

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of a)
Grid Modernization Opt-Out Tariff and)
for a Change in Accounting Procedures)
Including a Cost Recovery Mechanism.)

Case No. 14-1160-EL-UNC

Case No. 14-1161-EL-AAM

**REPLY BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

By order of the Public Utilities Commission of Ohio (“PUCO”),¹ Ohioans may choose not to have an advanced electric meter² installed at their homes. This case involves charges for residential customers of Duke Energy Ohio, Inc. (“Duke”) who exercise that option. Under the PUCO’s rules, electric utilities may, but are not required to, establish a one-time fee specifically “to recover the costs of removing an existing advanced meter, and the subsequent installation of a traditional meter.”³ The PUCO’s rules also allow, but do not require, electric utilities to establish a recurring charge “to

¹ *In the Matter of the Commission’s Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD (Entry on Rehearing) December 18, 2013.

² An advanced meter is “any electric meter that meets the pertinent engineering standards using digital technology and is capable of providing two-way communications with the electric utility to provide usage and/or other technical data.” Ohio Adm. Code 4901:1-10-01(A).

³ Ohio Adm. Code 4901:1-10-05(J)(5)(c). A traditional meter is “any meter with an analog or digital display that does not have the capability to communicate with the utility using two-way communications.” Ohio Adm. Code 4901:1-10-01(FF).

recover costs associated with providing meter reading and billing services associated with the use of a traditional meter.”⁴ Any approved charges must be tariffed and cost-based.⁵

Duke initially proposed a one-time charge of \$1,073.10 for residential customers who do not have (or want) an advanced meter.⁶ In written testimony, Duke witness Justin C. Brown revised the one-time charge to \$426.04, due to reduced information technology (“IT”) costs compared to the original estimate in the Application.⁷ Duke proposes that these IT costs be deferred and collected in Duke’s next distribution base rate proceeding.⁸ If the IT costs are deferred to Duke’s next base rate proceeding, Duke’s one-time charge would be \$126.70.⁹

Regardless of the amount, the one-time charge would be paid by all customers who have a traditional meter, even those who kept their existing traditional meter and never had an advanced meter.¹⁰ The deferred costs would be paid by all of Duke’s electric customers, not just by customers who choose not to have an advanced meter installed.¹¹ In addition to the one-time charge, Duke has proposed charging customers

⁴ Ohio Adm. Code 4901:1-10-05(J)(5)(d).

⁵ Ohio Adm. Code 4901:1-10-05(J)(1).

⁶ *See* Duke Ex. 1 at 1.

⁷ *See* Duke Ex. 2 (Brown Testimony) at 4-5. Duke, however, has not amended the Application and the Application as filed has been entered into evidence in this case. All arguments against the one-time charge in the Application also apply to the one-time charge in Mr. Brown’s testimony.

⁸ Neither the initial Application nor Mr. Brown’s testimony identified to where the IT costs would be deferred, but at hearing Mr. Brown confirmed that the costs would be deferred to Duke’s next base rate case. Tr. at 51.

⁹ *See* Duke Ex. 2 (Brown Testimony) at 7.

¹⁰ Tr. at 80-81.

¹¹ *See id.* at 57.

who have a traditional meter \$40.63 per month for meter reading,¹² even during months when the meter is not read.¹³

Duke has the burden of proof in this case and has not justified its alleged costs for either the one-time charge or the monthly meter reading charge, either through its Application or its testimony,¹⁴ or in its initial brief.¹⁵ For this reason, the PUCO Staff, Ohio Partners for Affordable Energy (“OPAE”), and the Office of the Ohio Consumers’ Counsel (“OCC”) oppose Duke’s proposed charges.

