

**BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.)))	Case No. 17-32-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.))	Case No. 17-33-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.)))	Case No. 17-34-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.))	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.))	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio Inc., for Approval to Change Accounting Methods.)))	Case No. 17-874-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4923.143, Revised Code, in the Form of an Electric Security Plan, Account Modifications, and Tariffs for Generation Service.)))))))	Case No. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.)))	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Vegetation Management Costs.)))	Case No. 17-1265-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.))))	Case No. 16-1602-EL-ESS

**INITIAL POST-HEARING BRIEF OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

On March 2, 2017, Duke Energy Ohio, Inc. (Duke) filed an application for an increase in its electric distribution rates.¹ The Staff Report of Investigation (Staff Report) was filed on September 26, 2017, and the Retail Energy Supply Association (RESA)² filed Objections to the Staff Report on October 26, 2017.³ Among RESA's objections were Staff's recommendation that Duke continue to offer a time-differentiated rate for residential customers; Staff's acceptance of Duke's Cost of Service Study and the failure to properly allocate costs incurred to provide SSO service into Duke's SSO rates; and Staff's failure to review and address the supplier charges in Duke's Supplier Tariff.

On March 30, 2017, Duke filed an application to modify its Price Stabilization Rider (Rider PSR).⁴ The application proposed to allow Duke to sell energy and capacity from its share of OVEC into the wholesale market and recover the difference from ratepayers through a hedge mechanism.

On June 1, 2017, Duke filed its application to establish a Standard Service Offer (SSO) in the form of an Electric Security Plan (ESP).⁵ In its application, among other things, Duke

¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR et al, Application (Mar. 2, 2017) (Rate Case Application).

² The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

³ RESA/IGS Ex. 2.

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR*, Case No. 17-872-EL-RDR et al, Application (Mar. 30, 2017) (PSR Application).

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 17-1263-EL-SSO et al, Application (June 1, 2017) (ESP Application).

proposed to implement a PowerForward Rider (PF Rider), which would allow Duke to recover costs associated with the Commission's PowerForward initiative.

On April 13, 2018, Duke filed a motion to consolidate the above proceedings, along with Case No. 16-1602-EL-ESS.⁶ That same day, a Stipulation and Recommendation (Stipulation) was signed by several of the intervening parties, including Staff. The Stipulation sought to resolve the issues in the consolidated proceedings, including Rider PSR and the PF Rider, while failing to provide for adequate allowances for retail market development. Additionally, the Stipulation did not address RESA's objections either to Duke and Staff's failure to identify costs that support Duke's provision of SSO service and therefore must be allocated to its SSO rates; or to the continuation of Duke's supplier charges in its Supplier Tariff.

II. ARGUMENT

The Commission employs a three-part test to evaluate stipulations.⁷ This test asks the following questions:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?
- Does the settlement package violate any important regulatory principle or practice?

The Stipulation fails the third prong of this test. Three separate provisions violate important regulatory principles or otherwise fail to benefit ratepayers or the public interest.

First, the Stipulation purports to authorize a subsidized SSO rate. Subsidies are forbidden under Ohio law. The proposed unbundling rider would remedy this subsidy.

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards*, Case No. 16-1602-EL-ESS, Application (July 22, 2016).

⁷ *See Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994).

Second, the provisions of Section E.8 concerning retail market enhancements are ill-defined, vague, and make no allowance for CRES supplier participation. If the Stipulation is to be approved, it should be modified to address these shortcomings.

Third, the Stipulation adopts tariffs that include supplier charges for which no underlying costs have been identified. These charges must be stricken from Duke's final tariffs.

The Stipulation also includes a provision related to future audits of Duke's purchase of receivables program. While not objectionable per se, the intent of this provision should be clarified.

A. The Commission should reject the provisions of the Stipulation implementing a subsidized SSO rate.

IGS's Initial Brief explains how Duke's distribution rates subsidize the SSO, and why this subsidy is unreasonable and unlawful. RESA agrees.

