

## BEFORE

### THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Duke Energy Ohio, Inc., for an ) Case No. 17-32-EL-AIR  
Increase in Electric Distribution Rates. )

In the Matter of the Application of )  
Duke Energy Ohio, Inc., for Tariff ) Case No. 17-33-EL-ATA  
Approval. )

In the Matter of the Application of )  
Duke Energy Ohio, Inc., for Approval ) Case No. 17-34-EL-AAM  
to Change Accounting Methods. )

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### MEMORANDUM CONTRA MOTION TO COMPEL

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#### I. INTRODUCTION

The Office of the Ohio Consumers' Counsel (OCC), contrary to its earlier stipulated commitments in each of the SmartGrid rider proceedings before the Commission, now seeks to re-litigate matters that have been resolved as long as nine years ago. Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) has filed an application for an increase in base electric distribution rates that includes a number of proposals. One important part of the case involves updating current grid modernization systems to allow for better coordination with competitive retail energy service (CRES) providers and to maintain existing software and hardware that comprises the modern grid in Duke Energy Ohio's service territory. Instead of considering matters relevant to this case, OCC seeks instead to revisit each and every element of the previous rider proceedings to reconsider and reargue whether it believes prudent decisions were made. In doing so, OCC seeks discovery of matters that are entirely irrelevant and not likely to lead to the

discovery of admissible information. OCC's discovery efforts are, in this regard, unduly burdensome. For these reasons, OCC's motion to compel should be denied.

## **II. OCC SEEKS DISCOVERY THAT IS WHOLLY IRRELEVANT TO THESE RATE CASE PROCEEDINGS.**

Many of the assertions in OCC's motion are factually incorrect, so it is important to explain more clearly what Duke Energy Ohio is proposing in its current rate proceedings. First, as explained by Company witness Donald L. Schneider, Jr., the Company was an early adopter in the industry, deploying a SmartGrid beginning as far back as 2009.<sup>1</sup> Mr. Schneider's testimony provides an overview of the system and explains its evolution.<sup>2</sup> Along with an understanding of the existing SmartGrid system, it is necessary to understand how data is stored for billing and customer service. Mr. Schneider provides a comprehensive overview of that information as well.<sup>3</sup> Mr. Schneider then goes on to explain current issues that must be addressed in order to maintain the existing system into the future.<sup>4</sup>

At the same time, as the result of matters raised in a separate docket wherein CRES providers are seeking access to the data that is stored in the existing systems, the Company is proposing a change to its current meter deployment and internal data systems, in order to enable the ability to share customer data with CRES suppliers in a bulk format.<sup>5</sup> This proposal is explained in detail by Duke Energy Ohio witness Scott B. Nicholson.<sup>6</sup> Mr. Nicholson points out that the changes proposed by Mr. Schneider in his testimony provide synergies with the Commission's focus on advanced technology and will permit the exchange of data with CRES

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No.08-920-EL-SSO, *et al.*, Opinion and Order (December 17, 2008).

<sup>2</sup> Direct Testimony of Donald L. Schneider, Jr. at pp. 3-6.

<sup>3</sup> *Id.* at pp. 7-8.

<sup>4</sup> *Id.* at pp.11-17.

<sup>5</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval*, Case No.14-2209-EL-ATA, Application (December 16, 2014).

<sup>6</sup> Direct Testimony of Scott B. Nicholson at pp. 8-12.

providers in bulk. It is this “perfect storm” of updating and modernizing that has caused the Company to propose an economically efficient and holistic approach that will ultimately save customers’ money and enable customers to have more control over their own data.

The plan is forward-looking. No part of the proposal requires a retrospective look at matters that were determined many years ago and resolved through stipulations and Commission approvals.

In the following discussion of the OCC’s issues, it should be noted that OCC’s description of the various interrogatories and document requests at issue is incomplete. Based on those incomplete descriptions, OCC has chosen to group its arguments into eight discrete categories that may or may not fully cover the specific interrogatories and requests for production of documents. Duke Energy Ohio is, herein, addressing OCC’s arguments. To the extent OCC has omitted some portions of the interrogatories and document requests, it is assumed that there is no dispute. However, Duke Energy Ohio reserves the right to address additional arguments concerning these interrogatories and document requests, to the extent they were unaddressed by OCC’s actual discussion.

