

**BEFORE
THE PUBLIC UTILITY 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 4923.143, Revised Code, in the Form of an Electric Security Plan, Account 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

**REPLY BRIEF OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

October 2, 2018

Mark A. Whitt (0067996)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

TABLE OF CONTENTS

I. INTRODUCTION	1
II. ARGUMENT	2
A. The unbundling riders should be approved to end the subsidized SSO rates.	2
B. There should be a stakeholder process before any applications are filed for retail market enhancements.....	5
C. There is no cost justification for the proposed supplier fees.	7
D. An audit of Duke’s Purchase of Accounts Receivable Program is unnecessary.....	8
E. Rider PSR is an unlawful bailout of generation costs through distribution rates.....	9
III. CONCLUSION	10

I. INTRODUCTION

None of the initial briefs sufficiently address or alleviate RESA's concerns with the Stipulation. The Stipulation is a bad deal for suppliers, a bad deal for shopping customers, and a bad deal for competitive markets generally. If the Commission is serious about advancing competitive markets, it ought to take RESA's concerns seriously. These concerns are as follows:

- ***Unbundling Riders.*** Staff's cost of service study failed to study Duke's true cost of service. Rather than assign administrative costs associated with the standard service offer (SSO) to customers actually on the SSO, Staff socialized these costs to all distribution customers, shopping and non-shopping alike. The unbundling riders are needed to re-assign SSO administrative costs to SSO customers. Removing this subsidy from the SSO will not diminish any of the benefits the SSO provides. Taking away a subsidy to which non-shopping customers were never entitled to begin with may not be popular, but it is necessary to ensure "unbundled and comparable" rates for shopping and non-shopping customers.
- ***Stakeholder process for market enhancements.*** The Stipulation as drafted more or less gives Duke a blank check to begin spending money on new or upgraded customer information systems, data access, and AMI without the input of stakeholders who will have to use these systems day-to-day, and who rely on the functionality of these systems to provide their own products and services. Suppliers should be given the opportunity to provide input before Duke files any formal applications, not after.
- ***Supplier fees.*** Duke's supplier fees are a hidden tax on shopping customers. No evidence has been provided showing that Duke incurs any incremental cost to switch customers or

provide reports of historical usage, let alone costs that justify fees of \$5 and \$32, respectively. These fees must be eliminated.

- ***Purchase of Accounts Receivable (PAR) Program.*** Duke’s PAR program currently allows for audits of the receivables it purchases from CRES suppliers; the audit proposed in the Stipulation is an overreach and has the potential to stifle innovations in the retail market.
- ***Rider PSR.*** OVEC is the gift that keeps on giving. Rider PSR is the latest gimmick to recover generation costs in distribution rates. Duke has stopped pretending that the continued operation of this Cold War relic is necessary to keep the lights on, or that the PSR surcharge makes economic sense to anyone other than Duke. Calling the surcharge a “hedge” fools no one. There is no justification for this surcharge whatsoever, let alone a nonbypassable charge that saddles customers who do not receive generation service from Duke.

Each of these concerns are addressed in greater detail below.

II. ARGUMENT

A. The unbundling riders should be approved to end the subsidized SSO rates.

RESA and IGS proposed the unbundling riders as a way to mitigate subsidies baked into Duke’s standard service offer. No party disputes that these subsidies exist, or that the unbundling riders would mitigate them. But parties who receive subsidies are usually reluctant to give them up, and this holds true with the SSO. Staff, OCC and OPAE like having a subsidized SSO; it gives their constituents something at someone else’s expense. What these parties criticize as a proposal to “artificially increase” the SSO is, in reality, a modest and incremental step toward a more rational, transparent SSO pricing structure.

Staff, OCC and OPAE offer different variations of the same argument. Their fundamental criticism of the unbundling riders is that the price-to-compare (*i.e.*, the sum of the bypassable generation rider charges) would increase. The fact that the price-to-compare would increase is not a reason to reject the riders. The price-to-compare *should* increase because it is artificially low; it is artificially low because some of the administrative costs Duke incurs to offer SSO service at the advertised price are embedded in distribution rates. The unbundling riders would isolate the administrative costs of the SSO and allow shopping customers to avoid these costs. All customers would pay rates commensurate with the administrative costs incurred by Duke to serve them. The unbundling riders would render the rates paid for SSO service “unbundled and comparable” to the rates paid by shopping customers. R.C. 4928.02(B). It should be noted that the SSO increase will result in a lower cost to distribution service for all customers, because the costs will have been appropriately assigned.