The PUCO Staff has proposed different amounts for the charges than Duke – a \$38 one-time charge and a \$24 monthly meter reading charge.¹⁶ The PUCO Staff differs with Duke regarding the amount of labor to perform some tasks, as well as some other issues.¹⁷ But the PUCO Staff’s proposed charges still are based upon the deficient record in this proceeding, and thus are not justified. The PUCO Staff would not allow Duke to defer IT costs.¹⁸ Instead, the PUCO Staff also wisely recommends that the IT charges be reviewed in Duke’s next distribution rate case proceeding.¹⁹

Considering the deficient record in this case, the PUCO Staff’s recommendation for further review, and that Duke is required to file a distribution base rate case this

¹² See Duke Ex. 1 at 1; Duke Ex. 2 (Brown Testimony) at 6.

¹³ Tr. at 91.

¹⁴ OPAE Brief at 2-9; OCC Brief at 6-22. See also PUCO Staff Brief at 10-16.

¹⁵ Indeed, Duke’s primary argument on brief is that it be permitted to defer and double recover in a base distribution rate proceeding the IT costs that are being collected from customers in current base distribution rates. See Duke Brief at 3-5.

¹⁶ PUCO Staff Brief at 2-3.

¹⁷ See *id.* at 6-8, 10-16.

¹⁸ *Id.* at 8-10.

¹⁹ Staff Ex. 2 (Rutherford Testimony) at 8.

year,²⁰ the logical resolution of this proceeding is for the PUCO to adopt OCC's and OPAE's recommendation: The PUCO should reject Duke's Application outright, or set both the one-time and monthly charges at zero dollars until Duke's costs can be reviewed in Duke's imminent base rate case.²¹ In addition, the PUCO should ensure that any one-time charge approved for Duke applies only to customers who have replaced an advanced meter with a traditional meter, per the PUCO's rules.

II. DISCUSSION

A. Duke provides no support for the charges it would impose on residential customers who do not want an advanced meter.

As noted in OCC's brief,²² Duke's Application and testimony offer no justification for either the one-time charge or the monthly meter reading charge. Duke's Application and testimony both vaguely describe the costs associated with customers choosing to have a traditional meter. The attachments to the Application and the testimony only summarize the costs, with no information regarding how they were derived. Duke's Application and testimony provide no support for the alleged costs.

Duke's brief also contains no support for the charges. Duke merely cites to portions of Mr. Brown's testimony, and occasionally makes conclusory statements concerning the testimony of the PUCO Staff's witnesses and OCC's witness with little or no citation to the record to support these statements. Parading "a team of twenty

²⁰ Under the stipulation in Case No. 10-2326-GE-RDR, Duke must file a base distribution rate case within one year after the PUCO Staff determines that Duke's SmartGrid is fully deployed. See OCC Ex. 1 at 6, n. 4. The PUCO Staff has determined that Duke's SmartGrid is fully deployed. See *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, Notice of Staff Determination (October 15, 2015).

²¹ OPAE Brief at 2-11; OCC Brief at 3-22.

²² See OCC Brief at 6-22.

people”²³ into the hearing also would not explain Duke’s costs, if their testimony were as inadequate as the Application and Mr. Brown’s testimony. Duke *is* in “the best possible position to know what costs were incurred internally to create an opt-out program.”²⁴ But Duke has not placed anything into the record of this case to show the specifics of each component of those costs and how they were derived.

1. Duke’s testimony provides no specifics concerning the proposed one-time charge.

In its brief, Duke claims that its witness, Mr. Brown, “provided highly detailed testimony to explain the steps and processes necessary to allow for customers to opt out of using an advanced meter.”²⁵ Duke’s claim is an exaggeration, at best. In fact, the five pages of Mr. Brown’s seven-page testimony that actually address Duke’s Application provide very little information regarding the costs involved in making the opt-out opportunity available to residential customers. Mr. Brown used about one-fourth of those five pages to explain why Duke filed its Application, to quote PUCO rules that define “advanced meter” and “traditional meter,” and to quote the PUCO rule that allows Duke to establish charges that residential customers would pay for not having an advanced meter.²⁶

On page 4 of his testimony, Mr. Brown discussed the need for the IT project in two sentences: “After the Commission issued the Entry on Rehearing, Duke Energy Ohio recognized that it would need to make changes to its customer systems in order to offer a non-standard metering option. An IT systems project was established to make customer

²³ See Duke Brief at 7.