RESA wholeheartedly supports utilities' right to recover prudently incurred costs. But in that same vein, rates should reflect *all* of the utility's cost of service. Duke's SSO includes numerous provisions related to distribution, with the cost of these provisions reflected in distribution rates instead of the SSO rate. This is the very definition of a subsidy. The SSO rate is lower than it should be, and distribution rates are higher than warranted under cost-based regulation.

The SSO should be paid for by customers taking SSO service. Shopping customers do not take SSO service. Therefore, shopping customers should not pay rates reflecting SSO costs. Yet shopping customers continue to pay SSO costs that are buried in distribution rates. If Duke is to provide an SSO with all of the "enhancements" of the SSO presented here, then Duke's non-shopping customers should pay for it in the SSO rate.

A subsidized SSO is a barrier to competition. As currently structured, the SSO rate reflects the cost of energy and capacity, and related procurement costs. The SSO rate and “price to compare” are largely one in the same. The SSO rate is lower than it should be because the rate does not reflect *all* costs associated with the SSO. Thus, comparing the SSO to CRES offers could lead one to conclude that there is little or no financial benefit to shopping. But what is supposed to be an apples-to-apples comparison is instead apples to oranges, because the SSO actually costs more than advertised. The true and full cost of the SSO is buried in distribution rates, forcing customers who should be avoiding SSO-related costs into paying them.

RESA and IGS presented testimony explaining how the proposed unbundling rider would remedy—at least partially—the disparity between the true cost of the SSO and the SSO rate.⁸ The remedy is revenue-neutral to Duke, and if the remedy is not adopted, the only remaining alternatives are to (a) approve manifestly unjust and unreasonable rates and risk reversal on appeal, or (b) reject the Stipulation and order that additional evidence be taken on the allocation of costs between SSO and distribution rates. Neither alternative seems preferable to IGS and RESA’s proposal.

B. The Commission should modify the Stipulation to incorporate RESA’s recommendations concerning retail market enhancements.

Rider PF is a “catch-all” rider allowing Duke to recover capital and O&M expenses associated with “programs, modifications, and offerings . . . that may be engendered by the Commission’s PowerForward review.”⁹ In addition to costs associated with Commission directives, Rider PF specifically authorizes cost recovery for AMI and data access, as well as

⁸ See RESA/IGS Ex. 1.

⁹ Stipulation, Section E.8.

customer information system (CIS) upgrades. RESA supports the apparent goal of these provisions, but it is not at all clear how Duke intends to achieve these goals.

RESA members have a vested interest in the design and functionality of enhanced systems for AMI, data access, and a CIS. Suppliers routinely interact with Duke through these systems.¹⁰ What works for Duke may not work for suppliers, and if these enhanced systems do not work for suppliers, then Duke's ratepayers are at risk of funding an expensive boondoggle. The Stipulation calls for "separate proceedings" to address whatever plans Duke eventually files, and perhaps that is one way to address issues concerning system design and implementation. But it would be far preferable to have a forum for suppliers to address these issues *before* Duke files any plans. In the worse-case scenario, Duke will be able to highlight any areas of disagreement in the plans it files with the Commission. These disagreements can be resolved more efficiently if they are addressed at the beginning of a contested proceeding rather than during the middle or the end. A stakeholder forum would also make it possible to realize the best-case scenario: filed plans that reflect consensus among Duke and suppliers. There is absolutely no downside to requiring stakeholder participation before Duke files plans for any of these projects.

State policy "encourage[s] innovation and market access"¹¹ of new retail products. Innovation is not a one-way street. True innovation requires cooperation between the utility designing the system and suppliers who will use those systems to offer new or enhanced products and services. For example, Zigbee access technology discussed by Ms. Ringenbach would allow direct customer control over utility data. There is no reason not to consider the costs

¹⁰ See RESA/IGS Ex. 6 at 2-3.

¹¹ R.C. 4928.02(D).

and benefits of this technology in conjunction with the design of new data access systems.¹²

Other examples could be cited, but citing them would only belabor the point.

Apart from the vague references to enhanced “data access” and CIS “upgrades” and the like, the Stipulation is very vague about the specific programs and objectives the future applications should address. In the interest of avoiding future disputes about whether these future applications meet the requirements of the Stipulation, the Commission should direct Duke to address the functionality listed below in its filings.