#### **1. SmartGrid Investment Grant Funds and RFPs**

The subject of SmartGrid Investment Grant Funds received from the federal government as part of the American Recovery and Reinvestment Act of 2009 was addressed in testimony filed with Duke Energy Ohio’s second SmartGrid rider application in 2010. Company witness Donald H. Denton, III, provided a detailed explanation of the process of applying for and receiving the funds and explained that the funds would be credited to projects at the time the invoice was submitted.<sup>7</sup> OCC was an intervenor in that rider case and conducted discovery

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<sup>7</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM for 2009 SmartGrid Costs*, Case No. 10-867-GE-RDR, Direct Testimony of Donald H. Denton, III, at pg. 6 (July 26, 2010).

specifically on this issue. Thereafter, Mr. Denton testified again the next year to provide an update, to explain how the funds would be received and spent, and to explain the job-related benefits associated with SmartGrid deployment in Ohio. The specific accounting was explained by Duke Energy Ohio witness Peggy A. Laub and illustrated in her schedules. This case was resolved by stipulation that was signed by OCC and approved by the Commission. The accounting for SmartGrid Investment Grant Funds continued through each rider proceeding up through the 2016 application for 2015 spending. In each of these cases, OCC conducted discovery, as needed, and had opportunities to cross-examine witnesses or seek data needed. And yet, now in 2017, OCC not only seeks to be provided again with the same information that was provided in earlier cases, but now requests data related to how such funds were used in other states. Information pertinent to the use of such funds in other states is not relevant to this Ohio proceeding. And information concerning the use of these funds in Ohio has already been provided and addressed by the Commission.

The information OCC seeks relating to Requests for Proposals to acquire system hardware and software for SmartGrid deployment is likewise information that has been provided since the beginning of deployment. Choices made with respect to such matters have long since been resolved. Indeed, with the Commission's review and approval to continue with deployment in 2012, such questions were determined favorably by all parties including OCC.

Indeed, almost all of the items in contention in OCC's motion relate to matters already addressed in previous SmartGrid rider proceedings in which OCC participated. Thus the information OCC seeks is readily available in the Commission's docket. But none of these topics is relevant to the Company's present proposals for future development of the existing SmartGrid deployment.

## **2. Interval Customer Data and the Energy Data Management System and Self-Healing Teams**

Interrogatories listed by OCC in its motion relating to these topics were in fact answered by the Company. For example, OCC interrogatory 02-31 states as follows:

*Referring to Mr. Nicholson's testimony at page 3, line 19, in your supplier web portal, define what is meant by "interval customer data." In your response, define the "interval" that is available to suppliers for both Echelon and Itron metered customers and whether that "interval" data is billing quality.*

The Company responded as follows:

*Please see page 4, lines 1 through 5, of Mr. Nicholson's testimony. The AMI interval data provided on the supplier web portal is the same for Itron and Echelon meters.*

The Company cannot respond more clearly. On page 4, lines 1 through 5, Mr. Nicholson states that the Portal provides hourly interval customer usage data for customers who have either an IDR or an AMI meter and this data can be requested for either the most recent 12- or 24-month billing periods. *Each hourly interval indicates whether the data in that interval is of billing quality or not.* It is unclear why OCC continues to seek a response when in fact a response was provided.

In OCC interrogatory 4-99, OCC asked the Company to describe the impact that the self-healing team deployment had on SAIFI and CAIDI reliability indices for each year between 2010 and 2016. The Company responded by explaining that self-healing team operations lower SAIFI by reducing the number of customers experiencing a sustained interruption due to a fault. Self-healing teams raise CAIDI because they reduce the number of customers interrupted more than they reduce the customer minutes of interruption.

While OCC may not agree with this answer, it is a full and complete answer. Again, it is difficult to understand why such responses have formed the basis for OCC's motion.

### 3. Charges for SmartGrid Components

As explained to OCC in the Company's responses and, indeed, as OCC well knows, after each year of SmartGrid deployment, the Company filed a SmartGrid rider application to recover costs from that prior year. In each application, Company witnesses described what had been accomplished that year, what successes had resulted, and what financial costs had resulted. In every case, Company witness Peggy A. Laub provided financial schedules that included costs for capital expenditures related to deployment. In each of these cases, OCC was an intervening party and conducted discovery. Thus, all of the financial aspects of SmartGrid deployment continue to reside in the schedules attached to Ms. Laub's testimony, as submitted along with each of the rider applications since 2009.

