

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Its Electric Distribution Rates.)	Case No. 17-32-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 17-33-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 17-34-EL-AAM
)	

**CITY OF CINCINNATI’S MOTION FOR LEAVE TO FILE AN OBJECTION
INSTANTER, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO PRESENT
TESTIMONY ON AN ADDITIONAL ISSUE**

I. INTRODUCTION

The City of Cincinnati (“City”) moves the Commission to grant it leave to file an objection to the Staff Report, which concerns a material issue that no other party has raised in this proceeding. The material issue at hand concerns Duke Energy Ohio, Inc.’s (“Duke”) unreasonable application and interpretation of the backup delivery point rider (“Rider BDP”) that the Commission first approved in Case No. 08-0709-EL-AIR et al. (“2008 Rate Case”). Given that Duke’s application in this case seeks re-approval and a continuation of Rider BDP into the foreseeable future, it is in the best interest of the Commission, the parties, and Duke’s customers to develop a full evidentiary record on a little-known but controversial tariff. Importantly, no party to this proceeding will be prejudiced if the Commission grants the City’s Motion. The City and Duke have already thoroughly considered and fully briefed issues surrounding Rider BDP in a separate complaint case currently pending before the Commission. But unlike the pending complaint case between Duke and the City, this proceeding involves multiple stakeholders with

different perspectives and different interests, as well as the renewed authorization of Rider BDP moving forward and the establishment of new rates. Accordingly, adjudicating issues related to Rider BDP in this forum is more favorable (i.e., from the Commission's perspective) as the Commission is better equipped to consider and weigh testimony about Rider BDP from many different perspectives, not just from Duke and the City.

In the alternative, pursuant to Ohio Admin. Code 4901-1-28(C) and well-established precedent, the Commission should exercise its "considerable discretion" by granting the City leave to present testimony on one specific, additional issue pertinent to this proceeding (i.e., Rider BDP). Given that Rider BDP charges are currently improperly tied to the underlying distribution rates, it is in the best interest of the Commission and all stakeholders to adjudicate and develop a full record concerning Rider BDP's impact on Duke customers. In so doing, the Commission is better suited to issue an informed decision about Rider BDP and other issues related to calculating and setting Duke's distribution rates.

II. ARGUMENT

A. The Commission Should Grant the City Leave to File an Objection *Instante*.

1. Duke's Proposed Continuation of Rider BDP Warrants the Full Development of Record Evidence Concerning Rider BDP's Impact on Customers.

In the application, Duke proposes the continuation of an unlawful and unreasonable tariff (i.e., Rider BDP) that the Commission first approved in the 2008 Rate Case. Although the application does not specifically discuss or even reference Rider BDP, Duke seeks re-approval and continuation of Rider BDP. Under Rider BDP, Duke assesses exorbitant charges on customers taking backup service. There is a dispute between Duke and the City regarding which customers are properly subject to Rider BDP. Duke claims that Rider BDP applies to all customers seeking redundant service, even those customers who have not requested Duke's new

“capacity reservation” product. The City disputes Duke’s interpretation, as it has never requested any “capacity reservation” product and simply asks for a continuation of the same service it has received for decades without a near 100% increase in its distribution charges for certain critical City facilities.

As more fully explained in the City’s proposed Objection to the Staff Report, a copy of which is attached hereto as **Exhibit A**, there are also disputes regarding the pricing of Rider BDP. Duke has charged customers the full distribution rate as a mere proxy for its cost to reserve capacity on an adjacent circuit. But by arbitrarily tying the Rider BDP rate to the full distribution rate, Duke fails to show that it has incurred any additional, identifiable incremental cost to provide this capacity reservation service. Troublingly, Duke never created any cost of service study specific to Rider BDP or to reserving capacity; instead, Duke generically cites to its distribution rate cost-of-service study as its sole cost support for Rider BDP. Given that Rider BDP was considered and approved in a prior distribution rate case and given that Rider BDP charges are artificially tied to the unbundled distribution rate, this is an appropriate proceeding to consider, present testimony, and debate the merits and demerits of Rider BDP and its overstated costs without a cost of service study going forward. Accordingly, the Commission should grant the City leave to file an objection to the Staff Report for failing to address (or even reference) Rider BDP and its impact on customers.