²⁴ *Id.*

²⁵ *Id.* at 2.

²⁶ Duke Ex. 2 (Brown Testimony) at 2-3.

system changes so that the customer service representatives who respond to customer issues could properly identify opt-out customers, ensure that they have the correct meter installed and apply opt-out fees as required under the Rules.” Mr. Brown then discussed the difference between the estimated total costs of the IT project in the Application and the “actual” costs of the project in Mr. Brown’s testimony. He also argued for PUCO approval of Duke’s proposed deferral of IT costs.

Mr. Brown concluded his discussion of the one-time charges in the top half of page 5 of his testimony. This “highly detailed testimony” consists of two sentences regarding the need for having a reserve supply of traditional meters, one sentence about the components of the Metering Services costs, one sentence describing distribution maintenance costs, and a paragraph stating what the proposed one-time charge would be with the deferral and without it. This is essentially nothing more than a reiteration of the footnotes on page 2 of Attachment JCB-1 to Mr. Brown’s testimony.

Mr. Brown’s testimony is hardly “highly detailed.” Instead, the testimony offers mere generalities regarding the work that was done to prepare for opt-out and conclusory statements about the costs associated with the work. Mr. Brown’s testimony was undermined at hearing.

For example, as OCC noted in its brief, Duke overestimated the number of traditional meters needed for its reserve stock.²⁷ The number was based on an overstated number of customers who likely will reject an advanced meter.²⁸ In addition, Duke’s estimated costs associated with meter repair and testing were based on faulty data.²⁹ The

²⁷ See OCC Brief at 9-11.

²⁸ *Id.* at 9-10.

²⁹ *Id.* at 12-14.

same is true regarding Duke's estimated costs for distribution maintenance.³⁰ And Duke has not shown that its base rates are insufficient to cover the IT costs.³¹

In its brief, Duke noted that OCC witness Williams testifies that Duke should not collect the IT costs from customers.³² Duke's response, however, is nothing more than a conclusory statement that Mr. Williams misunderstands the nature of the charges and has no knowledge of the work that was performed to support opt-out.³³ Duke cited to nothing in the record to support this statement. Duke's statement thus is meaningless.

Duke – which has the burden of proof in this case – has provided nothing in its Application, its testimony, or its initial brief to justify the costs associated with the proposed one-time charge. Nothing in the record supports approving Duke's proposed one-time charge, and thus the PUCO should reject the charge.

2. Duke provides no support for the monthly recurring charge.

Duke's brief offers little of substance regarding the monthly recurring charge. In its brief, Duke cited exclusively to the written testimony of Mr. Brown to address the monthly recurring charge. But Mr. Brown's testimony is lacking in specifics regarding the costs. The testimony was also undermined at hearing.

The largest portion of the monthly charge is for Metering Services, which is primarily taking the monthly meter reading.³⁴ In calculating this charge, Duke assumed that each reading would require the meter reader to drive from Duke's Queensgate Center

³⁰ *Id.* at 14-16.

³¹ *Id.* at 16-18.

³² Duke Brief at 5.

³³ *Id.*

³⁴ *See* Duke Ex. 2, Attachment JCB-1 at 3.

to the customer's residence and back again.³⁵ But as OCC noted, Duke did not take into consideration the efficiencies that would occur by changing the billing cycles of customers who have traditional meters so that meter reading routes could be implemented.³⁶ Thus, Duke's meter reading costs are overstated.

In its brief, Duke claimed that "the population" of customers with traditional meters "will vary from one month to the next."³⁷ But Duke cited nothing in the record to support this claim. It was not in Mr. Brown's testimony, which is the only source cited by Duke in that part of its brief. The PUCO should ignore Duke's statement.

