

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
APPROVAL OF ITS TEMPORARY PLAN
AND WAIVER OF TARIFFS AND RULES
RELATED TO THE COVID-19 STATE OF
EMERGENCY.

CASE NO. 20-599-GE-UNC

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
APPROVAL OF A REASONABLE
ARRANGEMENT.

CASE NO. 20-856-EL-AEC

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. TO MODIFY
ITS ECONOMIC COMPETITIVENESS FUND
RIDER AND REQUEST FOR WAIVERS.

CASE NO. 20-857-EL-RDR

FINDING AND ORDER

Entered in the Journal on June 17, 2020

I. SUMMARY

{¶ 1} The Commission finds that the applications of Duke Energy Ohio, Inc. for approval of its plan for addressing the COVID-19 state of emergency should be approved, subject to Staff's recommendations and modifications, and consistent with this Finding and Order.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) is an electric light company and natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.16 provides, in part, that, in the event of an emergency, when the Commission finds it necessary to prevent injury to the business or interests of the public or of any public utility, it may temporarily alter, amend, or suspend any existing rates or schedules.

{¶ 4} R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.

{¶ 5} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 6} Pursuant to R.C. 3701.13, the Ohio Department of Health has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 7} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission extended its winter reconnection order through May 1, 2020, and directed all

utility companies in this state to review their reconnection procedures. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 6. In the March 12, 2020, and March 13, 2020 Entries, the Commission also directed all utility companies to promptly seek any necessary approval, for the duration of the emergency, to suspend otherwise applicable disconnection or reconnection requirements that may impose a service continuity or service restoration hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. The Commission determined that such filings shall be deemed approved on an emergency basis for a period of at least 30 days effective as of the filing date or until such date as the Commission may otherwise specify, which shall not be less than 30 days.

{¶ 8} On March 19, 2020, in Case No. 20-599-GE-UNC, Duke filed an application proposing a temporary plan for addressing the COVID-19 state of emergency, which seeks the Commission's approval of certain policies, practices, and requirements the Company seeks to suspend pursuant to the Commission's March 12, 2020, and March 13, 2020 Entries and waiver of certain administrative rules. Duke proposes to suspend all disconnections for non-payment, waive all late-payment fees, waive electronic payment fees (credit cards, debit cards, electronic checks) for residential customers, waive credit reviews for reconnection, as well as other actions intended to minimize customer contact.

{¶ 9} By Entry dated March 20, 2020, the Commission directed all utility companies to suspend in-person, actual meter readings in circumstances where a meter is located inside a customer's home or similar location, as well as all other non-essential functions that may create unnecessary COVID-19 risks associated with social contact. The Commission also clarified that requests for accounting authority or incremental cost recovery related to the emergency will be addressed in each utility's individual case by subsequent entry. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 10-11, 13.

{¶ 10} On April 8, 2020, in the *Emergency Case*, the Commission, among other things, extended the 30-day automatic approval period for filings to suspend otherwise applicable

disconnection requirements for an additional 30 days, unless otherwise ordered by the Commission. *Emergency Case, Finding and Order* (Apr. 8, 2020) at ¶ 9.

{¶ 11} On April 16, 2020, Duke filed an application in Case Nos. 20-856-EL-AEC and 20-857-EL-RDR for a reasonable arrangement proposal that will temporarily reduce the currently approved demand ratchet in applicable non-residential rates during the summer of 2020 and enable Duke to recover the lost revenues from those classes of customers. The proposed reasonable arrangement purports to provide temporary relief to reduce the financial hardships of Duke's commercial and industrial customers. The Company proposes to temporarily modify the minimum billing provisions for Rate Schedules DS, DP, and TS such that the applicable ratchet is lowered from 85 percent to 50 percent of the summer peak for 2019. Duke purports that a reduction in the current demand ratchet to 50 percent appropriately balances the interests of all non-residential customers on the affected Rate Schedules and yields an equitable outcome in respect to amounts to be recovered via the Company's Economic Competitiveness Fund Rider (Rider ECF). Duke proposes to defer and recover the delta revenues accumulated for bills rendered from May 1, 2020, through September 30, 2020, via its approved Rider ECF, not to exceed 12 months, subject to a final true-up beginning January 1, 2021. Lastly, Duke submits a request for waivers of Ohio Adm.Code 4901:1-38-06, 4901:1-38-08(A), and any additional regulations that the Commission deems necessary in order to enable its reasonable arrangement to become effective as expeditiously as possible and the requested cost recovery to occur.

