

FILE

FAX

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy)
Ohio, Inc., for a Waiver of Certain Sections of)
the Ohio Administrative Code for SmartGrid)
Pilot Programs.)

Case No. 10-249-EL-WVR

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COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY
TO THE AMENDED APPLICATION OF DUKE ENERGY-OHIO

I. Introduction

On February 26, 2010, Duke Energy-Ohio ("Duke") filed an initial application for waiver of provisions of the Commission's rules in order to facilitate a smart grid pilot. Ohio Partners for Affordable Energy ("OPAE") filed an intervention on March 9, 2010, along with comments regarding the proposed waivers. The Office of the Ohio Consumers' Counsel did likewise the following day. Duke filed memoranda contra to the OPAE and OCC pleadings on March 24, 2010. Subsequently, OPAE filed a reply on April 1, 2010, with OCC doing the same on April 4, 2010. There has been one meeting of the Duke Smart Grid collaborative since the pleadings were filed. The concerns raised in this docket were not part of the discussion.

The fundamental issue in this docket is whether the increased functionality of smart meters justifies a diminution of consumer protections. Duke touts smart grid as the beginning of a "new paradigm". Even new paradigms cannot obviate the need for critical consumer protections which ensure continued access to essential energy services. Having meters that provide customers with more data on their energy use can be useful, assuming customers have the time and technology to analyze and use the data. Having a meter that can permit a utility to vary pricing during the day and provide customers an opportunity to reduce

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their usage in return for a bill credit is also useful. However, using a meter that can permit prices to vary up or down during a day in response to 'market' prices regardless of whether a customer has the time, interest, ability, or equipment to respond has the potential to drastically increase customer bills, especially when existing tariffs bill customers an average rate that already reflects varying wholesale prices. And, there is the issue of whether the benefits which inure to the utility are passed back to customers in the form of lower rates. Finally, a meter that is dependent upon a serious erosion of customer protections is of no use at all.

Duke filed what it characterized as an Amended Application and Request for Expedited Ruling on May 10, 2010. OPAE was not contacted by Duke regarding the Request for Expedited Ruling and hereby notes its opposition to the request. The Amended Application itself does not alter the initial waiver requests in any way but simply provides supplemental information. Amended Application at 1. OPAE offers the following comments.

II. Comments

A. Bill Formats

Duke adds eight billing formats to the documents filed in this case, indicating that they have been updated based upon "discussions with Commission Staff and others." Id. at 2. OPAE notes that these formats have not been discussed in the collaborative and that OPAE is not one of the "others" Duke consulted regarding the format. While our comments may be superfluous given that Duke notes "[i]t is not anticipated that [the bill format] will change", it is worth noting that six of the eight formats are identical including all the second pages. Id. at 2 and Attachments. The only two that are different is one headed "Your Final Duke Energy Statement", and a second headed "Your Duke Energy

Statement and DISCONNECTION NOTICE". The only difference is the heading. OPAE observes that the header included in the disconnection notice does not stick out from the other text, especially in the typeface used on the bill. The message box does provide information on the amount of the current and past due bills but the written notice of disconnection is not readily apparent.

B. Meter Reading – 4901:1-10-05(I)(1) thru (5); 4901:1-10-12(K)

The Duke application requests a waiver from the rules that require an actual meter reading. The language of the rule does not explicitly require an onsite reading by a person. There is no prohibition against reading a meter using new smart meter technology. No waiver of the rules is required.

The discussion of scalar reads and interval usage is illuminating though the picture of a smart meter attached is illegible. OPAE's point in the earlier pleading was that there has to be a start and end date for a meter read in order to calculate a bill. Including an interval usage format is simply another approach to providing information to customers. Again, this does not require a waiver of existing Commission rules.

C. Budget Billing

OPAE has acknowledged that customers on budget billing would have to go off of the service to participate in the pilot, and would have to leave the pilot if they desired to go on budget billing or an extended payment plan. However, neither of those scenarios requires a waiver of existing Commission rules so long as the extended payment plans including PIPP or budget billing remain available if the customer chooses to leave the pilot program.¹

¹ Duke speaks in terms of permitting the customer to leave the program. The customer should have the option to opt-out of the program at any time.

D. Disconnection Notice Requirements

Duke has not withdrawn its request for a waiver of 4901:1-18-05(A)(2) which requires a personal notice at time of disconnection. Implicit in this waiver request is also the waiver of 4901:1-18-05 (A)(4), which establishes the information required to be provided to customers by the employee or agent of the utility provides at the time of disconnection. OPAE continues to object to the granting of this waiver. R.C. 4933.122 establishes the procedures for terminating residential service. The statute requires reasonable prior notice, including notice of rights and remedies and the date after which the customer can be disconnected. The rules provide critical rights including a personal visit providing the customer with the opportunity to make a payment to avoid disconnection. During the personal visit the company representative must also "make available to the customer another means to avoid disconnection." 4901:1-18-05(A)(4)(c).