For rates to be truly comparable, shopping and non-shopping customers who pay the same distribution rate should receive the same services; the rate paid should recover the cost associated with the services provided. That does not currently happen. Customers on the SSO receive a bundled service from Duke. The cost of offering and administering this bundled service is recovered in distribution rates. That is the crux of the problem—the cost of offering a service used by some is paid for by all. Shopping customers do not receive a bundled service, but continue to pay distribution rates that reflect the cost of a bundled service. Shopping customers should not be paying administrative costs associated with a service they do not receive. The group of customers who receive bundled service should pay the full freight of this service available. The rationale for the unbundling riders is really no more complicated than this.

Critics of the unbundling riders also argue that because SSO service is available to everyone, everyone should pay the administrative costs of this service—whether they avail themselves of the service or not. But this argument flies in the face of basic principles of cost causation. All customers have the ability to request additional or special services, such as a meter test or special arrangements for meter reads, but the cost of making these services available is not socialized in distribution rates; the cost is directly assigned to customers who request these services. There is no sound reason to treat SSO service differently from any other identifiable service offering. A shopping customer’s *ability* to return to the SSO is not the same thing as *actually receiving* SSO service. The full cost of SSO service should be paid by those who avail themselves of the service—and no others.

Properly assigning the cost of SSO service would not diminish any of the benefits that Staff, OCC or OPAE ascribe to this service. SSO service would remain a “competitively bid” service.¹ Non-shopping customers could refrain from the “time consuming and sometimes confusing process of selecting an alternative supplier” if they so choose.² Customers could continue to use the SSO to “evaluate marketer offers when deciding whether to shop for their generation.”³ The SSO would remain a “safety net for all customers.”⁴ To the extent these benefits add value to the SSO, there should be no objection to a rate structure that recognizes this value.

¹ Staff Init. Br. at 61.

² *Id.*

³ *Id.*

⁴ OCC Init. Br. at 143-144.

Ultimately, the signatory parties to the Stipulation do not really challenge the underlying rationale for the unbundling riders. Their real objection is more pragmatic. Staff claims that determining the appropriate level of administrative costs assignable to the SSO is just too hard. A “comprehensive study” would be required and Duke may not have the necessary information in any event.⁵ In Staff’s view, the perfect is and should be the enemy of the good.

Staff’s concerns are overblown. A perfect cost allocation system capable of tracking costs and causers in real time has yet to be invented. Thus, the impracticalities of tracking individual customers as they move on and off the SSO are obvious. But the same impracticalities are present with nearly every type of cost. No evidence has been presented to suggest that Mr. Hess’s model for identifying and allocation SSO-related administrative costs is any more or less accurate than any other model relied on in this case to identify and allocate other types of costs.

No party disputes that Duke incurs administrative costs to make generation service available to SSO customers. No party disputes that these administrative costs are recovered through distribution rates. No party disputes that RESA and IGS have offered a viable solution to mitigate this subsidy. The Stipulation should not be adopted unless Duke’s new rate structure includes the unbundling riders.

B. There should be a stakeholder process before any applications are filed for retail market enhancements.

Imagine if Apple or Microsoft decided to design a new operating system without seeking input from app developers, software manufacturers, internet providers, or other companies that rely on a third-party operating system to make their own products work. It would be a disaster. Printers wouldn’t print, displays wouldn’t display, and computers would have all the

⁵ See Staff Init. Br. at 57-59.

functionality of a door stop. Why would anyone think the same thing would not happen if Duke designs a new customer information system, AMI platform, or other system that suppliers have no choice but to rely on in making their own products and services available?

RESA has made a simple and imminently-sensible request: that its members be given the opportunity to provide input into the design and roll-out of the new systems and market enhancements described in the Stipulation. RESA is not interested in designing any new systems for Duke or micromanaging any and all new functionality. But there is no reason suppliers should not be able to say to Duke, “Here are some things we would like your new systems to be able to do.” If Duke and the supplier community reach a consensus on the functionality of new systems, their consensus could be reflected in any applications filed with the Commission. If there are areas of disagreement, those could be indicated in the application as well, and parties would have the opportunity to present a case to the Commission about whether a recommendation or request should be approved or rejected. RESA has proposed a *process*; RESA has not requested a finding that it be given veto power to dictate the outcome of that process.

