

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio, Inc., to Adjust Rider AU)	Case No. 19-664-GA-RDR
for 2018 Grid Modernization Costs.)	

**APPLICATION FOR REHEARING
OF
DUKE ENERGY OHIO, INC.**

On June 25, 2019, Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) filed an application (Application) with the Public Utilities Commission of Ohio (Commission), seeking permission to adjust its Rider Advanced Utility (Rider AU) to reflect grid modernization deployment costs incurred during 2018. Staff of the Commission (Staff) filed recommendations on October 25, 2019. The Commission, based on those recommendations, determined that Staff should issue a request for proposals for audit services related to the Application. Furthermore, the Commission decided, with no basis or explanation whatsoever, to suspend collection of charges under Rider AU during the pendency of the audit and the Commission's consideration thereof.

Ohio law, in R.C. 4903.10, allows any party who has entered an appearance in a Commission proceeding to apply for rehearing in respect to any matters determined in the proceeding, within thirty days after the issuance of the order. Duke Energy Ohio is hereby filing its Application for Rehearing of the Entry, pursuant to R.C. 4903.10 and Ohio Administrative

Code (O.A.C.) 4901-1-35. Duke Energy Ohio asserts that the Commission's Entry is unlawful and/or unreasonable in the following respects:

1. The Commission erred in suspending the collection of charges under Rider AU, without providing Duke Energy Ohio any due process and without explaining its rationale as required by R.C. 4903.09.
2. The Commission erred in suspending the collection of charges under Rider AU in light of the fact that no new capital costs have been incurred since 2014 and prior cases considering the adjustment of rates under Rider AU have all been approved.
3. The Commission erred in suspending the collection of charges under Rider AU as the tariff clearly states that Rider AU is already subject to reconciliation.
4. The Commission erred in suspending the collection of charges under Rider AU while performing a third-party audit that is overbroad and unreasonable in scope, as the prudence of the Company's AMI meter investments should not be at issue.

Duke Energy Ohio respectfully requests that the Commission modify its Entry, as discussed herein.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/Jeanne W. Kingery

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Larisa M. Vaysman (0090290)

Senior Counsel

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45202

(513) 287-4320

(513) 287-4385 (facsimile)

Rocco.D'Ascenzo@duke-energy.com

Jeanne.Kingery@duke-energy.com

Larisa.Vaysman@duke-energy.com

BEFORE

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In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust Rider AU) Case No. 19-664-GA-RDR
for 2018 Grid Modernization Costs.)

**MEMORANDUM IN SUPPORT OF
APPLICATION FOR REHEARING
OF DUKE ENERGY OHIO, INC.**

Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) submits the following memorandum to the Public Utilities Commission of Ohio (Commission) in support of its Application for Rehearing of the Commission's Entry (Entry) addressing audit of Rider Advanced Utility (Rider AU) and its suspension during the pendency of the proceeding.¹ The Company alleges four errors for the Commission's consideration and urges the Commission to reverse the conclusions referenced herein in its entry on rehearing.

Assignment of Error No. 1:

The Commission erred in suspending the collection of charges under Rider AU, without providing Duke Energy Ohio any due process and without explaining its rationale as required by R.C. 4903.09.

Rider AU has been the mechanism approved by the Commission for collecting incremental costs associated with the deployment of an automated gas meter reading system for more than ten years. The deployment costs incurred up through March 31, 2012, were incorporated into base rates upon Commission approval of new base rates in the Company's

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider AU for 2018 Gas Grid Modernization Costs*, Case No. 19-664-GA-RDR, Entry (December 4, 2019).

2012 base rate case.² Since that case, Rider AU has only been recovering the costs associated with the investment in deploying the initial automated meter reading system after March 31, 2012. The Company completed its deployment in 2014; so, no new investment has occurred since that time. Even though the Commission approved each of the rider filings made in 2013, 2014, 2015, 2016, 2017, and 2018,³ it has now suspended the rider in a separate case, which has been recovering the same costs approved in the last six years of Rider AU filings, with no explanation of that suspension at all. Furthermore, because of the Commission's order in this case, the Company was required to suspend a rider that was approved in another case, specifically Case No. 18-837-GA-RDR, which was approved for recovery by the Commission on July 2, 2019, thereby only allowing partial recovery of an annual rider filing that was already approved. The entirety of the Commission's discussion of suspension appeared in the second half of a paragraph discussing the potential consolidation of two audits:

With respect to the question of whether the Rider AU charge should continue during the pendency of the audit, the Commission finds that collection of the charge should be suspended, as recommended by Staff. Following the completion of the audit of the Rider AU assets and a review of the audit findings, including, if necessary, an evidentiary hearing, the Commission will address the issue of Duke's recovery of its remaining AMI investment.⁴

² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.* (2012 Gas Base Rate Case).

³ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2012 SmartGrid Costs*, Case No. 13-1141-GE-RDR, Opinion and Order (April 9, 2014); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2013 SmartGrid Costs*, Case No.14-1051-GE-RDR, Opinion and Order (April 8, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2014 SmartGrid Costs*, Case No. 15-0883-GE-RDR, Opinion and Order (March 31, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2015 Grid Modernization Costs*, Case No.16-0794-GA-RDR, Finding and Order (Sept. 22, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2016 Grid Modernization Costs*, Case No.17-690-GA-RDR, Finding and Order (March 28, 2018); and *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2017 Grid Modernization Costs*, Case No.18-837-GA-RDR, Opinion and Order (July 2, 2019).

⁴ Entry, ¶ 13.

Staff, likewise, had expressed no rationale for suspension, saying only: “Further, Staff recommends that the Rider AU rate be suspended until the completion of the audit.”⁵ The Company opposed suspension in its reply comments after Staff’s recommendation, pointing out that nothing had changed from past years to make the incurred costs “uncollectible or unreasonable.”⁶ But the Commission offered no explanation to distinguish the instant year from past years.

This is the antithesis of what is required under Ohio law. The Legislature has made it very clear that Commission decisions must include “the reasons prompting the decisions arrived at.”⁷ There are no reasons here, either on Staff’s part or on the Commission’s. The Commission simply ordered the Company to stop recovering a revenue requirement for investment that it has previously approved.

Assignment of Error No. 2:

The Commission erred in suspending the collection of charges under Rider AU in light of the fact that no new capital costs have been incurred since 2014 and prior cases considering the adjustment of rates under Rider AU have all been approved.

The deployment of SmartGrid infrastructure and the recovery of the consequent grid modernization costs through Rider AU has been repeatedly approved by the Commission. It was approved, initially, in 2008, when deployment was about to begin.⁸ It was approved again, approximately midway through the deployment phase, following a third-party audit.⁹ Recovery was approved as part of the Company’s 2012 Natural Gas Base Rate Case. The infrastructure that was used and useful, and prudently incurred, as of the date certain in that case, March 31,

⁵ Staff’s Review and Recommendations, pg. 2 (October 25, 2019).

⁶ Reply Comments of Duke Energy Ohio, Inc., pg.4 (November 8, 2019).

⁷ R.C. 4903.09.

⁸ 2012 Natural Gas Base Rate Case.

⁹ *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.

2012, was included in rate base and the Commission approved of the continued recovery of incremental investments after the March 31, 2012, date certain through Rider AU.¹⁰

Deployment was completed in 2014 and cost recovery continued, as planned, through Rider AU, with annual Commission approval. In the 2018 annual proceeding, the Commission noted the need to transition to different infrastructure, due to certain previously unforeseeable circumstances. But even with that awareness, the Commission approved the recovery of 2017 costs in that proceeding.¹¹ Specifically, the Commission found that the Company's *unopposed* request to adjust its charge for Rider AU to \$0.60 per meter per month, with gas-only customers receiving a \$0.29 credit per meter per month, was reasonable and should be approved.¹²

There is simply no basis for suspension of Rider AU in this proceeding, particularly when "the Company's unopposed request to adjust its charge for Rider AU"¹³ was approved in a separate case by the Commission just six months ago.

Assignment of Error No. 3:

The Commission erred in suspending the collection of charges under Rider AU as the tariff clearly states that Rider AU is already subject to reconciliation.

The complete suspension of Rider AU is unreasonably punitive to Duke Energy Ohio. As previously stated, the Company has not installed any new metering equipment being recovered under Rider AU since 2014, when the initial deployment was completed.¹⁴ As such, no new meter-related capital costs have been incurred since December 31, 2014. The only costs included in the annual rider adjustments are updates to the Company's revenue requirement that

¹⁰ 2012 Natural Gas Base Rate Case, Opinion and Order (November 13, 2013).

