

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**MEMORANDUM CONTRA DUKE ENERGY OHIO'S
APPLICATION FOR REHEARING
ON BEHALF OF THE
OHIO MANUFACTURERS' ASSOCIATION**

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I. INTRODUCTION AND PROCEDURAL HISTORY

On May 29, 2014, Duke Energy Ohio, Inc. (Duke or the Company) filed an application (Application) for authority to establish a standard service offer pursuant to Section 4928.143, Revised Code, in the form of an electric security plan (ESP).¹ In its Application, Duke sought approval from the Public Utilities Commission of Ohio (Commission) to establish, inter alia, its proposed Distribution Capital Investment Rider (Rider DCI), to discontinue its interruptible program, and to establish and approve for use through 2040 its proposed Price Stabilization Rider (PSR). Numerous parties, including the Ohio Manufacturers' Association (OMA), were authorized by the Commission to participate in the above-captioned matters, and participated in an evidentiary hearing on Duke's proposed ESP, which commenced on October 22, 2014 and concluded on November 20, 2014.

¹ Duke Energy Ohio Ex. 1.

On April 2, 2015, the Commission issued its Order which, inter alia, permitted Duke “to establish a placeholder PSR, at an initial rate of zero, for the term of the ESP.”² The Commission also determined that the large customer interruptible load program should continue and should be modified to make “participating customers subject to unlimited emergency only interruptions year round.”³ The Commission further held that the level of credit should remain at 50 percent of Net CONE[,]” and that Rider DR-ECF “will also need to continue, through which Duke may apply for cost recovery.”⁴ The Commission also established Rider DCI caps of \$17 million in 2015, \$50 million in 2016, \$67 million in 2017, and \$35 million for the first five months of 2018.⁵ Finally, the Commission incorrectly determined that Duke’s proposed ESP satisfies the statutory requirement that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate than a market rate offer (MRO).⁶

On May 1, 2015 and May 4, 2015, Duke, OMA, and numerous other parties filed applications for rehearing of various aspects of the Commission’s Order. Duke raised a number of specific objections pertaining to the Commission’s determinations on the PSR, divestiture of OVEC assets, Rider DCI, and its interruptible load program.⁷ OMA hereby files its memorandum contra several of the specific objections asserted in the Duke Application for Rehearing.

² Order at 47.

³ Id. at 77.

⁴ Id at 77-78.

⁵ Id. at 72.

⁶ Id. at 96-97.

⁷ Application for Rehearing of Duke Energy Ohio, Inc. (May 4, 2015) (Duke Application for Rehearing).

II. ARGUMENT

- A. Given that the Commission established a placeholder PSR, it was reasonable for the Commission to deny Duke's proposal to include costs associated with the OVEC generating units in the PSR, as the Commission determined that the record did not support Duke's claim that customers would sufficiently benefit from the PSR's financial hedging mechanism.**

In its Application for Rehearing, Duke requests that the Commission reconsider its decision to defer ruling on whether to include the costs associated with OVEC in the PSR, arguing that the PSR is a financial hedge and that “the initial rate for Rider PSR can be set on the basis of forecasted information and then, subsequently, be trued up for actual results.”⁸ Initially, Duke contends that the PSR is needed to protect against some of the volatility of the cost of energy and capacity.⁹ Duke argues that “no witness denied that the wholesale market is volatile and that significant material changes are likely.”¹⁰ However, acknowledgment by witnesses that PJM market rates may be volatile does not translate into the PSR providing rate stability for customers.

Duke also contends that the Commission's findings were inconsistent with the record in these proceedings and it was unreasonable for the Commission to deduce that including costs associated with OVEC in the PSR would not provide customers with benefits that would offset the potential short-term cost of the rider over the ESP term, given that the Commission concluded that the third criterion of Section 4928.143(B)(2)(d), Revised Code, was satisfied, in that it authorized Duke to establish a placeholder PSR.¹¹ OMA, however, contends that the Commission's decision to authorize Duke to establish a placeholder PSR, rather than its decision

⁸ Id. at 8, 9.

⁹ Id. at 6.

¹⁰ Id. at 7.