{¶ 12} Subsequently, on April 17, 2020, Duke amended its application in Case Nos. 20-856-EL-AEC and 20-857-EL-RDR to provide for Attachments A through C detailing clean and redlined tariffs.

{¶ 13} On April 24, 2020, and corrected on April 28, 2020, Staff filed its review and recommendations in response to Duke's request for approval of its emergency plan, as amended.

{¶ 14} By Entry on April 27, 2020, the attorney examiner established a procedural schedule directing motions to intervene and comments to be filed by May 7, 2020.

{¶ 15} On May 4, 2020, Duke filed a motion seeking additional waivers in Case No. 20-599-GE-UNC. Specifically, the Company seeks a waiver of Ohio Adm.Code 4901:1-18-05, regarding extended payment plans. Duke requests to proactively reach out to customers accumulating arrearages to offer various repayment plans. The Company also seeks to offer repayment plans not outlined in Ohio Adm.Code 4901:1-18-05.

{¶ 16} Motions to intervene were filed by Ohio Energy Group (OEG), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAEE), Ohio Environmental Council (OEC), the Ohio Manufacturers' Association Energy Group (OMAEG), and the Kroger Company (Kroger). No one opposed any of the motions. Accordingly, the motions to intervene should be granted.

{¶ 17} On May 7, 2020, all of the intervening parties filed comments regarding Duke's request.

III. DISCUSSION

{¶ 18} Staff's review and recommendation considers Duke's temporary plan for addressing the COVID-19 state of emergency, including the Company's request for waivers of numerous rules, as well as Duke's request for a reasonable arrangement. Staff summarizes Duke's waiver requests as follows:

Rule	Rule Description	Reason	Duke Action
4901:1-10-04(C)	Voltage Requirements	Social Contact	Duke requests to deviate from prompt action in cases where the known voltage levels do not pose an imminent safety hazard or critical operational circumstance.
4901:10-05(F)(1)	Meter Test	Social Contact	Duke requests to suspend customer-requested meter tests.
4901:10-05(I)(1)	Meter Reading	Social Contact	Duke requests to estimate bills.

4901:10-05(I)(2)	Meter Reading	Social Contact	Duke requests to suspend customer-requested meter tests.
4901:10-05(I)(3)	Meter Reading	Social Contact	Duke requests to rely on estimated meter readings.
4901:1-10-05(J)(4)	Meter Opt-Out	Social Contact	Duke requests to refuse advanced meter opt-out service.
4901:1-10-09	Minimum Standards	Social Contact	Duke requests to not be held to the minimum service standards.
4901:1-10-27(D)(3)	Inspections	Social Contact	Duke requests to suspend field inspection requirements.
4901:1-13-04(D)	Meter Test	Social Contact	Duke requests to suspend customer-requested meter tests.
4901:1-13-04(G)(1)	Meter Reading	Social Contact	Duke requests to estimate bills.
4901:1-13-04(G)(5)	Meter Reading/Test	Social Contact	Duke requests to suspend customer-requested meter tests.
4901:1-13-04(G)(6)	Meter Reading	Social Contact	Duke requests to rely on estimated meter readings.
4901:1-13-05(A)	Minimum Standards	Social Contact	Duke requests to not be held to the minimum service standards.
4901:1-13-05(D)	Minimum Standards	Social Contact	Duke requests suspension to complete service line repairs after a shutoff by the end of the next day.
4901:1-16-04(I)	Gas Pipeline Safety	Social Contact	Duke requests suspension to complete repair of grade-two leaks.
4901:1-18-07(A) and (B)	Reconnection of Service	Social Contact	Duke requests suspension to reconnect service for previously disconnected customers within specific time frames.
4901:1-18-17	Removal from Percentage of Income Payment Plan (PIPP)	Service Continuity	Duke requests to suspend termination of PIPP Plus customers from the PIPP program.

