

**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. 21-887-EL-AIR
	)	
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 21-888-EL-ATA
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 21-889-EL-AAM
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**MEMORANDUM CONTRA  
MOTION TO STRIKE OBJECTIONS TO THE STAFF REPORT  
OF  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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**I. INTRODUCTION**

On October 1, 2021, Duke Energy Ohio, Inc. (Duke) filed its application to increase its distribution operating revenues by \$54.7 million or approximately 10.0% in annual distribution revenue over the test year (Application) and increase its rates for electric distribution service.<sup>1</sup> Duke also proposed the continuation and modification of various riders established under its current Electric Security Plan (ESP IV), such as its Delivery Capital Investment Rider (Rider DCI), Rider Power Future Initiatives (Rider PF), Distribution Storm Rider (Rider DSR), and Electric Service Reliability Rider (Rider ESRR).<sup>2</sup>

Staff filed its Staff Report of Investigation (Staff Report) on May 19, 2022.<sup>3</sup> The Public Utilities Commission of Ohio (Commission) issued an Entry on May 20, 2022, directing interested

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<sup>1</sup> Application at ¶ 8 (Oct. 1, 2021).

<sup>2</sup> *Id.* at ¶¶ 11, 16, 17, 20.

<sup>3</sup> Staff Report of Investigation (May 19, 2022) (Staff Report).

parties to file objections within thirty days pursuant to R.C. 4909.19 and Ohio Adm.Code 4901-1-28.<sup>4</sup> The Commission further stated that motions to strike objections be filed by June 30, 2022, and that memoranda contra motions to strike be filed by July 8, 2022.<sup>5</sup>

Pursuant to the Commission’s Entry, OMAEG timely filed their Objections to the Staff Report on June 21, 2022.<sup>6</sup> On July 1, 2022, Duke filed a Motion to Strike Specific Intervenor Objections (Motion to Strike).<sup>7</sup> Specifically, Duke sought to strike OMAEG Objection E<sup>8</sup> (Distribution Reliability Objection), which states that “OMAEG objects to the staff report to the extent it fails to consider proposing distribution pilot programs and increasing customer access to data.”<sup>9</sup>

Duke’s Motion to Strike fails to satisfy the Commission’s rules for striking objections and fails to set forth good cause for the Commission to strike OMAEG’s Distribution Reliability Objection. The Objection is specific, objecting to the Staff Report’s failure to address specific distribution service-related proposals and the Staff Report’s failure to make recommendations regarding Duke’s distribution service and facilities and distribution reliability, including access to customer data and distribution pilot programs related to the distribution system. These proposals are relevant to Duke’s Application to increase base distribution rates and to continue and modify various riders proposed in this proceeding. The distribution-related proposals have also been made an issue in this proceeding by Duke’s Application itself.

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<sup>4</sup> Entry at ¶¶ 4-5 (May 20, 2022).

<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> Objections to the Staff Report of The Ohio Manufacturers’ Association Energy Group (June 21, 2022) (OMAEG Objections).

<sup>7</sup> Motion to Strike Specific Intervenor Objections to Staff Report (July 1, 2022) (Motion to Strike).

<sup>8</sup> Motion to Strike at 13-14 (Duke numbered this objection as “OMAEG Objection 5: Pilot programs and data access”).

<sup>9</sup> OMAEG Objections at 13-14.

## II. ARGUMENT

Pursuant to Ohio Adm.Code 4901-1-12, a motion to strike must set forth good cause in order to be granted by the Commission and must satisfy the specific requirements of Ohio Adm.Code 4901-1-28 regarding motions to strike objections in rate cases. Duke's Motion to Strike fails to do both, and should be rejected by the Commission. First and foremost, OMAEG's Distribution Reliability Objection complies with the specificity and procedural requirements set forth in the Ohio Administrative Code and Commission and Supreme Court of Ohio precedent, and therefore, is authorized to stand. Simply put, OMAEG's Distribution Reliability Objection was "specific" and related to "the failure of the report to address one or more specific items," satisfying the standard in Ohio Adm.Code 4901-1-28 on its face. Duke's attempts to argue otherwise lack merit. Additionally, contrary to Duke's arguments and as explained further below, OMAEG's Distribution Reliability Objection also complies with any relevancy requirements set forth in Ohio law.