Poor customers live from hand to mouth and frequently use the rights provided by this rule to make a payment at the last possible moment. The value of the protection is not limited to those in poverty. An elderly customer suffering from dementia or Alzheimer's Disease may have forgotten to pay; recent press accounts have noted the death of two people, one a noted civil rights activist, which is demonstrative of this concern. The newly poor may not be aware of other options to avoid disconnection or simply too proud to ask. Energy service is too essential for there not to be a personal assessment by a company employee of the situation at the residence. Customers are paying for this service -- the personal visit at time of disconnection -- in rates and will continue to do so during this pilot. In this case, it is essential customers receive what they are paying for.

4901:1-18-05(A)(5) dictates what the disconnection notice must provide. By granting a waiver from this rule, the Commission would not just be violating Ohio law, but would eliminate all the information a customer requires to understand how to avoid disconnection. The notice must provide: (a) the total amount required to prevent disconnection and the security deposit (which is not included on the sample bill); (b) the earliest date on which disconnection may occur (which is not included on the sample bill); (c) contact information for the company; (d) information on how to contact the Public Utilities Commission and the Ohio Consumers' Counsel to obtain assistance; (e) notice of the imposition of a security charge and a reconnection charge (also not included in the bill format); (f) a statement detailing the consequences of a failure to pay; (g) an explanation of available payment plans -- during the winter heating season the company representative must also inform customers of the sources of assistance to pay, which is also required by 4901:1-18-04 and 4901:1-18-10, services provided primarily by OPAE member agencies; (h) provide the customer with information on the medical certification program; and, (i) information on authorized payment stations. Duke's waiver request is either inadvertently overbroad, or a cavalier attempt to undermine basic consumer protections.

Duke indicates that it will comply with the medical certification requirement, presumably through the text message or electronic message, with 4901:1-18-05(A)(5)(C), but nonetheless requests a waiver from notice requirements associated with the provision, particularly the personal visit at time of disconnection.

Duke asserts that it will provide all this vital consumer information via text message or electronic means, which it avers is the functional equivalent of the

personal visit. The problem is, once the rule is waived, it need not provide *any* information.

The rules do not require the message be provided in writing except during the personal visit at time of disconnection. The Commission can determine whether a text message or electronic communication is adequate if the customer agrees to that type of notice prior to the actual disconnection since the information will not be included in the proposed bill format. Duke should submit a draft document the customer could sign to waive the right to written notice, substituting some form of electronic notice. Again, a waiver of the rule is simply not required.

The Amended Application is also confusing. Duke seems to imply that it only seeks to waive 4901:1-18-05(A)(5)(a) which requires notice of the amount of the deposit owed. If this was all Duke wanted to waive, OPAE could possibly support the request. However, there is a host of other information detailed above that must be a part of the disconnection notice, whether the bill serves as the notice or a separate disconnection notice is provided. Unfortunately, Duke has requested a waiver from all of 4901:1-18-05(A)(5).

Finally, OPAE remains concerned about substituting notice via text message or e-mail for a written statement delivered in person at the time of disconnection. The information required is very extensive and likely difficult to digest in a text message. In addition, it seems logical that a customer about to have their electricity disconnected no longer has Internet service or a functioning cell phone. If Duke could provide a study showing that these types of notices are as effective as a written notice and a personal visit, there would be something to support its waiver request. Given the amount of money being spent on SmartGrid, this should not be a problem. We should not put the cart before the

horse and eliminate consumer protections just to pilot a technology. New technologies need to be compatible with traditional consumer protections.

III. Conclusion

Nothing is comparable to the notice and consumer protection inherent in a personal visit at time of disconnection. The waiver is overbroad, and should the Commission find a text message or e-mail an adequate substitute for providing all the information required by 4901:1-18-05(A)(5) in the combination bill and disconnection notice so be it. But waiving the rule that defines what must be included in the notice is not necessary. The information is vital and, most importantly, providing the information in writing at time of disconnection is critical.

What is really behind all this is the likelihood that disconnections will drastically increase because of smart meters. Pacific Gas and Electric Co. projects smart meters will result in the disconnection of 85 percent of eligible customers in 2011 as opposed to the 37 percent that lost service in 2008.² If a personal visit at time of disconnection remains a requirement, the cost of providing that visit will significantly offset, if not eliminate the cost savings smart meters can produce through remote meter reading. This is a situation where investment in a technology will likely not decrease costs to customers if existing consumer protections are retained. There is no basis for pro-actively eliminating consumer protections when they are already paid for in current rates and when the utility is not proposing any rate reductions to compensate customers for the lack of protection.

Energy is essential to modern life. Consumer protections have evolved over the years in recognition of the critical nature of energy services. The

² <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/01/26/BUUG1BNBVD.DTL>

byproducts of utility shut-offs are well known: disruption of families, including increased homelessness or transience; poor performance by children in school; negative impacts on health; and contribute to a host of other social problems noted in the literature.³ This can be avoided, at least in part, by a disconnection process that recognizes how people actually live, not how a utility company wants them to live. The duty to provide service, inherent in the function of a regulated monopoly utility, should be preserved.

Respectfully submitted,



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³ Colton, Roger, *Paid but Unaffordable: The Consequences of Energy Poverty in Missouri*, http://www.fsconline.com/05_FSCLibrary/lib2.htm

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Protest and Memorandum of Support and Motion to Practice Pro Hac Vice was served by regular U.S. Mail upon the following parties identified below in this case on this 14th day of May 2010.


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