

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Adjust) Case No. 19-1750-EL-UNC
its Power Forward Rider.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval to Change) Case No. 19-1751-GE-AAM
Accounting Methods.)

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

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TABLE OF CONTENTS

	PAGE
I. RECOMMENDATIONS	2
A. The PUCO should reject Duke’s proposal to charge electric customers \$79 million for its new customer information system.	2
1. If Duke’s new customer information system is found to be used and useful in the future, then Duke can charge customers for it after the conclusion of its next base rate case, consistent with Ohio law (R.C. Chapter 4909).	2
2. Parties will have no meaningful opportunity to affect changes to the design of the customer information system because Duke completed the design before this case was even filed.	5
B. The PUCO should reject Duke’s proposal to charge customers \$11.8 million for its new land mobile radio.	6
1. If Duke’s new land mobile radio system is found to be used and useful in the future, then Duke can charge customers for it after the conclusion of its next base rate case, consistent with R.C. Chapter 4909.	6
2. Parties will have no opportunity to make recommendations regarding the land mobile radio system because Duke has already designed and begun installing it.	8
C. The PUCO should reject Duke’s proposal to charge customers \$5 million to upgrade utility poles to “smart” poles in a small number of cities.	8
1. Utility customers should not pay for smart poles because the additional cost of such poles as compared to standard poles has nothing to do with utility service.	9
2. Cities should pay for smart poles themselves if those cities believe that such poles are a worthy investment.	10
3. If Duke is permitted to charge customers for smart poles, then any revenues generated by those poles should offset rider charges to customers.	11
D. The PUCO should reject Duke’s proposal to charge customers \$15.8 million to subsidize the electric vehicle industry.	12
1. Customer-funded subsidies for the electric vehicle industry violate R.C. 4928.02(H).	12

2.	Markets are preferred over monopolies for competitive businesses like electric vehicles and electric vehicle charging stations.	12
3.	The PUCO should reject Duke’s proposal to charge customers \$1.5 million to subsidize residential electric vehicle charging stations because they will benefit very few customers and will result in lower-income customers subsidizing higher-income customers.....	14
4.	The transportation industry, and not utility customers, should bear the foremost responsibility for developing the market for electric vehicles....	14
E.	The PUCO should reject Duke’s proposal to retroactively defer more than \$14 million in costs for its customer information system and land mobile radio system incurred since January 2018.....	16
1.	Duke’s request to defer costs fails the PUCO’s six-part test for deferrals.	16
2.	Approving Duke’s request to charge customers for past costs incurred for its new customer information system and land mobile radio system would be unlawful retroactive ratemaking.	19
II.	CONCLUSION.....	22

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Duke wants to charge its electric customers \$111 million under a single issue ratemaking charge called the “PowerForward” rider for four different projects: a new customer information system, a new land mobile radio system, upgraded smart utility poles, and electric vehicles and charging stations.¹ This \$111 million is in addition to the hundreds of millions of dollars that customers are already paying for Duke’s grid modernization investments,² and in addition to the hundreds of millions of dollars that Duke spent on its first attempt at installing a smart grid, which was a failure.³

The PUCO should not approve Duke’s request to charge customers for any of these projects. The customer information system and land mobile radio investments are not grid modernization; they are distribution utility investments that should be addressed in Duke’s next

¹ Direct Testimony of Jay P. Brown on Behalf of Duke Energy Ohio, Inc. at 3-5 (Sept. 24, 2019) (the “Brown Testimony”).

² Case No. 17-1263-EL-SSO, Direct Testimony of Donald L. Schneider, Jr. on Behalf of Duke Energy Ohio, Inc. at Attachment DLS-1 (June 1, 2017) (Duke to charge customers \$169 million to replace its old advanced metering system with a new one); Revised Direct Testimony of Paul J. Alvarez in Opposition to the Joint Stipulation and Recommendation at 13 (June 25, 2018) (concluding that Duke’s \$169 million amount is a gross understatement and the actual cost will be more than \$486 million).

³ Case No. 17-1263-EL-SSO, Revised Direct Testimony of Paul J. Alvarez in Opposition to the Joint Stipulation and Recommendation at 8 (June 25, 2018).

natural gas or electric base rate case, as applicable. The request for upgraded smart utility poles in a very small number of select locations has nothing to do with utility service. Instead, it is designed to help individual cities install non-utility technology. And the request for electric vehicle and charging station subsidies should be rejected because it is anticompetitive and unnecessarily burdens utility customers with subsidies for the benefit of the automotive industry. The PUCO should also reject Duke's request to retroactively defer charges incurred for these investments starting in January 1, 2018 because the deferral request fails the PUCO's test for deferrals.

I. RECOMMENDATIONS

A. The PUCO should reject Duke's proposal to charge electric customers \$79 million for its new customer information system.

1. If Duke's new customer information system is found to be used and useful in the future, then Duke can charge customers for it after the conclusion of its next base rate case, consistent with Ohio law (R.C. Chapter 4909).

Under traditional utility ratemaking, a utility makes money by investing in plant, filing a rate case, and charging customers for a return on and of any plant that is "used and useful."⁴ Plant can include things like land, buildings, substations, wires and poles, trucks and equipment, computer and billing systems, and other property that an electric distribution typically needs to provide safe and reliable service to its customers.

The rate case process balances the interests of both customers and the utility. The utility has an opportunity to collect its costs and earn a reasonable return on its investment. And customers are protected because they only pay for property that is used and useful in providing utility service to them, with the investment being valued at a date certain that falls within the test

⁴ R.C. 4909.15(A)(1), (B), (E).

year. Because the utility must spend its own money and then seek to collect its costs in a rate case, the utility has an incentive to carefully plan its investments to avoid being stuck with the cost of unnecessary assets.⁵

In this case, Duke wants to charge its electric customers \$78.6 million for a new customer information system, which Duke calls “Customer Connect.”⁶ As Duke explains in its testimony, a customer information system “manages the billing, accounts receivable, and rates” for Duke and “is the central repository for all customer information.”⁷ A customer information system is not a unique investment specific to grid modernization; it is a typical utility investment related to its provision of basic distribution service. Indeed, Duke says that the new customer information system is required to provide safe and reliable distribution service to customers, suggesting that it is an investment related to basic utility service and thus properly addressed through base rates.⁸ Duke currently has a customer information system in place, as it must, given that the customer information system performs basic utility functions like billing.⁹

Customers paid for Duke’s current customer information system through base rates beginning more than 20 years ago. And customers have paid for numerous upgrades that were necessary over time to maintain the current customer information systems in base rates. There is no reason that Duke’s electric customers should pay now for the new system on an accelerated ratemaking basis under the PowerForward Rider (“Rider PF”), rather than through Duke’s next

⁵ The utility also has an added incentive to invest in plant, even where a non-capital-intensive solution might be better because the utility earns a return on plant but only gets dollar for dollar recovery of non-plant expenses.