Duke also claimed that it "may need to locate and install additional communications devices to solve for these gaps."³⁸ But, as OCC noted, there may be a variety of reasons unrelated to traditional meters for Duke to have communications devices on hand.³⁹ Duke has not shown that traditional meters have caused, or will cause, any problems that require a special stockpile of communications devices. Further, these devices would seemingly be a one-time cost and not an ongoing cost that would be included in a monthly charge. The PUCO should reject Duke's proposed monthly charge.

³⁵ See Tr. at 64-65.

³⁶ See OCC Brief at 19-20.

³⁷ Duke Brief at 6.

³⁸ *Id.* Duke does not explain the "gaps" it references.

³⁹ See OCC Brief at 21-22.

B. Duke's proposed one-time charge is unlawful and unreasonable, with or without the proposed deferral.

Much of Duke's brief is dedicated to arguing against the PUCO Staff's recommendation that the PUCO not grant the deferral request for IT costs.⁴⁰ Duke calls the PUCO Staff's analysis "unfairly applied" in this case, especially because the PUCO Staff "makes no recommendation for recovery of the costs elsewhere."⁴¹ Duke urges the PUCO to "approve the request for deferral and recovery in the next base rate proceeding."⁴² Duke's arguments are internally inconsistent.

One the one hand, Duke argues that all costs associated with opt-out must be collected from those customers who cause the costs.⁴³ Duke bases this position on the PUCO's rules.⁴⁴ On the other hand, Duke proposes to defer the IT costs to the next base rate case.⁴⁵ Duke states: "Since the opt-out option is available to all residential electric customers, this is a reasonable and natural approach."⁴⁶ The proposed deferral, however, is contrary to the PUCO's rules; the deferred costs would be paid by all of Duke's electric customers, not just by customers who choose not have an advanced meter installed,⁴⁷ as the PUCO's rules require.⁴⁸

⁴⁰ Duke Brief at 2-5.

⁴¹ *Id.* at 5.

⁴² *Id.*

⁴³ *See id.* at 1-2.

⁴⁴ *See id.*

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *See* Tr. at 57.

⁴⁸ Ohio Adm. Code 4901:1-10-05(J)(5)(e).

Duke also claims that it seeks the deferral “in order to alleviate the high one-time costs to opt-out customers.”⁴⁹ In fact, all of Duke’s proposed charges would significantly increase customers’ bills. As OCC witness Williams explained, the average annual cost of electricity for a Duke residential customer using 750 kWh per month is approximately \$1,144.08.⁵⁰ The \$1,073.10 one-time charge proposed in the Application would increase an average customer’s annual cost of electricity to \$2,768.74, a 142 percent increase. Based on the data supplied by Mr. Williams, the \$462.04 charge would increase an average Duke residential customer’s annual cost of electricity to \$1,606.12, a 40 percent increase. Even the \$126.70 charge would increase the average Duke residential customer’s annual bill by 11 percent, to \$1,270.78. This is in addition to the 43 percent increase in an average Duke residential customer’s annual cost of electricity that the monthly meter reading charge would cause.⁵¹

Moreover, the one-time charge must be rejected regardless of whether a portion of the IT costs are deferred. Allowing Duke to defer IT costs would simply reduce Duke’s one-time charge from \$462.04 to \$126.70.⁵² As discussed above, Duke has not justified this cost, and therefore the proposed charge is unjust and unreasonable.

In addition, Duke would apply the charge in violation of the PUCO’s rules. The PUCO’s rules allow electric utilities to “establish a one-time fee to recover the costs of removing an existing advanced meter, and the subsequent installation of a traditional

⁴⁹ Duke Brief at 3.

⁵⁰ OCC Ex. 3 (Williams Testimony) at 9.

