

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
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	) ) )	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	) ) )	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio Inc., for Approval to Change Accounting Methods.	) ) )	Case No. 17-874-EL-AAM
In the Matter of the Application of Duke Energy Ohio Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	) ) ) ) ) ) ) ) )	Case No. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	) ) ) )	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Vegetation Management Costs.	) ) )	Case No. 17-1265-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.	) ) ) )	Case No. 16-1602-EL-ESS

MEMORANDUM CONTRA MOTION TO CONSOLIDATE CASES OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On April 13, 2018, Duke Energy Ohio, Inc. (“Duke”) and parties to the above-captioned proceedings entered into a partial stipulation and recommendation (“Stipulation”). On that same day, Duke filed a motion to consolidate.

The cases proposed to be resolved by the Stipulation are lengthy and the issues voluminous. Requiring all these cases to be considered together will deny due process and gloss over important issues that have a great impact on Duke’s customers. Further, there are separate requirements applicable to electric security plan (“ESP”) and distribution cases under Chapters 4909 and 4928 that cannot be adhered to by conducting a consolidated proceeding.

For these reasons, IGS recommends that the distribution case be severed and the motion be denied, in part.

II. BACKGROUND

Given the sheer number of cases and issues that are being considered, a brief summary is due. On July 22, 2016, Duke filed an application in Case Number 16-1602-EL-ESS to establish new reliability standards that would be effective in 2017, and thereafter. The filing included statistical measurements to indicate whether Duke had the appropriate processes in place to ensure the delivery of safe and reliable service.

On March 2, 2017, Duke filed an application in Case Numbers 17-32-EL-AIR, 17-33-EL-ATA, and 17-34-EL-AAM to increase its electric distribution rates and establish new riders that would be effective in January 2018. As part of its application, Duke sought to not only incorporate the SmartGrid revenue requirement into its base rates, but also to

extend its Rider DCI, modify the rider's recoverable costs, and adjust the basis for the rider's calculation.¹ Duke indicated that it made the filing, in part, to generate sufficient revenues to pay its distribution-related operating expenses, including taxes and depreciation; to service its debt; and to provide an adequate rate of return on its property used in the provision of electric distribution service to its customers.

Later that month, on March 31, 2017, Duke filed a separate application in Case Numbers 17-872-EL-RDR, 17-873-EL-ATA, and 17-874-EL-AAM seeking approval to make several modifications to its existing Price Stabilization Rider ("Rider PSR"). Specifically, Duke's application sought to modify its accounting practices to defer net costs related to its ownership share in Ohio Valley Electric Corporation ("OVEC") generating facilities, as of April 1, 2017; and to permit recovery of those deferred amounts via Rider PSR.² The application also included a proposal to modify the term of Rider PSR to continue through June 30, 2040.

On June 1, 2017, Duke filed an application to establish a standard service offer ("SSO") in the form of an ESP in Case Numbers 17-1263-EL-SSO, 17-1264-EL-ATA, and 17-1265-EL-AAM. The crux of Duke's application was its competitive bid process plan for procuring capacity, energy, and ancillary services; however, Duke also proposed to conduct separate requests for proposals to procure supply for percentage of income payment plan customers, and to expand Rider DCI to include distribution-related general, intangible, and common plant costs in its incremental revenue recovery. The filing also

¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al.*, Application at 4 (Mar. 2, 2017).

² *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Modify Rider PSR*, Case Nos. 17-872-EL-RDR, *et al.*, Application at 2 (Mar. 31, 2017).

included a proposal to implement a new PowerForward Rider that will be used to facilitate enhancements to Duke's distribution grid.

On April 12, 2018, Duke entered into a Stipulation with parties to the above-captioned proceedings to address issues and concerns raised by Duke's application for approval of its ESP as well as its applications to adjust its base distribution rates, Rider PSR, and minimum reliability performance standards.

The following day, Duke filed a motion to consolidate those ten cases into a single proceeding for the purpose of considering adoption of the Stipulation. Duke contends that consolidation of those ten cases is appropriate "as there are common issues between the proceedings and consolidation will enable their efficient administration."³

III. ARGUMENT

The General Assembly did not provide the Commission with specific guidelines with respect to consolidation in Commission proceedings. Moreover, the Commission has no procedural rule regarding consolidation. The Commission, however, has followed the standard set out in Civil Rule 42 of ordering consolidation when common issues of law or fact are presented by multiple applications. Under that section, when actions "involve a common question of law or fact" the court may "join for hearing or trial any or all matters at issue in the actions" or "consolidate the actions" or "issue other orders to avoid unnecessary cost or delay." As discussed below, the Commission should deny the motion in part.