⁶ Direct Testimony of Amy B. Spiller on Behalf of Duke Energy Ohio, Inc. at 20, n. 13 (Sept. 24, 2019) (the “Spiller Testimony”).

⁷ Direct Testimony of Retha Hunsicker on Behalf of Duke Energy Ohio, Inc. at 2 (Sept. 24, 2019) (the “Hunsicker Testimony”).

⁸ See OCC INT-03-015. All discovery responses cited in these comments are attached to these comments as an appendix.

⁹ Hunsicker Testimony at 3.

base rate case. Requiring customers to pay now for the new customer information system through a single issue ratemaking mechanism like the PowerForward rider shifts the financial risk of the new system on to customers rather than Duke shareholders—where it belongs. Duke provides no justification in its application¹⁰ or testimony for charging customers for the new customer information system through a rider. Nor has Duke demonstrated that any such investment was prudent and used and useful. And in fact, many of the new advanced billing capabilities that are supposed to be available in the new customer information system are capabilities that should already exist in Duke’s billing systems based on funding that was provided to Duke under a Smart Grid Investment Grant (SGIG). All evidence suggests that a base rate case is more than adequate to address Duke’s request in this instance.

First, Duke does not have a rider in place to charge its natural gas customers for the new customer information system, so Duke plans to include the allocated costs for its natural gas operations in its next gas base rate case.¹¹ Second, the new customer information system will serve not just Duke’s Ohio service territory but also its affiliates’ territories in other jurisdictions.¹² In all other states, Duke will collect its costs, if at all, through a base rate case. For example, Duke sought deferral authority in its pending rate case in Indiana, sought to include \$900,000 in base rates in its pending Kentucky rate case, and received a deferral in Florida to include its costs in its next rate case there.¹³ And Duke acknowledges that the deployment of the Customer Connect system will occur in Ohio regardless of whether it obtains funding approval under the Rider PF. The only uncertainty is if the new system would be deployed in 2022.

¹⁰ Duke Energy Ohio, Inc.’s Application for Approval of its Infrastructure Modernization Plan, Adjustment to Rider Power Forward, and Request for Deferrals (Sept. 24, 2019) (the “Application”).

¹¹ Brown Testimony at 6.

¹² See OCC INT-03-019.

¹³ See OCC INT-03-019.

But, there is no appreciable benefit for customers if Duke deploys the system in 2022 or later. For example, customers will not realize any of the operational savings associated with the Customer Connect deployment until and unless the company files its next distribution rate case. And Customer Connect may not provide many of the capabilities that can actually help customers like price to compare messages on natural gas bills, shadow billing messages, and other advanced billing functions.

In short, charging Ohio customers for the new customer information system through base rates, following a used and usefulness review, is more than adequate for Duke and fairer to Ohio's consumers, as demonstrated by Duke's approach in other states. There is no reason for Duke to be allowed to charge its Ohio customers for the system on an accelerated basis outside of a rate case.

2. Parties will have no meaningful opportunity to affect changes to the design of the customer information system because Duke completed the design before this case was even filed.

Duke seeks to charge electric customers \$79 million for the new customer information system under Rider PF because, as Duke notes, the approved settlement from Duke's most recent rate case provides that Duke's grid modernization plan "will include a proposal to upgrade the Company's CIS."¹⁴ But Duke has not included in this grid modernization case a "proposal" to upgrade its customer information system.

To the contrary, Duke has already made the decision to install a new customer information system, designed the entire thing, begun incurring costs for it, and plans to install it, regardless of what happens in this proceeding. As Duke explained in its responses to discovery, "The design of the Customer Connect Program, including requirements specific to Duke Energy

¹⁴ See OCC INT-02-031.

Ohio, is complete.”¹⁵ Further, Duke has completed “96% of the build phase for the core solution” of the new customer information system. Duke is not “proposing” anything here regarding the design of the customer information system. It has made all of the decisions about what the new customer information system will look like, and all it is seeking in this case is to charge customers.

Neither OCC, the PUCO Staff, nor anyone else will have any meaningful opportunity to be heard on what the new customer information system should look like, what capabilities it should have, what technologies it should enable, or anything else. The PUCO should not allow Duke to dictate what a system will look like, build that system, and then, after the fact, offer it up as a “proposal” for the PUCO to approve, including tens of millions of dollars of charges to consumers on an accelerated basis through a bill surcharge.

B. The PUCO should reject Duke’s proposal to charge customers \$11.8 million for its new land mobile radio.

1. If Duke’s new land mobile radio system is found to be used and useful in the future, then Duke can charge customers for it after the conclusion of its next base rate case, consistent with R.C. Chapter 4909.

Duke seeks to charge its electric customers \$11.8 million through its PowerForward Rider for a new land mobile radio system. As Duke explains in its testimony, a land mobile radio is a “person-to-person voice communication system consisting of two-way radio transceivers (an audio transmitter and receiver in one unit) which can be mobile, installed in vehicles or portable.”¹⁶ In layman’s terms, it is similar to a system of walkie talkies. According to Duke, it uses a land mobile radio for “day-to-day work (like switching electrical circuits), during short-

¹⁵ See OCC INT-02-002.

