BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the City of Cincinnati for Integration of Mercantile Customer Energy Efficiency or Peak-Demand Reduction Programs with Duke Energy Ohio, Inc.	)))))	Case No. 14-1409-EL-EEC

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

I. INTRODUCTION

The Application for Rehearing of the Commission's March 8, 2017 Finding and Order ("Order") filed by Duke Energy Ohio, Inc. ("Duke") fails to state valid grounds for rehearing. First and foremost, Duke's Application for Rehearing violates R.C. 4903.10 by improperly raising a matter that has never been determined in this proceeding. The City filed its application in this case some two-and-a half years ago. Now, for the first time, Duke insists the City filed the wrong application and is only eligible for a mercantile rebate, not a prescriptive rebate. Duke's new argument is misleading and wrong. The Commission properly held that the City's application and request for a cash rebate in the amount of $298,255 should be approved under "the unique facts and circumstances presented in this case."[1] And even if the City was potentially eligible for a rebate under multiple programs as Duke claims, this point is irrelevant. As the Commission noted in the Order, the City reasonably relied on Duke's representations that it was eligible for a cash rebate in the amount of $298,255. Accordingly, the Commission should deny the Application for Rehearing and remind Duke "to work closely with mercantile

[1] Order, p. 6.

customers on future applications under the EEC Pilot to minimize customer confusion regarding current practices."[2]

II. ARGUMENT

A. Duke's Application for Rehearing Violates R.C. 4903.10 and Commission Precedent.

R.C. 4903.10 establishes the rules and limitations related to filing applications for rehearing. Pertinent here, R.C. 4903.10 explains: "[a]fter any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing ***in respect to any matters determined in the proceeding***."[3] R.C. 4903.10 requires that an application for rehearing must be based on "matters determined in the proceeding."

Duke's sole argument in its Application for Rehearing is that "the Commission erred in ordering the Company to pay the equivalent of a 'prescriptive' rebate instead of a 'mercantile' rebate which is really what the City is entitled to for its program."[4] This matter has *never* been raised by the parties in this proceeding (let alone determined by the Commission) since the City filed its application in this docket on August 14, 2014. As the Commission has consistently held in prior entries on rehearing,[5] an application for rehearing cannot raise new matters that were

[2] Order, p. 6.

[3] R.C. 4903.10 (emphasis added).

[4] Duke Application for Rearing ("AFR"), p. 2

[5] *See, e.g., In the Matter of the Application of Conesville Generating Station Unit 3 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-1860-EL-REN, 2010 Ohio PUC LEXIS 536, Entry on Rehearing (May 19, 2010) at *13-14 (denying an assignment of error in an application for rehearing because it "was improperly raised for the first time on rehearing"); *In the Matter of the Application of Killen Generating Station for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility; In the Matter of the Application of Killen Generating Station for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-891, 2010 Ohio PUC LEXIS 568, Entry on Rehearing (May 26, 2010) at *18-19 (rejecting an argument in an application for rehearing, in part, because it "was improperly raised for the first time on rehearing"); *In the Matter of the Application of Bay Shore Unit 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-1042-EL-REN, 2010 Ohio PUC LEXIS 687, Entry

never determined in the proceeding. This is especially true where, as here, Duke had ample opportunities over the last two-and-a half years to articulate this novel issue. Yet Duke's only filing in this docket (other than its Application for Rehearing) was Comments submitted on September 9, 2014, which were submitted in response to the City's Application. Even then, Duke's Comments were confined to a little more than a single page in length, and in those Comments Duke *never* addressed or even referenced any mercantile/prescriptive program rebate distinction. Instead, Duke simply claimed that the City's Streetlight Project was not eligible for the Efficient Outdoor Lighting SmartSaver© Prescriptive Program "since the City does not contribute toward that program that is supported by other customers."[6]

Furthermore, on October 10, 2016, the Attorney Examiner afforded Duke an additional opportunity to file comments, this time in response to Staff's recommendations. But Duke chose not to. Duke is now foreclosed from raising this matter on rehearing. In sum, over the last two-and-a half years, Duke had full and fair opportunities to raise any/all arguments it believed were relevant for the Commission's consideration. Raising an entirely new matter on rehearing that was not determined in the proceeding is prohibited by statute and by Commission precedent. Accordingly, the Commission should deny the sole assignment of error in Duke's Application for Rehearing.

B. The Commission's Order Properly Determined That The City Was Eligible For a Cash Rebate In The Amount of $298,255.

Duke's statutory violation aside, the Commission's Order properly held that the City was eligible for a cash rebate in the amount of $298,255. Importantly, the Application for Rehearing does not challenge the Commission's finding that "there is no statutory requirement under R.C.

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on Rehearing (June 16, 2010) at *15 (rejecting an argument made in an application for rehearing that was never previously raised by any party nor supported by information in the docket).

[6] Duke Comments, p. 1.

4928.66 that limits the EE/PDR Rider exemption to the specific accounts that can be loosely associated with the mercantile customer's EE/PDR project."[7] Nor does Duke dispute (in the Application for Rehearing or otherwise) that it represented to the City that its Streetlight Project would be eligible for a cash rebate. Instead, for the first time, Duke concedes that the City *is* entitled to a cash rebate,[8] but now claims that the rebate should only be for $106,175 because "the City filed the wrong application."[9] Curiously, the Application for Rehearing does not seek rehearing on *any* of the Commission's essential findings and conclusions that supported the award of $298.255. Instead, Duke appears to rest its entire Application for Rehearing on the dubious assertion that the City should have filed its application under some alternative rebate program.

Duke's sole assignment of error in the Application for Rehearing demonstrates the very problem the Commission's Order cautioned Duke to address, namely that Duke continues to create needless customer confusion regarding its current EE/PDR practices. Instead of collaboratively working with the City to commit its Streetlight Project to Duke's energy efficiency program, Duke has misled, confused, and confounded the City by misrepresenting its position and shifting its commitment to help the City obtain the cash rebate to which it is entitled. Duke is now creating even more customer confusion by insisting – for the first time in two-and-a half years – that the City should have filed a different application for a different rebate program. And even if the City could potentially be eligible under several of Duke's rebate programs (depending on the application submitted), that is irrelevant to the resolution of this case.

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[7] Order, p. 5.

[8] "[T]he Commission erred in ordering the Company to pay the equivalent of a 'prescriptive' rebate instead of a 'mercantile rebate' which is really what the City is entitled to for its program." Duke AFR, p. 2.

[9] Duke AFR, p. 3.

In sum, the Commission's Order was lawful and reasonable, and Duke has failed to give *any* lawful, credible, or justifiable reason for reconsidering it. As such, the Commission should deny Duke's Application for Rehearing.

III. CONCLUSION

Duke has failed to show that the Order was unreasonable or unlawful. Therefore, for the reasons stated above, the Commission should deny Duke's Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 17th day of April, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney
One of the Attorneys for the City of Cincinnati

Summary: Memorandum Contra Application for Rehearing of Duke Energy Ohio, Inc. electronically filed by Mr. Mark T Keaney on behalf of City of Cincinnati