Duke and the City recently concluded a complaint case proceeding before the Commission based on Duke’s unlawful and unreasonable application of Rider BDP to certain critical infrastructure operated by the City for the benefit of the public and the environment (“Rider BDP Complaint Case”).¹ While it is possible that the Commission may render its

¹ *The City of Cincinnati v. Duke Energy Ohio, Inc.*, Case No. 16-1975-EL-CSS.

decision in the Rider BDP Complaint Case during the pendency of this case, Duke's proposed continuation of Rider BDP in this case necessitates the full development of record evidence related to Rider BDP. Importantly, the Commission should consider and review evidence that assesses the impact of Rider BDP on all customers, not just the City. To ensure the Commission is fully and fairly apprised of all issues pertinent to Duke's distribution rate case application, including issues related to Rider BDP, the City should be granted leave to file its Objection to the Staff Report.

2. Rider BDP Is Appropriate to Consider in this Proceeding Because Duke Has Failed to Offset Significant Rider BDP Revenue against Its General Revenue Requirement Contrary to Its Prior Assurances to the Commission.

Another reason to grant the City leave to file its Objection to the Staff Report is that Duke has not included the revenue associated with Rider BDP from the City and other customers in its projections. As described in more detail in the City's Objection to the Staff Report (see Exhibit A), Duke has earned a healthy profit off Rider BDP customers since those revenues were not included in its last rate case. Moving forward, Duke has repeatedly assured the Commission that Rider BDP would be revenue neutral to the Company. However, Duke seeks to extract some \$1.2 million in Rider BDP charges per year from the City. Yet Duke does not account for this revenue in its projections by offsetting it against Duke's general revenue requirement.

As a result, if the Commission denies this Motion and sanctions the continuation of Rider BDP without discussion or debate, Duke will continue to generate millions of dollars in Rider BDP revenue from the City (and other customers not included in the test period) that will not be offset against its general revenue requirement for the foreseeable future. To ensure revenue neutrality and to insulate customers from unreasonable Rider BDP charges, the City should be granted leave to file its Objection to the Staff Report.

3. Other Parties May Be Materially Impacted by Duke's Unlawful Application and Distorted Interpretation of Rider BDP.

It is especially important for the Commission to consider Rider BDP in this proceeding because Rider BDP impacts more than just the City. In the Rider BDP Complaint Case, Duke and the City developed a detailed factual record about Rider BDP, but only as applied to certain facilities owned and/or operated by City. The Rider BDP Complaint Case does not assess the broader impact of Rider BDP on other Duke customers, nor does it address other issues that may be of importance to other parties. Unlike the Rider BDP Complaint Case, this proceeding will allow other parties, not just the City, to develop and present evidence for the record concerning Rider BDP's broader impact in a variety of different circumstances and scenarios. As such, other customers would benefit from the City placing the issue of Rider BDP squarely before the Commission, which will give the Commission and all stakeholders a more complete and balanced understanding of Rider BDP and its impact on customers.

4. There is No Prejudice to Duke or Any Other Party to this Proceeding by Granting this Motion.

Importantly, granting the City leave to file its Objection will not prejudice Duke or any other party. First, the City is only requesting the consideration of *one* additional objection about *one* specific rider. Second, Duke has already considered and fully briefed the Rider BDP issues in the Rider BDP Complaint Case. Moreover, the City does not anticipate any additional significant written discovery regarding Rider BDP, as both the City and Duke have already completed numerous rounds of discovery, including taking depositions of six different witnesses, in the Rider BDP Complaint Case. Accordingly, given that the City is only raising one new objection concerning one specific rider that has already been fully briefed by Duke and the City, there is no prejudice to any party if the Commission grants the City leave to file its Objection to the Staff Report.

B. In the Alternative, the Commission Should Grant the City Leave to Present Testimony on an Additional Issue Not Addressed in the Parties' Objections to the Staff Report.

1. The Commission and Attorney Examiner Have Considerable Discretion to Designate Additional Issues or Areas of Inquiry That Are Not Addressed in the Staff Report or in Objections to the Staff Report.

Pursuant to Ohio Admin. Code 4901-1-28(C), objections to the Staff Report in a rate proceeding frame the issues in the proceeding, “although the commission, the legal director, the deputy legal director, or the attorney examiner may designate additional issues or areas of inquiry.” Similarly, Rule 4901-1-28(C) underscores that “[t]he commission or the presiding hearing officer may, in their discretion, permit the parties to present evidence or conduct cross-examination concerning additional issues” beyond those raised in objections or the Staff Report. As such, the Commission exercises “considerable discretion in determining which matters are proper for consideration in rate proceedings.”² The Supreme Court of Ohio has repeatedly recognized as much, finding that the Commission may “review any of an applicant’s ‘rules and regulations which in any manner could be applied in charging the new rates.’”³ Accordingly, there is ample legal authority and well-established precedent to grant the City leave to present testimony on one additional issue, namely Rider BDP, that was not covered by other intervenors’ objections to the Staff Report.

² *In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 89-1001-EL-AIR, 1990 Ohio PUC LEXIS 912, Opinion and Order, at *10.

³ *Cleveland Elec. Illum. Co. v. Pub. Util. Com.*, 42 Ohio St.2d 403, 420, 330 N.E.2d 1 (1975); *Cleveland v. Pub. Util. Com.*, 63 Ohio St.2d 62, 67, 406 N.E.2d 1370 (1980); *AT&T Communications of Ohio, Inc. v. Pub. Util. Com.*, 51 Ohio St.3d 150, 152, 555 N.E.2d 288 (1990); *see also In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and to Increase Its Filed Schedules for Fixing Rates and Charges for Electric Service*, Case No. 71-634-Y, 1973 Ohio PUC LEXIS 1, Opinion and Order, at *52 (repeating that the “scope of a general rate increase request certainly includes nearly all, if not all of the applicant’s rules and regulations which in any manner could be applied in charging new rates.”).

2. There is Good Cause to Grant the City Leave to Present an Additional Issue as the Commission Will Benefit from a Full Record in this Proceeding and There Is No Prejudice to Any Party.

The Commission should exercise its considerable discretion by granting the City leave to present testimony on one additional issue that will facilitate the development of a full record of all material issues related to calculating and setting Duke's distribution rates. As explained previously, Rider BDP charges are arbitrarily tied to the underlying distribution rates; accordingly, it behooves the Commission to adjudicate and develop a full record concerning Duke's unreasonable application and distorted interpretation of Rider BDP. With the development of a more complete factual record, the Commission is better equipped to make an informed decision on a critical issue that directly relates to setting/calculating Duke's underlying distribution rate.

Finally, no party will be prejudiced by granting the City leave to raise issues related to Rider BDP as Duke and the City have already fully briefed these issues in the Rider BDP Complaint Case. As such, there will be no prejudice in ensuring that the distribution rates established in the near future are based on a fully developed evidentiary record.

III. CONCLUSION

In conclusions, for the foregoing reasons, the Commission should grant the City leave to file an objection *instanter*, or in the alternative, grant the City leave to present testimony on an additional issue pertinent to this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Leave to File Objections *Instantly*, or in the alternative, Motion for Leave to Present Testimony on Additional Issues was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 3rd day of November, 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 Attorneys for the City of Cincinnati

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THE CITY OF CINCINNATI’S OBJECTION TO THE STAFF REPORT

I. INTRODUCTION

Pursuant to R.C. 4909.19 and Ohio Admin. Code 4901-1-28, the City of Cincinnati (“City”) submits the following objection to the Staff Report as filed on September 26, 2017 and as supplemented on October 12, 2017. The City objects to the Staff Report’s failure to appropriately address Rider BDP, and provides specific grounds supporting its objection. The City reserves the right to supplement or modify this objection if Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report. The City further reserves the right to respond to objections or other issues raised by other parties in the above-captioned proceedings.

II. OBJECTION

A. The Staff Reports Fails to Address Rider BDP as an Inappropriate and Unreasonable Tariff.

Under Rider BDP, which was first approved by the Commission in Case No. 08-0709-EL-AIR et al. (“2008 Rate Case”), Duke Energy Ohio, Inc. (“Duke”) assesses charges on customers seeking to reserve capacity on a backup circuit in the event the customer’s primary

service experiences an interruption or outage. Conspicuously absent from the Staff Report is any mention of or reference to Rider BDP. The City objects to Staff's failure to address Rider BDP as an inappropriate and unreasonable tariff. More specifically, the City objects to the Staff Report's failure to criticize (let alone acknowledge) the unreasonable and exorbitant charges that Duke seeks to apply under Rider BDP for customers who receive backup delivery service. For the following reasons, the Commission must substantially revise, if not eliminate, Rider BDP:

1. Duke Seeks to Charge a Rider BDP Rate That Is Inconsistent with the Terms of Rider BDP.

The terms of the Rider BDP tariff state that “[m]onthly charges will be based on the unbundled distribution and/or transmission rates of the customer’s most applicable rate schedule and the contracted-for reserved backup delivery point capacity.” Duke has interpreted this language as requiring a rate that is equal to the full distribution rate times capacity, with the full distribution rate being a charge for all the costs of distribution service on the backup line. In other words, Duke claims that the cost of reserving backup capacity on the distribution system is the same as the cost of providing primary distribution service. Thus, Duke is seeking to apply the full distribution rate times a pre-negotiated amount of reserved capacity.

But the actual tariff language does not require Duke to charge the full distribution rate; instead, the terms of Rider BDP merely state that monthly charges must be “**based on** the unbundled distribution and/or transmission rates.” By charging the full distribution rate, instead of negotiating the rate as provided by the terms of the tariff, Duke is recovering far more than its actual costs to provide the service contrary to its representations to the Commission when it first sought approval for Rider BDP.

2. Duke Seeks to Charge a Rider BDP Rate That Does Not Reflect Actual Costs Incurred to Provide Rider BDP Service.

By charging the full distribution rate for Rider BDP service, Duke insists that the cost to provide Rider BDP service is equal to the full distribution rate. But Rider BDP is not a charge for base distribution service; rather, it is described by Duke as a capacity reservation service. In other words, Rider BDP is a service that purportedly provides some level of assurance that space is available on an adjacent feeder so that a customer can switch to the adjacent feeder during an outage or interruption. Duke is using the full distribution rate as a mere proxy for Duke's cost to reserve service. But in doing so, Duke is recovering much more than its actual costs to reserve capacity for the Critical Facilities contrary to its representation to the Commission that Rider BDP would be revenue neutral and that Rider BDP would help Duke "cover [its] real costs" for providing this capacity reservation service.¹

3. Duke Failed to Create a Cost of Service Study or a Rate/Bill Impact Schedule for Rider BDP.

Duke is using the full distribution rate as a proxy for its cost to reserve capacity because it either has not or cannot identify any actual, identifiable costs incurred to provide Rider BDP service. For instance, Duke never created a cost of service study for Rider BDP, nor did Duke create a cost of service study for reserving capacity even though Duke could have done so. Not only did Duke fail to create a cost of service study specific to Rider BDP, Duke also failed to create any rate impact or bill impact schedule even though it is customary practice to consider the rate impact that a new tariffed service would have on customers who received that new service. In sum, Rider BDP completely lacks any cost support.

4. Duke Seeks to Charge a Rider BDP Rate that Is Discriminatory and Seeks Double Recovery of Its Distribution Rate.

¹ *In the Matter of the Application of The Cincinnati Gas & Electric Company For Approval of its Rider BDP, Backup Delivery Point*, Case No. 06-718-EL-ATA ("Rider BDP Application Case"), Application, Ex. C-1.

By artificially tying the monthly Rider BDP rate to the full distribution rate, Duke is double recovering contrary to its representations to the Commission that Duke would only cover its “real costs” to provide Rider BDP service. The distribution rate is comprised of a collection of services that the utility provides for the entire distribution system. In setting the distribution rate, Duke already recovers costs associated with designing and managing the distribution system. These system design costs include costs for maintaining sufficient excess capacity on circuits so that customers can be temporarily switched to adjacent circuits in the event of an outage or interruption or to perform maintenance work on a circuit. As such, Duke’s distribution customers already are paying for Duke’s distribution costs to design the system in a way that ensures there is sufficient excess capacity available to customers if needed. Yet, by seeking to charge customers double for distribution service via Rider BDP - even though it is not incurring any additional system design costs on that adjacent circuit - Duke is double recovering in violation of its representations to the Commission. The Commission should refuse to sanction any tariff that would so drastically increase a customer’s electric bill, especially for such an infrequently used service that customers already pay for in distribution rates.

5. Rider BDP Charges Should Reflect Actual, Identifiable Incremental Costs Duke Incurs to Provide Backup Delivery Service.

Instead of arbitrarily using the full distribution rate, the Rider BDP rate should be based on Duke’s actual, identifiable incremental costs incurred to provide Rider BDP service. Duke’s Rider BDP charges are inappropriate because they arbitrarily and unreasonably presume that the cost of providing Rider BDP service is at least equal to, or greater than, the costs being recovered under the unbundled distribution and/or transmission rates. Instead, the costs associated with providing Rider BDP service should only reflect the identifiable incremental costs actually incurred by Duke, net of any capital contributions provided by the customer, in order to reserve

capacity for that customer (“Additional Costs”). In many cases, the Additional Costs associated with providing a reservation of capacity service are less than Duke’s system average cost of providing distribution service; nonetheless, Duke still charges customers a Rider BDP rate at least equal to Duke’s system average costs for distribution service.