### **A. OMAEG's Distribution Reliability Objection Complies with Ohio Adm.Code 4901-1-28.**

Ohio Adm.Code 4901-1-28 sets the standard for objections to a Staff Report in a rate case:

Any party may file objections to a report of investigation described in paragraph (A) of this rule, within thirty days after such report is filed with the commission. Such objections 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. All objections must be specific. Any objections that fail to meet this requirement may be stricken* upon motion of any party or the commission staff or upon motion of the commission, the legal director, the deputy legal director, or the attorney examiner.<sup>10</sup>

OMAEG's Distribution Reliability Objection complies with the procedural and specificity requirements of Ohio Adm.Code 4901-1-28. OMAEG timely filed its Distribution Reliability

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<sup>10</sup> Ohio Adm.Code 4901-1-28 (emphasis added).

Objection.<sup>11</sup> OMAEG's Distribution Reliability Objection relates to the failure of the Staff Report to address one or more specific items, namely, the failure of the Staff report to consider proposing distribution pilot programs and increasing customer access to data.<sup>12</sup> Accordingly, OMAEG's Distribution Reliability Objection complies with the technical requirements of Ohio Adm.Code 4901-1-28, and should not be stricken.

Moreover, OMAEG's Distribution Reliability Objection was specific. The Distribution Reliability Objection contained a number of specific proposals that "could be used to reduce future distribution cost of service and increase distribution grid reliability for Duke customers by avoiding unnecessary system upgrades and appreciating the locational value of distributed energy resources."<sup>13</sup> These include:

1. A Distribution Circuit Coincident Peak Pricing Pilot Program;
2. Tracking and review of certain information for all circuits serving OMAEG member accounts, such as:
  - a. circuit identifier;
  - b. hourly circuit load in MWh for each hour of the year;
  - c. circuit design capacity in MW;
  - d. the circuit's thermal limit rating;
  - e. outage history including duration of outage;
  - f. all maintenance and operation work completed on the circuit, including vegetation trimming;
  - g. whether equipment was replaced;
  - h. if available, the age and manufacturer of original equipment that is replaced;
  - i. if new, purpose of install;
  - j. expected reliability improvement; and
  - k. how improvement will be measured; and

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<sup>11</sup> See OMAEG Objections.

<sup>12</sup> See *id.* at 13-15.

<sup>13</sup> *Id.* at 13.

3. A publicly available hosting capacity map.<sup>14</sup>

OMAEG further specifically explained in its Distribution Reliability Objection how each of these proposals could help improve distribution reliability for customers while lowering distribution expenses for Duke, both of which relate to the provision of distribution service to customers and the need to seek increases in base rates to recover costs from customers, including the need to increase base rates and for cost recovery from customers under various riders proposed by Duke in this case. Moreover, the Distribution Reliability Objection is directly related to the specific rates at issue in this case and extends to matters put at issue by Duke in its Application and the Staff Report's failure to address such. Accordingly, OMAEG's Distribution Reliability Objection complies with the specificity requirement of Ohio Adm.Code 4901-1-28, and should not be stricken.

Duke appears to agree with this conclusion, as Duke did not object to the Distribution Reliability Objection on the ground that it lacked specificity.<sup>15</sup> Given that this is the substantive requirement for an objection under the plain text of the Commission's rules, Duke's Motion to Strike must be rejected.

**B. OMAEG's Distribution Reliability Objection is Relevant to the Distribution Rate Case.**

Notwithstanding the plain text of Ohio Adm.Code 4901-1-28 and the requirements set forth therein, Duke improperly moved to strike OMAEG's Distribution Reliability Objection on the grounds that it purportedly "relates to a panoply of matters irrelevant to base distribution rate determination."<sup>16</sup> This is an astonishing argument by a distribution utility given that the Objection

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<sup>14</sup> OMAEG Objections at 13-15.

<sup>15</sup> See Motion to Strike at 5-8 (discussing objections which fail to comply with the technical and procedural requirements of Ohio Adm.Code 4901-1-28).

