

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc., for)	Case No. 17-2118-GA-AAM
Authority to Change Accounting)	
Methods.)	

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

I. INTRODUCTION

The City of Cincinnati (“City”) has built a retaining wall and Duke Energy Ohio, Inc. (“Duke”) would like its customers to pay \$3 million, plus interest, to help defray some of the City’s cost of building the wall.¹ The City built the wall because a landslide put some of its water and sewer lines at potential risk.² Duke claims the landslide also has jeopardized one of its 20-inch natural gas pipelines.³ Although under no obligation to pay, Duke apparently has agreed to contribute \$3 million to the City toward the wall’s construction costs.⁴ As a result, Duke proposes to recoup the \$3 million from its customers at an unspecified time, and allow interest on the \$3 million to accrue, which customers would also pay.⁵

¹ See Application (October 12, 2017) at 3.

² See *id.*

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ See *id.* at 3-4.

In an Entry issued on October 24, 2017, the Public Utilities Commission of Ohio (“PUCO”) sought comment on Duke’s proposal. On November 21, 2017, the Office of the Ohio Consumers’ Counsel (“OCC”) filed Comments opposing Duke’s plan. OCC noted that the \$3 million does not appear to be an actual cost to Duke but instead is Duke’s estimate of the cost to relocate the pipeline – a cost that Duke avoids because the retaining wall is being built by the City.⁶ Use of avoided costs is an inappropriate basis for rates charged to residential customers.⁷ Further, OCC argued that Duke has not shown that the \$3 million is an ordinary and necessary expense associated with providing service to its customers.⁸ And OCC explained how Duke has not met the PUCO’s standard for establishing deferrals.⁹

In addition to OCC, the PUCO Staff and Ohio Partners for Affordable Energy (“OPAE”) also separately weighed in on Duke’s proposal. The PUCO Staff recommends that the PUCO deny the application,¹⁰ while OPAE suggests that the PUCO delay the issue until Duke seeks to collect the deferrals in a base rate case.¹¹ Per the October 24 Entry, OCC submits these Reply Comments.

⁶ *Id.* at 3.

⁷ OCC Comments at 2-3.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4-6.

¹⁰ *See* PUCO Staff Review and Recommendation at 4.

¹¹ OPAE Comments at 2.

II. RECOMMENDATIONS

- A. The PUCO should follow the PUCO Staff's recommendation and deny Duke's proposal to charge customers the \$3 million in estimated relocation costs it avoided, plus interest, because the City built the retaining wall.**

In its review, the PUCO Staff did not object to Duke contributing to the cost of the City's retaining wall.¹² OCC also does not object, so long as the contribution is from shareholder dollars, and is not used to increase the amount customers pay for utility service (or is not in any way collected from customers).

The \$3 million is not based on actual costs incurred by Duke, but instead comes from Duke's estimate of the costs it would avoid by not relocating the pipeline. As OCC noted, basing a charge to residential customers on avoided costs is inappropriate.¹³ Charges based on avoided costs have historically been used only for wholesale and commercial customers.¹⁴ For residential customers, avoided costs are generally used as one of many factors considered in determining a rate.¹⁵ Avoided costs are typically used as a basis to reduce the amount customers pay, not increase it.¹⁶ But here, Duke asks that the estimated, not actual, costs it avoided by not relocating its pipeline be used as the basis for implementing a charge to customers. That is unjust and unreasonable because it

¹² PUCO Staff Review and Recommendation at 3.

¹³ OCC Comments at 2-3.

¹⁴ *Id.* at 2, citing *Application of Cincinnati Gas & Electric Co.*, Case No. 95-656-GA-AIR, Entry on Rehearing (February 12, 1997), 1997 PUC Lexis 106 [*16] (it may be appropriate to base the interruptible transmission rate on avoided costs).

¹⁵ *Id.*, citing *Investigation into Impacts of Demand-Side Management Programs and Power Purchases on Profitability of Electric Utilities*, Case No. 90-723-EL-COI, Entry on Rehearing (April 4, 1991), 1991 PUC Lexis 468 [*24] (lost revenue calculation includes applicable tariff rate net of costs avoided).

¹⁶ *Id.*

does not equate to an ordinary and necessary expense that is needed to provide service to Duke's customers.