¹⁶ Direct Testimony of Randy L. Turner on Behalf of Duke Energy Ohio, Inc. at 3 (Sept. 24, 2019) (the “Turner Testimony”).

cycle work such as meter set orders and perhaps most importantly, during storm restoration.”¹⁷ In particular, the land mobile radio system can be used when other forms of communication (like cellular service) might be out or congested, for example, during storms.¹⁸

Duke’s request to charge customers for the land mobile radio system through a rider fails for many of the same reasons as Duke’s requested charges for the customer information system. As with the customer information system, the land mobile radio system is used to provide basic distribution utility service and is not part of “grid modernization.” As with the customer information system, Duke says that the land mobile radio is required for safe and reliable service, thus making it a basic distribution service need, not an incremental grid modernization investment.¹⁹ As with Duke’s current customer information system, its current land mobile radio system was included in base rates, not in a rider. And as with the customer information system, Duke will seek to charge customers in other states for the land mobile radio system through base rates, not through a rider.²⁰

Duke has provided no justification for charging customers for the land mobile radio system on an accelerated basis through a rider. And once again, Duke’s proposal will shift the financial risks associated with premature obsolescence due to other technologies becoming available to serve the same purpose onto customers rather than Duke shareholders. If customers are to be charged for Duke’s land mobile radio system, that issue should be resolved in Duke’s next base rate case, where Duke will be required to show that the land mobile radio is used and useful in providing utility service to customers.

¹⁷ Turner Testimony at 3.

¹⁸ Turner Testimony at 3.

¹⁹ See OCC INT-02-003(d).

²⁰ See OCC INT-03-021 (land mobile radio to be charged to customers through base rates in Indiana, Kentucky, and North and South Carolina).

2. Parties will have no opportunity to make recommendations regarding the land mobile radio system because Duke has already designed and begun installing it.

As with the customer information system, parties to this case will apparently have no opportunity to make recommendations in this case regarding the land mobile radio system. This is because Duke has already designed the system, signed a contract for it, and starting installing it in Ohio and other states.²¹ Now, after all of those decisions have been made by Duke, with no input from parties, Duke apparently seeks the PUCO's after-the-fact blessing of those decisions and an opportunity to charge customers for the land mobile radio system without any showing of used and usefulness or any other protections typically found in a base rate case. The PUCO should reject Duke's proposal and address the land mobile radio in a future base rate case, if ever.

C. The PUCO should reject Duke's proposal to charge customers \$5 million to upgrade utility poles to "smart" poles in a small number of cities.

Duke serves more than 700,000 customers in nine counties in Southwestern Ohio. Yet in its Application, Duke wants to charge those 700,000 customers \$5 million to provide smart utility poles to a small number of cities serving just a fraction of those customers. The PUCO should reject Duke's proposal for its 700,000 customers to subsidize new smart utility poles for the benefit of the comparatively few customers who live in the cities that receive the subsidy.

²¹ See OCC-INT-02-002(d), (f); OCC INT-02-060.

1. Utility customers should not pay for smart poles because the additional cost of such poles as compared to standard poles has nothing to do with utility service.

According to Duke, a standard utility pole costs \$5,000 for a wood pole and \$10,000 for an aluminum pole,²² whereas a smart pole costs \$25,000.²³ Duke says that this additional cost will allow cities with smart poles to install the following types of technologies: security and safety cameras, pedestrian counters, traffic control devices, air quality sensors, waste management sensors, gunshot detection sensors, parking space monitoring, digital banners, Wi-Fi networks, and small cell wireless.²⁴

None of these things has anything to do with providing safe and reliable electric utility service (or with electric utility service at all, for that matter). Yet under Duke's proposal, utility customers would pay an extra \$15,000 to \$20,000 per pole, totaling \$5 million, so that a small number of cities can install non-utility technologies for the benefit of their local citizens. Duke's testimony regarding this proposal makes all manner of claims about how the proposal will benefit the cities that are getting free smart poles, paid for by customers.²⁵ But it says nothing at all about how the customers paying for the poles benefit. This is because they do not benefit (unless they happen to be one of the few customers who is a resident of the city that receives the customer-funded poles).

Ohio policy requires Duke to provide reasonably priced retail electric service²⁶ and the Duke's proposal contradicts this policy by charging customers for services that have nothing to

²² See OCC INT 02-015.

²³ See OCC INT 02-008.

²⁴ Direct Testimony of Timothy J. Duff on Behalf of Duke Energy Ohio, Inc. at 4-5 (Sept. 24, 2019) (the "Duff Testimony").

²⁵ Duff Testimony at 5-12.

²⁶ R.C. 4928.02(A).

do with providing retail electric services. Also, the Duke proposal contradicts its own tariff where customers who request an extension or relocation of company distribution facilities are required to pay the costs associated with the relocation or modifications.²⁷ This policy and tariff are well established under cost causation principles, where costs are assigned to the entity that causes the costs to occur.

There is no justification for forcing 700,000 utility customers to fund smart poles that enable select individual cities to provide non-utility services to their residents.

2. Cities should pay for smart poles themselves if those cities believe that such poles are a worthy investment.

According to Duke, “[w]hile many communities have expressed interest in taking advantage of [smart city] technologies, few have the funds necessary to initiate deployment.”²⁸ Yet Duke apparently defines “many” as three, because Duke could only identify three such communities.²⁹ For example, Douglas Adkins, the City Manager for the City of Middletown, Ohio—population 49,000³⁰—is testifying in this case about Middletown’s support for Duke’s proposal to provide 30 such poles to Middletown. More troubling, when Duke was asked about the basis for its claim that “few have the funds necessary to initiate deployment” of smart city technologies, Duke admitted that this statement was baseless: “the Company has no supporting information regarding the communities’ availability of funds.”³¹

A reasonable conclusion is not that cities lack funding, but that cities have determined that their money is better spent on things other than expensive, advanced utility poles.

²⁷ Duke Tariff. Sheet 60.17.

²⁸ Duff Testimony at 6.

²⁹ See OCC INT 02-011 (identifying only Cincinnati, Middletown, and Springfield as showing an interest in smart city technology).

³⁰ <https://www.census.gov/quickfacts/middletowncityohio>

³¹ See OCC INT 02-011.

Perhaps smart city technology will one day be a smart investment for cities in Ohio. If they are a smart investment, then cities will evaluate their own budgets to pay for the poles. If they are a bad investment, then cities will not use their own budgets to pay for the poles. And if cities believe they are a smart investment but lack money in their current budgets, they can either reallocate funds, raise taxes, or seek grants or other means to fund the program. Local governments make these types of decisions all the time—it is one of their core functions.

