

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke       )  
Energy Ohio, Inc., for a Waiver of       ) Case No. 21-1100-EL-WVR  
Specific Sections of the Ohio       )  
Administrative Code.       )

---

**CONSUMER PROTECTION COMMENTS  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Bruce Weston (0016973)  
Ohio Consumers' Counsel

Amy Botschner O'Brien (0074423)  
Counsel of Record  
Ambrosia Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215-4213  
Telephone: [Botschner O'Brien]: (614) 466-9575  
Telephone: [Wilson]: (614) 466-1292  
[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
(willing to accept service by e-mail)

January 6, 2022

## **TABLE OF CONTENTS**

	<b>PAGE</b>
I. INTRODUCTION .....	1
II. COMMENTS .....	4
A. The PUCO’s Rule “Waiver Process Is Not A Substitute For The Rulemaking Process” .....	4
B. The PUCO should require Duke to remove affiliated non-jurisdictional charges from the consumers’ monthly bill by no later than June 2022; not in twelve months as the Utility requests. ....	5
C. The PUCO should require Duke to comply with the new minimum billing standards in Ohio Adm. Code 4901:1-10-22(C) and have an online bill calculator available to disclose all rates and charges on the bill so that consumers can verify the accuracy of the bill.....	6
D. The PUCO should require Duke to comply with the PUCO Order in Case No. 17-1842-EL-ORD and file a new case that will set new reliability standards that complies with Ohio Adm. Code 4901:1-10-01(T) involving the calculation of the major event day (MED) threshold.....	8
III. CONCLUSION.....	10

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )  
Energy Ohio, Inc., for a Waiver of         ) Case No. 21-1100-EL-WVR  
Specific Sections of the Ohio             )  
Administrative Code.                     )

---

**CONSUMER PROTECTION COMMENTS  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

**I. INTRODUCTION**

Recent changes in the PUCO's minimum Electric Service and Safety Standards in Ohio Admin. Code 4901:1-10<sup>1</sup> may potentially provide more protection for utility consumers. These changes include limits on the types of charges that can be included on the monthly electric bill of a consumer, requirements that annual utility performance reliability reports more accurately reflect the service reliability consumers are experiencing, and requirements for online bill calculators so that consumers can verify that they are being billed accurately. These are all important consumer protections that the Office of Ohio Consumers' Counsel (OCC) supports.

But in this proceeding, Duke Energy Ohio, Inc. ("Duke" or "Utility") seeks a waiver<sup>2</sup> from these new requirements to either not implement the new minimum service standards or to delay the implementation of certain requirements for a long period of time.

---

<sup>1</sup> *In the Matter of the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, February 26, 2021.

<sup>2</sup> Application for Waiver of Duke Energy Ohio, Inc., Case No. 21-1100-EL-WVR, November 1, 2021.

Specifically, Duke has requested an additional twelve months from the approval date of the waiver to remove non-jurisdictional charges from the bill. Non-jurisdictional charges can include, but are not limited to, home warranties, line insurance, and other non-regulated goods and services. Duke currently includes charges from its affiliate on consumers' consolidated electric bill. Duke's waiver seeks additional time to remove their own affiliate charges from the bill thus avoiding being required to include Marketers' non-jurisdictional charges on consumers' bills, as required by the provision of the new rules. Duke requests twelve months to be able to update its billing system to reflect this.

OCC (and the PUCO Staff) agrees with Duke's position on removing both affiliate and non-affiliate non-jurisdictional charges from consumers' bills, which is permitted under the new rule provision.<sup>3</sup> While the billing system modifications and notification to affected consumers will take some time, a twelve-month delay to comply with the PUCO rules is unreasonable. Both OCC and Staff recommend six months as an appropriate amount of time to make the necessary changes in the bill. Six months should provide sufficient time to transition an affiliates' non-jurisdictional charges to alternative billing and to inform consumers about the billing changes.

For the protection of residential consumers, OCC recommends that the PUCO require Duke to shorten the amount of time that is being requested to remove its affiliate non-jurisdictional charges from the bill. OCC agrees with Staff<sup>4</sup> that six months should

---

<sup>3</sup> Ohio Adm.Code 4901:1-10-33(A).

<sup>4</sup> Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Staff Comments), Case No. 21-1100-EL-WVR (Dec. 10, 2021).

provide sufficient time to transition an affiliates' non-jurisdictional charges to alternative billing.<sup>5</sup>

Duke also requests to forego implementation of the online bill calculator requirements for certain residential consumers including those under time of day and space heating rates. The PUCO should require Duke to implement the online bill calculator for *all* residential tariff rates. Ohio law<sup>6</sup> requires that the content of consumers' bills be disclosed in a manner that permits consumers to recalculate charges on their bill for accuracy. In implementing this law, the PUCO ordered in Case No. 17-1842<sup>7</sup> that utilities should have an online bill calculator for consumers to calculate their bill for accuracy. To protect consumers who are using the advanced rate options that they are paying for with Duke's AMI deployment, the PUCO should require that the online bill calculator be available as a resource for *all* residential rate options so that consumers can better understand the charges on their bill.

