

## 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.  
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 THE 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

### FOURTH ENTRY ON REHEARING

Entered in the Journal on April 3, 2019

#### I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing filed by the Ohio Manufacturers' Association, the Kroger Company, and the Ohio Consumers' Counsel.

#### II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On May 29, 2014, pursuant to R.C. 4928.143, Duke filed an application for an SSO, in the form of an ESP (ESP 3).

{¶ 5} On April 2, 2015, the Commission issued its Opinion and Order approving Duke's proposed ESP, with certain modifications (ESP 3 Order). Pursuant to the ESP 3 Order, the ESP was approved for a three-year term lasting from June 1, 2015, to May 31, 2018. Further, Duke was directed to file its next SSO application by June 1, 2017. On May 1, 2015, and May 4, 2015, applications for rehearing of the ESP 3 Order were filed by numerous parties. By Entry on Rehearing dated May 28, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing. In a Second Entry on Rehearing issued March 21, 2018, the Commission granted in part and denied in part the applications for rehearing of the April 2, 2015 Opinion and Order. An Entry Nunc Pro Tunc issued March 28, 2018, clarified the Second Entry on Rehearing. A Third Entry on Rehearing was issued on May 9, 2018.

{¶ 6} On June 1, 2017, in accordance with the directives in the ESP 3 Order, Duke applied for an SSO in the form of an ESP in Case No. 17-1263-EL-SSO (ESP 4 Case). Initially, the attorney examiner scheduled the matter for hearing to begin November 13, 2017. Since that time, however, the attorney examiner granted several unopposed motions to continue the proceedings as the parties indicated there were ongoing settlement discussions. Thereafter, Duke, Staff, and several other parties filed a stipulation that purported to resolve the issues in the ESP 4 Case, as well as other proceedings. The evidentiary hearing regarding that matter concluded on July 24, 2018, with rebuttal testimony heard on August 6, 2018. The Commission issued an Opinion and Order approving the stipulation on December 19, 2018.

{¶ 7} On December 5, 2017, and revised on December 6, 2017, Duke made a filing in the ESP 4 Case requesting to proceed with two auctions to procure generation for its SSO customers. Duke asserted that, because its application was still pending in the ESP 4 Case, the auctions were necessary in order to maintain an adequate supply of energy for its customers. By Entry on December 20, 2017, the Commission authorized Duke to go forward with the auctions.

{¶ 8} On March 9, 2018, Duke submitted a motion to continue the riders incorporated in ESP 3, including, specifically, Duke's Distribution Capital Investment Rider (Rider DCI). As to Rider DCI, Duke requested to extend the current \$35 million cap until August 1, 2018. Memorandums in response were filed by the Ohio Energy Group (OEG), Ohio Consumers' Counsel (OCC), and, jointly, the Ohio Manufacturers' Association and the Kroger Company (OMA/Kroger). Duke filed replies to memorandums filed OCC and OMA/Kroger.

{¶ 9} On May 11, 2018, Duke filed a motion to extend the monetary cap associated with Rider DCI. Specifically, the Company asked to maintain its present average cap of \$7 million per month indefinitely until a new SSO is approved. OCC filed memorandum contra Duke's motion on May 15, 2018, to which Duke replied on May 21, 2018.

{¶ 10} On May 30, 2018, the Commission issued an Entry granting Duke's motion to extend ESP 3. In doing so, the Commission authorized Duke to continue the provisions, terms, and conditions of its current ESP until another SSO is authorized. Regarding Rider DCI, we found that the original \$35 million cap should be extended until August 1, 2018, as initially requested by Duke.

{¶ 11} Thereafter, on June 7, 2018, Duke filed an application for rehearing. On June 20, 2018, the Commission initially granted Duke's application to allow more time for further consideration. On June 29, 2018, OCC also filed an application for rehearing of the May 30, 2018 Commission Entry.

{¶ 12} In its Second Entry on Rehearing, issued July 25, 2018, the Commission denied OCC's application for rehearing and granted Duke's application for rehearing, in part. In the Entry, the Commission determined that Rider DCI could continue on an ongoing basis until another SSO is approved. The Commission also established a monthly cap for Rider DCI of \$5 million.