<sup>16</sup> OMAEG Objections at 13.

in question is entirely related to distribution reliability and decreasing the cost of reliably serving its customers, both of which are relevant to a base distribution rate case and the various riders proposed by Duke. It is also an unfortunate position for customers given the recent outages on multiple distribution systems in Ohio that may have been prevented by increased distribution reliability on the systems and improved customer data and distribution pilot programs for curtailment purposes. Duke's reluctance to deal with these important issues and economically increase distribution reliability in this case is telling. It is also hypocritical given that Duke has proposed to continue and expand numerous riders and has proposed a number of provisions in its Application which are purportedly related to distribution reliability. Notwithstanding Duke's arguments to the contrary, as noted by the Supreme Court of Ohio, Ohio law permits the Commission "to review any of an applicant's rules and regulations which in any manner could be applied in charging the new rates."<sup>17</sup> The scope of the Commission's inquiry extends to matters put in issue by the applicant or related to the rates which are the subject of the application.<sup>18</sup> A matter may be put in issue or related to the application even if the specific change is not proposed by the applicant itself.<sup>19</sup>

First, the reliability of a distribution system and the costs associated therewith is entirely relevant to the determination of base distribution rates. Ohio law states as much. For example, according to R.C. 4909.152:

*In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission may consider the efficiency,*

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<sup>17</sup> *Cleveland Illum. Co. v. Pub. Util. Comm'n of Ohio*, 42 Ohio St.2d 403, 420 (1975).

<sup>18</sup> *See id.*

<sup>19</sup> *See, e.g., In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges and to Change its Regulations and Practices Affecting the Same*, Case No. 83-300-TP-AIR, 1984 WL 992025, Entry on Rehearing at 4 (Mar. 20, 1984), *citing Cleveland Illum. Co. v. Pub. Util. Comm'n of Ohio*, 42 Ohio St.2d 403, 420 (1975).

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.

If the commission determines that the facility or service is inefficient, insufficient, or inadequate, the commission may order the public utility to improve such facility or service to a level determined by the commission to be efficient, sufficient, or adequate. However, in any order entered pursuant to section 4909.19 of the Revised Code, the commission shall authorize a rate of return that is just and reasonable.<sup>20</sup>

Moreover, the Commission can consider management policies, practices, and organization of a public utility to determine whether operating and maintenance expenses are prudently incurred. R.C. 4909.154 states that:

*In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission shall consider the management policies, practices, and organization of the public utility. The commission shall require such public utility to supply information regarding its management policies, practices, and organization.*

If the commission finds after a hearing that the management policies, practices, or organization of the public utility are inadequate, inefficient, or improper, the commission may recommend management policies, management practices, or an organizational structure to the public utility.

In any event, the public utilities commission shall not allow such operating and maintenance expenses of a public utility as are incurred by the utility through management policies or administrative practices that the commission considers imprudent.<sup>21</sup>

Thus, pursuant to the Ohio Revised Code Chapter 4909 regarding the fixation of rates, the Commission can evaluate the “efficiency, sufficiency, and adequacy of the facilities provided and the services rendered” by Duke.<sup>22</sup> The Commission can also order Duke to take steps to improve the efficiency, sufficiency, and adequacy of Duke’s facilities and services.<sup>23</sup> Furthermore, the

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<sup>20</sup> R.C. 4909.152 (emphasis added).

<sup>21</sup> R.C. 4909.154 (emphasis added).

<sup>22</sup> R.C. 4909.152.

<sup>23</sup> R.C. 4909.152.

Commission can evaluate information regarding Duke's management policies, practices, and organization to determine the prudence of operating and maintenance expenses.<sup>24</sup>

The specific distribution-related proposals outlined by OMAEG in its Distribution Reliability Objection would enable Duke to improve the adequacy of its facilities and services rendered thereunder and for the Commission, Staff, and OMAEG, and Duke to evaluate continually the reliability of Duke's distribution service in order to measure and take steps to improve the efficiency, sufficiency, and adequacy of Duke's distribution system pursuant to R.C. 4909.152. The proposals will also allow the Commission, Staff, and OMAEG to evaluate the prudence of Duke's operating and maintenance expenses, rate base expense, and other costs that Duke is seeking recovery of through rate base and various riders that Duke claims are related to distribution service and/or distribution reliability.