1. Supplier consolidated billing.

The Commission has previously expressed its desire that utilities adopt supplier consolidated billing capabilities, which would allow customers to receive one bill directly from their supplier and allow suppliers to more easily communicate its products and services to its customers.¹³ As RESA/IGS witness Matthew White testified, “It would be patently unreasonable to file an application to upgrade its billing system without providing the functionality for CRES providers to offer innovative products and services through consolidated billing.”¹⁴ As Mr. White also testified, Duke “is abandoning its existing CIS in favor of a new billing system due, in part, to its desire to improve bill formatting and provide customers with more opportunities for advanced billing options.”¹⁵ As pointed out by Duke at hearing, CRES suppliers currently serve

¹² RESA/IGS Ex. 6 at 5.

¹³ See, e.g., *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-395-EL-SSO et al, Opin. & Order at 36-37 (Oct. 20, 2017) (“[Supplier consolidated billing] would facilitate the innovative marketplace that we envision for the state of Ohio and would easily resolve how suppliers can bill for the goods and services that they wish to market and then bill to their customers.”)

¹⁴ RESA/IGS Ex. 5 at 10-11.

¹⁵ *Id.* at 6-7.

nearly 60% of residential customers in its service territory;¹⁶ it would clearly be unreasonable and discriminatory to spend millions of dollars to develop a new billing system without creating enhancements that would benefit these customers as well as SSO customers.

2. Non-commodity billing.

Similarly, Duke should include the ability for CRES suppliers to include non-commodity charges on the utility consolidated bill. According to Duke, it has the ability to provide non-commodity charges on its bills for its affiliates (and has done so in the past for its affiliate Duke Energy One), but that service is not available for non-affiliated third parties such as CRES suppliers.¹⁷ As Mr. White testified, “One of the major benefits of competition is that it encourages the development of innovative products and services that add value to customers beyond the electric commodity. As competitive markets and technology evolve, customers will start seeing electricity as more than just the commodity, but rather a package of products and services that include the electric commodity.”¹⁸ CRES suppliers are ready and willing to offer a wide range of products and services to customers, but without a way to bill for those services, suppliers are hamstrung. For many smaller suppliers, supplier consolidated billing, if it ever becomes available, will not be an option based on the company infrastructure or other obstacles; these suppliers should not be discriminated against by being prohibited from providing their customers with non-commodity products or services because of a shortcoming in Duke’s billing system.

¹⁶ Summary of Switch Rates from EDUs to CRES Providers in Terms of Customers For the Month Ending March 31, 2018, available at <https://www.puco.ohio.gov/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/electric-switch-rates-by-customer/customers-1q2018/>.

¹⁷ RESA/IGS Ex. 5 at MW-1, “IGS-INT-01-020.”

¹⁸ *Id.* at 13.

3. Enroll From My Wallet.

Finally, the newly designed CIS should allow customers greater flexibility of enrollment while still maintaining the integrity of their personal data. Duke already collects certain identifying information from its customers; an Enroll From My Wallet program would simply allow a customer to use this data to verify a sign-up with a CRES supplier, which would then contact Duke to match up that information with the customer's account. As Ms. Ringenbach testified, the system should also maintain customer protections that already exist, such as the letter of authorization that CRES suppliers collect for each enrollment, while streamlining the process to eliminate delays in the transfer of physical documents.¹⁹

C. The Commission should modify the Stipulation to require the removal of certain supplier fees from Duke's tariff.

RESA also objects to the continuation of certain fees charged by Duke to CRES suppliers in its Supplier Tariff, specifically its switching fee and its interval customer energy usage data (CEUD) fee.²⁰ Duke currently charges suppliers a \$5.00 fee each time a customer switches to a supplier or between suppliers; there is no equivalent charge for customers that switch to the SSO. Duke also charges a \$32.00 fee to suppliers that request twelve months of interval meter data.²¹

The CEUD fee was established through a stipulated settlement in Case No. 14-841-EL-SSO.²² This fee was not cost-based then, and it is not cost-based now. Duke simply left the fee in its tariff when it filed its rate case application. No testimony, schedules, or other information have been offered to justify this fee.

