BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service.	)	Case No. 14-841-EL-SSO
In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)	Case No. 14-842-EL-ATA

JOINT MEMORANDUM CONTRA DUKE ENERGY OHIO, INC.'s APPLICATION FOR REHEARING BY THE OHIO MANUFACTURERS' ASSOCIATION AND THE KROGER CO.

I. INTRODUCTION

On May 30, 2018, the Public Utilities Commission of Ohio (Commission) granted Duke Energy Ohio, Inc.'s (Duke) Motion to Extend its third Electric Security Plan (ESP 3), including Duke's Distribution Capital Investment Rider (Rider DCI). [1] The Commission declined, however, to permit Duke to increase the hard cap on the amount that may be collected from customers under Rider DCI. On June, 7, 2018, Duke applied for rehearing of the Commission's Entry, asking the Commission to allow Duke to collect additional charges from customers greater than the amount authorized under the approved cap for Rider DCI for 2018. [2]

Duke frames its Application for Rehearing as a request for "clarity" following the Commission's decision not to increase the cap on Rider DCI.[3] Of course, the Commission was perfectly clear in its May 30 Entry: Duke may continue its current ESP (ESP 3), including Rider

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1 Entry at ¶ 21 (May 30, 2018).
2 See Application for Rehearing of Duke Energy Ohio, Inc. at 4 (June 9, 2018) (Application for Rehearing).
3 See id.

DCI, but Duke may not increase the "hard cap" approved in ESP 3.[4] The Commission clearly stated that it was allowing Duke to extend the original $35 million cap until August 1, 2018, but that it was declining to increase that hard cap. Although the Ohio Manufacturers' Association (OMA) and The Kroger Co. (Kroger) opposed the continuation of Rider DCI, the Commission correctly determined that if Rider DCI was to be extended, Duke cannot collect charges from customers above the hard cap established by the Commission through its approval of ESP 3. As such, the Commission should deny rehearing and reject Duke's arguments that the Commission should disregard established distribution investment rider caps whenever a utility decides that it needs to collect more from customers than those caps allow.

Pursuant to Ohio Adm. Code 4901-1-35(B), OMA and Kroger hereby file this Joint Memorandum Contra Duke's Application for Rehearing.

II. ARGUMENT

A. An Approved Cap for Rider DCI Should Not Be Disregarded.

The undeniable effect of granting Duke's Application for Rehearing would be to render the $35 million cap approved in ESP 3 meaningless and create bad precedent for the many other settlements that have established annual revenue caps for distribution investment riders of other utilities. The Commission approved a $35 million cap on Rider DCI revenues through May 31, 2018. [5] The Commission did not provide for any contingencies for additional collection under Rider DCI in the event that a new ESP was not approved by that date.[6] Interestingly, the Commission *did* contemplate such an occurrence in other areas of ESP 3. Specifically, the Commission established a process by which Duke could continue to hold auctions for its competitively bid standard service offer (SSO) in the event that a new ESP was not approved by

4 Entry at ¶ 21 (May 30, 2018).
5 Opinion and Order at 72 (April 2, 2015).
6 See id.

May 31, 2018.[7] If the Commission had wanted to allow Duke to collect additional Rider DCI revenues in the event that ESP 4 had not been approved by the time Duke's 2018 Rider DCI cap had been exhausted and/or expired, it could have done so as it did for the SSO auctions.

In order for Commission-imposed caps on recovery by utilities to be meaningful, the established caps must be enforced. If, as Duke proposes, a cap can be extended or increased whenever a utility submits its need for such an adjustment to the Commission, the cap loses its value in providing a meaningful check against over-collection from customers. In analyzing and approving ESP 3, the Commission unambiguously provided for a $35 million cap on Rider DCI revenue collection for 2018.[8] Three years after approval of ESP 3 and after Duke has fully implemented ESP 3, including collecting hundreds of millions of dollars from customers, Duke improperly seeks additional revenue recovery under Rider DCI without a hearing or the taking of evidence and without reopening the entire ESP 3. The $35 million cap resulted from a fully-litigated proceeding and the Commission should not amend that cap without allowing a similar process for all interested parties.

Duke attempts to argue that the cap should be increased and the $7 million per month should be continued to be collected from customers given that customers would see "very little impact on their bills" if the caps for Rider DCI were extended.[9] Of course, if Duke were to continue charging customers the same amounts under Rider DCI after that hard cap expired as it had before the cap expired, customer bills would remain unchanged. But that does not make it lawful. The issue here does not turn on whether customer bills will be changed by the increase Duke requests; this issue is about whether Duke can lawfully collect Rider DCI revenues above the approved cap, and do so without any sort of hearing or the taking of evidence. The

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7 Id. at 51.
8 Id. at 72.
9 See Application for Rehearing at 6.

