

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.)	Case No. 21-0887-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 21-0888-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 21-0889-EL-AAM
)	

**THE CITY OF CINCINNATI'S MEMORANDUM CONTRA DUKE ENERGY OHIO'S
MOTION TO STRIKE OBJECTIONS TO THE STAFF REPORT**

Pursuant to R.C. 4909.19 and O.A.C. 4901-1-28(B), the City of Cincinnati ("City") filed objections to the Staff Report of Investigation ("Staff Report") relating to Duke Energy Ohio, Inc.'s ("Duke") application to increase its base distribution rates. Duke moved to strike four of the City's eight objections. The Commission should deny Duke's motion.

R.C. 4909.19(C) requires the Staff Report to "cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith." Pursuant to O.A.C. 4901-1-28(B), objections should be specific and "may relate to the findings, conclusions or recommendations contained in the report, or to the failure of the report to address one or more specific items." Only those objections that fail to meet these requirements may be stricken. *Id.* As stated in O.A.C. 4901-1-28(C), the purpose of objections is to frame the issues in the proceedings.

This Commission has previously held that "[w]hether or not [objections] are based on accurate representations of fact, and whether or not they are appropriate considerations in the

setting of rates, is irrelevant to the question of whether they should be stricken.” *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR, Entry at 5 (Nov. 10, 2003) (hereinafter “Water and Sewer LLC”). *See also Industrial Energy Consumers v. Pub. Util. Comm.*, 63 Ohio St. 3d 551, 554 (1992). In the Commission’s view, “[t]he intrinsic merit, or lack of merit, of any particular objection must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.” *Water and Sewer LLC*, Entry at 3 (Nov. 10, 2003). Accordingly, objections shall withstand a motion to strike so long as they are specific and either relate to the findings, conclusions, or recommendations in a staff report, or relate to the failure of the staff report to address certain items.

City Objection 2: Federal Funds

The City objects that the Staff Report did not explicitly recognize the need to address the impact of infrastructure funds on Rider DCI and elsewhere, as the Commission did with the Federal Tax Cuts and Jobs Act of 2017. Duke claims this objection is consistent with the Staff Report and fails to identify specific costs. Duke Motion, p. 22. The City’s objection is proper because it notes the failure of the Staff Report to address a specific item. Plus, identification of specific costs is unnecessary given that the objection relates to the specific category of costs reimbursed through federal infrastructure funds.

City Objection 3: Rider DCI

The City objects to the Staff Report for proposing Rider DCI rate caps without addressing whether Duke has legal authority in this rate case to increase rate caps set in an ESP proceeding. Duke mistakenly argues that the City’s objection is simply expressing support for Staff’s position. Duke Motion, pp. 22-23. This is incorrect. The City does not support Staff’s or Duke’s proposed rate caps. The City’s objection is similar to that made by OMAEG and Kroger regarding Rider

DCI (OMAEG Objections, pp. 7-9; Kroger Objections, p. 9), and Duke did not move to strike those objections.

City Objection 5: Residential Rates

On behalf of its residents, the City objects to the Staff Report's approximately 25% increase in energy charges for Rate RS. Duke argues that this objection is "entirely non-specific" because the City does not also offer a solution. Duke Motion, p. 8. However, only a specific objection is required, not a solution. Solutions are for the Commission to consider based on the testimony of all parties presented at hearing.

City Objection 8: Distribution Operations and Reliability

The City objects that the Staff Report does not address Duke's lack of provision of reliable service, giving, as examples, Duke's inadequate service provided to the City's water utility operations and via Duke's emergency line. Duke argues this objection is improper because it relates to "individualized services" Duke provides to City facilities and not to this distribution rate case. Duke Motion, p. 19. However, Duke overlooks the statutory requirements applicable to rate cases. Among others, the Commission must "consider the management policies, practices, and organization of the public utility" (R.C. 4909.154), and may:

- "consider the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered by the public utility, the value of such service to the public, and the ability of the public utility to improve such service and facility." R.C. 4909.152.
- "hear service complaints, if any, that may be presented by customers and the public during any" rate case proceeding. R.C. 4909.153.

The City's objection implicates Duke's management practices, the adequacy of its services, and Duke's ability to improve its services. These are fair issues for the Commission to consider in this distribution rate case when, among other things, authorizing Duke's return on investment.

For the reasons stated above, the Commission should deny Duke's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 8th day of July 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang
One of the Attorneys for the City of
Cincinnati

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Summary: Response to Motion to Strike electronically filed by Mr. James F. Lang
on behalf of City of Cincinnati