

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Increase in Electric ) Case No. 21-0887-EL-AIR  
Distribution Rates. )

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 ) Case No. 21-0889-EL-AAM  
Accounting Methods. )

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**ONE ENERGY ENTERPRISES INC.'S MEMORANDUM CONTRA  
DUKE ENERGY OHIO INC.'S MOTION TO STRIKE SPECIFIC INTERVENOR  
OBJECTIONS TO THE STAFF REPORT**

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Intervenor One Energy Enterprises Inc. (“One Energy”), by and through its counsel, responds below to Duke Energy Ohio, Inc.’s (“Duke”) Motion to Strike Specific Intervenor Objections to the Staff Report (“Motion”). As set forth below, One Energy reasonably objected to a number of issues and critical omissions in the Staff Report. Duke’s reluctance to have its filing held up to closer scrutiny is not a reason to strike One Energy’s objections. If anything, Duke’s reticence should alert the Public Utilities Commission (“PUCO” or “Commission”) and its Staff that a more in depth inspection is necessary. As set forth in greater detail below, the Motion should be denied.

For the convenience of the hearing examiners, One Energy’s response will track the order in which Duke’s Motion dealt with One Energy’s Objections to the Staff Report.

**One Energy Section 2, Rates and Tariffs, Objection 9: Miscellaneous Tariff Issue – Subject to Refund.**

It is disingenuous for Duke to boldly claim that “[n]either the Company [Duke] nor the Commission can determine why One Energy believes that the addition of such a statement [regarding customer refunds] to all riders and tariffs is necessary, or why Staff erred in not recommending such a statement in the Staff Report.” (Motion at 7). Surely Duke is aware that public utilities (like Duke) do not have to refund improper charges unless the Ohio legislature changes the law or a utility’s tariff specifically provides for a refund. See e.g. *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, 153 Ohio St. 3d 289, 2018-Ohio-229; and R.C. 4905.32. One Energy’s objection deals directly and specifically with this well understood concept. Further, it should be noted that a similar objection was raised by One Energy in The Dayton Power & Light Company’s (DP&L”) recent distribution rate case (Case No. 20-1651-EL-AIR) was not objected to by the utility, and the PUCO Staff understood the objection well enough to expressly respond to in the pre-filed testimony of Craig Smith (dated January 18, 2022).

**One Energy Section 1 Objection: Hitting the Reset Button and Rejecting Duke’s Filing.**

Duke argues in its Motion that, no matter how flawed and deficient its filing may be, Staff simply must accept it—and One Energy should not be allowed to even argue that it should have done otherwise. This defies logic. Certainly, there must be a minimum standard of care for a completed rate case application. If Duke had simply omitted every required exhibit and financial disclosure, surely Staff could (and would) have thrown out the entire application and required Duke to try again.

Further, Duke’s Motion really misses the point of One Energy’s objection, which more specifically states the following (on page 3 of its Objections to the Staff Report):

If a utility (like Duke) submits an Ohio rate case that includes fancy (and unnecessary) steak dinners, costs associated with a Kentucky power system, and a 66% failure rate in audit testing, they should be required to do more – to start over and provide a third party line by line audit that gives the Staff, the ratepayers, and the intervening parties a more accurate look at their books and records. Surely in a time of record energy rates, Ohioans are entitled to have an accurate accounting of Duke's rate base to ensure that they are only being charged their fair share of the broader costs of Duke. As such, One Energy objects, and both Duke and Staff should step back and restart the process after a full review by an independent auditor (see below for more detail).

In other words, One Energy reasonably objects to the Staff Report's failure to hold Duke accountable for its glaring accounting failures, and suggests that Duke's accounting practices as a whole are unreliable. Once Duke's errors came to light, Staff (as part of the Staff Report) should have required Duke to resubmit its filing with independently audited (and more accurate) financials. This is necessary for Staff and the other parties to review and respond to the filing with some level of confidence in its accuracy.

In addition, and because this objection is inherently tied to the next objection below (the need for full review of Duke's books and records by a financial auditor), so that response is incorporated into this section.

**One Energy Section 2, Rate Base and Operating Income, Objection 1: Need for Full Review by Financial Auditor in Light of Material Errors.**

Duke argues in its Motion that Staff does not have authority to require an audit of its books and records, and that One Energy cannot even request that it do so. This too is incorrect.

As One Energy set forth in its Objections, the PUCO and Staff have ordered comprehensive audits of management practices and accounting practices in other cases. *See e.g., In the Matter of Ohio American Water Company to Increase its Rates for Water and Sewer Services*, Case No. 09-391-WS-AIR, May 5, 2010 Opinion and Order (“[W]e are recommending an investigation and audit of the Company's management policies and administrative practices for purposes of the Company's next rate proceeding”).