As OMAEG noted in its Distribution Reliability Objection and above, "this is particularly salient given recent intentional load curtailments, which dangerously left 170,000 households without power during a heat wave."<sup>25</sup> OMAEG's proposals, which include distribution coincident peak pilot programs, increased access to data, and valuing the location of distributed energy resources would allow customers to respond to distribution grid related stress. These programs and policies, if properly implemented, will improve the reliability of the distribution grid and help to prevent the kind of dangerous outages that Ohio customers have recently faced. Accordingly, OMAEG's Distribution Reliability Objection relates to rules and regulations that could be applied in charging new rates, and is related to the rates that are the subject of the application.<sup>26</sup>

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<sup>24</sup> R.C. 4909.154.

<sup>25</sup> OMAEG Objections at 13.

<sup>26</sup> See *Cleveland Illum. Co. v. Pub. Util. Comm'n of Ohio*, 42 Ohio St.2d 403, 420 (1975).



In addition to Ohio law that places distribution reliability at issue in a distribution rate case, Duke has placed the matter of distribution reliability at issue through its own Application. For example, in its Application, Duke proposed “to continue existing riders...under the authority of R.C. 4909.18.”<sup>27</sup> Many of these riders are purportedly related to distribution reliability.

For example, Duke states that continuation of its Rider DCI “remains necessary in light of the ever-increasing costs to enhance the distribution system and maintain its reliability.”<sup>28</sup> Duke also proposes to continue, modify, and expand its existing Rider ESRR, which recovers incremental vegetation management costs, its Rider DSR, which recovers costs associated with outages caused by storms, and Rider PF, which recovers capital investment in the distribution system.<sup>29</sup> Moreover, Duke proposes rolling existing amounts included in Rider DCI, Rider ESRR, and Rider DSR into base rates.<sup>30</sup>

By proposing to recover costs purportedly associated with distribution reliability through base rates as well as Rider DCI, Rider ESRR, and Rider DSR, Duke has brought the matter of distribution reliability in issue in its Application. OMAEG’s Distribution Reliability Objection directly relates to these issues and the associated costs. OMAEG’s specific proposals will also assist the Commission, Duke, Staff, and OMAEG with tracking the progress of reliability improvements associated with Duke’s various proposals. It will also enable the parties to review the prudence of investments made and expenses incurred under those proposals, limiting costs that are passed through to customers.

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<sup>27</sup> Application at 4.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 6-7.

<sup>30</sup> *Id.* at 4-7.

### III. CONCLUSION

OMAEG's Distribution Reliability Objection was timely filed, relates to the Staff Report's failure to address specific distribution service-related proposals and the Staff Report's failure to make recommendations regarding Duke's distribution service and facilities and distribution reliability, and complies with the specificity requirement of Ohio Adm.Code 4901-1-28(B). Moreover, the Distribution Reliability Objection is directly related to issues the Commission may consider in evaluating a distribution rate case and matters raised by Duke.

The Ohio Revised Code gives the Commission the authority to consider the efficiency, sufficiency, and adequacy of Duke's service and facilities,<sup>31</sup> as well as Duke's management policies, practices, and organization.<sup>32</sup> Additionally, Duke brought the matter of distribution reliability in issue through various proposals in its Application, including its rider proposals. For the aforementioned reasons, OMAEG respectfully requests that the Commission reject Duke's Motion to Strike OMAEG's Distribution Reliability Objection.

Respectfully submitted,

/s/ Kimberly W. Bojko

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<sup>31</sup> R.C. 4909.152.

<sup>32</sup> R.C. 4909.154.

## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on July 8, 2022 upon the parties listed below.

/s/ Kimberly W. Bojko

Kimberly W. Bojko

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**Case No(s). 21-0887-EL-AIR, 21-0888-EL-ATA, 21-0889-EL-AAM**

Summary: Memorandum Contra Motion to Strike Objections to the Staff Report  
electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Manufacturers'  
Association Energy Group