It is more fair to use local taxes to pay for things that benefit local citizens because then the people paying the taxes are the ones receiving the benefit. This contrasts with taxing customers through utility rates. When 700,000 utility customers in nine counties pay to provide benefits to 49,000 in a single city (like Middletown), the vast majority of those customers are paying for something that brings them no benefits whatsoever and is not a cost to the utility of rendering utility service. There is no valid public policy justification for socializing costs in this manner.

3. If Duke is permitted to charge customers for smart poles, then any revenues generated by those poles should offset rider charges to customers.

Duke plans to charge cities attachment fees for the new smart poles.³² Yet according to Duke, it will *not* use these attachment fees to offset the charges to customers for the poles.³³ This is fundamentally unfair. If all Duke customers are required to pay for these pole upgrades, as Duke proposes, then it is only fair that the attachment fees made possible by the poles be used to offset the charges that customers pay. Duke provides no justification for its proposal that customers pay for the poles but then not receive a credit for pole attachment fees.

³² See OCC INT 02-005.

³³ See OCC INT 02-005.

D. The PUCO should reject Duke’s proposal to charge customers \$15.8 million to subsidize the electric vehicle industry.

1. Customer-funded subsidies for the electric vehicle industry violate R.C. 4928.02(H).

R.C. 4928.02(H) provides that it is state policy to “[e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.” Contrary to this law, however, Duke seeks to charge its monopoly utility customers \$15.9 million to subsidize the competitive electric vehicle industry.³⁴ Duke is seeking \$5 million in subsidies for electric vehicle fast charging stations, \$2.2 million in subsidies for school buses, \$300,000 in subsidies for transit buses, \$1.5 million in subsidies for residential electric vehicle charging stations, and \$6,000,000 in subsidies for commercial electric vehicle charging stations.³⁵ The PUCO should reject each of these subsidies are contrary to Ohio law.

2. Markets are preferred over monopolies for competitive businesses like electric vehicles and electric vehicle charging stations.

Ohio’s 1999 energy law (Senate Bill 3) deregulated Ohio’s energy markets. The law recognized that customers are best served by competitive markets, where businesses competing with each other will provide the best prices and the greatest innovation for consumers. This policy is reflected in R.C. 4928.02(H), as described above. Regulated monopolies, unlike business operating in the competitive market, are suited only to those limited situations where the competitive market fails.

³⁴ Direct Testimony of Land W. Reynolds on Behalf of Duke Energy Ohio, Inc. at 25 (Sept. 24, 2019) the “Reynolds Testimony”).

³⁵ Reynolds Testimony at 10.

Under Ohio law, the distribution of electricity is provided by regulated distribution utilities because the logistics of providing that service (an elaborate distribution system of poles and wires covering vast geographic areas) does not allow for effective competition. In contrast, the 1999 law recognized that the generation of electricity can be provided through markets (instead of monopoly utilities) where power plants compete with each other to provide the lowest prices and greater innovation to consumers. Electric vehicles are no different.

There is nothing about the market for electric vehicles that requires regulated monopolies to be involved. Businesses that want to enter the market for electric vehicles and electric vehicle charging stations can do so and compete with each other. They can compete freely by developing the best technology, marketing their products to customers demanding their product, and competing on price. In short, there is no evidence of a market failure for the provision of these products and services and no reason for government to step in and interfere with the development of a competitive market by introducing customer-funded monopoly subsidies.

When monopolies are allowed to use their captive customers' funds to enter otherwise competitive markets, the competitive market is harmed, and the captive customers are harmed. The competitive market is harmed because subsidies distort market prices and encourage parties to make decisions that the market might not support. Customers are harmed because they are paying higher utility bills to subsidize the transportation industry.

Markets will serve customers well and are preferred over monopolies for the competitive electric vehicle market. Duke should not be allowed to charge its customers to subsidize electric vehicles and electric vehicle charging stations.

3. The PUCO should reject Duke’s proposal to charge customers \$1.5 million to subsidize residential electric vehicle charging stations because they will benefit very few customers and will result in lower-income customers subsidizing higher-income customers.

Duke proposes charging customers about \$1.5 million for a residential electric vehicle charging station rebate program. According to Duke witness Reynolds, Duke wants to offer \$500 rebates to 1,000 residential customers who install electric vehicle charging stations at their homes.³⁶ The program will cost another \$1,000 for each such charging station (\$500 for participating in load management events and \$500 in administrative costs).³⁷

This proposal should be rejected for at least two reasons. First, the program benefits very few customers. Duke has around 700,000 customers, but only 1,000 can receive a rebate under Duke’s proposal. Those customers not receiving a rebate do not benefit. Further, customers who own electric vehicles are predominantly higher-income customers. A recent report by CNBC showed that 63% of electric vehicle owners make at least \$125,000 per year in income. One in four electric vehicle owners makes more than \$200,000 per year or more.³⁸ These customers do not need subsidies, and they certainly don’t need subsidies from their fellow Ohioans who make substantially less. They can pay for their own residential charging stations.

4. The transportation industry, and not utility customers, should bear the foremost responsibility for developing the market for electric vehicles.

A common refrain among those advocating for utility involvement in the electric vehicle industry is the “chicken and egg” argument. The argument goes like this: the electric vehicle market won’t take off until there are enough charging stations, but no one will build charging stations until there are enough electric vehicles on the road to use them. So, according to this

³⁶ Reynolds Testimony at 19.

³⁷ Reynolds Testimony at 19-20.

³⁸ See <https://www.cnbc.com/2019/10/20/electric-car-prices-finally-in-reach-of-millennial-gen-z-buyers.html>.

argument, we need the government to step in and allow distribution utilities regulated by the PUCO to develop a network of charging stations that will ultimately drive electric vehicle sales.

This argument does not withstand scrutiny. If there is a chicken and egg problem, utility customers being charged subsidies are not the solution. To the contrary, the solution lies in the private market, including automobile manufacturers.

