BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

IGS ENERGY'S MEMORANDUM CONTRA APPLICATION FOR REHEARING OF DUKE ENERGY OHIO, INC.

May 14, 2015

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I. INTRODUCTION

On April 2, 2015, Dynegy took title to Duke Energy Ohio, Inc.'s ("Duke") legacy generating assets.[1] On that same day, the Public Utilities Commission of Ohio ("Commission") modified and approved Duke Energy Ohio's ("Duke") application to establish an ESP ("Order"). Among other things, the Order approved a placeholder Price Stability Rider ("PSR"), but denied Duke's request to include cost recovery related to Duke's only remaining interest in a generating asset, the Ohio Valley Electric Corporation ("OVEC"). The Order reasoned that Duke's request was not in the public interest.

On May 4, 2015, Duke filed an application for rehearing asserting the following:

[1] *Dynegy Resources I, LLC*, EC14-141-000, 150 FERC ¶ 61,232, Order Authorizing Acquisition and Disposition of Jurisdictional Facilities (Mar. 27, 2015).

- The Order is internally inconsistent inasmuch as the Commission determined that a PSR-like mechanism could act as a hedge, but, based upon the evidence in the record, the PSR as proposed is not in the public interest.

- The Order erred inasmuch as there is sufficient evidence in the record to allow Duke to recover costs related to its interest in OVEC.

- The Order erred when it required Duke to divest its interest in OVEC.

- The Commission's entries in this proceeding erred in directing Duke to enter confidentiality agreements that permit parties to retain confidential information and utilize it in future proceedings subject to evidentiary rules regarding admissibility.

As discussed below, Duke's arguments lack merit; thus, the Commission should reject Duke's application for rehearing.

II. ARGUMENT

A. Duke has not met its burden of demonstrating the PSR should be approved

Duke claims that the Order erred because it is internally inconsistent.[2] Duke claims that the Order determined that the PSR could act as a hedge against volatile pricing, but then the Order inappropriately failed to approve the rider as proposed. Duke claims that the Order based its determination on two incorrect premises: (1) there is uncertainty regarding future power markets; (2) there are other means to guard against volatility in the electric markets.[3]

Regarding the first reason, Duke claims the Order erred because "the Commission routinely approves riders based upon forecasts or projections, directing

[2] Application for Rehearing of Duke Energy Ohio, Inc. at 7 (hereinafter "Duke Application").

[3] *Id.* at 8.

that such riders be trued up for actual costs."[4] Duke further claims that the Order unreasonably focused on the fact that the PSR is projected to be a charge for the term of the ESP. Additionally, Duke claims that the rider will provide benefits over the long-term and the Commission overlooked this "uncontroverted evidence."[5] Each of Duke's arguments lack merit.

The fact that the Commission has approved riders subject to later reconciliation misses the point. The PSR is not a fuel clause that a customer can merely avoid by selecting a competitive retail electric service ("CRES") provider. It represents a 25-year unavoidable commitment to guarantee cost recovery related to unregulated assets.[6]

In an ESP, "[t]he burden of proof in the proceeding shall be on the electric distribution utility."[7] The Order correctly determined that Duke had not met its burden of demonstrating that the PSR will in fact provide benefits to customers. The Order relied upon Duke's own projection of the impact of the PSR on customers to make that determination. Specifically, the Order stated:

> The Commission agrees with OCC, IEU, and other intervenors that the evidence of record reflects that the rider may result in a net cost to customers, with little offsetting benefit from the rider's intended purpose as a hedge against market volatility. On balance, the record reflects that, during the three-year period of the ESP, the PSR would result in a net cost to customers and that, only over a longer timeframe, would customers perhaps benefit from a credit under the rider. Duke, however, proposes a three-year ESP term.[8]

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[4] *Id.*

[5] *Id.* at 9.

[6] While IGS is encouraged that the Order did not approve Duke's request to include cost recovery for OVEC, IGS disagrees with the Order's finding that a PSR-like rider could be approved under certain circumstances not demonstrated here.

[7] R.C. 4928.143(C)(1).

[8] Order at 46.

Moreover, the Order correctly focused on the impact of the PSR during the duration of the ESP. The Commission can approve an ESP only if it appears to be more favorable than an otherwise applicable market rate offer during the time frame specified in the application.[9] Based upon Duke's own projections, the ESP would be a charge for the duration of the ESP. Thus, the Commission appropriately rejected it.

Duke, moreover, wrongly claims that it is uncontroverted that the ESP will provide benefits over the long-term. IGS witness Haugen and others testified that the PSR is unlikely to turn into a credit even beyond the ESP.[10]

Regarding the Order's second reason, Duke claims that laddering and staggering standard service offer ("SSO") auctions and fixed-price CRES products do not provide a hedge against price volatility. Duke claims that the Order reflects a "misunderstanding of the difference between a financial hedge and a general smoothing of price changes."[11] And, without any citations to the record, Duke offers a lengthy discussion of hedging principles in the agricultural industry to undercut the Order.[12]

Duke's criticism of the Order lacks merit. According to Merriam-Webster's Dictionary, volatile is defined as "likely to change in a very sudden or extreme way."[13] Contrary to Duke's claim, smoothing price changes reduces volatility. On the other hand, the PSR would inject volatility into customers' rates because there is no way to

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[9] R.C. 4928.143(C)(1).