⁵¹ *Id.*

⁵² *See* Duke Ex. 2 (Brown Testimony) at 7.

meter.”⁵³ But Duke would apply the one-time charge to any customer who has a traditional meter, even if the customer had never had an advanced meter.⁵⁴

Further, the one-time charge is based on Duke’s erroneous assumption regarding the number of customers to which the charge would apply. As discussed above, only those residential customers who have replaced an advanced meter with a traditional meter should be subject to the one-charge. But in calculating the proposed one-time charge, Duke divided the alleged total cost by the number of customers who refused installation of an advanced meter at any time during the implementation of the Smart Grid program. Some of these customers no longer have a traditional meter.⁵⁵ Duke thus based its charge on the wrong subset of customers; Duke counted apples in an effort to determine the number of oranges it has. This adds to the unreasonableness of Duke’s proposed charge.

Duke’s proposed one-time charge is unreasonable and unlawful, regardless of whether the charge is \$1,073.10 or \$462.04 or \$126.70. The PUCO should reject it by denying the Application. If the PUCO does not deny the Application, it should approve only a one-time charge and a monthly meter reading charge for Duke that are set at zero dollars until the charges can be reviewed in Duke’s upcoming base distribution rate case to ensure that the charges are just and reasonable.⁵⁶

⁵³ Ohio Adm. Code 4901:1-10-05(J)(5)(c).

⁵⁴ See OCC Brief at 3-6.

⁵⁵ See *id.* at 6-8.

⁵⁶ See also OPAE Brief at 9-11.

C. The PUCO Staff's proposed charges contain many of the same deficiencies that make Duke's proposed charges unreasonable and unlawful.

The PUCO Staff proposes that Duke's one-time charge for customers who replace an advanced meter with a traditional be set at \$38.⁵⁷ The PUCO Staff would set the monthly meter reading charge at \$24.⁵⁸ Although the PUCO Staff's methodology in calculating its proposed charges contains fewer deficiencies than Duke's methodology, the PUCO Staff's calculations also have many of the same flaws as Duke's approach.

The PUCO Staff bases its proposed one-time charge solely on the minimum amount of time it would take for a Duke employee to travel to a customer's home and replace an advanced meter with a traditional meter.⁵⁹ But the PUCO Staff bases its estimate on the same data that Duke used to calculate its proposed one-time charge.⁶⁰ As discussed above, Duke's travel time calculations are based on customers who have always had a traditional meter, rather than on customers who have replaced an advanced meter with a traditional meter. Because of this, Duke's calculations are flawed, and thus the PUCO Staff's calculations are also flawed.

The same holds true for the PUCO Staff's proposed monthly meter reading charge. Like Duke, the PUCO Staff assumed that each meter reading would require the reader to start at Duke's Queensgate Center, drive to the customer's residence, and return to Queensgate Center.⁶¹ Hence, like Duke's proposal, the PUCO Staff's proposed

⁵⁷ See PUCO Staff Brief at 2.

⁵⁸ *Id.* at 3.

⁵⁹ See *id.* at 12-13.

⁶⁰ *Id.*

⁶¹ See Tr. at 155.

monthly charge does not consider the efficiencies that could be achieved through establishing meter reading routes. And, like Duke's proposal, a customer with a traditional meter would be billed the PUCO Staff's proposed monthly charge even in those months when Duke does not read the customer's meter.

Because the PUCO Staff used the same flawed data and assumptions that Duke used, the PUCO Staff's calculations are not reliable. The PUCO should reject the PUCO Staff's proposed charges.

III. CONCLUSION

Duke has the burden of proof in this case to show that its proposed charges for customers to choose a traditional meter are just and reasonable. Duke has failed to meet this burden. To protect Ohioans, the PUCO should either deny Duke's application, or approve the Application with both the one-time charge and the monthly recurring charge set at zero dollars in Duke's tariff. The PUCO should also order Duke to develop more alternatives to opt-out for customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 15th day of December 2015.

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