

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Authority to Establish)	
a Standard Service Offer Pursuant to R.C.)	Case No. 14-841-EL-SSO
4928.143 in the Form of an Electric Security)	
Plan, Accounting Modifications, and Tariffs)	
for Generation Service.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Authority to Amend)	Case No. 14-842-EL-ATA
its Certified Supplier Tariff, P.U.C.O. No.)	
20.)	

**REPLY OF DUKE ENERGY OHIO, INC.,
TO MEMORANDUM CONTRA MOTION
TO CONTINUE THE CAP FOR RIDER DCI**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) provides generation service to its customers by means of a standard service offer (SSO) in the form of an electric security plan (ESP). It's current ESP (ESP III)¹ will expire by its terms on May 31, 2018, regardless of the fact that the Company's proposed fourth ESP has not yet been approved. The Company has put forward a proposed solution to this problem: to simply maintain the status quo until the Commission approves a new ESP. Unfortunately, the Office of the Ohio Consumers' Counsel (OCC) seeks to derail any possible solution that might be just and reasonable for all parties.² The Public Utilities Commission of Ohio (Commission) should see through that attempt and grant Duke Energy Ohio's motions, both to continue the riders approved in ESP III and the current motion to continue the cap on Rider DCI.

¹ Opinion and Order (April 2, 2015), Entry on Rehearing (March 21, 2018) (collectively, ESP III Order).

² OCC Memorandum Contra Duke Energy Ohio, Inc.'s Motion, May 15, 2018 (Memo Contra).

OCC makes four arguments in opposition to the Company's proposal to continue the current monthly cap amount for Rider DCI. All four are baseless.

The Commission Has Legal Authority to Grant the Company's Motion.

OCC argues that the Commission has no authority to continue the monthly level of the current cap on Rider DCI charges, on two bases: (1) its dubious claim that the Company misinterpreted Ohio law and (2) its own misunderstanding of the nature of an ESP and the request at issue.

Duke Energy Ohio is obligated, under R.C. 4928.142, to provide an SSO, in the form of either an ESP or a market rate offer. As noted above, the Company's current ESP is about to end. Because there is no statutory provision that addresses this situation, the Company had, in its March 9, 2018, motion to continue the ESP III riders (Motion to Continue), pointed to R.C. 4928.143(C)(1) for a comparable approach, such that its current ESP III would continue until a new SSO is approved. In the Motion to Continue and the subsequent reply to OCC's opposition, the Company made it abundantly clear that it was making no suggestion that the statute was on point.³ The Company's point was that the referenced statute is instructional for the current situation.

In the motion currently at issue, the Company merely referred back to the prior motion; it did not rely on R.C. 4928.143(C)(1) for justification that the current monthly cap on Rider DCI charges should be continued.⁴ Nevertheless, OCC asserts that Duke Energy Ohio's reading of the statute is in error: "But Duke misreads the statute. The statute is limited to addressing two

³ Motion of Duke Energy Ohio, Inc., to Continue the Riders Included in the Electric Security Plan, pg. 3 (March 9, 2018); Reply of Duke Energy Ohio, Inc., to Memorandum Contra its Motion to Continue Riders, pg. 2 (March 22, 2018).

⁴ Note that OCC's Memo Contra, in its footnote 16, purports to cite to footnote 13 in the Company's motion. However, there is no footnote 13 in this motion. The footnote 13 that it seems to refer to was in the prior motion to continue the riders.

circumstances, neither of which applies to the case at hand.”⁵ Of course, this is precisely what the Company previously said in its Motion to Continue. The continuation of the several riders that were approved in ESP III is not the topic of this motion. This motion relates solely to extending the defined cap on Rider DCI charges, which cap was previously established only with reference to the first five months of 2018.

OCC’s second basis for asserting that the Commission has no authority to grant the motion related to the cap on Rider DCI charges is an irrelevant reiteration of its bizarre reading of the definition of an SSO. It argues that a continuation of an existing SSO, under R.C. 4928.143(C)(1), would allow only for the continuation of those competitive electric services necessary to maintain essential electric service to consumers, and not the entirety of what was approved by the Commission.⁶ OCC previously made this same argument with regard to the Company’s Motion to Continue. With regard to that motion, the argument was at least relevant, although wrong. Here, it is not even relevant, as the current issue does not relate to the continuation of ESP III during the gap between its planned termination date and the approval of the next SSO.

The Company fully addressed OCC’s misreading of the statute in its reply relating to the Motion to Continue⁷ and will not repeat that argument here, but respectfully incorporates it by reference. OCC’s pettifoggery should be ignored.