### 4. Relevancy and Access

As expressly set forth in O.A.C. 4901-1-16, discovery may be obtained in respect of any matter "not privileged, which is *relevant* to the subject matter of the proceeding."<sup>8</sup> However, discovery into matters or about information that is not reasonably calculated to lead to the discovery of admissible evidence is not permitted.<sup>9</sup> In this regard, the Commission has found that the rules applicable to discovery will not be liberally interpreted.<sup>10</sup>

In its motion, OCC has critically neglected to explain what possible connection matters such as the SmartGrid Investment Grant Funds or RFPs from many years back could possibly have with the Company's current rate proceeding. The Company's proposal in this case is entirely forward-looking. There is no administrative economy or record benefit in revisiting issues that were addressed long ago. In applying the general principles set forth above, OCC's

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<sup>8</sup> O.A.C. 4901-1-16 (emphasis added).

<sup>9</sup> *Id.* See also *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan*, Case No.99-1658, 2000 PUC LEXIS 337, \*4.

<sup>10</sup> *In the Matter of the Complaint of David Wellman v. Ameritech Ohio*, Case No.99-768-TP-CSS, 2002 PUC LEXIS 634, \*6-7.

discovery requests are well beyond the scope of discovery in this case. Moreover, OCC's requests are not relevant or helpful in any way to the Commission's decisions in determining what infrastructure may be needed in the future. To the extent OCC wishes to argue that the Company should have made different choices in the past with respect to any particular vendor or product, OCC should have raised such issues many years ago. OCC's efforts to relive the past are counter-productive and serve only to unnecessarily delay the proceedings and squander administrative resources.

Rule 4901-1-19(D), Ohio Administrative Code (O.A.C.) provides:

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, *it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.* (Emphasis added.)

In this instance, OCC actually has the same access to the same information that the Company has, since the answers to OCC's interrogatories may be found in the Commission's docketing records online. Duke Energy Ohio provided case numbers and witness names, and directed OCC to Ms. Laub's schedules, when responding about the SmartGrid Investment Grant Funds.

To the extent any of OCC's SmartGrid deployment questions related to prior years are deemed relevant at all, OCC may find its answers in the cases in which it participated and conducted discovery. The burden on Duke Energy Ohio to ferret out material that OCC seeks is the same for Duke Energy Ohio as it would be for OCC. In this case, OCC is asking the Company to do its work and to perform research that OCC must do on its own. It is inequitable and unduly burdensome to request Duke Energy Ohio to locate and produce information and

documents from old cases in which OCC participated. This is a particularly egregious imposition when the information sought is not relevant to the case.

### **III. Conclusion**

In an attachment to this Memorandum, the Company will provide more specific responses to the discovery items that OCC has specifically delineated in its Motion. However, all of these requests in some way related to deployment plans and decisions along the way, all of which were monitored and agreed in almost every rider case, by Commission Staff, OCC and others. It is not productive to this case to rehash these matters. Rather, the parties should look at the proposal that is currently explained in testimony filed with the Company's application and determine what recommendations for future investment will provide value in the future. As all of the proposed expenditures are forward-looking, the past is not relevant to this case. For this reason, OCC's motion to compel should be denied.

Respectfully submitted,

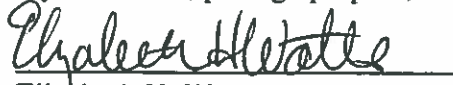


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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 18th day of September 2017, by U.S. mail, postage prepaid, or by electronic mail upon the parties listed below.

  
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### **Status of Specific Responses As Listed In OCC's Motion**

**RPD-02-06**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**RPD-02-07**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-02-011**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-02-31**

Previously answered in full by the Company.

**INT-02-45**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-04-99**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

This data is also available in the Company's annual reliability filings in docketing.

**INT-04-103**

Previously answered in full by the Company.

**INT-05-112 through 05-121**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-06-129**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-06-134**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-06-146**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

**INT-06-147**

Irrelevant and also available in each of the SmartGrid rider proceedings in the Commission's docketing.

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