

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Duke)	
Energy Ohio, Inc. for Authority to)	Case No. 14-841-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. 4928.143, in the Form of)	
an Electric Security Plan, Accounting)	
Modifications, and Tariffs for Generation)	
Service.)	

In the Matter of Application of Duke)	
Energy Ohio, Inc. for Authority to)	Case No. 14-842-EL-ATA
Amend its Certified Supplier Tariff,)	
P.U.C.O. No. 20.)	

**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC.'S
APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

In this case, the Public Utilities Commission of Ohio (“PUCO”) issued on Entry (over OCC’s and others’ objections) granting the motion filed by Duke Energy Ohio, Inc. (“Duke”) to extend its electric security plan (“ESP”) until a subsequent standard service offer is approved.¹ However, the PUCO denied Duke’s request to similarly increase the amount Duke can charge customers under Rider DCI.²

In denying Duke’s request, the PUCO upheld its previous decision to cap the amount Duke can charge customers in 2018 under Rider DCI at \$35 million.³ The

¹ Entry (May 30, 2018) at 7-9.

² *Id.*

³ See Opinion and Order (April 2, 2015) at 72, (“the cap in 2015 will be \$17 million, \$50 million in 2016, \$67 million in 2017, and \$35 million for the first five months of 2018.”)

PUCO's decision means that despite extending Rider DCI through August 1, 2018, customers would not pay more than \$35 million in 2018. Accordingly, Duke filed an Application for Rehearing requesting the PUCO reverse its decision.⁴ Duke argues that the \$35 million cap through the first five months of 2018 under Rider DCI is actually a monthly \$7 million cap. The PUCO should reject Duke's argument and uphold its determination that customers should pay no more (through August 1, 2018) for Rider DCI than \$35 million.

The Office of the Ohio Consumers' Counsel ("OCC") files this Memorandum Contra on behalf of Duke's approximately 630,000 residential electric consumers.⁵ The PUCO should deny Duke's application for rehearing for the reasons discussed below.

II. RECOMMENDATIONS

A. The PUCO has already considered and denied Duke's argument, and should do so again by denying Duke's Application for Rehearing to protect consumers.

The PUCO has already denied the arguments raised by Duke in its application for rehearing.⁶ In its May 30 Entry, the PUCO stated plainly, "Regarding Rider DCI, the original \$35 million cap is extended until August 1, 2018, as initially requested by Duke.

⁴ R.C. 4903.10 allows "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Duke filed its Application for Rehearing seven days after the PUCO's Entry. Therefore, while OCC files this Memorandum Contra to Duke's Application for Rehearing, OCC reserves its right to file an Application for Rehearing to the PUCO's May 30, 2018 Entry within the statutory 30 days; See Application for Rehearing of Duke Energy Ohio, Inc. (June 7, 2018).

⁵ OCC reserves its right to file an Application for Rehearing to the PUCO's May 30, 2018 Entry within the 30 days allowed by R.C. 4903.10.

⁶ Entry on Rehearing (Mar. 21, 2018) at 45-46.

At this time, the Commission declines to increase the hard cap that was approved in ESP 3.”⁷

Duke had argued earlier that the PUCO should, among other things, extend Rider DCI, but indicated that it was not seeking an increase in the Rider DCI cap.⁸ In its March 9 motion, Duke indicated that it was not seeking an increase in the Rider DCI cap, but argued that failure to extend Rider DCI could result in suspension of certain distribution investments.⁹

Thereafter, in its May 11 motion, Duke requested authority to "maintain the status quo" by continuing Rider DCI under the average monthly \$7 million revenue cap after August 1, 2018, until a new standard service offer is approved. In other words, Duke changed its mind about seeking to increase the Rider DCI cap. Its request, if granted, would allow Duke to charge customers an additional \$7 million every month until a subsequent standard service offer is approved.

The PUCO granted Duke’s motion to extend the ESP, along with Rider DCI, but denied Duke’s request to increase the Rider DCI revenue cap. The PUCO instead determined that it would consider, in a subsequent order, Duke’s request for recovery of capital investments made after August 1, 2018.¹⁰

Duke's application for rehearing merely reiterates the arguments the PUCO rejected. It is well settled that the PUCO will deny applications for rehearing that “simply

⁷ Entry (May 30, 2018) at 8.

⁸ Motion of Duke Energy Ohio, Inc. (March 9, 2018) at 5-6; Motion of Duke Energy Ohio, Inc. (May 11, 2018).

⁹ Motion of Duke Energy Ohio, Inc. (March 9, 2018) at 5-6.

¹⁰ Entry (May 30, 2018) at 8 (“[T]his does not preclude the Commission, if and when ESP 4 is approved, from considering requests for recovery of capital investments made after August 1, 2018.”).

reiterate arguments that were considered and rejected by the Commission.”¹¹

Accordingly, Duke’s application for rehearing should be denied.

B. The PUCO’s decision was just and reasonable, and will protect customers from paying unnecessary charges.

The PUCO determined that the original \$35 million cap should be extended to August 1, 2018, but not increased.¹² The PUCO then cites its prior discussions regarding Rider DCI, in which the PUCO had stated regarding the Rider DCI caps: “the cap in 2015 will be \$17 million, \$50 million in 2016, \$67 million in 2017, and \$35 million *for the first five months of 2018*.”¹³ The PUCO determined that these caps ensure “that spending is prudent and not too onerous for customers.”¹⁴ The PUCO was clear; Rider DCI would end after the first five months of 2018.