In its review, the PUCO Staff focused on one issue: Whether Duke's contribution to the cost of the City's retaining wall "is sufficiently extraordinary as to fall outside the normal funding method."¹⁷ The PUCO Staff analyzed Duke's application based on the PUCO's established criteria for deferrals.¹⁸ From this analysis the PUCO Staff recommended that Duke's application should be denied.¹⁹ Here, OCC agrees with the PUCO Staff.

The first criterion in considering deferrals is whether the utility's rates or revenues are sufficient to cover the costs associated with the requested deferral. The PUCO Staff considers this to be critical because "it is fundamentally unfair to ask customers to pay for an expense when the rates that customers already pay provides the utility with sufficient revenue to meet its expenses."²⁰ The key is not whether Duke's voluntary contribution to the City for the retaining wall *adds* an expense to Duke's costs that warrants an *additional* charge to customers. Rather, it is whether Duke's current rates can generate sufficient revenue to cover this expense.²¹

The PUCO Staff determined that Duke had not provided evidence to show that the revenue produced from its current rates is insufficient to cover the \$3 million

¹⁷ PUCO Staff Review and Recommendation at 3.

¹⁸ For the criteria, the PUCO Staff cited *Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1741-GA-AAM, Opinion and Order (November 3, 2016) at 5-6 and *Duke Energy Ohio, Inc.*, Case No. 16-387-GA-AAM, Opinion and Order (January 4, 2017) at 5. PUCO Staff Review and Recommendation at 1, n.6.

¹⁹ PUCO Staff Review and Recommendation at 4.

²⁰ *Id.* at 3.

²¹ *Id.*

contribution.²² Again, OCC concurs with the PUCO Staff. As OCC noted, Duke's application lacks even the most basic information for the PUCO to make a reasoned decision in this case.²³ Duke has the burden of proof in this case and did not meet that burden.

The second criterion is whether the costs are material. The PUCO Staff concludes that Duke's contribution to the City isn't material because the \$3 million represents less than one percent of Duke's total operating expenses.²⁴ OCC agrees. Further, by itself the \$3 million charge to customers would add approximately \$7.11 to each natural gas customer's bill in the year it is collected from customers. Interest charges would further increase the amount each customer would pay. For many customers, such as low-income customers or those living on fixed incomes, this increase would be significant. The \$3 million is not a material cost for Duke. But Duke's proposal to defer and collect its voluntary contribution to the City, with interest, would cause a material increase in natural gas costs for many customers.

The third criterion is whether the reason for the deferral is outside the utility's control. The PUCO Staff notes that Duke did not independently monitor or analyze the landslide area.²⁵ The PUCO Staff states that Duke merely relied on a report compiled by a consultant to the City.²⁶ Significantly, Duke provided the report to the PUCO Staff during a meeting held the same day as Duke filed its application.²⁷ But Duke did not

²² *Id.*

²³ OCC Comments at 3-4.

²⁴ PUCO Staff Review and Recommendation at 3.

²⁵ *Id.*

²⁶ *Id.* at 4.

²⁷ *Id.*

docket the report, so it is not in the record of this case. Regardless, the PUCO Staff notes that the report does not demonstrate that there is any immediate risk to Duke's pipeline.²⁸ If there is no risk to the pipeline, then there is no justification for charging customers for Duke's voluntary contribution to the retaining wall. The construction of the wall is not an ordinary and necessary expense to providing service to Duke's customers.

The PUCO Staff's analysis supports OCC's position that Duke has not provided sufficient information in the record of this case for the PUCO to make a reasoned decision regarding the application.²⁹ Based on the record, the PUCO should deny Duke's application.

The fourth criterion is whether the expenses are atypical and infrequent. The PUCO Staff agrees with Duke that the expense leading to the deferral request is atypical and likely to be infrequent.³⁰ But landslides occur often enough in the Cincinnati area that Duke should have anticipated that its natural gas (and electric) lines may occasionally be at risk from landslides. A certain amount of damage from landslides should be something Duke plans for in its base rates that customers already pay.

The fifth criterion for PUCO examination of deferral requests is whether the utility's financial integrity would be significantly and adversely affected if the deferral is not granted. Similar to the discussion regarding material costs, this criterion addresses instances where a utility's current rates do not produce sufficient revenue to cover a large and unanticipated expense.³¹ Here, the PUCO Staff notes that Duke's application does

²⁸ *Id.*

²⁹ *See* OCC Comments at 3-4.

