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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)
Cincinnati Gas & Electric Company To) Case No. 03-93-EL-ATA
Modify its Non-Residential Generation)
Rates to Provide for Market-Based)
Standard Service Offer Pricing and to)
Establish a Pilot Alternative)
Competitively-Bid Service Rate Option)
Subsequent to Market Development)
Period.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for) Case No. 03-2079-EL-AAM
Authority to Modify Current Accounting)
Procedures for Certain Costs Associated)
with The Midwest Independent)
Transmission System Operator.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for) Case No. 03-2081-EL-AAM
Authority to Modify Current Accounting) Case No. 03-2080-EL-ATA
Procedures for Capital Investment in its)
Electric Transmission and Distribution)
System And to Establish a Capital)
Investment Reliability Rider to be)
Effective After the Market Development)
Period.)

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**REPLY TO DUKE ENERGY'S MEMORANDUM CONTRA INTEGRYS'
REQUEST FOR A DECLARATORY RULING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

A. Prefatory Remarks

Pursuant to Ohio Adm. Code 4901-1-12(B)(2) and the Attorney Examiners'

instructions in these cases, the Office of the Ohio Consumers' Counsel ("OCC") replies to

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the memorandum contra (“Memo Contra”) filed by Duke Energy Ohio, Inc. (“Duke Energy” or “Company”) on May 11, 2007. The Memo Contra was filed in response to a Request for a Declaratory Ruling (“Request”) submitted by Integrys Energy Services, Inc. (“Integrys”). The OCC files this Reply on behalf of the 650,000 residential customers of Duke Energy.

The matters addressed in the Request and Memo Contra were not raised during the recent hearings in the above-captioned cases. The best procedures for dealing with matters such as those raised by Integrys are probably not the same as those that were used for the recent litigation. Nonetheless, parties to these cases appear to be under instructions to file and serve responsive pleadings in an expedited fashion and to follow electronic service requirements. Unfortunately, the electronic service requirements have not been met in this pleading cycle.¹ Integrys’ Request was served electronically, and appears to have followed the Attorney Examiners’ instructions. Duke Energy responded in the seven-day time period required under the expedited schedule for pleadings,² but failed to serve the OCC electronically.³ The OCC informed parties to these proceedings of that fact on May 14, 2007 via e-mail transmission, and received a response from Duke Energy stating that service was made using U.S. Mail. Therefore, the OCC’s Reply should be accepted by the Commission as timely filed.

¹ Tr. at 41 (December 14, 2006) (pre-hearing conference) (“they should be delivered electronically”). The time periods for dealing with expedited motion work, which effectively shortened the period for replies to three days after electronic service, were elaborated upon in a later entry. Entry at 3, ¶8 (February 1, 2007).

² Entry at 3 (February 1, 2007) (“memorandum contra shall be required to be filed within seven days after the service of such motion, and any reply memorandum within three days”).

³ The OCC has experienced problems with Duke Energy’s failure to properly serve documents. Letter at 1 (February 6, 2007).

B. Procedural History Regarding the Request and Memo Contra

On May 4, 2007, Integrys submitted its Request in which it asks the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to “permit documentation [regarding waiver of riders] based on recorded oral authorization in lieu of written authorization.”⁴ The waivers relate to bypassing the rate stabilization charge (“RSC”), annually adjusted component (“AAC”), and system reliability tracker (“SRT”) portions of Duke Energy’s standard service offer rates.

On May 11, 2007, Duke Energy submitted its Memo Contra in which it stated that consumers receive additional information “in the interest of assisting consumers to make an informed choice.”⁵

Neither the Request nor the Memo Contra made a distinction between communications to members of different rate classes.

II. ARGUMENT

The problem presented by the Request and especially with the Company’s Memo Contra is they fail to deal with differences that exist between residential and non-residential customers. Duke Energy’s Memo Contra is based upon the need to provide accurate information to customers, and characterizes Integrys’ proposal as “inadequate, misleading, and [one which will] lead to consumer confusion and dissatisfaction.”⁶ The

⁴ Request at 3.

⁵ Memo Contra at 3.

⁶ Id.

Company's proposal, however, has exactly that effect with respect to residential customers.

