

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Commission's)
Response To Provisions of the)
Federal Energy Policy Act of 2005)
Regarding Net Metering, Smart Metering) Case No. 05-1500-EL-COI
and Demand Response, Cogeneration)
and Power Production Purchase and)
Sale Requirements and Interconnection.)

**MOTION TO CONVENE TECHNICAL CONFERENCE OR WORKSHOPS
AND
MOTION TO AMEND APPLICATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all 607,000 residential electric utility consumers of Duke Energy Ohio ("Duke"), moves for the Public Utilities Commission of Ohio ("PUCO" or "Commission") to convene technical conferences or workshops and to amend Duke's application, to further the public interest in the implementation of net metering and interconnection. Duke proposes to modify its tariffs ("Tariffs") that affect the ability of Ohioans to secure interconnection and net metering on reasonable terms that do not economically discourage net metering and connecting cogeneration and distributed generation to the power grid. The needless discouragement of cogeneration, distributed generation and net metering will cause a loss of system benefits for all customers – including residential customers. OCC's Motions should be granted as explained in the attached Memorandum in Support.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 20, 2007, Duke filed an application requesting the PUCO to approve modifications to its Tariffs for net metering and interconnection services. This filing follows an extensive investigation by the PUCO as required by the Energy Policy Act of 2005 ("EPAAct 2005"), in Case No. 05-1500 EL-COI ("05-1500"). Customers with cogeneration or distributed generation require interconnection and may require net metering from Duke. Customers may also require standby power on a planned or unplanned basis, although Duke did not include standby tariffs in this filing. OCC moved to intervene and actively participated in case 05-1500 and is experienced in the issues presented herein.

II. MOTION TO CONVENE TECHNICAL CONFERENCES OR WORKSHOPS

Technical conferences or workshops are useful when addressing complex and technical issues, such as standby, net metering, and interconnection. The Tariffs filed in

this case are difficult for customers to understand and the rates are difficult to calculate, as discussed below.

The PUCO Ordered technical conferences to be held in the 05-1500 case to provide “an opportunity to share technical information, knowledge and experience” about cogeneration, net metering and standby rates.¹ Ohio Adm. Code 4901-1-37 allows the PUCO to hold workshops, as it did regarding standby, net metering, and interconnection services last year, for the purpose of receiving information and exchanging ideas about specific topics. Requests for workshops are to be made in writing as specified, in the PUCO’s Rules. OCC has submitted a request for workshops and a copy of that request is attached hereto as Exhibit A.

OCC requests technical conferences or workshops because the Tariffs concerning net metering and interconnection service require clarification and discussion. The Tariffs do not appear to be consistent with the PUCO’s policy decisions for those service offerings. The PUCO and all parties would benefit from such technical conferences or workshops.

R.C. 4909.18 provides “Any public utility desiring to establish any rate,...or modify, amend, change , increase or reduce any existing rate...shall file a written application...” with the PUCO. Pursuant to R.C. 4905.32, public utilities can only charge according to their schedules filed with the PUCO. To fulfill the intent of these statutes for obtaining approval of and implementing tariffs, Duke must file clear and understandable Tariffs for net metering and interconnection services.

¹ *In the Matter of the Commission’s Response To Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection*, Case No. 05-1500-EL-COI (“05-1500 Case”), Order at 2 (March 28, 2007).

The inability of customers to understand utility proposals that will impact the type of services they receive and the rates charged for those services is a paramount concern. The Commission has shared this concern as demonstrated by the numerous rules it has promulgated that establish customers' rights to obtain clear and understandable information from their utilities. In addition, on many different occasions, and in various proceedings, the Commission has reinforced the importance of customer understandability through its rulings on customer notification requirements.² Customer understanding of the utility application and tariffs is key. Tariffs and related documents should further customer understanding and customers should be afforded a meaningful opportunity to inquire further, object, or intervene as to the proposal.³ Duke's Tariffs are not clear and customers must be provided additional information in the Tariffs.

In addition to being unclear, OCC can identify instances where the Tariffs filed in this case are onerous or not consistent the policies determined by the PUCO. A few examples of such problems follow:

- The interconnection requirements may be supplemented by Duke "with a minimal number of additional requirements [to IEEE 1547] where appropriate."⁴ The requirements, if any, should be specified.

² See e.g. *In re Application of the Ohio Bell Telephone Company*, Case No. 93-487-TP-ALT, Order at 80-81. (November 23, 1994); *In re Complaint of the Office of the Consumers' Counsel*, Case No. 92-1525-TPCSS, 1994 Ohio PUC LEXIS 956,178, Order (March 30, 1994).

³ *Ohio Assoc. of Realtors v. Public Utilities Comm.* (1979), 60 Ohio St. 2d. 172, 178.

⁴ *In the Matter of the Commission's Response To Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection*, Case No. 05-1500-EL-COI ("05-1500 Case"), Duke Energy Ohio Revised Tariffs,, PUCO Electric 19, Sheet No. 49.2, Page 2 of 4.

- The term of the Interconnection Agreement is not specified.⁵
- The interconnection requirements are vague and not specified in the Tariffs;⁶
- The net metering tariff does not define what comprises “generation component,” the credit to customers’ bills.⁷

The Tariffs, as filed, impede cogeneration, interconnection, distributed generation, and net metering within Duke’s service area by imposing incomplete or confusing net metering and interconnection Tariffs. These issues are examples of problems and do not necessarily address all problems with the Tariffs.

The Tariffs and the concepts upon which they are based must be rejected. For all these reasons, OCC moves the PUCO to convene technical conferences or workshops to investigate and explain the rates filed by Duke in this case.