¹¹ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2017 Grid Modernization Costs*, Case No. 18-837-GA-RDR, Opinion and Order (July 2, 2019).

¹² *Id.*

¹³ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2018 SmartGrid Costs*, Case No. 18-837-GA-RDR, Opinion and Order, pp. 5-6 (July 2, 2019).

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM) and Rider AU for 2014 SmartGrid Costs*. Case No. 15-883-GE-RDR Opinion and Order (March 31, 2016).

reflect a diminishing rate base and the associated depreciation, property tax, and operating expenses.¹⁵ The Staff has audited these costs annually, and the Commission has approved the adjustments to Rider AU in each annual filing, including all years since the initial deployment was completed in 2014.¹⁶

Nonetheless, the Rider AU tariff already has language included that necessarily provides consumer protection in the event the Commission were to find that the costs incurred in Rider AU should no longer be recovered after full due process is afforded to Duke Energy Ohio. Rider AU provides that it is:

[S]ubject to reconciliation, including, but not limited to, **refunds** or additional charges to customers, ordered by the Commission **as the result of audits** by the Commission in accordance with the Opinion and Order in Case Nos. 07-589-GA-AIR, et al. and 12-1685-GA-AIR, et al.¹⁷

Given the explicit provision for potential refunds after an audit, complete suspension of the recovery of Rider AU costs already incurred, particularly when the Commission has examined the Company's annual applications to adjust the Rider AU for the last six years, is unreasonably punitive to the Company. There has been no allegation, much less any evidence, to demonstrate that the Company's continued investment in AMI meters between April 1, 2012, and December 31, 2014, was imprudent in any of the previous six annual audits of Rider AU. It is unclear how long it will take to (1) conduct this audit, (2) litigate the findings, and (3) obtain a final Commission order. It is very likely that it will be several months before the process is fully litigated and such a prolonged suspension of Rider AU will have a significant financial impact on the Company. Rider AU's suspension will decrease Duke Energy Ohio's revenues by approximately \$2.6 million, annually. Moreover, the suspension of Rider AU has the potential to

¹⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider AU for 2017 Grid Modernization Costs*, Case No. 18-837-GA-RDR, Opinion and Order, ¶¶ 19, 20 (July 2, 2019).

¹⁶ See fn. 3, *supra*.

¹⁷ P.U.C.O. Gas No. 18, Sheet No. 88.12 (emphasis added).

impact other proceedings before the Commission, including the Company's Application in Case No. 18-1830-GA-UNC, regarding the treatment of benefits created by the 2017 Tax Cuts and Jobs Act (TCJA).¹⁸

Accordingly, the Commission should reinstate Rider AU at its previously approved levels until the Commission issues a substantive decision in this matter.

Assignment of Error No. 4:

The Commission erred in suspending the collection of charges under Rider AU while performing a third-party audit that is overbroad and unreasonable in scope, as the prudence of the Company's AMI meter investments should not be at issue.

The Commission erred in suspending the collection of charges under Rider AU to conduct an overbroad and unreasonable third-party audit, as the prudence of the investment in grid modernization should not be at issue. In its December 4, 2019, Entry, the Commission issued a request for proposals (RFP) for a third-party audit of Duke Energy Ohio's Rider AU. The scope of work included in the RFP states as follows:

This Request for Proposal (RFP) seeks audit services to review the accounting accuracy, *prudence*, and used and usefulness of Duke's jurisdictional rate base as presented within its Rider AU AMI components for its gas operations. (Emphasis added.)

The inclusion of prudence in this audit is unreasonable, overbroad, and contradictory to established Ohio law.

The only capital costs included in Rider AU consist of the incremental investment between April 1, 2012, and December 31, 2014.¹⁹ And, this investment was made as part of an

¹⁸ Note also that Staff's proposed resolution of the Tax Cuts and Jobs Act of 2017, as it relates to Duke Energy Ohio's natural gas business, would refund, via Rider AU, excess accumulated deferred income taxes (EDITs) related to SmartGrid investments currently being recovered through Rider AU. (Case No. 18-1830-GA-UNC, *et al.*) The suspension of Rider AU would therefore impede the refunds of EDITs associated with the current Rider AU. Moreover, to the extent any investment previously being recovered through Rider AU is ultimately found to be unrecoverable, then the EDITs associated with such investment should not be allocated to customer rates.

