

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**MEMORANDUM CONTRA DUKE ENERGY OHIO’S APPLICATION FOR
REHEARING BY THE ENVIRONMENTAL LAW & POLICY CENTER AND THE OHIO
ENVIRONMENTAL COUNCIL**

I. INTRODUCTION

The application filed by Duke Energy Ohio, Inc. (“Duke” or “Company”) seeking rehearing of the April 2, 2015 Opinion and Order (“Order”) of the Public Utilities Commission of Ohio (“Commission”) in this proceeding does not provide any basis for the Commission to change its decision not to force Duke’s customers to bear the costs of a purchased power agreement (“PPA”) for Duke’s share of the Ohio Valley Electric Corporation (“OVEC”) plants. The Commission appropriately relied on the lack of record evidence supporting either the need for or the purported benefits of that PPA for inclusion in Duke’s proposed Price Stability Rider (“PSR”). Duke’s arguments do not cure those fundamental flaws. The Environmental Law & Policy Center and the Ohio Environmental Council (collectively, “Environmental Advocates”) therefore request that the Commission deny Duke’s application for rehearing of the Order with respect to this issue.

Duke likewise fails to offer any record evidence to justify its argument that the Commission should withdraw its order for Duke to bid demand response as a capacity resource into the appropriate PJM base residual auctions and incremental auctions occurring during the term of its Electric Security Plan (“ESP”). As the Commission has recognized, demand resources are important to ensuring reliability and encouraging economic development in Ohio; bidding of these resources into the PJM capacity market helps serve both of those purposes while lowering customer rates.

II. ARGUMENT

A. The OVEC PPA Offers No Certainty Regarding Benefits to Customers that Would Justify Its Inclusion in the PSR.

Duke itself notes the many reasons that predictions regarding electricity prices are likely to be uncertain over the coming years: PJM’s proposal to define new capacity products, currently awaiting FERC approval; environmental regulations that are changing the economics of coal-fired generation; and a pending Supreme Court case regarding the participation of demand resources in the wholesale market.¹ Duke cites these circumstances as sources of potential price volatility and thus a justification for hedging retail prices through the PSR. Yet the Company fails to note that the same uncertainty regarding the economics of the wholesale market makes it impossible to determine whether the PSR will in fact operate as a hedge, and whether that hedge will be worth the price customers pay. Duke cannot rely on market uncertainty on one hand and ignore it on the other.

Duke highlights the Commission’s conclusion that the PSR “would, in theory, have the effect of” reducing price volatility by “produc[ing] a credit or charge based on the difference

¹ Duke Rehearing Application at 6 (May 4, 2015).

between wholesale market prices and OVEC's costs."² According to the Company, this abstract statement regarding the proposed operation of the PSR warrants inclusion of the OVEC PPA under the PSR even in light of uncertainty about the benefits and price tag of that specific PPA, since "[u]ncertainty concerning the rate impact of a proposed rider is common and unavoidable."³ But the types of uncertainty cited by Duke regarding the costs of a fuel adjustment clause or the procurement of energy for its Standard Service Offer ("SSO") are different both in kind and in magnitude.

In both those examples, the costs incurred provide a concrete and quantifiable benefit: the electricity that the utility provides to its SSO customers. By contrast, as the Commission recognized, the uncertainty regarding future market prices, as well as generation costs at the OVEC plants in light of new environmental regulations, means 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."⁴ For example, if impending carbon regulations increase the costs of coal-fired generation like the OVEC plants as compared to other generation resources, that will decrease the plants' profit margins and reduce the hedging impact of the PPA, without necessarily resulting in any increased market revenues; in a worst-case scenario it might even erase the hedging benefit altogether as rising plant costs consume the profits that Duke insists will offset any rise in market prices.

Even more importantly, uncertainty with respect to rate impacts of a fuel adjustment clause or a rider for recovery of SSO auction costs is mitigated by the fact that these costs result from some competitive market process, and are not imposed on customers on a non-bypassable

² Order at 44.

³ Duke Rehearing App. at 8.

⁴ Order at 46.

basis. As discussed in the Environmental Advocates' Application for Rehearing, such mechanisms ensure that customers obtain their electric service at the lowest price available, and that if the resulting costs are more than they want to pay, they can seek that service from an alternative provider.⁵ Including the OVEC PPA in a non-bypassable PSR, on the other hand, would remove any incentive for the minimization of OVEC costs and would keep customers from choosing alternative hedging products that are cheaper or better tailored to their needs.