### III. DISCUSSION

{¶ 13} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 14} On August 24, 2018, applications for rehearing of the Second Entry on Rehearing were filed by OCC and OMA/Kroger. Duke filed a memorandum contra the applications on September 4, 2018. On September 19, 2018, in the Third Entry on Rehearing, the Commission granted the applications for rehearing for further consideration of the matters specified in the applications.

#### A. *OCC's Application for Rehearing*

{¶ 15} In its application, OCC submits two points of error in the Commission's Entry. OCC first argues that the Commission wrongly relied on evidence not in the record when it authorized Duke to collect up to \$5 million per month under Rider DCI. According to OCC, pursuant to R.C. 4903.09, the Commission must base its decision on the evidence in the record. Here, OCC contends that the Commission relied on Duke's assertion, in its application for rehearing, that the Company's return on equity (ROE) would be reduced from 9.84 percent to 1.90 percent if Rider DCI was not extended. OCC argues that the numbers offered by Duke were outside of the record and prejudices OCC.

{¶ 16} OCC further alleges that the Commission's Entry on Rehearing improperly considered evidence that could have been offered in the original hearing. OCC notes that R.C. 4903.10 precludes the Commission from considering evidence that, with reasonable diligence, could have been offered upon the original hearing. OCC avers that the information regarding Duke's reduced ROE could have been offered in the Company's original ESP filing or in its original application for rehearing. OCC contends this allowed Duke to get additional funds for financial integrity through Rider DCI even though the

authorized purpose of Rider DCI is for grid stability. OCC maintains that this was improper and that the Commission should reverse its decision.

**B. OMA/Kroger Application for Rehearing**

{¶ 17} OMA/Kroger argues that the Commission should reverse its decision from the July 25, 2018 Entry on Rehearing because the Commission lacks statutory authority to extend Rider DCI. Initially, OMA/Kroger avers that the Commission has limited authority to extend an SSO. According to OMA/Kroger, the Commission is only explicitly permitted to extend an SSO pursuant to R.C. 4928.143(C)(2), when a Commission rejects an SSO application or when a utility withdraws its application. OMA/Kroger submits that neither scenario applies here and thus the SSO extension should not be permitted. OMA/Kroger further argues that, even if the SSO is extended, it is improper to extend Rider DCI. OMA/Kroger maintains that an ESP is not synonymous with an SSO and the various charges permitted under an ESP, such as Rider DCI, are separate from the SSO. Therefore, states OMA/Kroger, it was improper for the Commission to continue Rider DCI as part of the SSO. OMA/Kroger argues that this allowed Duke to collect additional money without going to hearing and providing necessary evidence to justify its needs. OMA/Kroger assert that this will hinder future negotiations and will incent utilities to extend SSOs past their expiration.

**C. Duke's Memorandum Contra**

{¶ 18} Duke asks that the applications for rehearing filed by OMA/Kroger and OCC be denied. Duke first asserts that the Commission already ruled on these arguments in its May 30, 2018 Entry and July 25, 2018 Second Entry on Rehearing. There, according to Duke, the Commission found the extension of the ESP, and Rider DCI, was appropriate. Duke maintains that the only issue pertinent for rehearing is concerning the \$5 million monthly spending cap for Rider DCI. Regardless, Duke contends that the extension of the ESP is legal. Duke notes that R.C. 4928.143(C)(1) directs that an SSO application be approved within 275 days. Because that did not occur, Duke maintains the Commission

appropriately and reasonably continued the previous ESP. Duke additionally disputes OMA/Kroger's contention that an SSO is a separate part of the ESP. Duke asserts that R.C. 4928.141 is clear that an ESP, along with a MRO, is one type of SSO.

{¶ 19} Duke also asserts that the July 25, 2018 Second Entry on Rehearing was properly considered by the Commission. According to Duke, the arguments raised by OCC and OMA/Kroger are misplaced. Duke maintains the Commission sufficiently explained its reasoning, with references to the record including comments from all parties. Duke states that the ESP and Rider DCI were initially approved in a fully litigated case and no new evidence needed to be introduced in order for the Commission to reach a decision regarding an extension. Duke further maintains that the Company's ROE was not the only basis for the Commission's decision to extend the ESP. Additionally, Duke argues that any recovery for Rider DCI is still subject to audit and review by the Commission. Accordingly, Duke requests that the applications for rehearing be denied.

