

BEFORE

FILE

THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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2010 JUL 29 PM 5:22

In the Matter of the Commission's Review )  
of Fuel Adjustment Clause Guidelines )  
)

Case No. 10-479-EL-UNC

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DUKE ENERGY OHIO'S  
REPLY COMMENTS

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I. INTRODUCTION

In its Entry dated June 23, 2010 ("Entry"), the Public Utilities Commission of Ohio ("Commission") issued proposed guidelines to establish uniform standards and specifications for fuel adjustment clause ("FAC") audits authorized statutorily through Ohio Revised Code § 4928.142(F)(1)-(2) and § 4928.143(B)(2)(a). The Commission sought comments to be filed on July 14, 2010 and reply comments by July 28, 2010. Duke Energy Ohio, Inc. ("Duke Energy Ohio") previously submitted its initial comments. These comments are submitted in reply to the initial comments filed by others.

II. GENERAL COMMENTS

Duke Energy Ohio generally supports the comments that were submitted by Columbus Southern Power Company and Ohio Power Company ("AEP") and Dayton Power and Light Company ("DP&L") even though not all of the proposed modifications were identical. However, Duke Energy Ohio does oppose many of the initial comments filed by the Ohio Consumers' Counsel ("OCC").

First, the OCC is asking the Commission to make modifications that would take an auditor outside of the proper scope of a fuel audit. The OCC's requested modifications not only reduce an auditor's ability to use his/her professional experience, by being overly prescriptive, but these requested modifications actually encourage an auditor to review items that are either beyond the review period or beyond the scope of the FAC mechanism. The OCC's proposed modifications would dramatically increase the costs of audits. Amazingly, the OCC also proposes a denial of recovery of these costs from the customers, despite the fact that a PUCO-mandated fuel audit is clearly a legitimate regulatory expense.

Another problem within the OCC's proposed modifications is the OCC's desire for a new standard of the "most cost effective price."<sup>1</sup> This term suggests the lowest cost alone should be the criteria for evaluating a supplier proposal. This term ignores the fact that fuel procurement decisions need to be evaluated in a context that recognizes the existence of hedging instruments and other risk management strategies. The Commission's proposed standard of "lowest reasonable cost" remains an appropriate standard for evaluation because it suggests that all considerations will be evaluated in determining if the cost was reasonable at the time.

### **III. SPECIFIC COMMENTS**

#### II(A)(6)(c)(iii)

The OCC's proposed modifications are overly prescriptive. The level of specificity that the OCC proposes is unnecessary and would stifle the auditor's discretion to determine the necessity of a follow-up.

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<sup>1</sup> Eagle Energy, LLC's Initial Comments have a similar term entitled "lowest practical price."

II(A)(6)(c)(vi)

The OCC's proposed modifications are overly prescriptive. The auditor should and does have full discretion to review any agreements in effect during the review period, but it should be the auditor's professional experience that determines what agreements the auditor reviews and the number of times he reviews those agreements.

II(A)(6)(c)(vii) and II(A)(6)(c)(viii)

The OCC's proposed modifications are unnecessary. The provisions under the draft guidelines, as provided by the Commission, are sufficient to raise the issues around affiliate comparisons. Price is just one of the important factors in evaluating affiliate performance. The OCC's proposed modifications ignores factors such as reliability of supply.

II(A)(6)(f)

The OCC's proposed modifications go beyond the scope of the FAC audit. Hedging should be decided on a case by case basis and requires decisions based on in-the-moment decisions. The proposed modifications invite an auditor, after the fact, to substitute his/ her judgment as to the proper design and procedures of a hedging program.

II(A)(8)(f)

The OCC's proposed modifications go beyond the scope of the FAC audit. There is no requirement for Duke Energy Ohio (or any other utility) to maintain a

“contingency” of banked allowances. Furthermore, there is not no objective standard offered to judge what an acceptable “contingency” of banked allowances would be.

II(A)(8)(g)

The OCC’s proposed modifications go beyond the scope of the FAC audit. Similar to II(A)(8)(f), the need to conserve allowances is not well defined.

II(A)(8)(h)

The OCC’s proposed modifications go beyond the jurisdiction of the Commission. Simply stated, the allocation of emission allowances among affiliates within a multi-state utility system is beyond the jurisdiction of the Commission.

II(A)(9)

The OCC’s proposed modifications which include the phrase “and sales for resale” is the OCC’s indirect approach to undermine the Commission’s decisions in Case No. 08-917-EL-SSO and Case No. 08-918-EL-SSO. The “sales for resale” have already been determined to be outside the jurisdiction of the Commission.

II(A)(10(a))

The OCC’s proposed modifications go beyond the scope of the FAC audit. The FAC audit should be directly and narrowly focused on the fuel procurement and power purchase issues relating to the audit. The OCC's proposed language goes beyond that by trying to lump a utility’s SSO into the context of an FAC.

#### IV. CONCLUSION

Duke Energy Ohio appreciates the opportunity to provide comments in this matter. Duke Energy Ohio urges the Commission to adopt the modifications suggested in Duke Energy Ohio's Initial Comments and in these Reply Comments.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2010 an exact copy of the foregoing was filed electronically. Notice of this filing will be sent by electronic mail.

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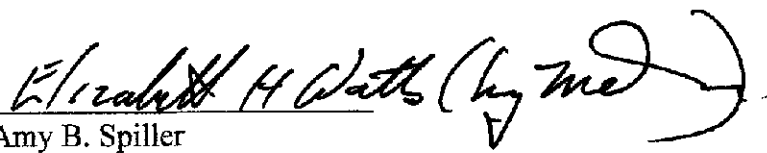
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