Ohio Adm. Code 4901-01-06 provides that any party for good cause can move to amend any application that violates the PUCO’s orders, etc. There is good cause to amend the Tariffs proposed in Duke’s Application. Duke’s Tariffs do not meet its burden of proof. At the conclusion of the technical conferences or workshops, Duke should be required to file amended Tariffs reflecting the types of net metering and interconnection rates deemed appropriate by the PUCO in this case. Once these amended Tariffs have been scrutinized and there has been an opportunity for parties to comment, it can be determined whether formal hearings must be convened for the PUCO to determine

⁵ Id.

⁶ Id, Paragraph 3.

⁷ Id. Original Sheet 48 Page 1 of 2.

whether the burden of proof discussed below has been satisfied. In addition, Duke must file standby rate tariffs, which also will require scrutiny.

III. DUKE BEARS THE BURDEN OF PROOF AND HAS FAILED TO MEET IT.

R.C. 4909.18 requires that when a change or amendment of a rate is proposed, Duke must demonstrate to the PUCO that the change or proposal is just and reasonable: “If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for a hearing.... At such hearing the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility.” (Emphasis added). The PUCO, in its Order in this case, provided policy guidance concerning net metering and interconnection for Ohio. Duke has not complied with the decisions in that Order. Duke has failed to meet its burden of proof.

Duke’s Tariffs thwart the PUCO’s goal to make interconnection, net metering, and distributed generation easily implemented processes, because interconnecting customers typically require standby rates to obtain electricity to meet planned or unplanned outages. Duke has yet to file standby rates that comply with the PUCO’s policy decisions regarding standby service.

Once Duke amends its Tariffs, a hearing may still be necessary for a fair opportunity for parties to contribute to the record that the PUCO will consider in making its findings, opinions, and decisions under R.C. 4903.09 and other statutes.⁸

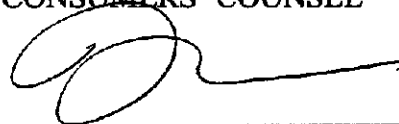
⁸ OCC does not waive any right to a hearing.

IV. CONCLUSION

For the reasons stated above, the Commission should grant OCC's Motions, on behalf of all residential consumers in Duke's service area, and convene technical conferences or workshops. The PUCO should also grant OCC's Motion to amend the Application so that the proposed Tariff terms and conditions are clear and compliant with the PUCO's requirements. If Duke's Tariffs do not become clear and compliant with PUCO standards for Tariffs, then OCC's Motion for a hearing should be granted to resolve the matter in the public interest.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motions* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 13th day of February, 2008.



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Office of the Ohio Consumers' Counsel

Your Residential Utility Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

February 12, 2008

Hand Delivered

Steven R. Brennen, Director
Utilities Department
Doris McCarter, Director
Service Monitoring and Enforcement Department
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: REQUEST FOR WORKSHOPS**FirstEnergy Companies:**

Case Nos. 07-1294-EL-ATA, 07-1295-EL-ATA, and 07-1296-EL-ATA;
Case Nos. 07-1291-EL-ATA, 07-1292-EL-ATA, and 07-1293-EL-ATA;
Case Nos. 07-1297-EL-ATA, 07-1298-EL-ATA and 07-1299-EL-ATA; and
Case Nos. 07-1288-EL-ATA, 07-1289-EL-ATA, and 07-1290-EL-ATA.

Dayton Power & Light:

Case Nos. 07-1301-EL-ATA and 07-1302 EL-ATA

AEP Companies:

Case Nos. 07-1303-EL-ATA and 07-1304-EL-ATA

Duke Energy:

Case No. 05-1500-EL-COI

Dear Mr. Brennen and Ms. McCarter:

By this letter, the Office of the Ohio Consumers' Counsel ("OCC") requests that workshops be convened as soon as reasonably possible by the Public Utilities Commission of Ohio ("Commission" or "PUCO") to address the above-captioned applications pursuant to Ohio Adm. Code 4909-1-1-37. Rule 37 allows for requests for workshops by sending a letter to the PUCO department director with a copy to the PUCO Chairman.

These electric company applications purport to be in compliance with EPAct 2005 and the Commissions' Order in Case No. 05-1500-EL-COI ("05-1500 Order"). The filings contain tariffs that are confusing, if not inconsistent with the 05-1500 Order.¹ Several workshops were conducted by PUCO Staff last year to address issues related to the 05-1500 Order, including for standby service, interconnection, and net metering. It was

¹ In the Matter of the Commission's Response To Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering and Demand Response, Cogeneration and Power Production Purchase and Sale Requirements, and Interconnection, Case No. 05-1500-EL-COI ("05-1500 Case"), Order (March 28, 2007).

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anticipated that the result of the workshops would be standardized, tariffs providing services on common terms. This has not been the case.

The tariffs filed are confusing and in some instances nearly impossible to calculate. In order to provide customers with clear and consistent tariffs that provide appropriate notice of the terms and conditions available to customers, the applications and attendant tariffs must be rejected, revised and refilled. By way of example, tariffs should include explanations of the various options available to customers for standby services including examples of rates calculations for each type of rate available showing the proposed charge for the most common levels of customer use. Tariffs should be conformed to the Commissions' policies as stated in the 05-1500 Order. Workshops will also be useful in reviewing such rate calculations to see how the rates differ by electric company. These specific concerns regarding the tariffs and OCC's request to convene workshops or technical conferences are more fully discussed in OCC's Motion to Intervene in each specific electric company application.

The OCC appreciates the PUCO's interest in making the tariffs as user-friendly as possible. The PUCO's work in the 05-1500 case is important for Ohio's energy future and the OCC would like to see this process end for Ohio customers as well as it began.

Very truly yours,



Jacqueline Lake Roberts, Counsel of Record
Assistant Consumers' Counsel

cc: Alan R. Schriber, Chairman
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