Finally, Duke seeks to delay filing a reliability standards case until 2025 to implement revisions in the manner in which service reliability standards are calculated. Other utilities are following the new provision in the rules which require new reliability standards to include transmission outages, which complies with the PUCO definitions for major events in Ohio Adm.Code 4901:1-10-01(T). There is nothing precluding Duke from complying with the PUCO directive. Until Duke makes this change and implements the rule provision, there will be no readily available way to evaluate the reliability of

---

<sup>5</sup> Staff Comments at 6.

<sup>6</sup> R.C. 4929.10(C).

<sup>7</sup> *In the Matter of the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD (February 26, 2020).

service that Duke provides its customers. Delaying Duke's implementation of this rule provision means that consumers will lack the benefits of an open and transparent process for establishing prescribed reliability standards as required under Ohio law.<sup>8</sup> The PUCO should deny Duke's request to delay filing the required reliability standards case to implement the improved method for calculating reliability standards.

## II. COMMENTS

### A. The PUCO's Rule "Waiver Process Is Not A Substitute For The Rulemaking Process."<sup>9</sup>

This is not a rulemaking case. However, Duke is attempting to substitute through the waiver process a change to the minimum electric service standards rulemaking. The PUCO has determined that the waiver process should not be a substitute for the rulemaking process.<sup>10</sup> Yet that is what is happening here. That is wrong.

Further, under the Case 00-1265 Entry, the PUCO required the applicant to make "a showing of actual hardship ...."<sup>11</sup> Also, the PUCO required that actual hardship should be "supported by detailed documentation ..."<sup>12</sup> in order to grant a waiver. Duke has not provided such detailed documentation of as hardship.

Further, Duke has not cited O.A.C. 4901:1-10-02(C). And has not claimed that good cause exists under the rule. For these reasons, the PUCO should deny Duke's request.

---

<sup>8</sup> R.C. 4928.11(A).

<sup>9</sup> *In the Matter of the Amendment of the Minimum Telephone Service Standards as Set Forth In Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 00-1265-TP-ORD, Entry at 9-10 (May 14, 2008).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* At 10.

<sup>12</sup> *Id.*

Finally, there is unfair asymmetry to the PUCO's waiver process that works against consumers. Through the waiver process, the utilities are able to *weaken* consumer protections intended by the rules. The PUCO should have a corollary that enables consumers, through the waiver process, to *strengthen* the consumer protections within PUCO's rules.

**B. The PUCO should require Duke to remove affiliated non-jurisdictional charges from the consumers' monthly bill by no later than June 2022; not in twelve months as the Utility requests.**

Under the new provisions to Ohio Admin. Code 4901:1-10-33(A), electric utilities are only required to include Marketers' non-jurisdictional charges on their consolidated electric bill if the utility includes non-jurisdictional charges from its affiliate on the bill. Otherwise, non-jurisdictional charges cannot be included on the consolidated electric bill. Duke has decided to no longer include charges from its affiliate on the electric bill.<sup>13</sup> Consequently, Duke will not include any non-jurisdictional charges on the monthly bills of its distribution consumers.

However, Duke is requesting a delay of twelve months from the date the PUCO order approving the waiver to cease billing customers for these affiliated non-jurisdictional charges.<sup>14</sup> OCC fully supports the removal of non-jurisdictional charges from the Duke regulated electric bill. However, OCC is opposed to Duke delaying the removal of the non-jurisdictional charges by twelve months.

Duke is in the process of deploying a new customer information system ("CIS") that is scheduled to be completed in April 2022 and should be in place no later than the first half of 2022. Duke claims that the reason for the twelve-month delay is the imminent

---

<sup>13</sup> See, Duke Waiver Application at 2-3.

transition to the new CIS and technical requirements for implementation.<sup>15</sup> However, Duke provided no support for the twelve-month delay.

The PUCO Staff recommends a six-month waiver of these rules<sup>16</sup> as of the date of the Order in this case. Staff believes that six months should provide ample time to transition an affiliate's non-jurisdictional charges to alternative billing.<sup>17</sup> OCC agrees. Since many of the Duke technical resources will be involved in the transition to the new CIS, this provides a good opportunity to remove the affiliate non-jurisdictional charges from the bill as other changes are being made. Therefore, the PUCO should require Duke to comply with O.A.C. 4901:1-10-33(A) no later than June 30, 2022.