overall program to implement automated metering that was approved by the Commission in its 2007 base rate case.²⁰ As previously stated, the Company has not included any new metering infrastructure capital costs in its Rider AU since 2014. The Company's last natural gas base rate case included a test year of the twelve months ending December 31, 2012, and a date certain of March 31, 2012. At the time of that case, no party argued that the investment made in automated meter reading for natural gas was imprudently incurred and no party argued that the program should be suspended at that time. Consequently, the Company continued its initial deployment of the gas automated meter reading program and, as noted above, concluded the initial deployment in 2014. The annual adjustments since March 31, 2012, as approved by the Commission, consist of the incremental amounts related to recovery of deferred grid modernization, operation and maintenance expense, carrying costs, incremental operation and maintenance savings, gas furnace program incentive payments, and administrative expenses.²¹ This proceeding is not, therefore, an appropriate forum to reconsider the merits of the original investments.

Prudence, as the term is applied in the context of utility rate making proceedings before this Commission, has a specific definition that has been adopted by the Ohio Supreme Court:

[o]ne which reflects what a reasonable person would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made. *In the Matter of the Investigation into the Perry Nuclear Power Station* (Jan. 12, 1988), PUCO No. 85-521-EL-COI, at 10-11. The standard contemplates a retrospective, factual inquiry, without the use of hindsight judgment, into the decision-making process of the utility's

¹⁹ See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order, pg. 13 (November 13, 2013), ("Upon approval of the new rates in these proceedings. Rider AMRP and Rider AU will be reset to recognize recovery of investment through the date certain, March 31, 2012, in base rates.")

²⁰ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR, *et al.* (2007 Natural Gas Base Rate Case).

²¹ *Id.*, pg. 14.

management. See *Re Syracuse Home Util. Co.* (Dec. 30, 1986), PUCO No. 86-12-GA-GCR; *Re Toledo Edison Co.* (July 16, 1987), PUCO No. 86-05-EL-EFC.²²

As it relates to Rider AU, prudence of the incremental SmartGrid investment made should not be at issue, as such decisions were based directly upon the Commission's orders in the 2007 Natural Gas Base Rate Case, which initially approved the deployment of SmartGrid for Duke Energy Ohio's gas business, and in the 2012 Natural Gas Base Rate Case, which approved a stipulation permitting Duke Energy Ohio to continue recovering costs associated with deployment of SmartGrid for its gas distribution business.

Suggesting that "prudence" is to be reviewed at this time, many years after the program was approved and many years after cost recovery has begun is inappropriate. A Commission finding of imprudence so many years after prior approvals would amount to the hindsight judgment deemed illegal by the Ohio Supreme Court.

Moreover, to the extent the Commission were to find that any of the Company's Rider AU costs were somehow imprudently incurred, or otherwise unrecoverable, such a finding would have a direct and proportional impact on the Company's excess deferred income taxes (EDITs) that would be associated with the Rider AU assets/capital that would otherwise flow back to customers as part of the TCJA and that is currently pending before the Commission in Case No. 18-1830-GA-UNC. To the extent any of the underlying Rider AU costs are no longer recoverable through rates from customers, so too would the EDITs not be attributable to customers. The prudence of the Company's investment in ongoing SmartGrid for its gas distribution service in response to the Commission's previous orders approving the SmartGrid deployment should be irrelevant, as these investments were made pursuant to Commission

²² *Cincinnati v. Pub. Util. Comm.*, 67 Ohio St.3d 523, 530, 620 N.E.2d 826, 830 (1993).

approvals issued completed many years ago, and each year's incremental investment has been reviewed by the Commission in each annual rider filing.

CONCLUSION

Duke Energy Ohio respectfully requests that the Commission reconsider the Entry, grant rehearing, and eliminate the suspension of Rider AU.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/Jeanne W. Kingery

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Larisa M. Vaysman (0090290)

Senior Counsel

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45202

(513) 287-4320

(513) 287-4385 (facsimile)

Rocco.DAscenzo@duke-energy.com

Jeanne.Kingery@duke-energy.com

Larisa.Vaysman@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 3rd day of January, 2020, to the parties listed below.

/s/Jeanne W. Kingery
Jeanne W. Kingery

Jodi Bair
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Jodi.Bair@ohioattorneygeneral.gov

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Summary: Application Application For Rehearing of Duke Energy Ohio, Inc. electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Kinergy, Jean and Vaysman, Larisa