The distinction between customer classes is also not recognized in the Request. The Request,⁷ as well as the telephonic process proposed by Integrys,⁸ does not reflect the fact that residential customers may not bypass the SRT.⁹ Whether the SRT will continue to be non-bypassable -- or whether the SRT component will be made bypassable along with other elements of the Company's standard service offer generation rates -- is a matter before the Commission in the case litigated on remand from the Supreme Court of Ohio.¹⁰ Upon the revision to the non-bypassable nature of the SRT for residential customers, as recommended by the OCC, the OCC will not have a problem with the Request. Until that time, however, communications to residential customers should accurately reflect the Company's charges and the PUCO's orders regarding the non-bypassable SRT charge.

Duke Energy's Memo Contra is incorrect regarding notice for residential customers to bypass the AAC rate. Duke Energy states that "[b]ypassing certain Riders requires between 60-90 days to effectuate" and proposes questions for the enrollment script to alert customers to this "fact."¹¹ The applicable tariff provisions regarding the AAC and RSC apply a minimum 60-day notice the Company for "*non-residential*

⁷ See, e.g., Request at 4 ("also orally waive the RSC, AAC and SRT riders").

⁸ See, e.g., Request, Attachment A at ¶4 ("riders are the Annually Adjusted Component, the Rate Stabilization Charge and the System Reliability Tracker").

⁹ *In re Setting of SRT*, Case No. 05-724-EL-UNC, Order at 3 (November 22, 2005).

¹⁰ See, e.g., OCC Initial Post-Remand Brief, Phase I, at 65-66 (April 13, 2007).

¹¹ Memo Contra at 5.

customer[s].”¹² Marketer communications to residential customers should not contain the changes proposed by Duke Energy regarding riders remaining in effect for 60 to 90 days.

Duke Energy also proposes that customers be asked whether they “understand that if you return to Duke Energy Ohio for generation service before January 1, 2009, Duke Energy Ohio may charge you a different rate than the standard offer rate[].” This statement is incorrect regarding residential customers who return to the Company’s standard service offer rate¹³ and not at a “different rate.”¹⁴ Duke Energy Ohio’s suggested change fails to distinguish between the situations faced by residential and non-residential customers. The change, as applied to the residential customer situation, would be “inadequate, misleading, and [would] lead to consumer confusion and dissatisfaction.”¹⁵

The Request and the responsive pleadings demonstrate the importance of Commission oversight -- and the opportunity for the OCC to comment upon proposed communications -- regarding the communications with customers regarding rates and terms of service. Residential customers should be provided accurate information, and should not receive communications that conflict with the rate treatment in the above-captioned cases and related cases. The script proposed in the Request should not be approved without modification to state the proper treatment of all charges, including the

¹² P.U.C.O. Electric No. 19, Sheet No. 51.3 (“Avoidance of Annually Adjusted Component Rider Charge”) and Electric No. 19, Sheet No. 55.2 (“Avoidance of Rate Stabilization Charge”) (emphasis added).

¹³ See, e.g., Order at 35 (September 29, 2004).

¹⁴ Memo Contra at 3.

¹⁵ Memo Contra at 3.

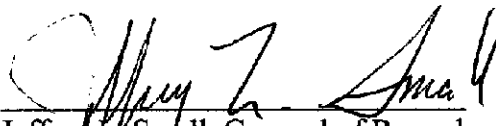
SRT, and should be modified as the result of any change to the bypassability of standard service offer charges. The communications to residential customers that could result from the approval of Duke Energy's proposed changes should likewise be corrected. Residential customers should not be told that a 60-day notice will apply since that communication conflicts with the Company's tariffs. Residential customers should be affirmatively informed that their change in service will not result in any change in the standard service offer rate upon their possible return to Company service. Such a market development affirming message should be delivered to residential customers, not a false statement that discourages market development as proposed by Duke Energy.

III. CONCLUSION

The OCC, in the interests of Duke Energy's 600,000 residential customers, requests that the Commission not grant the Request until such time as the communications are corrected regarding the rate situation faced by residential customers. The communications proposed by Duke Energy should be corrected regarding the rates that are applicable to residential customers. Communications should be accurate, which in this case means that residential customers should be affirmatively reassured that their rates upon return to Duke Energy would be the Company's standard service offer rates.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", written over a horizontal line.

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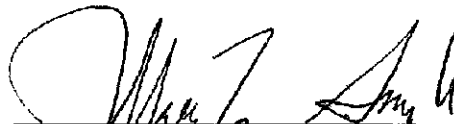
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Reply Memorandum was served electronically and by U.S. Mail on the persons listed below, this 17th day of May 2007.



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