#### ***D. Commission Conclusion***

{¶ 20} The applications for rehearing filed by OMA/Kroger and OCC should be denied. First, we will address the legality of extending the ESP. As discussed by Duke, these issues were originally settled in the July 25, 2018 Second Entry on Rehearing. As we noted in that Entry, the Revised Code does not speak to a situation where an SSO expires without a replacement SSO established. However, in other situations regarding an interim period between SSOs, the Revised Code directs the Commission to extend the previous SSO. *See* R.C. 4928.143(C)(2)(b). Accordingly, that is what the Commission appropriately did in this proceeding. In the May 30, 2018 Entry we additionally explained that "the SSO is not a subset of an ESP; rather, the ESP is the form of the SSO." R.C. 4928.141 directs utilities to offer an SSO of all competitive electric services necessary to maintain essential service. The entire package offered by the utility, whether it is an ESP or an MRO, is considered the SSO needed to maintain those essential services.

{¶ 21} The Commission additionally dismisses OMA/Kroger and OCC's argument that there was no basis for the decision in the July 25, 2018 Second Entry on Rehearing. Duke's ESP, including provisions such as Rider DCI, was fully litigated and approved by the Commission in its April 2, 2015 Opinion and Order. After that ESP was set to expire, before ESP 4 was approved, we granted Duke's request to extend the ESP, including Rider DCI, in order to "maintain essential electric service and continue proactive investment in the electric grid." May 30, 2018 Entry at ¶ 21, citing ESP 3 Order at 72. Thereafter, on rehearing, the Commission permitted Duke to continue recovery under Rider DCI, at the same monthly rate that was previously approved, in order to "preserve those objectives" discussed in the ESP 3 Order and in the May 30, 2018 Entry. July 25, 2018 Second Entry on Rehearing at ¶ 20. Thus, OCC's argument that the Commission continued Rider DCI merely to preserve Duke's financial integrity has no merit. In extending Duke's recovery of Rider DCI, we were persuaded by Duke's explanation of how the rider operated, noting, among other things, there was a three-month lag between when the Company makes its investment and when it can adjust rates to collect on those investments. July 25, 2018 Second Entry on Rehearing at ¶ 20. Duke's explanation of how Rider DCI operates and the repercussions of terminating Rider DCI is not outside of the record, and, further, other parties had the opportunity to respond to Duke's explanation. We additionally note that Rider DCI will continue to be subject to audit and review. Accordingly, the applications for rehearing filed by OMA/Kroger and OCC are denied.

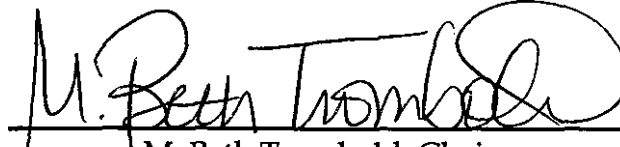
#### IV. ORDER

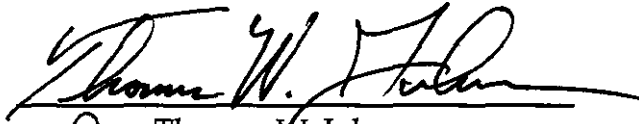
{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the applications for rehearing filed by OCC and OMA/Kroger be denied. It is, further

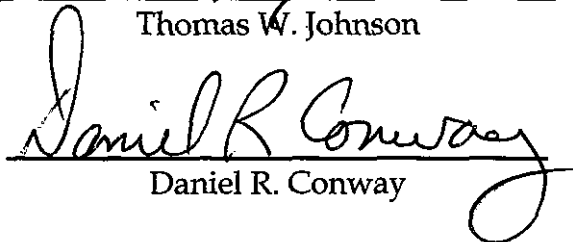
[¶ 24] ORDERED, That a copy of this Fourth Entry on Rehearing be served upon all parties of record.

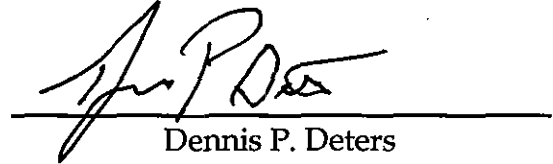
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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