**C. The PUCO should require Duke to comply with the new minimum billing standards in Ohio Adm. Code 4901:1-10-22(C) and have an online bill calculator available to disclose all rates and charges on the bill so that consumers can verify the accuracy of the bill.**

Under the new provisions to Ohio Adm. Code 4901:1-10-22(C), electric utilities are required to "... publish and maintain an online active bill calculator that shows each and every rate or charge and permits customers to enter their billing determinates to determine the accuracy of their bill." Duke has proposed a six-month delay in implementing the online bill calculator for residential PIPP customers as well as residential consumers that use three-phase service.<sup>18</sup> OCC is not opposed to the six-month delay to implement the online bill calculator for customers on these two rate schedules. However, Duke has also proposed a waiver from implementing the online bill

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Ohio Adm. Code 4901:1-10-22(B)(16), 4901:1-10-33(A), and 4901:1-10-33(C)(9).

<sup>17</sup> Staff Comments at 6.

<sup>18</sup> Waiver Application at 3-5.



calculator for customers who are served on time-of-day (Rate TD) and space heating rates (Rate ORH).<sup>19</sup>

Duke claims in the application that it would be impossible to program a Rate TD calculator.<sup>20</sup> But in discovery, the utility admitted that while they believe that implementation of an online calculator for time-of-day rates may be confusing for customers, it would not be impossible to implement.<sup>21</sup> And in fact, Duke has not justified why the online calculator for time-of-day rates would be confusing for customers or why the online calculator would be difficult to program.

Customers on advanced rate options such as the Rate TD need resources such as the online calculator to determine if they are being billed accurately. Residential customers are paying hundreds of millions of dollars on Advanced Metering Infrastructure (“AMI”) and other smart grid modifications that are intended to provide more granular usage information for customers so that they can take advantage of more advanced rate options such as the Rate TD. Not providing an online bill calculator for customers who use the more granular usage information that they are paying for is unreasonable and inconsistent with state policies.

Furthermore, Duke has even proposed expanding upon the tariff rate options that are available to customers with a new residential time of day rate (Rate TD-CPP).<sup>22</sup> These advanced rate options demand online calculators so that customers can determine if they are being accurately billed.

---

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.*

<sup>21</sup> *See* OCC INT-005(g).

<sup>22</sup> Case 21-887-EL-AIR, Direct Testimony of Duke witness Sailors (October 15, 2021) at 19.

OCC disagrees with Duke’s position (with which the PUCO Staff apparently agrees)<sup>23</sup> to waive bill calculators for those consumers who take service for electric space heating rates and time of day rates due to their “limited applicability”<sup>24</sup> or “impracticality.”<sup>25</sup> To protect consumers who are using the advanced rate options that they are paying for with Duke’s AMI deployment, the PUCO should require that the online bill calculator be available as a resource for *all* residential rate options, including those taking service under Rate TD and the optional residential electric space heating Rate ORH.

**D. The PUCO should require Duke to comply with the PUCO Order in Case No. 17-1842-EL-ORD and file a new case that will set new reliability standards that complies with Ohio Adm. Code 4901:1-10-01(T) involving the calculation of the major event day (MED) threshold.**

Under the new provisions to Ohio Adm. Code 4901:1-10-01(T), the PUCO modified the definition of a “major event” to no longer exclude transmission outages in the major event day calculations that are used to calculate and report reliability performance. And in the PUCO’s Order in Case 17-1842-EL-ORD, the PUCO required the electric utilities to file reliability standards cases within six months of that Order unless the electric utility had already scheduled such a filing. Duke requests a waiver from implementing the new definition for a major event day through 2025 claiming that since the PUCO established standards through 2025, a reliability standards case is effectively scheduled to occur after that time.<sup>26</sup>

---

<sup>23</sup> Staff Comments at 5.

<sup>24</sup> Staff Comments at 5.

<sup>25</sup> Duke Waiver Application at 4-5.

<sup>26</sup> Waiver Application at 5-6.

Duke's current reliability standards were established through a global settlement in Case 17-032-EL-AIR, *et al.*<sup>27</sup> There is no requirement or schedule in that Settlement or Order that requires Duke to file an application to establish new distribution reliability standards in 2025. And in fact, according to the PUCO rules,<sup>28</sup> the standards in effect in 2025 could remain in effect indefinitely until new reliability standards are authorized by the PUCO. Therefore, Duke's assertion that it is not required to file a reliability standards case now because it has scheduled to make such a filing in 2025 is factually incorrect.