¹¹ Id. at 6-10 (citing Order at 46).

not to authorize Duke to recover OVEC costs through the PSR, was inconsistent with the record evidence submitted in the case.¹² The record establishes not only that Duke failed to meet its burden of showing that it was reasonable for the Commission to authorize Duke to recover charges related to the PSR from ratepayers, but also that the basic establishment of the PSR is not authorized by the provisions of Section 4928.143(B)(2)(d), Revised Code.¹³ Duke's arguments on this issue are without merit and should be disregarded by the Commission.

Duke contends that "the fact that there is uncertainty about the future is not a reason to reject a hedge."¹⁴ Duke fails, however, to address the concerns that this uncertainty (and associated costs) actually shifts risk from the utility to the customers as any purported benefits of the PSR after the ESP term are merely speculative.¹⁵ Approval of the PSR will inject risk that is unwanted, from most ratepayers' perspectives, into distribution rates. Contrary to Duke's assertions,¹⁶ Duke has not demonstrated that, as proposed, the PSR will either stabilize rates or provide ratepayers with certainty regarding any aspect of their retail electric service. Duke cannot guarantee that the proposed 'financial hedge' would even provide stability or be a positive offset in future markets at the time a credit may be placed on a customer's bill. The PSR is not financial insurance akin to a farmer selling his crop in the market.¹⁷ Rather, a customer entering into a fixed-price contract for retail electric service to guard against an increase in its electric rate due to a future market can be compared to the farmer. However, under Duke's

¹²Application for Rehearing of OMA at 9-11 (May 4, 2015) (OMA Application for Rehearing).

¹³ Id.

¹⁴ Duke Application for Rehearing at 9.

¹⁵ See Reply Brief of OMA at 20 (citing Tr. Vol. VII at 2063-64; IEU Br. at 28 (citing OEG Ex. 1 at 18-19 and Tr. Vol. XII at 3404); Staff Br. at 22-24; Kroger Br. at 11; OCC Br. at 33 (citing OCC witness Wilson, OCC Ex. 43 at 19)) (December 29, 2015) (OMA Reply Br.).

¹⁶ Duke Application for Rehearing at 9-11.

¹⁷ Id. at 10.

proposal, the PSR would negate that customer's financial insurance of entering into a fixed-price contract for retail electric service as the PSR will introduce uncertainty and risks for customers that do not exist today. Duke has failed to demonstrate how shopping customers on fixed-priced contracts with a certified retail electric service (CRES) provider or customers taking service pursuant to a fixed SSO price that was established pursuant to laddered auctions will receive more certain or stable rates when adding an unknown and variable charge (or credit) to customers' bills, which could be volatile, as it is based on the output of OVEC being offered into PJM's day-ahead market and will be adjusted quarterly.¹⁸

Moreover, OVEC's costs are not fixed and may increase for the implementation of new carbon emission regulations, fuel costs, decommissioning costs, or other environmental upgrades and regulations.¹⁹ Under the Inter-Company Power Agreement (ICPA) (as amended), Duke is required to pay its portion (9%) of the fixed and variable costs of operating the OVEC generation facilities and a return on equity, as well as other charges delineated in the ICPA for the life of the OVEC entitlement, which is currently scheduled to end in 2040.²⁰ OVEC's average cost of generation increased from 2011 to 2012 and Duke's average cost of electricity from OVEC increased by 71% between 2009 and 2012.²¹ The record demonstrates that OVEC's cost estimates have been inaccurate and unreliable.²² As such, the Commission cannot find that Duke's OVEC-related generation costs are certain or stable.²³

¹⁸ Tr. Vol. I at 112-114; OCC Br. at 11-14 (citing OCC Ex. 43 at 28-29); OMA Br. at 23 (citing Direct Energy Ex. 1 at 6); IEU Br. at 28-29; Staff Br. at 23-24 (citing OCC witness Wilson, OCC Ex. 4 at 12); Exelon Br. at 11.

¹⁹ See Staff Brief at 22 (December 15, 2014) (Staff Br.). ("The success or failure of the PSR depends on the stability of OVEC's costs.")