Commission approved a *hard cap* on Rider DCI recovery in 2018 under ESP 3 of $35 million. If Duke had exhausted the Rider DCI cap in February 2018, Duke would not have been authorized to continue recovering Rider DCI revenues in March, April, or May. Rider DCI would have been set to zero. The same result should follow here: the cap has been exhausted, so Duke's recovery must cease until an order in its ESP 4 application provides otherwise. Customers should, therefore, see a decrease in their bills as Rider DCI is required to be set at zero once the hard cap is achieved.

In its decision, the Commission recognized that it was not prejudging the outcome in Duke's ESP 4 proceeding by acknowledging that recovery for distribution investments not covered by Rider DCI revenues collected under ESP 3 could be addressed in that proceeding.[10] That ruling has no effect on the $35 million cap approved in ESP 3. And Duke's arguments to the contrary in an attempt to garner additional revenue from customers for distribution investments that exceed the established cap are meritless and should be rejected. The Commission will decide what capital investments may be included in Rider DCI and the level of the Rider DCI caps through the term of ESP 4 when the Commission issues a ruling on the merits of ESP 4.

B. Duke's Claims of Being Punished for Engaging in Settlement Discussions Are Unfounded and Should Be Rejected.

In its Application for Rehearing, Duke asserts that it has been "exposed to a highly prejudicial outcome because of its willingness to engage in settlement discussions."[11] In making this unfounded assertion Duke attempts to portray itself as having taken actions beyond those which would be standard in an ESP proceeding by engaging in settlement discussions. In reality, however, settlement discussions between electric distribution utilities and interested intervening

[10] Entry at ¶ 21 (May 30, 2018).
[11] Application for Rehearing at 5.

parties are common. To argue otherwise is disingenuous and will have a stunning effect on future settlement negotiations. In any settlement, Duke takes the risk of agreeing to a particular revenue level for a particular time period. Arguments that a subsequent proceeding could impact or change those agreed to revenue levels renders the establishment of a revenue cap meaningless.

The fact that Duke chose to pursue resolution of its application without incurring the expense of a multi-week hearing with multiple opposing parties does not relieve the Company of complying with Rider DCI caps that were approved in the prior case. Moreover, at this point, electric distribution utilities should expect that more than one year will elapse between the date an electric distribution utility files an ESP application and the date when the Commission issues an order.

In fact, in *every single ESP proceeding* of Ohio's other electric utilities that occurred between the approval of Duke's ESP 3 and its application for its ESP 4 significantly more than a year passed between the electric distribution utility's application and the Commission's eventual approval of an ESP: AEP-Ohio's extension of its ESP in Case Nos. 16-1852-EL-SSO, et al., was approved one year, five months, and two days after AEP-Ohio filed its application;[12] and The Dayton Power and Light Company's latest ESP was approved 1 year, 7 months, and 28 days after the company filed its application in Case Nos. 16-395-EL-SSO, et al.[13] Additionally, the FirstEnergy Companies' most recent ESP was approved one year, 7 months, and 27 days after FirstEnergy filed its application in Case No. 14-1297-EL-SSO.[14]

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[12] See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, et al.*, Case Nos. 16-1852-EL-SSO, et al., Amended Application (November 23, 2016) and Opinion and Order (May 4, 2018).

[13] See *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.*, Case Nos. 16-395-EL-SSO, et al., Application (February 22, 2016) and Opinion and Order (October 20, 2017).

[14] See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C.*

Ultimately, the Commission did not "terminate the Company's recovery of significant expenses and necessary revenue requirement through Rider DCI, as a consequence of its good faith actions." The Commission ended recovery through Rider DCI because additional revenue recovery would have exceeded the hard cap that the Commission had already approved. Since the Commission's 2015 Opinion and Order in this case, the parties have known the approved caps for Rider DCI. Duke cannot now exceed those caps simply because it engaged in settlement discussions for a subsequent proceeding.

III. CONCLUSION

Accordingly, for the foregoing reasons, OMA and Kroger respectfully request that Duke's Application for Rehearing be denied. The Commission's decision to uphold the previously-imposed revenue cap on Duke's recovery through Rider DCI was just and reasonable, and Duke has not offered a compelling argument for the Commission to depart from that decision.

Respectfully submitted,

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4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-El-SSO, Application (August 4, 2014) and Opinion and Order (March 31, 2016).

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Joint Memorandum Contra was served via electronic transmission upon the parties this X day of June, 2018.

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Summary: Memorandum Joint Memorandum Contra Duke Energy Ohio, Inc.'s Application For Rehearing By The Ohio Manufacturers' Association And The Kroger Co. electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA & Kroger