³⁰ PUCO Staff Review and Recommendation at 4.

³¹ *See id.* at 4.

not claim that Duke's financial integrity would be significantly or adversely affected if the deferral is not granted.³² Further, the PUCO Staff points out that Duke's financial integrity would not be affected without the deferral, given that the \$3 million is such a small amount compared to the expenses already built into Duke's base rates.³³ OCC agrees with the PUCO Staff.

Moreover, during a time where deferral requests have become all too commonplace, the PUCO has expressed a general opposition to the creation of deferrals absent extraordinary circumstances. Specifically, the PUCO has stated: "Further, **although this Commission is generally opposed to the creation of deferrals**, the extraordinary circumstances presented before us, which allow for AEP-Ohio to fully participate in the market in two years and nine months as opposed to five years, necessitate that we remain flexible and utilize a deferral to ensure we reach our finish line of a fully-established competitive electric market."³⁴

Duke's proposal to charge its natural gas customers for its \$3 million voluntary contribution to the City, plus interest, does not pose an extraordinary circumstance that warrants the PUCO's acceptance of deferral treatment in this case. Therefore, the PUCO should follow its precedent and deny Duke's application.

³² *Id.*

³³ *Id.*

³⁴ *In the Matter of the Application of Columbus Southern Power Company 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. 11-346-EL-SSO, et al., Opinion and Order at 36 (August 8, 2012) (emphasis added).

B. The PUCO should not postpone addressing the issue of whether Duke may collect its \$3 million voluntary contribution to the City (plus interest) from customers, but instead should deny the application now.

OPAE suggests that the PUCO find in this case that Duke is only seeking authority to modify its accounting procedures to reflect the deferral of Duke's contribution to the City plus any associated interest on the contribution.³⁵ OPAE would delay definitive action on the application until Duke attempts to collect the deferred contribution and interest in a base rate case.³⁶ The PUCO should not postpone action on the application, but instead should deny it immediately.

Duke already has a base rate case pending at the PUCO.³⁷ Duke's voluntary contribution to the City occurred outside the test year of that case, and thus the retaining wall expense might not be addressed until Duke's *next* rate case. This could be many years from now. In the meantime, Duke would be accruing interest on the expense at the rate of 5.32 percent.³⁸ If Duke would ultimately be allowed to collect the expense from customers, deferral of the expense would mean that customers would pay at least an additional \$159,600 for every year collection of the \$3 million is deferred. Customers should not be subjected to the possibility of paying hundreds of thousands of dollars more for Duke's voluntary contribution to the City.

OCC noted that Duke's contribution to the City is not based on any actual costs incurred by Duke.³⁹ The City apparently never billed Duke for any costs associated with

³⁵ OPAE Comments at 2.

³⁶ *Id.*

³⁷ *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.

³⁸ See Case No. 12-1682, Opinion and Order (May 1, 2013) at 6, 11.

³⁹ See OCC Comments at 6-7.

the retaining wall. Instead, the voluntary contribution is based on Duke's estimate of costs it avoided by not relocating the affected pipeline. And as discussed above, Duke has not shown that the contribution meets the test for deferrals.

As the applicant in this case, Duke has the burden of showing that the \$3 million it contributed to the City is ordinary and necessary to provide service to its customers. Duke also has the burden of showing that its base rates are insufficient to cover its contribution to the City. Duke has failed to meet these burdens. The PUCO should not wait until Duke decides to collect these costs from customers. It should deny the application now.

III. CONCLUSION

Duke's application is inadequate to meet the PUCO's criteria for approving deferrals. There is no basis in the record for allowing Duke to put on its books its \$3 million voluntary contribution to the City that could be collected later, plus interest, from Ohioans. The PUCO should deny the application outright.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter (0067445), Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: 614-466-7964 (Etter Direct)

terry.etter@occ.ohio.gov

(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served on the persons stated below via electronic transmission this 1st day of December 2017.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

SERVICE LIST

jodi.bair@ohioattorneygeneral.gov
cmooney@ohiopartners.org

Amy.Spiller@duke-energy.com
Elizabeth.Watts@duke-energy.com

Attorney Examiner:
Stacie.cathcart@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/1/2017 4:45:24 PM

in

Case No(s). 17-2118-GA-AAM

Summary: Reply Reply Comments by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.