²⁰ See IEU Ex. 5; Duke Ex. 2 at 10; Duke Ex. 1 at 13-14 .

²¹ See IEU Brief at 4-5, 27 (December 15, 2014) (IEU Br.).

²² Id.

²³ Id.

As acknowledged by the Commission, the proposed PSR does not promote rate stability and could produce greater instability than other tools that are currently available to stabilize rates.²⁴ The evidence also demonstrates that the PSR “may result in a net cost to customers, with little offsetting benefit from the rider’s intended purpose as a hedge against market volatility.”²⁵ Simply stated, it will be an additional charge (or credit) placed on customers’ bills (even those under fixed price contracts) that is based upon the difference between OVEC’s generation costs and past wholesale auctions.²⁶ The only stability provided by the PSR is the stability provided to Duke, as an equity owner in OVEC, through a guaranteed return on and of its generation investment in OVEC.²⁷

The evidence demonstrates that the PSR will not stabilize rates. Duke’s own projections indicate that OVEC costs will exceed revenues from 2015 through 2018, resulting in a net charge to customers via the PSR.²⁸ Duke does not project any benefits from the PSR during the term of the proposed ESP.²⁹ As the Commission correctly recognized, any purported benefits of the PSR to consumers after the ESP term are merely speculative and do not outweigh the potential cost of the PSR.³⁰

²⁴ Order at 46.

²⁵ Id.

²⁶ Id. at 44.

²⁷ Tr. Vol. I at 105-107; OMA Br. at 22 (citing RESA/Constellation witness Campbell, RESA/Constellation Ex. 3 at 13).

²⁸ Order at 45.

²⁹ Id.

³⁰ Id. at 46.

For these reasons, the Commission properly determined that Duke's PSR proposal is not in the public interest.³¹ Accordingly, the Commission should deny Duke's application for rehearing arguments regarding the PSR.

B. The Commission's directive to Duke to transfer its OVEC contractual entitlement or divest the OVEC asset was reasonable.

As recognized by the Commission, its order approving the stipulation in the ESP 2 Case to transfer Duke's OVEC entitlement out of Duke did not "exempt Duke from pursuing the divestiture or transfer of the OVEC contractual entitlement" by the end of 2014.³² Contrary to Duke's assertion, this is not a "new interpretation of the ESP 2 Stipulation."³³ Rather, the evidence demonstrates that it is the majority's interpretation.³⁴ Therefore, the Commission's decision to order such divestiture was reasonable.

As explained by intervenors in the proceeding, the need for the PSR would be completely obviated if, pursuant to its rights under the ICPA, Duke assigned its OVEC entitlement to a Permitted Assignee, such as another Sponsoring Party or a Duke affiliate with credit ratings that are investment grade (e.g., Duke's Kentucky and Indiana operating affiliates).³⁵ The concerns inherent in establishing the PSR and in Duke's continued retention of its OVEC entitlements would be relieved if Duke determined that assigning its entitlements was the most prudent course of action. Given that Duke has the option of avoiding, by means of assignment, the costs to consumers and the legal and policy concerns associated with the establishment of the PSR, but has refused, to date, to make such assignment, it is evident that the Company intends to use the

³¹ Id.

³² Id. at 48.

³³ Duke Application for Rehearing at 12.

³⁴ Order at 36.

³⁵ IEU Br. at 30-31; OMA Reply Br. at 19.

PSR to insulate itself against losses that may arise in connection with its OVEC entitlements. As such, the Commission should continue to deny Duke's request to pass on the costs associated with OVEC to customers through the PSR, and should require Duke to divest or transfer the OVEC entitlements.

