Duke Energy references OCC's concerns over potential refunds of previously billed RSG charges and agrees to include any such refunds in its TCR riders. Specifically, Duke Energy agrees to include refunds as a result of the FERC litigation,

⁹ Duke Energy did not file an application with the Commission, but instead made its request through a cover letter addressed to docketing (hereinafter, "Letter").

“but only as they are received from the MISO and only up to the amount collected from Rider TCR customers.” Letter at 1. Duke Energy did not address the other questions and concerns raised by OCC in its June 5 Comments. Duke Energy did, however, include such RSG costs in its revised TCR filing that it made on October 16th.

Subsequent to Duke’s October 16th TCR filing, FERC issued an Order on Rehearing on October 26, 2006.¹⁰ In the RSG Order II, FERC affirmed, in part, and reversed, in part, its RSG Order. FERC reversed its RSG Order requiring that refunds associated with virtual transactions be issued. However, FERC affirmed portions of its RSG Order that required refunds for other types of transactions.

Pursuant to the recent FERC RSG Order II, all refunds ordered by FERC since the inception of the TCR riders for residential customers (January 1, 2006) should be credited, with interest, to residential customers. To that end, OCC appreciates Duke’s commitment to flow any refunds owed from the Midwest ISO through the TCR riders. Letter at 1.

Nonetheless, issues concerning the appropriateness of recovering the Midwest ISO’s RSG charges through the TCR riders and the appropriate level of those costs that are recovered from customers still exist. Until these concerns are addressed, OCC requests that the decision as to whether the RSG costs and the level of the RSG costs that were and are being collected from customers are appropriate be held in abeyance pending the outcome of the Commission Staff’s investigation and the Commission’s determination regarding the RSG costs.

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶61,113 (October 26, 2006) (“RSG Order II”)

Additionally, through its TCR filing, Duke Energy proposes to shift the recovery of congestion costs, net financial transmission rights ("FTRs"), and losses billed from the Midwest ISO from the TCR riders to the fuel and purchased power ("FPP") riders in order to "avoid double recovery." OCC does not necessarily oppose the shift in cost recovery from the TCR riders to the FPP riders. However, OCC is concerned that double recovery has already occurred due to the fact that some congestion costs are likely included in the cost of purchased power incurred by Duke Energy. OCC had assumed that an offset was occurring in the TCR calculation for congestion costs that were already included for recovery in the FPP riders. If the offset had not been accounted for, then the issue of double recovery needs to be explored more closely. OCC believes that the appropriate forum to explore such issue should be in the pending FPP audit proceeding in Case No. 05-725-EL-UNC, as well as future FPP rider proceedings.

OCC understands that Duke Energy has been over collecting TCR costs from residential customers, and others, for several months. In order to end the over collection and to more appropriately recognize the actual transmission costs being assessed to Duke Energy by the Midwest ISO, Duke Energy is proposing to reduce its TCR riders for those customers.

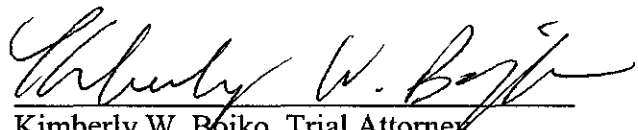
Notwithstanding the concerns raised above, OCC agrees that it is appropriate to lift the suspension of Duke Energy's previous May 15th TCR filing and implement the reduction to the TCR riders for residential customers, as well as others. During this time of rising energy costs, OCC welcomes this rate relief that can be provided to customers. Duke Energy's proposed reduction to the TCR riders assessed to certain tariff schedules, including the general residential service tariff schedule, will provide some relief to residential customers and others in the form of a rate reduction to a portion of their bill.

III. CONCLUSION

For the aforementioned reasons, the OCC respectfully requests that the Commission lift the suspension as proposed by Duke Energy and implement the revised TCR riders, which will be a reduction in the TCR riders for residential customers and others. OCC also requests that the Commission stay the determination of the appropriateness of the RSG costs collected from customers through the TCR riders until the Commission Staff's investigation is complete and OCC's concerns raised herein as well as in its June 5 Comments are addressed. Additionally, the Commission should require Duke Energy to continue to credit, with interest, the TCR riders in accordance with any RSG refunds ordered by FERC as discussed herein. Finally, OCC requests that the Commission investigate the possibility of double recovery with regard to congestion costs in pending and future FPP rider proceedings.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

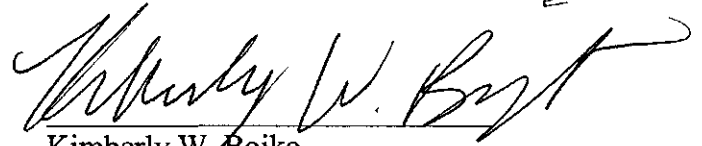


Kimberly W. Bojko, Trial Attorney
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
bojko@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Comments* of the Office of the Ohio Consumers' Counsel was served upon the following parties via first class mail this 3rd day of November 2006.



Kimberly W. Bojko
Assistant Consumers' Counsel

PARTIES

Samuel C. Randazzo
Lisa G. McAlister
Daniel J. Neilsen
McNees, Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228

Paul Colbert
Duke Energy Ohio
139 East Fourth Street
25th Floor, Atrium II Building
Cincinnati, OH 45201-0960

Duane W. Luckey
Attorney General's Office
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

David C. Rinebolt
Ohio Partners for Affordable Energy
P.O. Box 1793
Findlay, OH 45839-1793