BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for the Establishment of a Charge Pursuant to Revised Code Section 4909.18.	)))	Case No. 12-2400-EL-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 12-2401-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a Tariff for a New Service.	)))	Case No. 12-2402-EL-ATA

OHIO PARTNERS FOR AFFORDABLE ENERGY'S COMMENTS

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits to the Public Utilities Commission of Ohio ("Commission") these comments on the above-referenced applications filed by Duke Energy Ohio, Inc., ("Duke"). These applications adversely affect OPAE and violate the provisions of the Stipulation and Recommendation signed by Duke, OPAE and numerous other parties, including the Staff of the Commission, in Duke's recent electric security plan ("ESP") proceeding, Case No. 11-3549-EL-SSO, et al., which the Commission approved one year ago. *Duke Energy Ohio*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011).

On October 4, 2012, OPAE joined a motion to dismiss these applications. The Office of the Ohio Consumers' Counsel, the Ohio Energy Group, the Greater Cincinnati Health Council, the Ohio Manufacturers' Association, the Kroger Company, the Industrial Energy Users-Ohio, Cincinnati Bell, Inc., and Wal-Mart Stores East LP and Sam's East Inc. all joined the motion to dismiss.

OPAE continues to believe that the Commission has no alternative but to dismiss these applications. The applications clearly violate the stipulations that Duke signed and that the Commission has approved. The Commission should have dismissed these applications. However, because the Commission has not acted, OPAE repeats herein in abbreviated form the arguments made in the Joint Motion to Dismiss filed October 4, 2012 and the Joint Reply to Duke's memorandum contra the joint motion filed October 26, 2012.

The Stipulation in Case No. 11-3549-EL-SSO, et al., adopted a wholesale capacity charge for competitive suppliers priced at the PJM RTO market-based Reliability Pricing Model ("RPM") prices. This means that the capacity charge is market-based, not cost-based. Duke agreed to be compensated for capacity based on competitive PJM prices, not Duke's own costs. In return for this provision, the Stipulation in Case No. 11-3549-EL-SSO, et al., provided Duke an additional $110 million per year for each year of the three-year ESP term to provide stability to Duke as a Fixed Resource Requirement ("FRR") entity and created a non-bypassable rider called the Electric Service Stability Charge ("ESSC") rider to collect the $330 million. Stipulation at 16.

The Stipulation in Case No. 11-3549-EL-SSO, et al., is not the only case in which Duke committed not to seek a cost-based rate for capacity. Duke made the same commitment in another stipulation in Case Nos. 11-2641-EL-RDR and 11-2642-EL-RDR, Stipulation and Recommendation, April 26, 2011, which was approved by the Commission in its Opinion and Order dated May 25, 2011.

Duke expressly chose in two separate stipulations in two separate Commission proceedings to resolve the wholesale capacity pricing issue by accepting the RPM market-based priced capacity plus the $330 million ESSC in the ESP stipulation. Through these stipulations, Duke resolved its wholesale capacity pricing issue.

In these applications, Duke seeks to renege on its commitments in the two stipulations. Duke is now seeking a cost-based charge for its capacity and seeks to defer the difference between its current market-based charges and its cost of capacity and to recover in the future an additional $776 million from customers.

As the Joint Movants in the Motion to Dismiss explained, Duke's applications directly violate the stipulations it signed. Duke's applications seeking cost-based pricing of capacity destroy the entire bargain of these stipulations. Duke's application for additional compensation above the RPM-base pricing it agreed to in the stipulations is barred by the Duke ESP and RDR stipulations and the Commission's orders approving the stipulations.

There is also no basis for the Commission to create a regulatory asset based on the difference between the RPM-based price and Duke's request for cost-based compensation. The Commission's ability to phase-in capacity charges emanates solely from R.C. 4928.144, which allows a just and reasonable phase-in of any electric distribution utility rate or prices established under R.C. 4928.141 to R.C. 4928.143 for standard service offers and electric security plans. Neither the cost-based transmission rate nor the non-bypassable charge to collect it has been established under the Commission's authority pertaining to Duke's standard service offer or ESP. The Commission has no authority to grant the accounting authority and non-bypassable charge requested by Duke.

Therefore, the Commission has no alternative but to dismiss these applications. The Commission should enforce the stipulations it approved and respect the requirements of Ohio law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the following persons identified below on this 2nd day of January 2013.

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