

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)	
Ohio, Inc. for Authority to Establish a Standard)	
Service Offer Pursuant to Section 4928.143,)	
Revised Code, in the Form of an Electric Security)	Case No. 14-841-EL-SSO
Plan, Accounting Modifications, and Tariffs for)	
Generation Service)	

In the Matter of the Application of Duke Energy)	
Ohio, Inc. for Authority to Amend its Certified)	
Supplier Tariff, P.U.C.O. No. 20)	Case No. 14-842-EL-ATA

**APPLICATION FOR REHEARING
OF
THE CITY OF CINCINNATI**

Pursuant to Ohio Revised Code Section (“R.C.”) 4903.10, the City of Cincinnati (“City” or “Cincinnati”) respectfully submits this Application for Rehearing of the April 2, 2015, Opinion and Order (“Order”) of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) modifying and approving Duke Energy Ohio, Inc.’s (“Duke”) electric security plan (“ESP”). The Commission has unreasonably and unlawfully authorized Duke to adopt a price stabilization rider (“PSR”) as a zero-dollar placeholder.

As discussed in greater detail in the attached Memorandum in Support, the City respectfully requests that the Commission grant this Application for Rehearing and modify its April 2, 2015 Order in accordance with this Application for Rehearing.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Consistent with its initial and reply briefs submitted herein, the City's arguments are limited exclusively to the issue of the PSR.

The Commission correctly recognized the inherently speculative nature and lack of record support for the PSR proposal and denied Duke's plan, as filed. Order at p. 47. At the same time, the Commission approved the rider mechanism itself on the basis that a lawful and reasonable PSR, if structured correctly, could be proposed by Duke in the future and approved by the Commission. For essentially the same reasons as those relied upon by Commission in rejecting Duke's proposed PSR, the Commission's approval of the "placeholder" PSR mechanism as a part of this ESP application is not supported by either the record or the Revised Code and is therefore unlawful and unreasonable.

The Commission has noted that its decisions must be based on the record before it. Order at p. 46, citing *Tongren v. Pub. Util Comm.* 85 Ohio St. 3d 87 (1999). Beyond this, Commission decisions are subject to reversal if they are "Manifestly against the weight of the evidence, and are so clearly unsupported by it as to show misapprehension or mistake, or willful disregard of duty" *Delphos v. Public Util. Comm.* 137 Ohio St. 422 (1940). See also *Elyria Foundry Co. v. Pub. Util. Comm.* 114 Ohio St. 3d 305 (2007). The Commission's conclusion on the PSR meets these criteria for reversal, as there are several fatal flaws in the Commission's reasoning.

II. ARGUMENT

A. R.C. 4928.143(B)(2)(d)

The Commission determined that in order for the PSR to be legal it must comply with three criteria found in R.C. 4928.143(B)(2)(d). That subsection of the Revised Code provides:

(2) The plan may provide for or include, without limitation, any of the following:

(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, *as would have the effect of stabilizing or providing certainty regarding retail electric service*;

Italics added.

The Commission appropriately determined that first, an ESP component approved under R.C. 4928.143(B)(2)(d) must be a term, condition, or charge. Second, it must relate to one of the enumerated types of terms, conditions, and charges, and third, it must have the effect of stabilizing or providing certainty regarding retail electric service. Order at p. 43.

The Commission expressly determined that it could not find that the PSR proposal put forth by Duke in the present proceeding would, in fact, promote rate stability, or is in the public interest. Order at p. 46. Yet despite this unequivocal finding, the Commission proceeds to authorize Duke to establish a “placeholder PSR” at an initial rate of zero. Order at p. 47. There is nothing in the language of R.C. 4928.143(B)(2)(d) that authorizes the Commission to establish an as-of-yet undefined “placeholder PSR.”

The Commission acknowledged, as it must, that it has the authority to approve, as a component of an ESP, only items that are expressly listed in the statute. Order at p. 43, citing *In Re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 512 (2011). The Commission cannot reconcile its express finding regarding the PSR with the requirements of R.C.

4928.143(B)(2)(d). Nowhere in that provision of the Revised Code, or anywhere else for that matter, does it allow the Commission to approve a placeholder charge based on a *theoretical* benefit, not actually found in the record before it.

Finally, the Commission's equation of a simple charge on customers' bills with a "financial limitation on shopping" misapplies the language of R.C. 4928.143(B)(2)(d). In the logic of the Commission, the statute authorizes "charges" relating to "charges on customer shopping." By equating the charge posed by the PSR with a financial limitation on shopping, this is how the Commission is reading the statute. But the statute does not say this. It speaks of "charges" relating to "limitations on customer shopping" rather than "financial limitations on customer shopping." The Commission is adding words and meaning to the statute that the General Assembly did not provide.

III. CONCLUSION

WHEREFORE, the City of Cincinnati respectfully urges the Commission to grant its application for rehearing.

Respectfully submitted on behalf of,
THE CITY OF CINCINNATI



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served upon the following parties via electronic mail this 4th day of May 2015.



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Summary: Application for Rehearing of The City of Cincinnati electronically filed by Teresa Orahod on behalf of Thomas O'Brien