If the Commission is not inclined to modify the Stipulation to offer the process RESA proposes, then the Stipulation should be modified to require that any new systems or enhancements have the capability to accommodate supplier consolidated billing, non-commodity billing, and Enroll With Your Wallet. If the Stipulation does not mandate *something*, then the Stipulation is simply a pre-approval for Duke to go ahead and spend money on *anything*, whether the final product works as intended or not. Ratepayers have already suffered through one spectacle with Duke’s AMI roll-out. They should not be forced to suffer another.

C. There is no cost justification for the proposed supplier fees.

Duke's supplier tariff has featured a \$5 switching fee and \$32 historical usage data fee for a decade. Regardless of whether these fees were just and reasonable when first approved, neither Staff nor Duke has presented evidence that the fees are just and reasonable now. Both fees must be eliminated from the supplier tariff for the simple reason that no evidence has been offered to support them.

Ohio law requires that “[a]ll charges made or demanded for *any* service rendered, or to be rendered, shall be just [and] reasonable [.]” R.C. 4905.22 (emphasis added). There is no dispute that the supplier fees are a “charge” levied for a “service.” And Staff is not permitted to pick and choose among which charges to review. Staff is responsible for reviewing the “cost to the utility of rendering the public utility service for the test period;” likewise, “the revenues and expenses of the utility shall be determined during a test period.” R.C. 4909.15(A)(4) and (C)(1). The very premise of cost-based regulation is that rates and charges should recover the cost of service. The cost of a service dictates the just and reasonable charge for that service. If there is no evidence of cost, there is no basis for a charge.

In addition to the utter lack of direct evidence concerning the costs (if any) Duke incurs to switch customers or print reports of historical usage, the Stipulation authorizes Duke to embark on system upgrades and enhancements that, if implemented correctly, should reduce whatever costs Duke incurs to provide these services during the rate effective period. So, an inference can certainly be drawn that *even if* the supplier fees were cost-justified when introduced, the fees are excessive in relation to Duke's costs going forward.

If the fees at issue were charged directly to customers instead of suppliers, no one would say that Duke's decision to not alter the fee justified Staff's decision to approve the fee without question. Staff would ask for a cost-based justification for the fee. And Staff would get it—or

else the fee would not be approved. There is no justification for treating supplier fees differently. Again, evidence must be produced to support the underlying cost associated with *all* fees for *any* service. “All” means “all” and “any” means “any.”

Neither Duke nor Staff has been able to justify these fees or explain Staff’s refusal to perform an evaluation of them. The Commission should eliminate these fees from the Supplier Tariff.

D. An audit of Duke’s Purchase of Accounts Receivable Program is unnecessary.

As Staff itself states in its Initial Brief in reference to Duke’s PAR Program, “The Company has within its agreements with CRES suppliers multiple opportunities to ensure that the terms of the agreements are fulfilled and that errors or fraud are discovered or avoided.”⁶ If this is true, then the audit provision of the Stipulation is superfluous; but for some reason Staff still believes that an independent audit of the PAR Program is “necessary,”⁷ but cannot give any explanation as to why. Staff simply assumes that there is “error” or “fraud” in the Program, but is unable to cite to any evidence of such. Staff states that Duke “did not actively review, inquire, or inspect any supplier receivable between 2014 and 2107.”⁸ Staff does not explain why this is a problem or why an additional audit requirement is the solution, rather than addressing the Company’s adherence to already-established processes. Further, Staff does not attempt to explain the scope of the audit or whether CRES suppliers will be required to open up their books and allow an auditor to examine all the costs that go into the rates CRES suppliers charge their customers with the goal of discovering some “error” or “fraud.” Staff expects CRES suppliers to participate in the enhancement of Ohio’s retail electric market by innovating and creating new

⁶ Staff Init. Br. at 27.

⁷ *Id.* at 26.

⁸ *Id.*

products and services, but refuses to say whether these new products or services will be deemed “non-compliant” with PAR sometime in the future.