The Company’s Motion Is Not the Equivalent of an Application for Rehearing.

OCC proposes that the Commission view the Company’s Motion as if it were an application for rehearing. In doing so, however, OCC must ignore the fact that unforeseen

⁵ OCC Memo Contra, pg. 6.

⁶ OCC Memo Contra, pp. 6-7.

⁷ Reply of Duke Energy Ohio, Inc., to Memorandum Contra its Motion to Continue Riders, pp. 3-4 (March 22, 2018).

circumstances often give rise to solutions that were not originally anticipated. The fact that the Company is willing to continue providing electric service under its existing ESP for a limited period of time in order to solve for a potential crisis does not mean that it is seeking any change in the terms of that ESP.

OCC argues that the Company seeks to change two elements of the ESP III Order: that Rider DCI has a “definitive end date” of May 31, 2018, and that customers will not have to pay any more than \$35 million under Rider DCI during 2018.⁸ OCC is in error on both counts. The Commission set no “definitive end date” for Rider DCI. Although it noted that Staff had recommended that the rider “sunset” at the conclusion of ESP III,⁹ the Commission never ruled on that issue. With regard to the cap on charges during 2018, the Commission clearly did *not* determine that “\$35 million is all that customers are obligated to pay in 2018 under Rider DCI.”¹⁰ Rather, the Commission stated that the cap would be “\$35 million for the first five months of 2018.” It said absolutely nothing about the remaining seven months of 2018.

As the two elements of Rider DCI that OCC identified as being sought to be “changed” by the motion were, in actuality, never addressed by the Commission, the motion should not be treated as if it were a late-filed application for rehearing.

The Company’s Motion Is Not Relitigation of ESP III.

OCC also suggests that the Commission view the Company’s Motion as if it were an attempt to relitigate its ESP and, thus, precluded under doctrines of res judicata or collateral estoppel.¹¹ In doing so, however, OCC must ignore the fact that unforeseen circumstances often give rise to solutions that were not originally anticipated. The fact that the Company is willing to

⁸ OCC Memo Contra, pg. 9.

⁹ ESP III Order, pg. 69.

¹⁰ OCC Memo Contra, pg. 9.

¹¹ OCC Memo Contra, pg. 10, *et seq.*

continue providing electric service under its existing ESP for a limited period of time in order to solve for a potential crisis does not mean that it is seeking any change in the terms of that ESP.

Just as the motion is not seeking rehearing, it is similarly not seeking to relitigate the terms of ESP III. The items at issue – a termination date for Rider DCI and the maximum amount that Duke could charge thereunder during the last seven months of 2018 – were simply not decided by the Commission in the ESP III Order.

OCC's argument should be rejected.

The Rider DCI Cap Need Not Be Altered To Return Tax Reduction Benefits to Customers.

In its final argument, OCC proposes to reduce the average monthly level of the cap on Rider DCI charges in order to account for the lower federal corporate income tax rate that resulted from the Tax Cuts and Jobs Act of 2017 (TCJA). In this discussion, OCC either misunderstands the calculation of Rider DCI or entirely ignores the fact that the *rate* being charged under Rider DCI has been changed, by the Company, to account for the recently reduced federal corporate income tax. The benefits of the TCJA, as they relate to Rider DCI, are already being returned to customers. Lowering the cap has nothing whatsoever to do with flowing TCJA benefits through to customers.

The Commission should grant the Company's motion to allow the average monthly cap on Rider DCI revenue to continue until such time as new tariffs become effective following an order in Case No. 17-1263-EL-SSO, et al.

Respectfully submitted,

/s/ Jeanne W. Kingery

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services LLC

Room 1303 Main

139 E. Fourth Street

Cincinnati, Ohio 45202

Rocco.d'ascenzo@duke-energy.com

Jeanne.kingery@duke-energy.com

Elizabeth.watts@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this 21st day of May, 2018.

/s/ Jeanne W. Kingery

Jeanne W. Kingery

Steven Beeler
Thomas Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad St., 6th Floor
Columbus, Ohio 43215
Steven.beeler@ohioattorneygeneral.gov
Thomas.lindgren@ohioattorneygeneral.gov

David F. Boehm
Michael L. Kurtz
Jody M. Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for Staff of the Commission

Kevin R. Schmidt
88 East Broad Street, Suite 1770
Columbus, Ohio 43215
schmidt@sppgrp.com

Counsel for the Ohio Energy Group

Mark A. Hayden
Jacob A. McDermott
Scott J. Casto
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

Counsel for the Energy Professionals of Ohio

Counsel for FirstEnergy Solutions Corp.