In some dire cases, they have even appointed a receiver to run the utility. *See e.g., In the Matter of the Review of Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC*, Case No. 17-1534-HC-UNC, June 30, 2017 Finding and Order (“The Commission further finds that, due to its inability to timely pay utility suppliers, debt service, and employee payroll and the magnitude by which its outstanding debt servicing requirements exceed currently projected revenue, Youngstown Thermal is in imminent danger of insolvency. Thus, pursuant to the authority granted by R.C. 4905.60, the Commission orders the Attorney General to seek the appointment of a receiver and pursue any other appropriate civil remedy”). This directly rebuts Duke’s suggestion.

In this case, and as One Energy pointed out in its Objections, the Staff Report should have recommended, at a minimum, a comprehensive audit here. Staff noted multiple deficiencies in Duke’s accounting practices, including the following:

- (i) Improper accounting of an admittedly retired asset (totaling more than \$1.4 million) which was not removed from plant-in-service (page 8 of the Staff Report);
- (ii) Finding that Duke was unable to provide documentation/invoices for a number of expenses (pages 8-9 of the Staff Report);
- (iii) Including excessive costs of meals “such as meals at upscale steakhouses” (page 9 of the Staff Report);
- (iv) Identifying “numerous transactions for expenses incurred prior to the test year” (page 17 of the Staff Report); and,
- (v) Staff’s discovery that Duke failed to remove amounts attributable to a facility (“Silverhawk”) providing distribution service in Kentucky to the tune of \$13,184,293.00 or almost 3% of total general plant-in-service (page 9 of the Staff Report).

But, it did not review these specific problems more holistically to determine whether there is a larger problem. The simple question must be asked: How much worse does a utility’s accounting have to be to trigger an audit?

Further, and perhaps more importantly, Duke’s claim that One Energy’s objection “has no relevance to base electric distribution ratemaking” makes no sense. Solid and reliable accounting

practices are at the heart of a distribution rate case. Staff and the parties cannot properly review a rate case filing when the accounting has proven to be unreliable. Surely, Duke and Staff are more than capable of responding to this issue as part of this proceeding.

**One Energy Section 2, Rates and Tariffs, Objection 2: Installation (Sheet No. 23.7, Pages 1 of 2 of Customer's and Duke's Installations – Installation of Meters)**

In this section of its Motion, Duke argues that Staff was not required to address the installation of meters in relation to Duke's tariff. This, they argue, is not related to setting electric distribution rates. In other words, Duke contends that its tariff (which is a required filing in distribution rate cases) is not relevant to this case. Nothing could be further from the truth, as a public utility's tariff is always a critical part of distribution rate cases.

Here, Duke filed its tariff in this proceeding and proposed certain changes to its tariff, many of which are entirely unrelated to the setting of rates. It is disingenuous for Duke to propose changes to certain portions of its tariff, and then argue that intervenors (like One Energy) cannot take issue with Duke (and Staff) failing to require other changes. Here, Duke's tariff states that it has unlimited authority and discretion in determining the number of meters, delivery points, type of metering equipment, as well as the location of meters. Duke itself put the installation of meters at issue in its tariff and, by granting itself full authority to do whatever it pleases regardless of customer concerns or needs, created the problem as well. Accordingly, One Energy properly objected to the Staff Report's failure to temper Duke's complete discretion in this area by amending the tariff to state that Duke shall be required to (i) cooperate with any customer's request to locate meters or metering equipment; or (ii) take service at a less intrusive delivery point on the customer's premises so long as such location is technically feasible and otherwise compliant with Duke's tariff. Contrary to Duke's contentions, One Energy's objection is very specific. In fact, it is difficult to understand how it could be any more specific.

Further, if Duke voluntarily cooperates with customers as a matter of course, as it suggests in its Motion, this would be no great burden on Duke and would ensure Duke's tariff is consistent with its own practices.

**One Energy Section 2, Rates and Tariffs, Objections 4, 5 and 6: Rider DIR (Sheet No. 71.2), Rider EEPC (Sheet No. 75.2, Page 1 of 6 Emergency Electrical Procedures) and Rider GP (Sheet 79.6)**

Again, Duke continues with its theme of de-emphasizing its tariff and here, shockingly states that a specific provision in its tariff "does not form a necessary or relevant part of this rate proceeding." (Motion at p. 16). Elsewhere Duke states that a review of its tariffs "is neither necessary nor appropriate for setting electric distribution rates." (Motion at p. 16). The setting of rates is certainly an important component of any distribution rate case, but it is not the sole allowable focus of the PUCO, its Staff or intervening parties in such cases. The standard filing requirements for a distribution rate case specifically include an entire section devoted to tariffs. And, not surprisingly, Duke filed four different documents (Schedules E-1 through E-3) involving its tariff and countless proposed changes to its tariff. As a result, the PUCO (by its own rules) and Duke (by its filings in this case) have made Duke's tariff an integral part of this proceeding. Accordingly, objections to tariff provisions not addressed by Duke and/or Staff in the Staff Report are more than proper for this (and any) distribution rate case. As such, Duke's Motion as it relates to these (and frankly all tariff provisions) is entirely improper.