It is clear that the uncertainty underlying the Commission's original conclusion regarding the OVEC PPA is not simply a matter of whether customers will receive a good hedge or a great hedge. That uncertainty calls into question the very premise that the PSR will deliver any hedge at all. Moreover, Duke's cherry-picking of its OVEC interest as the source of the PSR's purported hedge, without any consideration of alternatives, exacerbates that uncertainty by removing any assurance that the OVEC PPA is the best among multiple hedging options. Finally, the Commission's approval of the PSR as a non-bypassable rider removes the protections of the competitive retail market by precluding customers from deciding that they can achieve the hedge they desire at a lower price or with less uncertainty. For all these reasons, the Commission should stand by its decision not to approve recovery of costs of the OVEC PPA through the PSR.

B. Duke Has Offered No Persuasive Reason to Avoid Bidding Demand Response Resources into the PJM Capacity Markets.

As the Commission recognized – and Duke does not challenge on rehearing – the large customer interruptible load program “offers numerous benefits and furthers state policy” as a program that creates demand resources that are “valuable for reliability” and that “can lower

⁵ Environmental Advocates' Rehearing App. at 7-9, 11-18 (May 4, 2015).

market prices during peak times and lower the demand for more capacity resources.”⁶

Consistent with this explanation, the Commission made clear in this Order that it is committed to ensuring the continuance of demand response programs in Ohio because of their reliability and economic development benefits. These benefits could evaporate if Duke does not bid the demand resources resulting from this program into the PJM capacity markets.

The existence of demand response programs does help ensure reliability in extreme circumstances (such as the Polar Vortex of 2014) by allowing a utility to reduce load to avoid the need for load shedding. But even where demand response resources are not called into play, they offer important daily benefits to customers by lowering wholesale capacity prices and providing businesses with revenues that promote economic development. These features would be in large part lost if Duke does not bid its demand resources into the PJM capacity markets: the wholesale market would be unable to incorporate those demand resources as least-cost capacity resources, resulting in higher electricity prices for all Ohio ratepayers; and Duke would not receive the PJM revenues from the sale of that capacity to fund the credits that support the businesses participating in its interruptible load program.

Duke’s arguments do not include any reason to deprive Ohioans of these benefits. Although the base residual auctions (“BRAs”) that will occur during this ESP will require Duke to provide demand response resources in delivery years beyond the term of this ESP,⁷ that fact is simply a product of how the PJM capacity markets are designed. It has not prevented Ohio

⁶ Order at 77.

⁷ Duke Rehearing App. at 26.

utilities from successfully bidding demand response resources into PJM in the past pursuant to Commission order, and it should not do so in the future.⁸

In particular, existing uncertainty about the role of demand resources in PJM does not mean that bidding into ongoing BRAs under the applicable PJM rules and definitions is a wildly speculative venture; PJM has already taken proactive steps to address potential pending shifts in its capacity market, and has in the past been able to ensure a smooth transition in the face of changes in the regulatory treatment of demand resources. With respect to the Capacity Performance proposal, PJM has issued two versions of planning parameters to guide participation in the upcoming BRA for the 2018/2019 year: one for if the Federal Energy Regulatory Commission (“FERC”) approves the Capacity Performance proposal and another for if FERC rejects the proposal.⁹ These parameters provide definitive guidance as to which demand resources will be eligible to participate in the upcoming BRA. With respect to the scenario where the definition of demand resources changes only after the 2015 BRA, PJM’s response to a complaint filed by FirstEnergy with FERC seeking to undo the participation of demand response in the 2014 BRA for the 2017/2018 delivery year explains PJM’s preferred

⁸ For example, under the stipulation that Duke entered into regarding its 2014-2016 portfolio plan, the Company committed to bidding at least 50% percent of eligible projected demand response megawatts into the BRA for the 2017/2018 delivery year – even though there would not yet be any approved portfolio plan for that delivery year when the BRA occurred. *See In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak-Demand Reduction Portfolio Programs*, Pub. Util. Comm. No. 13-431-EL-POR, 2013 Ohio PUC LEXIS 278, *13 (Dec. 4, 2013). The Commission approved that stipulation without objection. If the Commission is unwilling to require Duke to bid its eligible demand response resources into the PJM capacity market as a condition of approval of this ESP, the Commission could at least recognize that it would be imprudent for Duke to withhold all of those resources from the wholesale market, so that Duke may act accordingly.