Now, Duke argues that the PUCO’s extension of Rider DCI to August 1, 2018 is insufficient. Duke argues that it should be permitted to charge customers more than the \$35 million cap; and without a hearing or any due process. Duke argues that the revenue requirement for incremental investments in distribution plant that the utility has already made have not yet been fully recovered.

But Duke had notice three years ago, when the PUCO approved Rider DCI, that the rider would end after the first five months of 2018. And Duke did not seek rehearing

¹¹ *Wiley v. Duke Energy Ohio, Inc.*, Case No. 10-2463-GE-CSS, Entry on Rehearing (Nov. 29, 2011) at 6-7; *See also In re Duke Energy Ohio*, Case No. 10-2586-EL-SSO, Entry on Rehearing (May 4, 2011) at 15-16 (rejecting an application for rehearing that “raised nothing new”); *City of Reynoldsburg v. Columbus Southern Power Co.*, Case No. 08-846-EL-CSS, Entry on Rehearing (June 1, 2011) at 19-20 (holding that no grounds for rehearing existed where no new arguments had been raised); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-1344-GA-EXM, Entry on Rehearing (Nov. 1, 2011) at 9-10 (denying application for rehearing because applicant “raised nothing new on rehearing that was not thoroughly considered” in the PUCO order at issue).

¹² Entry (May 30, 2018) at 8.

¹³ Opinion and Order (April 2, 2015) at 72 (emphasis added).

¹⁴ *Id.*

on that PUCO determination at that time. Its application for rehearing now is merely a late application for rehearing of the PUCO's determination in its April 2, 2015 Opinion and Order to cap Rider DCI at \$35 million in 2018. The PUCO has historically dismissed untimely applications for rehearing and should do so in this case.¹⁵

Duke has already been permitted to charge customers \$169 million dollars through Rider DCI. Now, Duke asserts that it is being penalized because it cannot charge more than that \$169 million. And Duke proposes no hearing or due process for the rate increase over the already-approved \$169 million. Duke's application for rehearing requests a rate increase through Rider DCI, but such rates cannot be increased without a hearing pursuant to R.C. 4909.18.¹⁶ To protect customers and provide parties adequate due process, the PUCO should deny Duke's application for rehearing.

C. The PUCO should direct that Rider DCI be audited for prudence through a financial and management/performance audit.

The arguments raised by Duke demonstrate that Rider DCI should be audited for prudence, including a financial and management/performance audit. Duke argues that a time limit for the current Rider DCI recovery would result in the utility no longer recovering any of the incremental revenue requirement on the incremental plant that has been invested through March 31, 2018¹⁷ (even though Rider DCI has always had a hard

¹⁵ See, e.g., In re Application of the E. Ohio Gas Co., Case No. 07-829-GA-AIR, Entry (Sept. 23, 2009) (denying utility's motion to reopen case on the grounds that it was an untimely application for rehearing); In re Application of Ohio Power Co., Case No. 14-1186-EL-RDR, Finding & Order (Apr. 2, 2015) (rejecting parties' arguments as a collateral attack on prior PUCO orders); In re Application of Duke Energy Ohio, Inc., Case No. 12-2400-EL-UNC, Opinion & Order (Feb. 13, 2014) (dismissing utilities' application because the issues raised should have been raised in an application for rehearing).

¹⁶ R.C. 4909.18 ("At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility.")

¹⁷ Application for Rehearing of Duke Energy Ohio, Inc. (June 7, 2018) at 9.

time limit).¹⁸ Duke argues that abruptly ceasing Rider DCI would mean the utility would have only recovered any pre-tax return, depreciation expense, and property taxes on one single month for all of the distribution investment made by Duke through March 31, 2018. Duke argues that ending Rider DCI would reduce its ROE from the approved 9.84 percent to 1.90 percent.¹⁹

If this is true, then it underscores the need for the PUCO to order an audit of Rider DCI to determine if Duke is properly implementing the rider and prudently charging customers through the rider. While Rider DCI is annually reviewed for consistency with the PUCO's Order in this case,²⁰ such reviews do not evaluate whether Duke is prudently charging customers under Rider DCI, or whether Rider DCI has improved reliability and aligned expectations between Duke and its customers.²¹

III. CONCLUSION

The PUCO authorized Duke to continue Rider DCI, but did not authorize Duke to increase the cap for Duke to charge customers more under the rider. The PUCO should uphold its determination to maintain the Rider DCI cost cap in order to protect consumers. Further, regardless of the PUCO's determination regarding Duke's motion, the PUCO should direct that Rider DCI be audited for prudence through a financial and management/performance audit.

¹⁸ Opinion and Order (April 2, 2015) at 72 (“* * * through the first five months of 2018.”).

¹⁹ Application for Rehearing of Duke Energy Ohio, Inc. (June 7, 2018) at 11.

²⁰ *In re Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 17-1118-EL-RDR.

²¹ Opinion and Order (April 2, 2015) at 66-72 (“In deciding whether to approve an ESP that contains any provision for distribution service, R.C. 4928.143(B)(2)(h) directs the Commission, as part of its determination, to examine the reliability of the EDU's distribution system and ensure that customers and the EDU's expectations are aligned and that the EDU is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.”).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic transmission upon the parties this 18th of June 2018.

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This foregoing document was electronically filed with the Public Utilities

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6/18/2018 3:38:47 PM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Memorandum Memorandum Contra Duke Energy Ohio, Inc.'s Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of McKenney, Bryce