There is little doubt that automobile manufacturers will be one of the primary beneficiaries of the growing market for electric vehicles. It is in their interest to sell more vehicles, so it is also in their interest to see that electric vehicle charging stations are built and placed in locations that will maximize electric vehicle sales. To be sure, some manufacturers are proactive in building out a network of charging stations. But if there is a perceived or actual dearth of well-placed charging stations, then it is up to the market to fill that gap. Electric vehicle automobile owners and other manufacturers looking to sell more vehicles should be the ones stepping up. Monopoly utility customers should not subsidize the development of the transportation industry.

If the utilities want to be in the electric vehicle charging business, they should be required to do so through a separate shareholder-funded unregulated company that would compete on a level playing field against other providers. The separate unregulated entity would not receive monopoly customer funding and would be subject to corporate separation law and rules in Ohio.

E. The PUCO should reject Duke’s proposal to retroactively defer more than \$14 million in costs for its customer information system and land mobile radio system incurred since January 2018.

1. Duke’s request to defer costs fails the PUCO’s six-part test for deferrals.

In its Application, Duke seeks authority to defer operations and maintenance costs for its new customer information system and its new land mobile radio system, as of January 1, 2018.³⁹

The PUCO will approve a deferral when it finds that there are “both exigent circumstances and good reason demonstrated before such amounts should be treated differently from ordinary utility expenses.”⁴⁰ To accomplish this, the PUCO has used a number of factors to determine whether to authorize a utility to defer a regulatory asset. While no factor is determinative, the PUCO has applied these factors over its history of considering deferrals. The factors are:

1. Whether the utility’s current rates or revenues are sufficient to cover the costs associated with the requested deferral,
2. Whether the costs are material,
3. Whether the reason for requesting the deferral is outside the utility’s control,
4. Whether the expenses are atypical and infrequent,
5. Whether the financial integrity of the utility will be significantly and adversely affected if the deferral is not granted, and
6. Whether a deferral will incent a utility to take action.⁴¹

³⁹ Application at 12.

⁴⁰ *In re Joint Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., & The Toledo Edison Co.*, Case No. 05-704-EL-ATA, Opinion & Order at 8-9 (Jan. 4, 2006) (“Although the granting of such deferral authority is within the discretion of the Commission, we believe that to approve such a measure requires that we find there to be both exigent circumstances and good reason demonstrated before such amounts should be treated differently from ordinary utility expenses.”).

⁴¹ *In re Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods*, Case No. 17-2118-GA-AAM, Opinion & Order ¶ 24 (Apr. 18, 2018) (citing cases); *In re Commission’s Investigation of the Financial Impact of the Tax Cuts & Jobs Act of 2017 on Regulated Ohio Utility Cos.*, Case No. 18-47-AU-COI, Opinion & Order ¶ 20 (Dec. 19, 2018).

Duke has not shown that these factors support its request for a deferral. These factors are especially difficult to support, since Duke has already incurred the expenses that it now seeks to defer.

With respect to the first factor, Duke notes only that the specific costs in question fall outside the test years of its most recent rate cases.⁴² This is meaningless, for at least three reasons. First, if the costs in question were incurred during the test year, then they would be included in base rates, so there would be no need for a deferral. The fact that they are incurred after the test year therefore says nothing, especially since the timing of the rate case and the timing of the expenses were 100% within Duke's control. The fact that expenses are incurred after the end of a test year does not, in and of itself, justify a deferral. Third, outside of the test year, some utility costs might go up, and some might go down. Even if Duke is incurring costs for its new customer information system and land mobile radio system, it might simultaneously be saving costs elsewhere (for example, terminating any contracts related to its old systems). Duke made no attempt to show that its current revenues are insufficient to cover the costs associated with the requested deferral.

Regarding the second factor, Duke simply repeats it back, stating that "the costs to be deferred are material and significant in nature."⁴³ Such conclusory statements cannot satisfy Duke's burden of proof.

Regarding the third factor, Duke admitted in discovery that this factor does not support a deferral: "The Company does not state that the reason for the request was outside of the Company's control with respect to Customer Connect or Land Mobile Radio."⁴⁴

⁴² Application at 13-14.

⁴³ Application at 14.

⁴⁴ See OCC INT-02-001.

Regarding the fourth factor, the expenses that Duke seeks to defer (related to the customer information system and land mobile radio) are not atypical. To the contrary, Duke's customer information system and land mobile radio are basic components of Duke's distribution system. As Duke explained in its testimony, it has routinely invested in its customer information system over the past 33 years.⁴⁵ Likewise, Duke's current land mobile radio system has been in place for 14 years.⁴⁶ Duke has undoubtedly incurred costs to maintain the system over the years, including purchasing replacement parts.⁴⁷ There is nothing atypical or infrequent about Duke spending money to support these systems. It has been doing so for decades.

Regarding the fifth factor, Duke has provided no evidence whatsoever that its financial integrity "will be significantly and adversely affected if the deferral is not granted." Instead, Duke says only that "incurring such costs could cause financial harm." This statement fails for several reasons. First, it is again a conclusory statement without support. Second, even if it is true, it does not meet the standard. The fifth factor requires a finding that the lack of a deferral *will* significantly and adversely affect financial integrity, but Duke only speculates that it *could*. Further, the factor requires the affect to be *significant*. Duke says only that could be financial harm without any demonstration that it is significant. For example, Duke says nothing about whether it would or would not be able to earn a reasonable return on rate base without a deferral. If it can, then Duke cannot possibly argue that it is suffering significant financial harm.

Finally, the sixth factor also weighs against a deferral. Under this factor, the PUCO considers whether a deferral will incent a utility to take action. Here, there is no such incentive. Duke has already made the decision to install its new customer information system and its new

⁴⁵ Hunsicker Testimony at 3-5.

⁴⁶ Turner Testimony at 7.

⁴⁷ Turner Testimony at 7.

land mobile radio system. Whether Duke's deferral request is approved, Duke is moving forward with those projects. Thus, a deferral is not necessary to incent Duke to do anything.

In sum, none of the PUCO's six factors support Duke's deferral request. It should be denied.

2. Approving Duke's request to charge customers for past costs incurred for its new customer information system and land mobile radio system would be unlawful retroactive ratemaking.