Staff asserts that Duke's disconnection and continuity of service plan is appropriate. Further, Staff does not oppose the rule waiver requests. However, Staff recommends that customers requesting an actual meter reading should receive guidance from Duke on how to provide an actual reading. Staff also advises that the Company should track any

inspections that are delayed and rescheduled and provide that information to Staff on a monthly basis. Finally, Staff asks that the Commission only approve the waiver requests for a specific amount of time and that an end-date should be established. The Commission notes that Staff's review and recommendation does not address Duke's May 4, 2020 request regarding Ohio Adm.Code 4901:1-18-05, which was submitted after Staff's review was filed.

{¶ 19} Regarding Duke's request for a reasonable arrangement to reduce the minimum billing demand provision for certain non-residential customers, Staff asserts that the request is reasonable and recommends approval. Staff explains that Duke proposes to recover foregone revenues from the reasonable arrangement through Rider ECF. As Rider ECF is normally socialized across all customers, Staff states that Duke seeks a waiver to allocate the foregone revenues only to those customers associated with the reasonable arrangement. Staff submits an alternative plan, where the affected customers repay Duke at some point in the future through a repayment mechanism, if feasible.

{¶ 20} In comments, intervening parties generally did not object to Duke's plan in response to the COVID-19 state of emergency. Regarding Duke's request for specific waivers, OP&A, O&C, and OCC are supportive, although OP&A expressed concerns as to the waiver of Ohio Adm.Code 4901:1-18-05(B), which allows the Company to proactively reach out to customers about payments plans. OP&A argues that such contact is already permissible and that customers may be coerced into unnecessary or unaffordable payment plans.

{¶ 21} OCC seeks clarification as to Duke's waiver requests, as well as additional protection for specific customers. First, OCC asserts that Duke's plan for reconnection of customers disconnected for non-payment, which started with the March 9, 2020 declaration of emergency, should be retroactively applied to 30 days prior to the emergency declaration, as those customers are still likely to be in need. Further, OCC asks that disconnections for non-payment should continue to be suspended until a reasonable time after the state of emergency has ended and that extended payment plans should be continued through 2021.

OCC also requests additional protections for PIPP customers, as they are the customers most in need and most likely to be affected by the economic fallout from the emergency. OCC also agrees with Staff that, while Duke should be granted a waiver from certain duties that may result in person-to-person interaction, the Company should still be required to continue necessary inspections and repairs to maintain the safety of the system.

{¶ 22} OCC further submits that, in addition to what Duke proposes, further consumer protections are necessary. OCC contends that the Company should track any potential savings that result from the emergency and that any savings should be used to offset any recoverable expenses associated with the emergency. Additionally, OCC asks that any pending cases before the Commission that would result in a rate decrease for Duke customers be resolved as expeditiously as possible. Regarding Duke's gas customers, OCC avers that customer information should not be disclosed to gas marketers during the pendency of the emergency, without affirmative customer consent, as Duke's gas cost recovery rate is consistently the most affordable option. Also, OCC seeks a suspension of all non-essential Duke services, such as energy efficiency programs, and requests that all associated charges be withheld until the emergency is over. OCC seeks refund language added to Duke's tariffs in the event that any charge authorized by the Commission is later overturned by the Ohio Supreme Court. Finally, OCC comments that Duke's emergency response plan should be made available on the Company's website.