⁹ PJM, 2018/2019 RPM Base Residual Auction Planning Period Parameters, *available at* <https://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2018-2019-planning-parameters-report.ashx>.

approach to a scenario where the demand response bid into a capacity auction would no longer qualify under the law applicable in the delivery year:

[E]ven assuming *arguendo* the Commission determines that FirstEnergy’s Complaint has merit, it nevertheless should recognize that demand response that cleared RPM auctions under rules that were approved in final, unchallenged orders before *EPSA* remain obligated to perform for the RPM Delivery Years for which they have already been committed, and remain eligible to receive compensation for those commitments. This approach is consistent with the Commission’s numerous precedents for declining to require regional market operators to re-run settled markets after the fact.¹⁰

PJM further argued that undoing the participation of demand resources in a BRA under the rules applicable at the time would “undermine PJM’s reliance on demand response to ensure reliability of service”¹¹ and would violate “the rule against retroactive ratemaking.”¹² In light of these statements it seems highly unlikely that PJM would attempt to unwind the 2015 BRA in response to later changes to its tariff or a Supreme Court ruling invalidating FERC regulation of demand response in *FERC v. Electric Power Supply Association*, No. 14-840. Finally, in the event that some sort of transition out of the market is necessary for demand response bid into the 2015 BRA, PJM has smoothly managed such transitions before – Attachment DD, Section 5.14A of its Open Access Transition Tariff, for example, provides for withdrawal of certain demand resources bid into the BRAs for the 2012-2015 delivery years where the demand resource is not viable under revised requirements for such resources, with monetary credits to be provided to the bidders to make them whole for resulting losses.

The Environmental Advocates recognize that demand resources may be eligible for participation in future incremental auctions, in which case bidding those resources into those

¹⁰ PJM Answer to FirstEnergy Complaint, *FirstEnergy Service Co. v. PJM Interconnection, LLC*, FERC Docket No. EL14-55-000, at 4 (Oct. 23, 2014).

¹¹ *Id.* at 24.

¹² *Id.* at 26.

markets could produce some of the same benefits as bidding them into the relevant BRA. However, the pending PJM Capacity Performance proposal could result in a scenario where abstaining from BRAs during the term of this ESP leaves Duke holding demand resources that are no longer eligible for bidding into future incremental auctions – effectively depriving those resources of most of their value. Alternatively, if the definition of demand resources does not change significantly in the next several years, incremental auction prices may be lower than BRA prices. FERC’s order on the PJM Capacity Performance filing, expected in the next few months, should resolve some of the uncertainty on this front. But in the meantime, Duke has not provided any basis for the Commission to judge the potential costs and benefits of participating in the BRA versus incremental auctions, and Duke should not be able to use unsubstantiated allegations of uncertainty to avoid taking actions to benefit its customers.

III. CONCLUSION

As described above, the OVEC PPA is an uncertain bet, arrived at without any competitive process that would assure the Commission that it represents the best option for customers. Therefore, the Environmental Advocates respectfully request that the Commission deny Duke’s application for rehearing with respect to the rejection of the OVEC PPA.

The Commission must also require Duke to bid eligible demand resources into the PJM capacity markets. Duke’s suggestion that it will not do so because of uncertainty about the future role of demand resources in PJM ignores the fact that PJM has taken steps to ensure a smooth transition to any new regulatory regime for demand response, and is highly likely to continue to do so. Therefore, Duke has failed to establish any reason to deprive customers of the significant benefits that result from bidding eligible demand resources into the wholesale market.

Dated: May 14, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Duke Energy Ohio's Application for Rehearing has been electronically filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on May 14, 2015.

/s/ Justin Vickers

Justin Vickers

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Summary: Memorandum Memorandum Contra Duke Energy Ohio's Application for Rehearing by the Environmental Advocates electronically filed by Mr. Justin M Vickers on behalf of Environmental Law & Policy Center and Ohio Environmental Council