

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review)	
of Duke Energy Ohio, Inc.'s)	PUCO Case No. 18-1036-EL-RDR
Distribution Capital Investment Rider.)	

**DUKE ENERGY OHIO, INC.'S REPLY TO THE MEMORANDUM CONTRA OF THE
OFFICE OF OHIO CONSUMERS' COUNSEL**

I. Introduction

Regarding important matters pending before the Public Utilities Commission of Ohio (Commission), the content of pleadings is key and words matter. The Office of the Ohio Consumers' Counsel (OCC) has erroneously made claims regarding the record of this case and those errors were substantive and must be corrected. Accordingly, Duke Energy Ohio, Inc., (Duke Energy Ohio) submitted a motion to strike portions of OCC's Reply Brief to ensure that the record in the case is not misrepresented.

The OCC misstated the record in two important respects and these incorrect statements are regarding relevant and central facts in the case. As was noted in the Company's Motion to Strike, some leeway may be tolerated in respect of legal argument, but glaringly incorrect and clearly unsupported statements must be corrected.

II. Discussion

OCC's response to Duke Energy Ohio's motion, on its face, admits its error. Instead of explaining its error in previous briefs, OCC, after accusing the Company of using its motion as an opportunity to reargue its position, does exactly that; OCC reargues its case. The record cited by OCC that quotes a response from Duke Energy Ohio witness Sarah Lawler does not support OCC claims, yet OCC continues to assert that it does. Again, words matter.

The fact that Ms. Lawler understands that a utility company must abide by its own tariffs does not constitute an admission that “allowing Duke to charge consumers for transmission costs through the Distribution Charge violates the filed rate doctrine.” Despite OCC’s repeated claims, Ms. Lawler made no such statement and indeed specifically disagreed with that claim by stating that she was confident that the Stipulation was in compliance with the tariff. Again, words matter. Facts matter. And OCC’s attempts to claim otherwise should not be permitted.

OCC’s next error concerned when an accounting correction was made by the Company. The timing of the correction matters because it is important to Duke Energy Ohio that the record reflect that the Company discovered and corrected the error *prior to the audit*. Further, the OCC’s brief states that “in the interim, Duke incorrectly charged consumers \$2,763,853 on an annualized basis.” This is wrong as it relates to the December 2017 and March 2018 filings. These filings did not incorrectly charge consumers as the OCC so claims. The record clearly indicates that these corrections were made in these filings in addition to the June 2018 quarterly filing. The statement by OCC that “the correction to remove these erroneous and unwarranted charges on consumers for the transmission plant included with the Distribution Charge did not occur until the June 2018 quarterly Distribution Charge filing” is completely false, which is supported by the fact that neither OCC or Staff is demanding that Duke refund customers for transmission plant included in the December 2017 and March 2018 filings because it was properly removed from those filings. While OCC may not wish to accept this fact, nonetheless, it remains a fact that the Company made manual entries to correct the error prior to the audit. The correct date was referenced at least four other times in the Auditor’s report.¹ The Company explained this fact in its comments in the case and the dates were provided in the hearing.²

¹ *Compliance Audit of the July 1, 2017 to June 30, 2018 Distribution Capital Investment Rider*, (December 6, 2018) prepared by Rehmann Consulting, (December 7, 2018) at pgs.14,16,17, 19.

² Comments of Duke Energy Ohio, Inc., at pg.2 (February 26, 2019) and Transcript at pg.9.

III. Conclusion

The inclusion of blatantly incorrect statements in OCC's Reply Brief is highly prejudicial and unfair to the Parties in this proceeding. For the reasons set forth in the Company's motion to strike, Duke Energy Ohio respectfully requests that the Commission strike the following portions of OCC's Reply Brief:

Page 3, second paragraph in section II, A.1., beginning with the words "The correction" and ending with the word "filing" and Page 5, first full paragraph on the page, beginning with the word "Further" and ending with the word "tariffs."

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 7th day of October, 2019, to the following parties.

/s/ Elizabeth H. Watts
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Summary: Reply Duke Energy Ohio, Inc.'s Reply to the Memorandum Contra of the Office of The Ohio Consumers' Counsel electronically filed by Carys Cochern on behalf of Duke Energy