¹⁹ RESA/IGS Ex. 6 at 5-6.

²⁰ RESA/IGS Ex. 2 at 3.

²¹ Duke Certified Supplier Tariff, P.U.C.O. Electric No. 20, Sheet No. 52.5, "Rate CS Certified Supplier Charges" (Supplier Tariff).

²² IGS Ex. 8, "IGS-INT-02-001."

The Staff Report did not challenge these fees or question where or how costs are incurred that would justify such charges. According to Staff witness Marchia Rutherford, “Because the Company did not propose changing the current tariff, Staff did not review the cost related charge in its investigation of the Company’s application[.]”²³

By refusing to investigate the fees Duke charges to suppliers, Staff is ignoring the fact that Duke has already recovered millions through these fees, with little to no justification. As Ms. Ringenbach testified, Duke recovered nearly half a million dollars in switching fees in 2016 alone.²⁴ According to discovery responses, Duke collected over half a million dollars in CEUD fees in the test year.²⁵ Despite these millions, Duke’s AMI system is still badly in need of an upgrade, and in fact, through this Stipulation, Duke will be permitted to recover several more million dollars for that express purpose.²⁶ It is unreasonable to continue to charge suppliers for these services when the Company is already set to receive recovery for the systems the services utilize.

The Stipulation did not address either fee, meaning if approved, both the switching fee and CEUD fee will continue for the foreseeable future. These fees create disincentives for customers to switch, because despite the monopoly nature of the service being provided, suppliers are still forced to pay individual fees every time the service is utilized. This drives up the prices suppliers charge to their customers, meaning that for as long as these fees are in effect, competition will be hampered and shopping customers will pay the price.

²³ Staff Ex. 7 at 4.

²⁴ RESA/IGS Ex. 6 at 4.

²⁵ IGS Ex. 8, “IGS-INT-02-001.”

²⁶ Stipulation at 17, Attachment F.

The Commission should strike these fees from the Supplier Tariff, or at the very least require Duke to demonstrate the costs associated with the fees and determine the best method for recovery.

D. The Commission should clarify the Stipulation’s provision to require an audit of Duke’s Purchase of Accounts Receivable Program.

Staff recommends that Duke utilize the existing controls and reviews permitted within its Purchase of Accounts Receivable (PAR) program to “audit[] and inspect[] CRES supplier receivables and books for errors, compliance, and/or fraud, reviewing CRES supplier internal and external audit reports and management letters for discovered problems, random[] sampling [of] bills for excluded charges, and perform[] analytical procedures.”²⁷ The Stipulation included a similar provision, requiring Duke to, within six months of a Commission order adopting the Stipulation, “hire an independent auditor to audit its PAR program,” the scope of which audit is to be “determined by Staff and shall include without limitation . . . the sufficiency of internal processes and controls for monitoring CRES providers’ compliance with” Duke’s PAR program agreement.²⁸

While the Stipulation language appears to require less invasion into the “receivables and books” of CRES suppliers, it still gives Staff the authority to develop the scope of an audit “without limitation.” The implication remains that Duke will be permitted to require CRES suppliers to open up their books and allow an auditor to examine all the costs that go into the rates CRES suppliers charge their customers with the goal of discovering any “excluded charges.” There is unfortunately no explanation of what types of “excluded charges” may cause a

²⁷ Staff Report at 54.

²⁸ Stipulation at 22.

CRES supplier to be deemed non-compliant with program rules or even what type of information CRES suppliers will be required to turn over.

The Commission should either remove this provision from the Stipulation or require any audit to be performed using the express language of the PAR program agreement and not the overly broad language of the Staff Report.

III. CONCLUSION

The Commission has a duty to ensure that rates charged by utilities are just and reasonable for all customers. The Commission also has a duty to protect competition and encourage innovation in the retail market. This Stipulation falls short on all counts. The Commission should reject the Stipulation or modify it based on RESA’s recommendations above.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy the foregoing Initial Post-Hearing Brief was served by electronic mail this 11th day of September, 2018 to the following:

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