The Commission should let the controls and reviews already in place to continue to work as they have, and remove the provision for an audit of the PAR Program.

E. Rider PSR is an unlawful bailout of generation costs through distribution rates.

Duke admits that Rider PSR will cost ratepayers money—and lots of it:

[I]t is not a requirement that each and every settlement term and condition must be beneficial to all stakeholders or that each term or condition must result in cost savings to all stakeholders. Such is not part of the test used by the Commission in evaluating a Stipulation’s reasonableness. As such, the fact that the *Company’s current projections* of OVEC’s inclusion in the Rider PSR *result in a net cost* does not undermine its *potential value as a hedge* for customers should market prices exceed those forecasts.⁹

Anyone willing to believe that Rider PSR will produce a net economic benefit to customers will believe anything. OVEC cannot operate economically under any reputable forecast, model, or prediction. There is no more reason to “hedge” the risk invented by Duke than there is to buy insurance that pays out in the event one is simultaneously stuck by lightning and bitten by a shark. Duke may want to pretend that the “potential upside” of Rider PSR is “unlimited,”¹⁰ but this hyperbole is not grounded in reality. Duke’s share of the OVEC assets are not large enough to ever produce a credit of any real consequence to ratepayers, and to suggest otherwise is simply dishonest.

⁹ Duke Init. Br. at 33-34 (emphasis added).

¹⁰ *Id.*

As explained in IGS' initial brief, Rider PSR is equivalent to a transition charge.¹¹ Duke does not even attempt to legally justify the rider. The Commission should call Duke's bluff on what it will allegedly do if Rider PSR is not approved. The Commission should reject Rider PSR.

III. CONCLUSION

The Commission should seize the opportunity to move the competitive market forward, not backward. RESA's proposed modifications to the Stipulation are reasonable and should be adopted.

Dated: October 2, 2018

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

ATTORNEYS FOR THE RETAIL
ENERGY SUPPLY ASSOCIATION

¹¹ IGS Init. Br. at 39-42.

CERTIFICATE OF SERVICE

I hereby certify that a copy the foregoing Reply Brief was served by electronic mail this
2nd day of October, 2018 to the following:

rocco.dascenzo@duke-energy.com
elizabeth.watts@duke-energy.com
jeanne.kingery@duke-energy.com
camal.robinson@duke-energy.com
chris.miller@icemiller.com
mike.mizell@icemiller.com
mkurtz@bkllawfirm.com
jkylercohn@bkllawfirm.com
dboehm@bkllawfirm.com
william.michael@occ.ohio.gov
kevin.moore@occ.ohio.gov
christopher.healey@occ.ohio.gov
zachary.woltz@occ.ohio.gov
terry.etter@occ.ohio.gov
fdarr@mwncmh.com
mpritchard@mwncmh.com
cmooney@ohiopartners.org
mfleisher@elpc.org
paul@carpenterlipps.com
mleppla@theoec.org
tdougherty@theoec.org
joliker@igsenergy.com
mnugent@igsenergy.com
eakhbari@bricker.com
nhewell@bricker.com

mdortch@kravitzllc.com
kboehm@bkllawfirm.com
bojko@carpenterlipps.com
dressel@carpenterlipps.com
daltman@environlaw.com
jnewman@environlaw.com
jweber@environlaw.com
swilliams@nrdc.org
rdove@attorneydove.com
mjsettineri@vorys.com
glpetrucci@vorys.com
charris@spilmanlaw.com
dwilliamson@spilmanlaw.com
lbrandfass@spilmanlaw.com
dborchers@bricker.com
dparram@bricker.com
talexander@calfee.com
jlang@calfee.com
slesser@calfee.com
mkeaney@calfee.com
rsahli@columbus.rr.com
tony.mendoza@sierraclub.org
steven.beeler@ohioattorneygeneral.gov
robert.eubanks@ohioattorneygeneral.gov

/s/ Rebekah J. Glover

One of the Attorneys for the Retail Energy
Supply Association

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/2/2018 5:09:34 PM

in

Case No(s). 17-0032-EL-AIR, 17-0033-EL-ATA, 17-0034-EL-AAM, 17-0872-EL-RDR, 17-0873-EL-ATA, 1

Summary: Text Reply Brief electronically filed by Ms. Rebekah J. Glover on behalf of Retail Energy Supply Association