Duke is seeking to defer more than \$14 million in O&M costs that it has incurred since January 1, 2018 for its proposed new customer information system and new land mobile radio system.⁴⁸ Duke also seeks to begin charging customers for these past costs immediately through its PowerForward Rider. Allowing Duke prospective compensation for past expenses (January 1, 2018 through the present) is retroactive ratemaking. And retroactive ratemaking is unlawful under R.C. 4905.32 and Ohio Supreme Court precedent.

The PUCO cannot authorize a utility to charge higher future rates to make up for past costs. This rule is fundamental to utilities regulation and has been recognized in the State of Ohio for decades, including by the Ohio Supreme Court in *Keco*⁴⁹ in 1957, *Lucas County*⁵⁰ in 1997, and more recently in 2011 in *Columbus Southern*.⁵¹ It is also recognized by statute, where R.C. 4905.32 prohibits a utility from charging or collecting any rate that is different than the rate specified in its rate schedule.

In Ohio, after the PUCO approves a rate, that rate is the "only rate which the utility may lawfully charge."⁵² This means that "a utility may not increase, decrease, or change its tariff rates

⁴⁸ This includes costs through 2020, based on Duke's responses to the Staff's data requests.

⁴⁹ *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 259 (1957).

⁵⁰ *Lucas Cnty. Comm'rs v. PUCO*, 80 Ohio St. 3d 344, 347-48 (1997).

⁵¹ *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, 514-15 (2011).

⁵² *Cleveland Elec. Illuminating Co. v. PUCO*, 46 Ohio St. 2d 105, 115 (1976).

without commission approval.”⁵³ If a utility seeks to change its rates, it must obtain PUCO approval for the change. And when a utility seeks a rate change, the change applies only to future rates—the PUCO cannot change rates retroactively.⁵⁴ As the Ohio Supreme Court succinctly concluded in *Lucas County*, “retroactive ratemaking is not permitted under Ohio’s comprehensive statutory scheme.”⁵⁵

Consistent with *Keco* and its progeny, a utility cannot recover past losses through future rates. In *Columbus Southern*, the utility sought a rate increase effective January 2009, but the PUCO did not issue an order granting the increase until mid-March of that year.⁵⁶ The PUCO, however, permitted the utility to recover the full amount of the increase as though the higher rates had been in effect as of January 1, 2009. It accomplished this by setting the utility’s rates at a level that would allow it to recover 12 months of rate increases (*i.e.* January through December 2009) in a 9-month period (April through December 2009).⁵⁷

The Ohio Supreme Court ruled that this was retroactive ratemaking.⁵⁸ As the Court explained, the PUCO effectively permitted the utility to recover losses from January, February, and March 2009—that is, losses the utility suffered *before* the PUCO’s order approving the rate increase.⁵⁹ This violated *Keco* and the fundamental rule against retroactive ratemaking.⁶⁰ The

⁵³ *Lucas Cnty.*, 80 Ohio St. 3d at 347.

⁵⁴ *Lucas Cnty.*, 80 Ohio St. 3d at 348 (“[U]tility ratemaking by the Public Utilities Commission is prospective only.”).

⁵⁵ *Id.*

⁵⁶ 67 Ohio St. 3d at 514.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 515.

⁶⁰ *Id.*

Ohio Supreme Court has established clear precedent: a utility cannot charge customers for losses that the utility incurred prior to the entry of the order approving the rate increase.

Duke's proposal in the current case violates this precedent. Duke is asking the PUCO to authorize Duke to charge customers, prospectively, for costs that it incurred in the past (from January 1, 2018 to the present). From January 1, 2018 through the present, Duke has not been authorized to charge customers for costs related to its new customer information system or new land mobile radio system. If the PUCO allows Duke to charge customers for these past costs now, Duke would effectively be retroactively updating the amount that it charged customers through its PowerForward Rider by charging customers in the future for those past costs. This is equivalent to AEP's attempt to charge customers for past losses in future rates, which the Supreme Court of Ohio rejected as unlawful retroactive ratemaking.⁶¹ Duke wants the PUCO to adjust future rates to make up for the fact that the rates it was collecting since January 1, 2018 were not "sufficient" and have caused them financial harm.

In an attempt to end-around the prohibition on retroactive ratemaking, Duke is asking the PUCO for a deferral of these past costs. And although a deferral itself may not be retroactive ratemaking because it is not ratemaking, Duke is asking for more than just a retroactive deferral. It is also asking for the deferred amounts to be immediately included in rates under the PowerForward Rider. If a utility could obtain retroactive deferral and then immediate inclusion of such deferred amounts in rates, then the rule against retroactive ratemaking would be rendered a nullity.

The PUCO must follow Ohio Supreme Court precedent. It must rule that Duke cannot defer past costs it has incurred for its customer information system and land mobile radio system

⁶¹ 67 Ohio St. 3d at 514.

because any charges for such retroactively deferred amounts would be unlawful retroactive ratemaking.

II. CONCLUSION

Duke's request to charge customers for its new customer information system and new land mobile radio system are not part of grid modernization. These are distribution system investments that are more appropriately addressed through a base rate case, where the PUCO can evaluate the prudence and used and usefulness of Duke's investments in determining whether customers should pay for them. Duke's proposal for customers to pay \$5 million to subsidize heavy-duty utility poles should be rejected because it has nothing to do with utility service. And Duke's proposal for customers to pay \$16 million to subsidize the market for electric vehicles should be rejected because it will interfere with competitive markets.

The PUCO should deny Duke's Application in its entirety and save customers from the burden of these unnecessary charges.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Christopher Healey

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 15th day of April 2020.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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REQUEST:

Application page 12-13 states, "Staff of the Commission (Staff) has delineated six criteria that it believes the Commission has historically considered in determining whether to grant such deferral authority." One of the criteria is "whether the reason for requesting the deferral was outside of the utility's control."

- a) With respect to Customer Connect, explain why the reason for requesting the deferral was outside of Duke's control.
- b) With respect to the Land Mobile Radio communication system, explain why the reason for requesting the deferral was outside of Duke's control.

RESPONSE:

As stated in the application on page 13, the Company notes that the Commission does not require an applicant to meet every one of the six factors identified by Staff. The Company does not state that the reason for the request was outside of the Company's control with respect to Customer Connect or Land Mobile Radio.