³ Duke Energy Ohio, Inc. Motion to Consolidate Cases at 2.

IGS supports efforts to streamline to more efficiently manage Commission proceedings. But Duke's motion will not achieve that result, given the inherent legal and factual differences applicable to the proceedings the motion seeks to combine. Rather, a more likely outcome is a plethora of legal appeals related to the violation of procedural and legal requirements. As discussed below, the difficulty of combining a distribution rate case and an electric security plan is quickly evident by examining the statutory frameworks applicable to both proceedings. Moreover, consolidating traditional distribution ratemaking and post-restructuring generation issues into a single proceeding will likely cause lessened scrutiny on issues of great importance to Duke customers.

Chapter 4909, applicable to applications for distribution rate increases, represents a form of traditional cost-based regulation that has existed in its current form since 1983, with concepts dating back over 100 years. It is only through Chapter 4909 that the Commission may establish base distribution rates. The process is based upon a statutory formula that is mechanical, methodical, and long-established.

There is a clear process that must be followed under Chapter 4909. Specifically, "the commission shall at once 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. Within a reasonable time as determined by the commission after the filing of such application, a written report shall be made and filed with the commission."⁴ This report is commonly referred to as the "Staff Report." Following the issuance of the Staff Report, intervenors may file objections.⁵ "Such objections may relate to the findings,

⁴ R.C. 4909.19(C). See also R.C. 4909.15 *et sec.*

⁵ R.C. 4909.19(C).

conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items.”⁶ “The objections to the report described in paragraph (A) of this rule, shall frame the issues in the proceeding”⁷ Parties may also file rebuttal testimony per Commission rule.⁸ Following a hearing, the staff report or portions of the staff report may be stricken in any order authorizing distribution rates.⁹

Under Chapter 4928, particularly section 143, the law is very different. The Commission must evaluate whether the proposed electric security plan proposing a default offering of competitive retail electric services is authorized by the statute and will provide an outcome more favorable than what would otherwise occur under a market rate under, as that term is defined under R.C. 4928.142. Under an ESP, the Staff’s role is very different. There is no Staff Report. There are no objections. Procedurally, there is merely an application and testimony from intervening parties. Rebuttal testimony is rarely granted. The Commission often relies upon “qualitative factors” that have no place in a distribution rate case. While an ESP may include riders related to distribution rates, an ESP does not establish base distribution rates. That power is left to Chapter 4909.

Duke’s motion claims that combining these proceedings will streamline legal and factual issues. That is simply not true. Trying to combine a base distribution case and ESP is akin to using an Apple hard drive in a Microsoft computer. It might sound

⁶ OAC 4901-1-28(B).

⁷ OAC 4901-1-28(C).

⁸ *Id.*

⁹ OAC 4901-1-28(A).

innovative, but you are not likely to get the results you want. The rules for the devices are simply too different to function properly together.

For example, in the distribution rate case, parties have submitted objections to the Staff Report. Normally, testimony is submitted by parties to support objections. Then, the Staff must submit its own testimony to defend the Staff Report. How will the Staff achieve that end in a combined hearing? Also, in areas where the Stipulation proposes to modify the Staff Report, who will provide testimony to support the modified Staff Report? Further, if the Staff fails to address individual objections with testimony, will the Commission strike the Staff Report. Will there be one order and will such order properly adhere to the separate requirements of Chapters 4909 and 4928?

Further, there are very important issues that are being addressed by a single stipulation that do not appear to be related. For instance, the Stipulation would approve OVEC cost recovery and a standard service offer for default customers while at the same time setting new distribution rates for customers. The intent of electric restructuring is to legally separate electric distribution from the electric generation of the utility. Consolidating a distribution case and a generation cases muddies the water between utility distribution and generation, opening up any decision on the proceeding to be attacked on appeal.

IV. CONCLUSION

For the reasons stated herein, IGS recommends that the Commission deny, in part, the motion to consolidate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Memorandum Contra Motion to Consolidate Cases* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio and served this 30th day of April 2018 via electronic mail upon the following:

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