

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy )  
Ohio, Inc. to Amend Its Tariffs. ) Case No. 16-862-GA-ATA

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
REPLY TO THE MEMORANDUM CONTRA**

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**I. Introduction**

Ohio Partners for Affordable Energy ("OPAE") herein replies to Duke Energy Ohio's ("Duke") Memorandum Contra OPAE's motions to intervene and dismiss the above-captioned application to amend Duke's tariffs. Duke is seeking to amend its tariffs so that Duke may collect its Fixed Delivery Charge for service at a premise for months when Duke is providing no service at the premise. The Public Utilities Commission of Ohio ("Commission") must dismiss this application for the reasons set forth herein and in OPAE's motion to dismiss.

**II. Duke's application violates the Stipulation and Recommendation in Case No. 12-1685-GA-AIR, et al., which was approved by the Commission.**

Duke's Memorandum Contra cites the Commission's Opinion and Order in Case No. 07-589-GA-AIR (May 28, 2008), which approved the Fixed Delivery Charge. However, Duke's current gas distribution base rates were set in a later case, Case Nos. 12-1685-GA-AIR, et al., in which the Commission approved a Stipulation and Recommendation signed by Duke. Case Nos. 12-1685-GA-AIR, et al., Opinion and Order (November 13, 2013).

The Staff Report in Case Nos. 12-1685-GA-AIR, et al., states as follows at 19-20:

### **Charge for Reconnection of Service:**

The Company is proposing a new provision to this section of its tariff. The new provision would require customers who request to have service disconnected and then reconnected at the same premise within an eight month period to pay “...*the equivalent to the appropriate billing of the customer’s Fixed Delivery Service Charge for the number of billing periods the service was disconnected, including any necessary prorated charges representing partial bill periods*”.

Staff believes that levying such a change has the effect of requiring customers to pay for services they did not receive and covers a period of time when they were not even Duke’s customers. According to the direct testimony of William Don Wathen Jr. “*It is the availability of gas distribution service that causes the cost.*” If the Commission approves Duke’s requested change to its tariff, then a landlord, who for example, disconnects service for safety reasons when their property is vacant, would be required to pay for “the availability of gas service” during a period when they have requested to turn the gas off; a common occurrence. Duke’s territory serves college campuses, off campus housing or multi-unit dwellings all of which would be empty over the summer months. In addition, Staff is concerned that if the argument “the availability of gas distribution service caused the cost” is upheld, Duke could in the future request to expand this charge to those customers who were disconnected for nonpayment. For example, if a customer is disconnected in June for non-payment and is unable to find funds to reconnect service until the “Winter Reconnection Order” is issued in mid-October, he/she could also be required to pay for the availability of gas service for the months he/she was disconnected.

In addition, Duke could not provide data older than two years regarding the number of customers who requested service disconnection followed by reconnection at the same premise, despite the fact their new rate design has been in effect since 2008. Because of this lack of information, Staff cannot determine if this occurrence is trending upward, downward or is a seasonal occurrence regardless of the rate design. If this pattern of requested disconnection followed by reconnection at the same premise is seasonal, the customer count numbers provided by Duke would already have been taken into account as a seasonal fluctuation. The Company’s Fixed Delivery Charge is based, in part, on the customer count numbers filed by Duke in this case. The customer count numbers are the 12 month average, meaning it accounts for the lower customer count numbers in the summer months and the higher customer count numbers in the winter months and thus already recovers the costs for seasonal fluctuations. To levy an additional charge for reconnection of service would be redundant.

Staff therefore recommends that the Commission reject this proposed provision.

The Stipulation and Recommendation signed by Duke in Case Nos. 12-1685-GA-AIR, et al., (April 12, 2013) states at 9:

Duke Energy Ohio agrees to withdraw its request for approval of a change to its Reconnection Tariff, meaning that the Reconnection Charge will remain at the current amount.

The Stipulation and Recommendation also states at 13:

Duke Energy Ohio shall file applicable compliance tariffs within fourteen days of the submission of this Stipulation and Recommendation to the Commission. The compliance tariffs shall include the tariff language filed with the Application, as amended by the Staff Report and this Stipulation.

The Stipulation and Recommendation also states at 14:

**Staff Report Resolves Other Issues**

The parties agree that the Staff Report resolves the remaining issues not addressed in this Stipulation and Recommendation. . .

The Commission's Opinion and Order in Case Nos. 12-1685-GA-AIR, et al, approved the Stipulation on November 13, 2013. Duke's effort in this application to revive its request to charge reconnecting persons service charges for months when they were not customers and there was no service at the premises violates the Stipulation and Recommendation approved by the Commission in Case Nos. 12-1685-GA-AIR,et al.

**III. Duke's application violates Ohio law.**

In addition to violating the Stipulation and Recommendation in Case Nos. 12-1685-GA-AIR, et al., Duke's application is an improper application for an increase in rates. Duke claims that customers are not being asked to pay additional charges and that the proposed tariff change would protect the majority

of residential customers from the few who attempt to shift a substantial portion of their annual cost responsibility to others by disconnecting service. Memorandum Contra at 2-4. Duke claims that when a customer disconnects over the summer, the customer is avoiding the rates that the Commission approved. Duke claims that a customer who continues gas service during the summer months will be making up for those customers who temporarily suspend service. Memorandum Contra at 5. Duke claims that the tariff amendment ensures that customers do not avoid responsibility for the actual cost of providing their service.

Memorandum Contra at 5.

All this is completely rebuked by the Staff Report cited above and agreed to by Duke in the Stipulation and Recommendation in Case Nos. 12-1685-GA-AIR, et al., which the Commission approved. This application is about monthly service charges to be applied to non-customers who are receiving no service. Duke has no cost to serve persons Duke is not serving. Duke is not billing these persons; Duke is not reading meters that are not registering service; Duke is not maintaining service to premises where service is disconnected. As the Staff Report noted, Duke was unable to identify the number of persons disconnecting and reconnecting service in the manner described by Duke so that the effect of this practice is unknown. However, because the Fixed Delivery Charge is based on annual costs, it already accounts for this annual occurrence. In addition, there is no cost shifting relieved by Duke's proposal because no Duke customer is paying the cost responsibility of non-customers who have no cost responsibility to shift. As the Staff Report in Case Nos. 12-1685-GA-AIR, et al., states in rejecting this proposal, this proposal is requesting the payment of service charges from persons who are not receiving service.

In short, this proposal is an unreasonable charge as the Staff Report confirms and as Duke has already agreed. R. C. Section 4905.22 prohibits unreasonable charges. Charges are for services rendered. “All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the Commission.” R.C. 4905.22. Duke’s proposal violates Ohio law because it is proposing a charge for service when there is no service rendered.

#### **IV. OPAE’s motion to intervene should be granted.**

With regard to OPAE’s motion to intervene, Duke claims that because it is only seeking approval of a tariff amendment and not an increase in rates, no hearing is required and OPAE’s motion to intervene should be denied. Duke also claims that OPAE’s intervention will delay the resolution of the proceedings, because no process is required. Memorandum Contra at 4.

OPAE agrees that this proceeding should be resolved without a hearing because the application should simply be dismissed. However, Commission practice is to grant motions to intervene even when no hearing is held. OPAE’s motion to intervene should be granted even when the Commission dismisses this application, which the Commission should do.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

A copy of the foregoing Reply to the Memorandum Contra will be served electronically by the Commission's Docketing Division on the parties listed below who are electronically subscribed on this 23rd day of May 2016.

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Summary: Reply to the Memorandum Contra electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy