

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Duke Energy Ohio, Inc., for an)
Increase in Electric Distribution Rates.) Case No. 12-1682-EL-AIR

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Tariff)
Approval.) Case No. 12-1683-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Approval)
to Change Accounting Methods.) Case No. 12-1684-EL-AAM

**MOTION TO STRIKE A DUKE OBJECTION TO THE PUCO STAFF REPORT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers of Duke Energy Ohio, Inc. ("Duke" or "Utility"), moves to strike an objection to the Report by the Staff ("Staff Report")¹ of the Public Utilities Commission of Ohio ("Commission" or "PUCO").² Specifically, OCC moves to strike the following objection filed in these proceedings by Duke on February 4, 2013: (18) Facilities Relocation Tariff (Rider FRT).³

¹ Staff's Report of Investigation (January 4, 2013).

² Ohio Adm. Code 4901-1-12; Ohio Adm. Code 4901-1-28(B).

³ Duke Objections at 10.

The grounds for OCC's Motion to Strike are more fully set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Staff Report in the above-captioned cases was issued on January 4, 2013. Pursuant to R.C. 4909.19, Duke, as well as other parties, submitted objections to the Staff Report on February 4, 2013. An Entry dated January 18, 2013 directed that Motions to Strike Objections to the Staff Report be filed by February 19, 2013.⁴ OCC moves to strike Duke's Objection No. 18.

II. ARGUMENT

Among its Objections filed on February 4, 2013, Duke objected to the Staff Report's recommendation regarding Rider FRT. Duke's Objection 18 stated:

[Duke] objects to the Staff's recommendation to eliminate the proposed Rider FRT. Staff lists several reasons why it believes the Rider should not be approved in these proceedings. Staff's concerns in this regard are misplaced, raise issues that are beyond the jurisdictional capabilities of the Commission to consider and,

⁴ Entry at 5, ¶10 (January 18, 2013).

in some cases, are simply false. As such the Staff's justification in recommending a denial of approval for Rider FRT is unfounded.

But the Staff Report listed five reasons why the Staff opposes Rider FRT.⁵

Duke's objection failed to specifically address which areas of the Staff's recommendation Duke disagrees with. Duke's Objection No. 18 thus lacks the specificity required by the Commission's rules, and should be stricken.

Ohio Adm. Code 4901-1-28(B) states:

Any party may file objections to a report of investigation described in paragraph (A) of this rule, within thirty days after such report is filed with the commission. Such objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items. **All objections must be specific. Any objections which fail to meet this requirement may be stricken**, upon motion of any party or the commission staff or upon motion of the commission, the legal director, the deputy legal director, or the attorney examiner. (Emphasis added).

The Commission has interpreted this rule as follows:

Objections to the staff report should be filed in accordance with Section 4909.19, Revised Code. The parties are reminded that Rule 4901-1-28(B), Ohio Administrative Code (O.A.C.), requires that all objections must be specific. Any objection which is not specific enough to convey what is actually being placed at issue will be struck pursuant to the above rule. Some hypothetical examples of objections which would be deemed not specific enough to satisfy the requirements of Rule 4901-1-28(B), O.A.C., are: **“the staff incorrectly calculated test year labor expense”**; **“the staff unreasonably determined rate case expense”**; **“the staff unreasonably eliminated certain advertising costs”**; and **“the comments of the Consumers' Services portion of the report are unreasonable, inaccurate, and misleading”**. Those hypothetical examples could be improved so that they would be deemed specific enough to satisfy the O.A.C. requirements: “the staff incorrectly calculated test year labor expense because it failed to use estimated end-of-test-period employee levels and wage rates in its calculation”; “the staff unreasonably determined rate case

⁵ Staff Report at 21-22.

expense because it failed to include the cost of publishing the required legal notice of the local hearing and because it amortized the expense over a three-year period instead of a one-year period”; “the staff unreasonably eliminated \$15,375 of advertising costs which it deemed promotional because such advertising should have been classified as informational”; and “the statement in the Consumers’ Services portion of the report that claims the company fails to respond to out-of-service reports in a timely manner is inaccurate.”⁶

The hypothetical objections provided by the Attorney Examiner in the *Gem Beach Case* offer good illustrations of the lack of specificity that can result in objections being stricken under Ohio Adm. Code 4901-1-28(B). A similar lack of specificity can be found in Duke’s Rider FRT Objection No. 18.

For example, Duke argues that the Staff’s concerns about Rider FRT are misplaced, raise issues that are beyond the jurisdictional capabilities of the Commission to consider and, in some cases, are simply false.⁷ But Duke fails to expand on, explain, or support these assertions in any detail. In this regard, Duke does not specifically explain how the Staff’s concerns are misplaced, what jurisdictional issues are raised in the Staff Report, or in what aspects those concerns are not true. Duke’s Objection 18 thus is not specific enough to convey what is actually being placed at issue. The Commission should strike Duke’s Objection No. 18.

III. CONCLUSION

Duke’s Objection 18 is vague and overbroad, leaving the PUCO Staff and interested parties with no idea what specific concerns Duke is objecting to or how to

⁶ *In the Matter of the Application of Gem Beach Utility Company for an Increase in its Rates and Charges* (“*Gem Beach Case*”), Case No. 93-1335-WW-AIR, Opinion and Order, 1994 Ohio PUC LEXIS 81 at [*1]-[*2] (February 3, 1994) (emphasis added).

⁷ Duke Objections at 10.

address them. For the reasons set forth herein, the Commission should strike Duke's Objection No. 18, as discussed above, in accordance with Ohio Adm. Code 4901-1-28(B).

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Motion to Strike has been served upon the below-stated counsel, via electronic service this 19th day of February 2013.

/s/ Terry L. Etter
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Summary: Motion Motion to Strike a Duke Objection to the PUCO Staff Report by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.