

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates. : Case No. 12-1685-GA-AIR

In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval. : Case No. 12-1686-GA-ATA

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan. : Case No. 12-1687-GA-ALT

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods. : Case No. 12-1688-GA-AAM

**MOTION TO STRIKE
DUKE ENERGY OHIO, INC.’S OBJECTIONS
TO
THE STAFF REPORT OF INVESTIGATION
AND
RECOMMENDATION ON DUKE’S PROPOSED RIDER FRT
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Staff of the Public Utilities Commission of Ohio (“Staff”), pursuant to Rule 4901-1-28, Ohio Administrative Code, submits this motion to strike Duke Energy Ohio, Inc.’s (“Duke”) objections to Staff’s recommendation on Duke’s proposed Facilities Relocation Tariff (“Rider FRT”) in its Staff Report of Investigation (“Staff Report”) on

the grounds that Duke's objections are vague, overbroad, and not specific enough to convey what is actually being placed at issue.

The reasons for this motion are more fully set forth in the attached memorandum in support.

Respectfully submitted,

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/s/ Devin D. Parram

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MEMORANDUM IN SUPPORT

As part of its rate case, Duke is requesting a new tariff for relocating its facilities, Facilities Relocation – Mass Transportation Rider (“Rider FRT”), which focuses on recovery of the costs of the relocations due to mass transportation projects initiated by governmental subdivisions. On January 4, 2013, Staff filed its Staff Report that included its position on Rider FRT. The Staff does not support Duke’s proposal to create Rider FRT and provided several specific reasons why.

On February 4, 2013, Duke filed its objections to the Staff Report, which included objections to Staff’s recommendation to eliminate the proposed Rider FRT. Duke’s objections stated “Staff’s concerns in this regard are misplaced, raise issues that are beyond the jurisdictional capabilities of the Commission to consider and, in some cases, are simply false. As such the Staff’s justification in recommending a denial of approval for Rider FRT is unfounded.”¹

Rule 4901-1-28(B), Ohio Administrative Code, requires that all objections made to a report of investigation be specific. The rule also states that any objections that fail to meet this specificity requirement may be stricken. Prior Attorney Examiner Entries provide examples of objections that fail to meet the specificity requirement of Rule 4901-

¹ See Duke Energy Ohio, Inc.’s Objections to Staff Report of Investigation and Summary of Major Issues at 10 (February 4, 2013).

1-28(B).² Conclusory statements, such as “the staff *incorrectly* calculated test year labor expense” or “the staff *unreasonably* determined rate case expense”, are insufficient and noncompliant with the rule. (emphasis added)³ Vague statements like these have been stricken in previous cases.⁴ For example, in *In re Ohio-American Water Co.*, the Attorney Examiner struck an objection that merely stated “the company will provide updated information about unaccounted for water at the prehearing conference.”⁵ The Attorney Examiner stated that the objection violated Rule 4901-1-28(B) because it did “not sufficiently inform the parties as to the area of disagreement.”⁶ The Attorney Examiner determined that the overbroad objection “could [have been] related to the mathematical calculation in the staff report, the staff recommendation or any other associated issue.”⁷ Therefore, the objection failed to adequately notify the parties of the specific concerns at issue.

Duke’s objections are so vague and overbroad that Staff has no idea how to address them. Instead of explaining its position, Duke merely states that Staff’s position is “misplaced” and “false.” These conclusory statements are very similar to the examples

² See, e.g., *In re Consumers Ohio Water Company*, Case No. 95-1076-WW-AIR (Entry) (July 2, 1996) (1996 Ohio PUC Lexis 371).

³ *Id.* at ¶ 4.

⁴ *In re Ohio-American Water Company*, Case No. 01-626-WW-AIR (Entry) (January 4, 2002) (2002 Ohio PUC Lexis 15).

⁵ *Id.* at ¶ 7.

⁶ *Id.*

⁷ *Id.*

discussed in *Consumers Ohio Water Company* that do not comply with the specificity requirement. Duke's claim regarding "the jurisdictional capabilities of the Commission" is equally unhelpful. Duke does not articulate any basis for its "jurisdictional" concerns, which leaves Staff in the dark as to Duke's true position.

The purpose of specific objections is to narrow the scope of the hearing by detailing the contested issues. Duke's objection does not do this. Rather, it forces Staff to wait until Duke clarifies its true position at a later time. Duke may claim that simply identifying a major topic of the Staff Report satisfies Rule 4901-1-28(B). But this is basically the same tactic used by the company in *Ohio-American Water Company*. In that case, the company notified parties that unaccounted-for-water may be an issue but did "not sufficiently inform the parties as to the area of disagreement."⁸ Here, although Staff detailed five reasons for opposing the Rider FRT, Duke failed to specify which areas of Staff's recommendation it disagrees with. Instead, like the company in *Ohio-American Water Company*, Duke filed an objection so general that it is impossible to determine what portion of Staff's recommendation it is objecting to. Duke has failed to articulate what it is putting at issue and failed to meet the specificity requirement for its objections to Staff's recommendation on Rider FRT.

For the foregoing reasons, Staff respectfully requests that its motion to strike Duke's overbroad and vague objections to Staff's recommendation to eliminate the proposed Rider FRT be granted.

⁸ *In re Ohio-American Water Company*, Case No. 01-626-WW-AIR (Entry at ¶ 7) (January 4, 2002) (2002 Ohio PUC Lexis 15).

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Motion to Strike Duke Energy Ohio, Inc.’s Objections to the Staff Report of Investigation and Recommendation on Duke’s Proposed Rider FRT** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served via electronic mail upon the following Parties of Record, this 7th day of February, 2013.

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Summary: Motion to Strike Duke Energy Ohio's Objections to the Staff Report of Investigation and Recommendation on Duke's Proposed Rider FRT submitted on behalf of the Staff of the Public Utilities Commission of Ohio by Assitant Attorney General Devin D. Parram electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio