

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in 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
)	

**MEMORANDUM CONTRA MOTION TO STRIKE OBJECTIONS OF INTERSTATE
GAS SUPPLY, INC.**

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November 13, 2017

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I. INTRODUCTION

Pursuant to OAC 4901-1-28(B) and R.C. 4909.19, IGS filed objections to the Staff Report of Investigation (“Staff Report”) relating Duke Energy Ohio, Inc.’s (“Duke”) application to increase its base distribution rates.¹ Among other things, Interstate Gas Supply, Inc. (“IGS”) objected to the Staff Report’s failure to provide a comprehensive evaluation of all matters and issues related to Duke’s proposed customer information system (“CIS”).² In support of its objections, IGS specifically referenced the Staff Report’s failure to discuss how, and at what cost, Duke’s proposed CIS would transmit interval data to CRES providers; as well as the Report’s failure to recommend that Duke calculate customer peak load contributions, energy usage, and network service peak load

¹ Objections to Staff Report of Investigation and Summary of Major Issues of Interstate Gas Supply, Inc. (Oct. 26, 2017) (hereinafter “IGS Objections”).

² *Id.* at 12-16 (Objections E.1. and E.2.).

contributions for purposes of calculating CRES provider wholesale settlement statements; as well as the failure to address billing functionality under the proposed CIS.³

On November 6, 2017, the Office of Ohio Consumers' Counsel ("OCC") filed a motion to strike IGS's objections.⁴ Because Duke incurred no expenses related to the CIS in the Test Year, OCC alleges that issues related to the CIS cannot be addressed in a base rate case under Ohio law.⁵ OCC's motion should be denied for two simple reasons: It seeks to inappropriately prejudge the merits of IGS's objections, and it contradicts OCC's own request to resolve issues related to the CIS in this case.

II. ARGUMENT

The OCC moves to strike objection E.1 and E.2, which state that the Staff Report failed to provide a comprehensive evaluation of all matters and issues related to Duke's proposed CIS upgrade.⁶ OCC argues that since the Staff Report found that Duke failed to incur any CIS-related expense during the Test Year, the proposed upgrades are entirely forward-looking and should therefore be excluded from the base rate case.⁷ OCC asserts that pursuant to R.C. 4909.15(C)(1), a determination of revenues and expenses associated with the proposed CIS upgrades is appropriate in a base rate proceeding only

³ *Id.* at 13-16. R.C. 4909.19(C) requires the Staff Report to conduct an "investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith." IGS Objections E.1. and E.2. relate to the Staff Report's failure to adhere to these requirements.

⁴ Motion to Strike Objections to the PUCO Staff's Report of Investigation by The Office of The Ohio Consumers' Counsel (Nov. 6, 2017) (hereinafter "Motion to Strike"). Although OCC does not articulate with specificity the portions of IGS's Objections that it seeks to strike (OCC does not identify objection E.2, identifying only page 13), this memorandum contra responds as if OCC moved to strike E.1. and E.2, given that both objections addressed upgrades to the CIS.

⁵ *Id.* at 4.

⁶ IGS Objections at 12.

⁷ Motion to Strike at 2.

in situations where the expenses are incurred during the Test Year.⁸ On that basis, OCC moves to strike IGS's objections E.1 and E.2., asserting that the objections are not legally cognizable.

R.C. 4909.19(C) requires the Staff Report to "cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith." Pursuant to OAC 4901-1-28(B), objections "may relate to the findings, conclusions or recommendations contained in the [staff] report, or to the failure of the report to address one or more specific items." Indeed, objections "must be specific," and any objections that fail to meet this requirement may be stricken.⁹ In addition, OAC 4901-1-28(C) states that the purpose of objections is to frame the issues in the proceedings.

More importantly, this Commission has previously held that "[w]hether or not [objections] are based on accurate representations of fact, and whether or not they are appropriate considerations in the setting of rates, is irrelevant to the question of whether they should be stricken."¹⁰ In the Commission's view, "[t]he intrinsic merit, or lack of merit, of any particular objection must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time."¹¹ The question of whether an objection is supportable or legal is irrelevant. Accordingly, objections shall withstand a motion to

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR, Entry at 2 (Nov. 10, 2003) (hereinafter "*Water and Sewer LLC*"). See also *Industrial Energy Consumers v. Pub. Util. Comm.*, 63 Ohio St. 3d 551, 554 (1992).

¹¹ *Water and Sewer LLC*, Entry at 3 (Nov. 10, 2003).

strike so long as they relate to the findings, conclusions, or recommendations in a staff report, or relate to the failure of the staff report to address certain items, and are specific.

Despite this clear legal standard, OCC's Motion briefs its argument on the merits of IGS's objection and, therefore, the Motion should be denied. OCC neither asserts that the objection lacks specificity nor that it is unrelated to the Staff Report. Objections E.1 and E.2. relate directly to the Staff Report's failure to address material issues put into play by the applicant in its request to incur expenses and collect revenues to upgrade the CIS. The objection frames the issue(s) in this proceeding by citing the Staff Report's failure to address critical issues, such as billing functionality, the manner in which Duke calculates customer peak load contributions, energy usage, and network service peak load contributions for purposes of calculating CRES provider wholesale settlement statements under the proposed CIS, as well as how, and at what cost, the proposed CIS will transmit interval data to CRES providers. Accordingly, OCC's Motion to Strike should be denied.

OCC further claims that issues related to Duke's CIS "would more properly be addressed in other pending cases before the PUCO" ¹² Inexplicably, OCC's forum-based argument represents an about-face from a joint motion it filed earlier this year specifically recommending that the Commission stay the procedural schedule in Duke's tariff application case so that matters related to Duke's CIS would be more properly "dealt in a rate increase proceeding."¹³ OCC's argument is improper, given that at the time it filed the joint motion in the *CEUD Case*, it was fully aware that Duke did not incur CIS-

¹² Motion to Strike at 3.

¹³ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval Regarding Customer Energy Usage Data*, Case No. 14-2209-EL-ATA, Motion to Hold the Case in Abeyance and Request for Expedited Review by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy at 3 (May 3, 2017) (hereinafter referred to as "*CEUD Case*" and "Motion to Hold in Abeyance").

related expenses during the test year. Indeed, the testimony of Retha Hunsicker on which OCC relies in its Motion to demonstrate that Duke incurred no CIS-related expenses in the Test Year¹⁴ was publicly available when OCC urged the Commission to resolve CIS-related issues in this case.¹⁵

Now OCC attempts to delay the discussion of Duke's CIS by shifting the forum back to the *CEUD Case*. Recognizing that its ploy is likely to be perceived as nothing but thinly veiled gamesmanship, OCC attempts to support its argument by claiming that nowhere did its motion "suggest that the entirety of the *CEUD Case* would be litigated through the base rate case" ¹⁶ But OCC's motion in that case speaks for itself:

On April 26, 2017, Duke filed testimony in this case [the *CEUD Case*]. *Duke's testimony purported to answer only one of the PUCO's four questions from the December 15, 2015 Entry. **With respect to the other three (what type of customer data should be provided to marketers, the costs of providing this data, and the timeframe for providing this data)***, Duke simply referred to testimony in the Duke Rate Case.

As the Attorney Examiner acknowledged, there are very complex and detailed issues raised in this proceeding. In the electric distribution rate case Duke is seeking approval of mechanisms to collect costs from customers for system changes necessary to enable customer usage data to be provided to marketers. *The rate case, according to Duke "will enable parties to fully evaluate, on a holistic level, the current system and appropriate modifications," while the "present proceeding does not allow such an opportunity."*¹⁷

¹⁴ Motion to Strike at Footnote 9.

¹⁵ Witness Hunsicker's testimony was available for over two months when OCC requested that the Commission delay the *CEUD Case*.

¹⁶ Motion to Strike at 4.

¹⁷ *CEUD Case*, Motion to Hold in Abeyance at 2 (emphasis added).

Now that Duke has filed its testimony in both the Duke Rate Case and in this Case, it is clear that many of the issues raised in this case will ultimately need to be resolved in the rate case.¹⁸

In light of these statements, it is clear that OCC sought to delegate to this forum the issues addressed in IGS's objections.

To avoid undue delay and to facilitate administrative efficiency, the Commission should holistically evaluate Duke's CIS proposal and issues related thereto in the current case. Indeed, Duke has already filed its testimony describing the proposed CIS in the base distribution rate case. The scope and functionality of the proposed CIS is also outlined in the proceeding. Accordingly, the Commission should find that Duke's base rate case is the appropriate forum to litigate matters related to the CIS, just as OCC originally proposed.

Finally, and in the alternative, to the extent that the Commission grants any portion of OCC's Motion to Strike, IGS urges the Commission to immediately lift the stay in the *CEUD* case.

III. CONCLUSION

As discussed, objections shall withstand a motion to strike so long as they relate to the findings, conclusions, or recommendations in a staff report, or relate to the failure of the staff report to address certain items, and are specific. IGS's objections are specific and relate to the Staff Report's failure to provide a comprehensive evaluation of all matters and issues related to Duke's proposed CIS. IGS's objections frame the issues associated with the CIS that are essential for consideration in this case. Litigating matters related to

¹⁸ *Id.* at 3 (emphasis added).

the CIS in the base rate case rather than the CEUD as OCC now proposes will also avoid a duplication of effort and facilitate administrative efficiency. Based on the foregoing, OCC's Motion to Strike should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Memorandum Contra Motion to Strike Objections of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio and served this 13th day of November 2017 via electronic mail upon the following:

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Case No(s). 17-0032-EL-AIR, 17-0033-EL-ATA, 17-0034-EL-AAM

Summary: Memorandum Contra Motion to Strike electronically filed by Mr. Joseph E. Oliker on behalf of IGS Energy