PERSON RESPONSIBLE: Jay P. Brown

REQUEST:

Referring to page 14 of the Application, a statement is made that “the costs to be deferred are material and significant in nature. These costs are necessary to timely complete the development of the Customer Connect system and the Implementation of LMR.”

- a) What is the current status of the design of the Ohio specific requirements for the Customer Connect system?
- b) What is the current status of the development of the Customer Connect system specific to Ohio?
- c) What is the deployment schedule for completing the Customer Connect system in each state where customer connect is being deployed?
- d) What is the current status of the design of the Ohio specific requirements for the proposed LMR system?
- e) Has Duke initiated procurement actions for the Ohio specific LMR system?
- f) What is the deployment schedule for installing the new LMR system in each state where the new LMR is being deployed?

RESPONSE:

- a) The design of the Customer Connect Program, including requirements specific to Duke Energy Ohio, is complete.
- b) The design-build phase of the Customer Connect program, including Ohio-specific requirements is approximately 90% complete.
- c) The deployment timeline for the full meter-to-cash system for each of Duke Energy’s regulated utilities is: Duke Energy Carolinas in April 2021; Duke Energy Florida in November 2021; Duke Energy Progress in April 2022; and Duke Energy Midwest (Indiana, Kentucky, Ohio) in September 2022.
- d) The initial design is complete.
- e) Yes
- f) Current projected timeline

OH/IN/KY	Florida	Carolinas
2019-2021	2019-2021	2021-2024

- PERSON RESPONSIBLE:**
- a) Retha Hunsicker
 - b) Retha Hunsicker
 - c) Retha Hunsicker
 - d) Randy Turner
 - e) Randy Turner
 - f) Randy Turner

REQUEST:

Referring to page 14 of the Application, there is a statement that "Absent the requested deferral authority, incurring such costs could cause financial harm to the Company, and indeed delay implementation of the projects...."

- a) When will the Customer Connect system be deployed in Ohio if the deferral request is approved?
- b) When will the Customer Connect system be deployed in Ohio if the deferral request is not approved?
- c) When will the LMR system be deployed in Ohio if the deferral request is approved?
- d) When will the LMR system be deployed in Ohio if the deferral request is not approved?
- e) Provide any estimates or projections that Duke has prepared regarding the length of any such "delay."

RESPONSE:

- a) As noted in the response to OCC-INT-02-002, deployment for the full meter-to-cash solution of the Customer Connect program for Duke Energy Midwest (Indiana, Kentucky, Ohio) is scheduled for September 2022.
- b) The Company is focusing efforts on implementing Customer Connect to meet the September 2022 deployment data and has not determined what delays could or would result if the Company's deferral request is not approved.
- c) Refer to response provided to OCC-INT-02-002(f).
- d) The current plan is to get LMR approved via the PF Rider recovery mechanism; should that not occur we will need to re-evaluate the project next steps based on the state of the existing system, recovery options available and the status of the project in other regions. However, based upon the antiquated system currently in place, we would need to move forward with the deployment of the new LMR system.
- e) The Company has not estimated the impact of a delay at this time.

PERSON RESPONSIBLE:

- a) Retha Hunsicker
- b) Retha Hunsicker
- c) Randy Turner
- d) Randy Turner
- e) Randy Turner

REQUEST:

Regarding smart street lighting under the proposed Smart City initiative:

- a) Will Duke be compensated for any attachments on the Smart Street Lighting poles?
- b) How will the attachment rate be calculated?
- c) Will the revenue from pole attachments be an offset to the revenue requirement for Rider PF or any other rider?

RESPONSE:

- a) Yes
- b) There are 2 different attachment fees; both are flat fees. The fee is either \$10 or \$25 monthly, depending on the specifications of the equipment being attached; those specifications are wattage, weight, volume, and vertical space occupied on the pole.
- c) The pole attachment fees will be treated in the same manner as all other pole attachment fee revenues collected by the Company and will not be credited to Rider PF.

PERSON RESPONSIBLE: Timothy J. Duff

REQUEST:

Referring to the Direct Testimony of Mr. Duff at page 5, what is the total number of Duke-owned poles that are subject to being upgraded or replaced under the Smart Cities Infrastructure Acceleration Program?

RESPONSE:

It is estimated that 200 poles can be replaced/upgraded under this program, assuming the cost of each replacement is \$25,000.

PERSON RESPONSIBLE: Tim Duff

REQUEST:

Page 6 of the Duff Testimony states, "The market for Smart City technologies is only just developing. While many communities have expressed interest in taking advantage of these technologies, few have the funds necessary to initiate deployment."

- a) Identify all of the communities that "have expressed interest in taking advantage" of Smart City technologies.
- b) For each community identified in your response to (a), state whether the community has "the funds necessary to initiate deployment."
- c) Provide all supporting information for your belief that each community identified in your response to (a) does or does not have the funds necessary to initiate deployment.

RESPONSE:

- a) Cincinnati, Middletown, and Springfield.
- b) Unknown. The Company does not have insight into the communities' financial status and the availability of funds to initiate deployment.
- c) Other than its knowledge of the fact that these cities have not elected to move forward deploying smart poles, the Company has no supporting information regarding the communities' availability of funds.

PERSON RESPONSIBLE: Timothy J. Duff

REQUEST:

Referring to the testimony of Mr. Duff on page 12 that "In some cases, if feasible, the Company will work with the cities to use the funds on other types of pole upgrades that could satisfy the incorporation of the desired smart city functionality short of replacement with a multi-use pole."

- a) Describe the "other types of pole upgrades" that are being referred to.
- b) What are the comparative costs of each of the other types of upgrades to a multi-use pole?
- c) Were the other types of pole upgrades considered for the Middletown pilot program?

RESPONSE:

- a) Depending on the type of attachment(s) needed, it is possible that a taller or more robust standard lighting pole may suffice in lieu of a multi-use pole
- b) There are many potential types, but a replacement of a wood pole with a taller wood pole could cost approximately \$5,000 and the replacement of a standard aluminum lighting pole with a taller aluminum lighting pole could cost approximately \$10,000.
- c) To date, there have been no discussions with Middletown around specific pole types.