C. The Commission's decision not to include general plant in Rider DCI was reasonable.

As noted in the Order, Duke sought Commission approval of a nonbypassable Rider DCI to recover a return on capital investment in order to support numerous distribution programs over the course of the ESP.³⁶ The Commission denied Duke's request that Rider DCI include general plant.³⁷ In rendering its decision, the Commission depended upon the fact that "inclusion of general plant would go beyond the intent of the statute, which is geared towards reliability infrastructure."³⁸ The Commission also correctly recognized that "[s]uch recovery would be better considered and reviewed in the context of a distribution rate case where the costs can be evaluated in the context of the Company's total distribution revenues and expenses, and the Company's opportunity to recover a return on its investment can be balanced against the customers' right to reasonably priced service."³⁹ Contrary to Duke's assertions, the Commission's decision is directly on point with a recent order issued in AEP Ohio's ESP proceeding.⁴⁰ In that order, the Commission stated that the "expanded [Distribution Investment Rider (DIR)] for which AEP Ohio seeks approval in these ESP Proceedings far exceeds the

³⁶ Order at 66.

³⁷ Id. at 72.

³⁸ Id.

³⁹ Id.

⁴⁰ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Opinion and Order at 46 (February 25, 2015).

justification offered and accepted by the Commission in approving the original DIR.”⁴¹ In the AEP Ohio ESP proceeding, the Commission similarly acknowledged that “DIR investments, at the level requested in these proceedings, would be better considered and reviewed in the context of a distribution rate case where the costs can be evaluated in the context of the Company’s total distribution revenues and expenses, and the Company’s opportunity to recover a return on and of its investment can be balanced against customers’ right to reasonably priced service.”⁴²

The Commission’s decision not to include general plant in Rider DCI is consistent with a prior decision in an ESP proceeding for another utility. Accordingly, the Commission’s decision to exclude general plant in Rider DCI was reasonable and should not be reversed on rehearing.

D. The Commission should clarify that although it directed Duke to bid the capacity resources associated with its large customer interruptible load program into PJM’s base residual auctions held during the ESP term, and such base residual auctions have already occurred, that Duke may still bid the large customer interruptible load program capacity resources into PJM’s incremental capacity auctions held during the ESP term.

Duke contends that the Commission must modify or clarify its directive that the Company bid the capacity resources associated with its large customer interruptible load program into PJM’s base residual auctions, and then offset against the costs of the large customer interruptible load program the revenues received from PJM, as the Commission’s requirement “is unachievable.”⁴³ Duke bases its position on the fact that PJM has already conducted the base residual auctions (BRAs) into which such capacity resources may be bid for each of the years that span the term of the ESP; thus, Duke contends, “[t]he Commission’s order to bid capacity

⁴¹ Id. (The DIR Rider in the AEP proceeding is similar to Duke’s Rider DCR in this proceeding).

⁴² Id.

⁴³ Duke Application for Rehearing at 25.

resources associated with the interruptible load program into PJM's BRA auctions would . . . not be workable within the bounds of this ESP."⁴⁴

The Order directs that Duke "bid the additional capacity resources associated with the program into PJM's BRAs held during the ESP term, with any resulting revenues credited back to customers through Rider DR-ECF."⁴⁵ Although Duke contends that complying with the Commission's directive is not workable because the PJM BRAs for the ESP term have already occurred, the Company notes the following:

If the Commission's intent was to order the Company to bid the capacity into BRAs for the delivery years covered by this ESP, such BRAs have all already occurred. Compliance with the first of these is an impossibility, unless the Commission's intent was to refer to incremental auctions – and, even then, the incremental auctions for the 2015-2016 delivery year have all been completed. . . [.]⁴⁶

In the above passage, Duke recognizes the fact that although the PJM BRAs for the ESP term have already occurred, it may still participate in and bid the capacity resources associated with the interruptible load program into the additional PJM incremental capacity auctions held during the last two of the three delivery years of the proposed ESP. Utilizing this practice would at least partially offset the amounts that would otherwise be recovered from customers; thus, it is a viable option for recovering some of the costs attributable to interruptible load program credits. OMA accordingly requests that the Commission clarify that Duke may bid the capacity resources associated with its large customer interruptible load program into the incremental capacity auctions held during the ESP term in order to reduce the credit amounts that must be recovered from ratepayers.

⁴⁴ Id at 26.

⁴⁵ Order at 78.

⁴⁶ Duke Application for Rehearing at 26.

III. CONCLUSION

As discussed at length supra, OMA respectfully requests that the Commission deny Duke's request for rehearing of the previously identified issues, and grant rehearing of the issues outlined in OMA's Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on May 14, 2015.

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