[10] IGS Ex. 12 at 10-16; Tr. Vol. XV CONFIDETNIAL at 4136-37. *See also* Tr. Vol IX CONFIDENTIAL at 2517-19; Tr. Vol. 1 at 225-226; Tr. Vol. XII at 3398-99. Sierra Club Ex. 4 at 7-8.IGS Initial Brief at 27-31.

[11] Duke Application at 9.

[12] Duke Application at 9-10.

[13] http://www.merriam-webster.com/dictionary/volatile

predict its impact in advance. Such uncertainty does not exist with respect to fixed-price CRES products or an auction-based SSO product. Thus, both products provide better protection against volatility than the PSR.

Finally, the evidence does not support Duke's claim that the PSR operates as a counter-cyclical hedge. If there is a large market price increase in the future, it will most likely result from the Environmental Protection Agency's ("EPA") Clean Power Plan, which would limit carbon emissions from existing generating stations.[14] Because these rules will likely increase the cost of operating OVEC, an increase in market prices will not necessarily lead to additional margins at OVEC.[15] Thus, the PSR would not be a hedge. Duke appears to have conceded this fact in the recent $94 million OVEC-related impairment it recorded.[16] Therefore, the Commission should reject Duke's rehearing request.

B. Duke is obligated to transfer OVEC

Duke claims that that Order unlawfully directed it to transfer its OVEC interest. Duke argues that the ESP II Stipulation only required Duke to transfer its generating assets and it did not require Duke to transfer purchase power agreements. Duke claims that "[t]he Commission's new interpretation of the ESP 2 Stipulation, and its new assertion with regard to the intent that it says it had three years ago, constitutes a flagrant violation of Duke Energy Ohio's due process rights under the Ohio and United

[14] IGS Ex. 12 at 13-14 and TH-7.

[15] *Id.*

[16] Duke Energy Ohio, Inc. FERC Form 1, 2014 Q4, p. 123.128 (Apr. 17, 2015) Accession Number: 20150417-8022.

States Constitutions."[17] Duke further claims that "[t]he law does not require the utility to divest generation assets or contractual entitlements in entities that own and operate generation assets."[18] Finally, Duke claims that the Order lacks jurisdiction to order Duke to transfer its OVEC interest. Duke's arguments are factually and legally incorrect.

Duke's argument fails for a very simple reason. As part of the ESP Stipulation, Duke agreed to complete its decade-long transition to a wires-only company:

> [T]he Commission's approval of the stipulation will constitute approval of Duke's Third Amended CSP and **full legal corporate separation**, as contemplated by Section 4928.17(A), Revised Code, such that the transmission and distribution assets of Duke will continue to be held by the distribution utility and **all of Duke's generation assets** will be transferred to an affiliate.[19]

R.C. 4928.17(A)(1) provides that an EDU shall operate pursuant to a corporate separation plan that provides:

> [A]t minimum, for the provision of the **competitive retail electric service** or the nonelectric product or service **through a fully-separated affiliate of the utility**, **and include separate accounting requirements**, the code of conduct, and such other measures as are necessary to effectuate the state policy.

Thus, Ohio's corporate separation laws mandate that EDUs provide competitive and other unregulated services through a separate affiliate and that the accounting related to those services be separate from the books of the EDU. Ohio law prohibits the financial performance and accounting of unregulated and competitive services from impacting the financial integrity of the regulated distribution utility.

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[17] Duke Application at 12.

[18] Duke Application at 13.

[19] *In the matter of the application, motion for protective order and memorandum in support of Duke Energy Ohio for authority to establish a Standard Service Offer pursuant to Section 4928.143, Revised Code, in the form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO, *et al.*, Opinion and Order at 45 (Nov. 21, 2011) (emphasis added).

Continuing to operate OVEC would require Duke to maintain a business unit that has one foot in the competitive marketplace. And it would require Duke to include costs and revenues related to that business in its accounting ledger. Duke cannot comply with the directives contained in R.C. 4928.17(A)(1) if it retains its OVEC interest. Thus, the stipulation contemplated Duke operating as a distribution utility that provides only non-competitive distribution service.

While Duke is dissatisfied with the timing of the Order's clarification, the Order's interpretation of the ESP Stipulation is reasonable and in line with the understanding of every single party that signed the ESP Stipulation except for Duke. Duke's novel interpretation of the ESP Stipulation is all too convenient given its PSR proposal. Thus, on rehearing, the Commission should reject Duke's request to further delay its fulfillment of the General Assembly's intent that EDUs leave the competitive market.

C. The Commission should reject Duke's request to reconsider its prior orders

In its last assignment of error, Duke half-heartedly challenges several prior orders issued by the Commission with respect to confidentiality agreements. Duke again argues that "[t]he Commission should reverse its prior decisions with regard to the subsequent use of confidential information, in unrelated proceedings."[20] Duke offers no new reasoning for the Commission to consider, but rather incorporates its prior arguments by reference.

Duke has provided no new reasoning for the Commission to consider; thus, the Commission should not second guess its prior rulings. This issue has been litigated *ad*

[20] Duke Application at 29.

nauseam, and the Commission's prior rulings are supported by sound regulatory policy and precedent.

III. CONCLUSION

For the reasons stated herein, on rehearing the Commission should deny Duke's application for rehearing.

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CERTIFICATE OF SERVICE

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