{¶ 23} As to Duke's reasonable arrangement request, intervening parties did not generally oppose modifying the minimum billing provisions for certain non-residential customers, although most parties were against the Company's proposed recovery of lost revenue. As proposed by Duke, the Company would recover funds lost from the reasonable arrangement through Rider ECF. All of the parties assert that only those customers receiving the benefit of the modified billing provision should be charged for the eventual recovery of those revenues. Most parties recommend that the Commission adopt Staff's proposed recovery plan, where each customer establishes a payment plan with Duke. According to the commenters, a similar recovery method was established by the

Commission regarding a similar request in *In re Ohio Power Co. d/b/a AEP Ohio*, Case No. 20-602-EL-UNC, et al., Finding and Order (May 6, 2020) (*AEP Order*). OMAEG and others observe that Duke's request to recover lost funds includes carrying costs. OMAEG asserts that the inclusion of carrying costs will only continue to harm customers that are already in difficult economic situations.

IV. CONCLUSION

{¶ 24} The Commission finds that Duke's proposal to address the state of emergency related to COVID-19, and the accompanying requests for waivers, is reasonable and consistent with the Commission's directives in the *Emergency Case*. In the *Emergency Case*, the Commission directed utilities to review service disconnection policies and seek any necessary approval to suspend requirements that may impose a service continuity hardship on customers. *Emergency Case*, Entry (Mar. 12, 2020) at ¶ 7. As discussed by multiple parties, the Commission recognizes that service disconnections for non-payment cannot be suspended indefinitely. Accordingly, the Commission finds that, in light of the easing of social distancing restrictions as provided in the Department of Health's Amended Stay at Home Order, and in furtherance of the necessity of planning for the safe resumption of more complete operations, Duke should begin working with Staff to develop a comprehensive plan describing the Company's expectations to safely resume activities to a pre-COVID-19 basis, including operations that will necessarily involve at least the potential for an expanded level of social contact. The Commission, therefore, directs Duke to work with Staff to develop a single, comprehensive plan for the resumption of activities and operations previously prohibited by the *Emergency Case* in furtherance of a safe return to pre-COVID-19 operations. Duke's plan should include specifics as to the activities considered for resumption and include timelines and provisions for safety adaptations for both residential and non-residential customers impacted by the activities proposed for resumption. The plan should also address extended payment plans for both residential and non-residential customers impacted by the emergency. This comprehensive plan should be filed in this docket at least 45 days prior to the resumption of activities that involve the likelihood of

enhanced social contact and the resumption of service disconnections. Interested persons may file comments regarding the plan within ten days after the filing of the plan.

{¶ 25} Our approval includes Duke's May 4, 2020 request for waivers regarding Ohio Adm.Code 4901:1-18-05. The proposal provides consumers additional time and options to better manage any delinquent charges, deposits, and fees that may occur during this emergency. As to OPAE's concerns that consumers may still be coerced into unaffordable payment plans, we note that, consistent with Ohio Adm.Code 4901:1-18-05(A), the Company should inform customers that they may propose individualized plans outside of those specific plans in the rule and in Duke's motion. The Commission strongly encourages Duke to be more flexible in its deferment of delinquent charges, deposits, and fees, as well as its acceptance of extended payment plans and terms as a result of this COVID-19 emergency.

{¶ 26} In response to OCC's request that Duke suspend non-essential utility service work, we find no further direction is necessary as the March 20, 2020 Entry in the *Emergency Case* directed all public utilities to suspend all non-essential functions that may create unnecessary COVID-19 risks associated with social contact, including in-home energy efficiency audits and weatherization programs. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 1, 10-11. Any non-essential work may continue, provided that it does not create unnecessary COVID-19 spread risks during the emergency. OCC's recommendations regarding the suspension of energy efficiency charges or other specific programs such as battery storage or Rider PF should be raised in the docket associated with those charges. As in the *AEP Order*, we also find it unnecessary to adopt OCC's "look-back period," although we encourage Duke to work with its customers to agree on terms to reconnect service, regardless of when disconnection occurred, and to temporarily forego the collection of deposits and fees, where it is reasonable to do so under the circumstances. Regarding OCC's concern as to safety standards, the Commission notes that nothing in the March 20, 2020 Entry or any other entry has authorized any public utility to forego work that is necessary to ensure the provision of safe electric or gas service and we have expressly noted that