Duke’s current interpretation and application of Rider BDP allows Duke to over-recover where the Additional Costs to provide Rider BDP service are less than Duke’s distribution system average cost. To avoid over-recovery, Duke should identify its Additional Costs, if any, associated with reserving capacity for each individual backup delivery point, and recover those Additional Costs consistent with Section 3 of the Net Monthly Bill provision of Rider BDP, where the monthly charge would be equal to the product of the Additional Costs incurred by Duke and a levelized fixed charge.

6. Contrary to Duke’s Representations to the Commission, Rider BDP is Not Revenue Neutral to Duke.

When Duke submitted its application to establish Rider BDP in Case No. 06-718-EL-ATA,² Duke represented to the Commission that “appropriate BDP pricing enables the Company to be indifferent as to whether it simply provides capacity or provides electric service on its transmission and distribution assets.”³ But Rider BDP is not revenue neutral to Duke.

When the Commission approved Rider BDP in the 2008 Rate Case, there were no Rider BDP revenues to collect during the 2008 Rate Case test period; accordingly, there was nothing for Duke to offset against its general revenue requirement while its 2008 rates were effective. Similarly, in Case No. 12-1682-EL-AIR *et al.* (“2012 Rate Case”), Duke again did not collect

² Duke eventually consolidated its Rider BDP application in Case No. 06-718-EL-ATA into the 2008 Rate Case. *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates et al.*, Case No. 08-709-EL-AIR (“2008 Rate Case”), Entry (September 12, 2008), ¶¶ 4, 5.

³ Rider BDP Application Case, Application, Ex. C-1.

any Rider BDP revenue during the test period, which was the 12-month period preceding December 31, 2012. Nevertheless, while its 2012 rates were (and still are) effective, Duke has collected significant Rider BDP revenue from customers. None of this revenue has ever been offset against Duke's general revenue requirement.

To make matters worse, Duke will continue to profit off Rider BDP customers because the test period for this distribution rate case does not include the approximate \$1.2 million in Rider BDP charges per year that Duke seeks to extract from the City. Thus, for the foreseeable future (i.e., until Duke files its next rate case), Duke will generate millions of dollars in Rider BDP revenue from the City (and other customers not included in the test period) that will not be offset against its general revenue requirement.

7. Rider BDP Does Not Apply to Customers with Existing Backup Delivery Points that Do Not Request Rider BDP Service.

Rider BDP does not apply to customers with existing backup delivery points that do not request capacity reservation service. The actual terms of Rider BDP are clear that it applies only “[u]pon customer request” for “additional [backup] delivery points.” Staff noted one exception in its Staff Report in Duke's last distribution rate case:

Finally, Staff is aware that some customers have been provided, and are currently receiving, a predecessor service to Backup Delivery for no additional charge. Staff believes it appropriate for those customers to now be charged for the service they are receiving.⁴ Cincinnati has never received the predecessor service to Rider BDP. Duke has never reserved capacity for any of the City facilities, and so Staff's reference to customers receiving the predecessor service is not applicable to the City. Staff has also never found it appropriate for

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates et al.*, Case No. 08-709-EL-AIR (“2008 Rate Case”), Staff Report (January 27, 2009), at 21.

customer like Cincinnati to be charged for Rider BDP. However, Duke has ignored Staff's instruction and has insisted that any and all customers with more than one delivery point, most of which never received the predecessor service, must pay for Rider BDP. Staff's Report in this proceeding should have directed Duke to apply Rider BDP as directed. Duke should not apply Rider BDP to customers who do not request capacity reservation service and did not receive Duke's predecessor service.

8. Rider BDP Has a Limited Application Because It Only Applies to Backup Sources That Are Distinctly Different from the Primary Source.

In support of Rider BDP in the 2008 Rate Case, Duke explained that Rider BDP charges would apply only to backup sources that are "distinctly different" from the sources providing primary service.⁵ In other words, where the primary and backup circuits have similar characteristics (or are not "distinctly different"), Rider BDP charges do not apply. However, Duke has disregarded this commitment by improperly seeking to apply Rider BDP charges to all primary and backup circuits, even those that have similar characteristics (or are not "distinctly different").

⁵ 2008 Rate Case, Direct Testimony of James E. Ziolkowski, at p. 16.

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Summary: Motion Motion for Leave to File an Objection Instantly, or in the alternative, Motion for Leave to Present Testimony on an Additional Issue electronically filed by Mr. Mark T Keaney on behalf of City of Cincinnati