Maureen R. Willis
Office of the Ohio Consumers' Counsel
65 East State Street, 7th floor
Columbus, Ohio 43215-4203
Maureen.willis@occ.ohio.gov

Dane Stinson
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
dstinson@bricker.com

Counsel for the Ohio Consumers' Counsel

**Counsel for the Ohio
Developmental Services Agency**

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com
perko@carpenterlipps.com

Joseph Olikier
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com

**Counsel for the Ohio Manufacturers'
Association**

**Counsel for Interstate Gas Supply,
Inc.**

Matthew Schuler
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
Matthew.schuler@aes.com

Mark J. Whitt
Andrew J. Campbell
Rebekah J. Glover
Whitt Sturtevant LLP
88 East Broad Street, Suite 1950
Chicago, Illinois 60601
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

**Counsel for The Dayton Power and Light
Company**

**Counsel for Direct Energy Services,
LLC and Direct Energy Business,
LLC**

Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Counsel for Industrial Energy Users-Ohio

Trent Dougherty
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

**Counsel for the Ohio Environmental
Council**

Elyse Akhbari
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
eakhbari@bricker.com
**Counsel for People Working Cooperatively,
Inc.**

Colleen L. Mooney
Ohio Partners for Affordable Energy
P.O. Box
Columbus, Ohio 43264
cmooney@ohiopartners.org

**Counsel for Ohio Partners for
Affordable Energy**

Steven T. Nourse
American Electric Power Service
Corporation
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com

Counsel for Ohio Power Company

Richard Sahli
Richard Sahli Law Office, LLC
981 Pinewood Lane
Columbus, Ohio 43230
rsahli@columbus.rr.com

Counsel for the Sierra Club

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
paul@carpenterlipps.com

Counsel for The Kroger Company

Michael J. Settineri
Gretchen L. Petrucci
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O.Box 1008
Columbus, Ohio 43216-1008
mjsettineri@vorys.com
glpetrucci@vorys.com

**Counsel for Constellation NewEnergy, Inc.
and Exelon Generation Company,
LLC**

David I. Fein
Vice President, State Government
Affairs - East
Exelon Corporation
10 South Dearborn Street, 47th Floor
Chicago, Illinois 60603
David.fein@exeloncorp.com

For Exelon Corporation

Douglas E. Hart
441 Vine Street
Suite 4192
Cincinnati, Ohio 45202
dhart@douglasshart.com

**Counsel for The Greater Cincinnati
Health Council**

Cynthia Fonner Brady
Exelon Business Services Company
4300 Winfield Road
Warrenville, Illinois 60555
Cynthia.brady@constellation.com

**For Exelon Generation Company,
LLC**

Lael Campbell
Exelon
101 Constitution Avenue, NW
Washington, DC 2001
Lael.Campbell@constellation.com

For Constellation NewEnergy, Inc.

Michael J Settineri
Vorys, Sater, Seymour, and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

mjsettineri@vorys.com

**Counsel for Miami University and the
University of Cincinnati**

Justin Vickers
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, Illinois 60601
jvickers@elpc.org

**Counsel for the Environmental Law &
Policy Center**

Samantha Williams
Natural Resources Defense Council
20 N. Wacker Drive, Suite 1600
Chicago, Illinois 60606

swilliams@nrdc.org

**Counsel for the Natural Resources Defense
Council**

Michael J. Settineri
Gretchen L. Petrucci
Vorys, Sater, Seymour, and Pease,
LLP
52 East Gay Street
P.O.Box 1008
Columbus, Ohio 43216-1008
mjsettineri@vorys.com
glpetrucci@vorys.com

**Counsel for the Retail Energy
Supply Association**

Joel E. Sechler
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
sechler@carpenterlipps.com

Counsel for EnerNOC, Inc.

Tony Mendoza
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Tony.mendoza@sierraclub.org

Counsel for the Sierra Club

Rick D. Chamberlain
Behrens, Wheeler, & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, OK 73105
rchamberlain@okenergylaw.com

**Counsel for Wal-Mart Stores East, LP and
Sam's East, Inc.**

Donald L. Mason
Michael R. Traven
Roetzel & Andress, LPA
155 E. Broad Street, 12th Floor
Columbus, Ohio 43215
dmason@ralaw.com
mtraven@ralaw.com

**Counsel for Wal-Mart Stores East,
LP and Sam's East, Inc.**

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/21/2018 2:28:43 PM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Reply Reply of Duke Energy Ohio, Inc., to Memorandum Contra Motion to Continue the CAP for Rider DCI electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Watts, Elizabeth H and Kingery, Jeanne W