disconnections and inspections must continue where necessary to remedy a safety-related concern. *Emergency Case*, Entry (Mar. 12, 2020) at ¶ 7, Entry (Mar. 20, 2020) at ¶ 10.

{¶ 27} Regarding OCC's recommendation to circumvent the exchange of Duke's gas customer contact information, as required by statute, the Commission finds the request to be an inappropriate use of the Commission's emergency powers, particularly where such action is not essential to the immediate protection of the public interest during this emergency, and we note that consumers may select an energy marketer for a variety of reasons in addition to price.

{¶ 28} OCC advocates for the implementation of the consumer protections recommended by the National Consumer Law Center, which OCC attached to its comments. The Commission finds that, with the *Emergency Case* and each utility company's emergency plan or motion for waiver, the issues of service continuity, social distancing, consumer protections, and payment arrangements, including fees and charges, are being and will continue to be adequately addressed.

{¶ 29} Finally, to the extent that Duke has not already done so, it should also notify its customers regarding the relief measures afforded under its emergency plan.

{¶ 30} Regarding Duke's request for a reasonable arrangement, the Commission appreciates the Company's proposal to temporarily eliminate or offset, through a bill credit, minimum billing demand charges. We determine that the request would assist commercial and industrial customers in avoiding demand ratchet wires charges at a time when the operations of, and the cash flow available to, many Ohio businesses have been curtailed by efforts to address the COVID-19 public health emergency. However, consistent with our determination in the *AEP Order*, we agree with certain intervenors that Duke's recovery of the resulting foregone revenue should be collected from those customers that will benefit from the proposal through a reasonable extended payment plan that the Company makes available to non-residential customers. We, therefore, decline to approve the proposed reasonable arrangement and associated recovery of foregone revenues through Rider ECF.

Consistent with one of Staff's alternative options for cost recovery, the Commission directs Duke to file in these proceedings, for Staff's review, an optional extended payment plan mechanism. This mechanism should enable any non-residential customer subject to a minimum billing demand provision that has or will have during the pendency of the emergency, for service rendered on or after March 9, 2020, an accumulated bill payment arrearage to maintain service, while eliminating the arrearage over a reasonable period of time measured with reference to the state's phased efforts to responsibly relax the requirements of the Stay at Home Order. Duke should establish an opt-in process for the relevant industrial and commercial customers to obtain the relief afforded by this proposal. The Commission also emphasizes that the suspension of disconnection and the expansion of payment plans do not suspend a customer's bill obligations. Customers who have the ability to pay current charges or a portion thereof should continue to do so.

V. ORDER

{¶ 31} It is, therefore,

{¶ 32} ORDERED, That Duke's applications be approved, subject to Staff's recommendations and modifications, and consistent with this Finding and Order. It is, further,

{¶ 33} ORDERED, That Duke take all necessary steps to carry out the terms of this Finding and Order. It is, further,

{¶ 34} ORDERED, That the motions to intervene in these proceedings filed by OCC, OPAE, OEG, OEC, Kroger, and OMAEG be granted. It is, further,

{¶ 35} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

NJW/hac

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Case No(s). 20-0599-GE-UNC, 20-0856-EL-AEC, 20-0857-EL-RDR

Summary: Finding & Order approving the applications of Duke Energy Ohio, Inc. for approval of its plan for addressing the COVID-19 state of emergency, subject to Staff's recommendations and modifications, and consistent with this Finding and Order. electronically filed by Kelli C King on behalf of The Public Utilities Commission of Ohio