There is nothing precluding Duke from complying with the PUCO's directive. All of the electric utilities in Ohio (with the exception of Duke) have pending applications to establish new reliability standards that comply with the PUCO definition for major events in Ohio Adm. Code 4901:1-10-01(T).<sup>29</sup> Under Ohio Revised Code 4928.11(A), the PUCO is required to protect consumers by establishing the minimum service quality, safety, and reliability requirements that apply across the electric industry in Ohio. There is no reason for Duke to be excused from meeting the industry standards for reliability since it is under no schedule or obligation (now or in the future) to file a reliability standards case. Furthermore, Duke has a pending application to increase funding under its Distribution Capital Investment ("DCI") rider for the supposed purpose of increasing customer reliability.<sup>30</sup> A reliability standards case now will provide the

---

<sup>27</sup> Case No. 17-32 at page 41.

<sup>28</sup> See, Ohio Adm. Code 4901:1-10-10(B)(8).

<sup>29</sup> See, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Revise Reliability Performance Standards Pursuant to O.A.C. 4901:1-10-10(B)(7)*, Case No. 20-0580-EL-ESS, Application, (March 11, 2020). *In the Matter of the Application of Ohio Power Company to Revise Reliability Performance Standards Pursuant to O.A.C. 4901:1-10-10(B)(7)*, Case No. 20-1111-EL-ESS (June 1, 2020). *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for Establishing New Reliability Standards*, Case No. 21-0956-EL-ESS. (October 21, 2021).

<sup>30</sup> Case No. 21-887-EL-AIR, Testimony of Duke Witness Hesse (October 15, 2021) at 7.

baseline reliability performance information that is needed to quantify the impact of any additional customer spending on reliability.

Delaying a Duke reliability standards case indefinitely through at least 2025 (as seemingly supported by Staff comments<sup>31</sup> means that customers will lack the benefits of an open and transparent process in established prescribed reliability standards as required under Ohio law.<sup>32</sup> In fact, according to the discovery responses that Duke provided OCC,<sup>33</sup> Staff was expecting all of the standards cases to be reopened in 2022 so that the changes in the major event day threshold calculations could be updated consistently across the industry. There is no explanation in the Staff's Comments why a delay until after 2025 would now be considered acceptable. Consumers deserve better and should have the assurance that Duke is adhering to the minimum electric service standards required under Ohio law and uniformly applied and enforced by the PUCO across Ohio.

The PUCO should reject Duke's waiver request, and instead require the Utility to file a reliability standards case that complies with the requirements in Ohio Adm. Code 4901:1-10 and the PUCO Order in Case No. 17-1842-EL-ORD.

### **III. CONCLUSION**

The PUCO should adopt OCC's consumer protection recommendations. The PUCO should require Duke to shorten the amount of time that is being requested to remove the non-jurisdictional charges from the bill. The PUCO should also require Duke to implement the online bill calculator for all residential tariff rates. Finally, the PUCO

---

<sup>31</sup> See Staff Comments at 6.

<sup>32</sup> R.C. 4928.11(A).

<sup>33</sup> Email between Staff and Duke (October 14, 2021) subject: important rule change updates. Provided to OCC in response to OCC Request for Production of Documents 1-002.

should deny Duke's request to delay filing the required reliability standards case to implement the improved method for calculating reliability standards.

Respectfully Submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien (0074423)  
Counsel of Record  
Ambrosia Wilson (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215-4213  
Telephone: [Botschner O'Brien]: (614) 466-9575  
Telephone: [Wilson]: (614) 466-1292  
[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
(willing to accept service by e-mail)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 6<sup>th</sup> day of January 2022.

/s/ Amy Botschner O'Brien  
Amy Botschner O'Brien  
Counsel of Record  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

[thomas.shephert@ohioAGO.gov](mailto:thomas.shephert@ohioAGO.gov)  
[Sarah.feldkamp@ohioAGO.gov](mailto:Sarah.feldkamp@ohioAGO.gov)  
[joe.oliker@igs.com](mailto:joe.oliker@igs.com)  
[evan.betterton@igs.com](mailto:evan.betterton@igs.com)  
[michael.nugent@igs.com](mailto:michael.nugent@igs.com)  
[fdarr2019@gmail.com](mailto:fdarr2019@gmail.com)

[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)  
[Larisa.vaysman@duke-energy.com](mailto:Larisa.vaysman@duke-energy.com)

Attorney Examiner:  
[Matthew.sandor@puco.ohio.gov](mailto:Matthew.sandor@puco.ohio.gov)  
[Nicholas.walstra@puco.ohio.gov](mailto:Nicholas.walstra@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**1/6/2022 5:15:09 PM**

**in**

**Case No(s). 21-1100-EL-WVR**

Summary: Comments Consumer Protection Comments by Office of the Ohio  
Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of  
Botschner O'Brien, Amy