**One Energy Section 2, Rates and Tariffs, Objection 5: Rider EEPC (Sheet No. 75.2, Page 1 of 6 Emergency Electrical Procedures)**

In addition to its apparent desire to keep everyone from nosing around its tariffs, Duke contends that a comprehensive review of this specific tariff provision is improper. What Duke conveniently ignores, however, is that Rider EEPC contains a reference to the East Central Area Reliability Council ("ECAR"), which Staff admitted in the DP&L electric distribution rate case no

longer exists. Like DP&L, Duke did not catch this error (or the reference to ECAR Document No. 3 dated June 16, 1998). These are sloppy errors that should be caught as part of Duke's review and filing of its tariff in cases like this. Such errors raise the question of what else in Duke's tariff needs to be updated. Duke is already redlining its tariff as part of this case, so asking that Duke actually read the entirety of its tariff (including this specific rider) to ensure everything is accurate is a simple ask—and certainly one that Staff should have required as part of the Staff Report.

**One Energy Section 2, Rates and Tariffs, Objection 10: Miscellaneous Tariff Issue – CRES Provider Registration and Credit Requirements**

Again, Duke's Motion misses the point as it relates to this objection. Both Ohio law and Duke itself put its tariff at issue in this case. Duke cannot be allowed to pick and choose (in its sole discretion) which portions of its tariff are relevant to this case. The entirety of its tariff is at issue in the case. Period. Simply because Duke did not file its supplier tariff in this case does not mean that it is not properly part of this case especially considering that the PUCO's standard filing requirements in the Ohio Administrative Code refer to tariffs generally, not a specific tariff or tariff provision that a utility wants to focus on. As a result, One Energy reasonably objects to Duke's failure to include the entire Credit Supplier Tariff as part of its filing, and Staff's failure to require Duke to do that and require common sense changes to its CRES provider registration and credit requirements.

**One Energy Section 2, Management and Operations review, Objection: Management and Operations Review**

Clearly this objection hit a nerve. Diversity, equity and inclusion efforts have taken center stage over the past couple of years and appear to be a key component of Duke's management philosophy. Given that Duke has failed, to One Energy's knowledge, to make a public announcement that it has achieved gender (or race) wage parity, or to acknowledge in this case that it has done so, it is reasonable to conclude that Duke either: (i) does not know whether it has a

gender (or race) wage gap because it has not conducted the analysis; or, (ii) knows the answer and affirmatively chose not to address it. Duke argues that One Energy puts forth an “ill-conceived and fictitious wage disparity theory.” Yet, Duke has provided no evidence (and Staff required none in the Staff Report) establishing wage parity.

Now for the numbers. Only 13% of Duke’s Ohio employees identify as female, which is far less representative than its parent company (approximately 24% of employees at Duke’s parent company identified as female as of December 1, 2021), and far less representative than the customers Duke serves. Women are clearly underrepresented at Duke, making the related issue of wage parity more immediate and pressing.

Further, and as it relates to the setting of rates, the issue of gender and racial wage parity has a direct impact on Duke’s Operating Income in the form of labor expenses. If Duke has not achieved wage parity, this rate case essentially demands that ratepayers foot the bill for its unlawful and inequitable treatment of its employees. For example, if the test year salary expenses included for men are in excess of what would have been paid to women in similar roles at Duke, then they are inherently unreasonable and imprudent and would need to be reduced accordingly. Ratepayers should not be burdened with the inflated costs of an inequitable payroll, and this is certainly a proper subject for the Staff and intervenors to examine as part of this case.

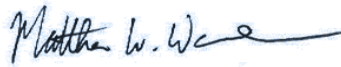
Further, Duke tries to evade this sensitive issue by incorrectly stating that “One Energy concedes that Staff properly required the Company [Duke] to provide information related to three functional areas within the Company’s [Duke’s] management policies and practices.” (Motion at p. 17). One Energy made no such concession. And, One Energy’s objection had nothing to do with the number of functional areas to be reviewed; rather, it focused on the specific topics selected. As One Energy explained in its objections, “the selected topics hardly move the needle. One Energy objects to Staff’s failure to examine truly substantive and important issues which directly



relate to Duke's management activities during the test year, especially Duke's diversity, equity and inclusion efforts." In other words, One Energy's objection is that Staff did not choose to examine the important management topic of diversity, equity and inclusion—and, more specifically, the critical topic of race and gender parity. Although Duke may not want to focus on this topic, the objection is entirely proper and directly relates to both Duke's management policies, practices and organization as well as the setting of electric distribution rates.

For the foregoing reasons, Duke's Motion should be denied and One Energy's specific, easily understood and entirely relevant objections to the Staff Report should stand.

Respectfully submitted on behalf of  
ONE ENERGY ENTERPRISES INC.



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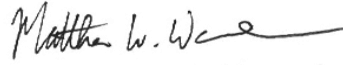
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## **CERTIFICATE OF SERVICE**

I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 8th day of July 2022.



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Summary: Text One Energy Enterprises LLC's Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Objections to The Staff Report electronically filed by Teresa Orahod on behalf of Matthew W. Warnock