PERSON RESPONSIBLE: Timothy J. Duff

REQUEST:

Referring to the testimony of Ms. Hunsicker on page 11, given that the analysis and design of the Customer Connect is 100% complete and the system coding is 75% complete, why is Duke seeking recovery of the costs through the Power Forward rider as opposed to in a future base rate proceeding?

RESPONSE:

The Company is seeking recovery through Rider PF in response to the Opinion and Order in Case No. 17-0032-EL-AIR, filed 12/19/2018, on page 45. It states that "The third component of Rider PF will be for the recovery of costs related to an infrastructure modernization plan, which will be filed in a separate proceeding and subject to hearing. The plan will include a proposal to upgrade the Company's CIS." The Company is complying with the Commission order.

PERSON RESPONSIBLE: Jay P. Brown

Duke Energy Ohio
Case No. 19-1750-EL-UNC
OCC Second Set of Interrogatories
Date Received: December 19, 2019
OCC-INT-02-060

REQUEST:

Referring to the testimony of Mr. Turner on page 23, has Duke Energy Ohio entered a contract with Harris Corporation for the design and procurement of the LMR system? If so, what is the current status of deploying the P25 LMR system?

RESPONSE:

Yes. Radio frequency design and tower assessment are underway.

PERSON RESPONSIBLE: Randy L. Turner

Duke Energy Ohio
Case No. 19-1750-EL-UNC
OCC Third Set of Interrogatories
Date Received: March 17, 2020
OCC-INT-03-015

REQUEST:

Referring to the Duke response to OCC-INT-2-001, is the Customer Connect system as proposed by Duke required in order for Duke to provide safe and reliable service to customers?

RESPONSE: A customer information system (CIS) serves as a central repository for information regarding a utility's customers. A CIS manages the billing, accounts receivable, and rates for a utility. The Company requires a CIS in order to provide safe and reliable service to customers in compliance with Ohio law and regulations, which includes properly handling all aspects of billing. For the reasons described in the testimony of Retha Hunsicker on pages 3-11 and 17-18, it would not be practical, sustainable, efficient, or cost-effective for the Company to continuously modify its existing CIS to keep up with all of the capabilities required (now and in the future) to provide safe and reliable service to customers. Customer Connect is a practical, sustainable, efficient, and cost-effective means for the Company to manage its billing, accounts receivable, rates, and customer information, and will remain so for years to come.

PERSON RESPONSIBLE: Retha Hunsicker

Duke Energy Ohio
Case No. 19-1750-EL-UNC
OCC Third Set of Interrogatories
Date Received: March 17, 2020
OCC-INT-03-019

REQUEST:

Referring to the Duke response to OCC-INT-2-002, what is the current status for obtaining regulatory approval (including deferral authority) to deploy the Customer Connect system in:

- a) Indiana;
- b) Kentucky;
- c) Florida;
- d) Duke Energy Progress;
- e) North Carolina;
- f) South Carolina.

RESPONSE: Objection. This Interrogatory is overly broad, given that it seeks information that is neither relevant to this proceeding nor likely to lead to the discovery of admissible evidence in this proceeding. The status of regulatory approval in other jurisdictions is not relevant to Duke Energy Ohio's application for approval of programs under the Power Forward Rider. Furthermore, this interrogatory seeks to elicit information that is of public record, and thus is equally accessible to the requestor. Without waiving said objection, to the extent discoverable, and in the spirit of discovery:

- a. **Duke Energy Indiana** – Requested deferral authority in most recent base rate case; decision expected summer 2020.
- b. **Duke Energy Kentucky** – Request to include approximately \$900k in base rates in open rate case; agreed to accept Attorney General's recommendation to defer expenses to a regulatory asset if regulatory asset authority is granted to allow the Company to accumulate all actual O&M, including carrying costs. Decision expected spring 2020.
- c. **Duke Energy Florida** – Deferral of O&M Jan. 2018 – Dec. 2022 in regulatory asset to be included in next base rate case; 15-year amortization.
- d. **Duke Energy Progress NC** – Deferral of O&M in regulatory asset with AFUDC accrual beginning Jan. 2018 until DEP core solution goes in service, or Jan. 1, 2022, whichever is sooner.
Duke Energy Progress SC – Deferral of expenses Jan. 2018 – May 2019 with 3-year amortization.

- e. **Duke Energy Carolinas NC** – Deferral of O&M in a regulatory asset with AFUDC accrual beginning Jan. 2018 until DEC core solution goes in service, or Jan. 1, 2023, whichever is soon.
- f. **Duke Energy Carolinas SC** – Deferral of expenses Jan. 2018 – May 2019 with 3-year amortization; ongoing deferral through April 30, 2022.

PERSON RESPONSIBLE: As to objection - Legal
 As to response - Retha Hunsicker

Duke Energy Ohio
Case No. 19-1750-EL-UNC
OCC Third Set of Interrogatories
Date Received: March 17, 2020
OCC-INT-03-021

REQUEST:

Referring to the Duke response to OCC-INT-2-002, what is the current status for obtaining regulatory approval (including deferral authority) to deploy the LMR system in:

- a) Indiana;
- b) Kentucky;
- c) Florida;
- d) Duke Energy Progress;
- e) North Carolina;
- f) South Carolina.

RESPONSE: Objection. This Interrogatory is overly broad, given that it seeks information that is neither relevant to this proceeding nor likely to lead to the discovery of admissible evidence in this proceeding. The status of regulatory approval in other jurisdictions is not relevant to Duke Energy Ohio's application for approval of programs under the Power Forward Rider. Furthermore, this interrogatory seeks to elicit information that is of public record, and thus is equally accessible to the requestor. Without waiving said objection, to the extent discoverable, and in the spirit of discovery:

- a) Indiana; to be included in base rate recovery
- b) Kentucky; to be included in base rate recovery
- c) Florida; included in current settlement
- d) Duke Energy Progress; Included in current rate case
- e) Duke Energy Carolina. Included in current rate case

PERSON RESPONSIBLE: As to objection – Legal
As to response - Randy Turner

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Case No(s). 19-1750-EL-UNC, 19-1751-GE-AAM

Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.