

In the Matter of Duke Energy Ohio, Inc. for )  
Approval of an Alternative Form of ) Case No. 19-791-GA-ALT  
Regulation. )

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

William J. Michael (0070921)  
Counsel of Record  
Amy Botschner-O'Brien (0074423)  
Ambrosia E. Logsdon (0096598)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7th Floor  
Columbus, Ohio 43215-4213  
Telephone [Michael]: (614) 466-1291  
Telephone [Botschner O'Brien]:  
(614) 466-9575  
Telephone [Logsdon]: (614) 466-1292  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)  
[ambrosia.logsdon@occ.ohio.gov](mailto:ambrosia.logsdon@occ.ohio.gov)  
(willing to accept service by e-mail)

June 22, 2020

## **TABLE OF CONTENTS**

	<b>PAGE</b>
I. BACKGROUND .....	1
II. OBJECTIONS.....	4
Objection 1. To protect consumers, the PUCO Staff should have recommended that customers not pay new charges until after the coronavirus emergency is over (and for a reasonable time thereafter). ....	4
Objection 2. The PUCO Staff properly recommended limits on increases to charges to customers under the Cap ex Rider, but to better protect consumers, the limit should be based on annual investment as opposed to a rate cap.....	5
Objection 3. Instead of recommending that it file an alternative regulation case by December 31, 2024, the PUCO Staff should have recommended that Duke file a base rate case by December 31, 2022. ....	7
Objection 4. To protect consumers, any charges to customers under Rider CEP should be calculated using the most recently available customer count. ....	7
Objection 5. Duke’s replacement of older infrastructure should result in operational savings, and those operational savings should be passed on to customers through the CEP Rider. ....	8
Objection 6. To protect consumers, the PUCO should not authorize Duke to charge customers a 9.16% before tax rate of return on CEP investments.....	9
III. CONCLUSION.....	11

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Duke Energy Ohio, Inc. for       )  
Approval of an Alternative Form of                ) Case No. 19-791-GA-ALT  
Regulation.    )

---

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

---

Duke Energy Ohio wants to add a new charge to its customers' bills to pay for capital investments it made from 2013 to 2018. The Public Utilities Commission of Ohio ("PUCO") should not approve these new charges. They would be nearly \$45<sup>1</sup> per year for each residential customer to start, with annual increases thereafter. Duke is asking to increase consumers' charges right when they are facing the challenges of a once-in-a-lifetime health and financial emergency resulting from the coronavirus. Even in the absence of such emergency, Duke's request for these new charges (referred to as the "capital expenditure program rider" or "Cap ex Rider") should not be approved without certain consumer-protection modifications.

The Office of the Ohio Consumers' Counsel ("OCC") respectfully requests that the PUCO adopt the following recommendations to protect Duke's residential customers from paying unjust and unreasonable rates.

**I. BACKGROUND**

Duke's capital expenditure program began in late 2013. From 2013 through 2018, Duke made approximately \$341.8 million in capital investments, including \$320.9 million on distribution improvement projects and \$20.9 million on information technology (collectively, the

---

<sup>1</sup> See Application, Proposed Tariff Gas No. 18 at Original Sheet No. 84 (\$3.72 a month x 12 months = \$44.64).

“CEP Investments”).<sup>2</sup> Until now, Duke has been deferring post in-service carrying costs (“PISCC”) and property tax and depreciation expenses associated with the investments.<sup>3</sup>

Duke now requests authority to begin charging customers for the Cap ex deferrals as well as a return of and on the capital investments (totaling \$297.5 million for the CEP Investments after accounting for retirements,<sup>4</sup> plus \$45 million for the accrued CEP deferrals<sup>5</sup>). If Duke’s Application is approved as filed, residential customers will each pay \$3.72 per month initially, with higher charges in the future as Duke continues to make capital investments under its capital expenditure program.<sup>6</sup> This is equivalent to \$18.0 million in charges to residential customers over a one-year period.<sup>7</sup> Residential customers would pay nearly three-fourths of all capital expenditure program costs.<sup>8</sup>

On behalf of the PUCO Staff, Larkin & Associates PLLC (“Larkin” or the “Auditor”) performed an audit of Duke’s capital spending under the capital expenditure program.<sup>9</sup> Larkin recommended minimal adjustments to Duke’s Application. In sum, Larkin recommended a reduction in the capital expenditure program plant in service balance of approximately \$898,000, from \$297.5 million to \$296.6 million.<sup>10</sup> As a result of Larkin’s recommendation, charges to

---

<sup>2</sup> See Application, Ex. J, Schedule 4, Ln. 9.

<sup>3</sup> See *In the Matter of the Application of the Duke Energy Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 13-2417-GA-UNC, et al., Finding and Order at ¶21 (Oct. 1, 2014).

<sup>4</sup> See Application, Ex. J, Schedule 1 (\$341,830,234 in capital additions minus \$44,354,944 in retirements).

<sup>5</sup> See *id.*, Schedule 3.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*, Schedule 3 (72.35% allocated to residential customers).

<sup>9</sup> See Plant in Service and Capital Spending Audit of the East Ohio Gas Company d/b/a Duke Energy Ohio (Apr. 27, 2020) (the “Audit” or “Audit Report”).

<sup>10</sup> See Audit Report at 5-2.

residential customers would be \$3.68 per month, just four cents lower per month as compared to Duke's Application.<sup>11</sup>

The PUCO Staff filed its Staff Report shortly after the Audit Report. In the Staff Report, the PUCO Staff largely adopted the recommendations found in the Audit Report, including Larkin's small adjustments to Duke's proposed charges to customers. While OCC objects to some of the PUCO Staff's recommendations as discussed below, the Staff Report includes various recommendations that would benefit consumers if implemented:

- The PUCO Staff properly stated that costs should be controlled and that the PUCO should ensure that customers "are not burdened with excessive and unnecessary plant investments."<sup>12</sup>
- The PUCO Staff properly recommended that there be a cap on increases to charges to consumers under Rider CEP (though as discussed below, OCC recommends a modification to the Staff Report's proposed cap).<sup>13</sup>
- The PUCO Staff properly recommended that charges to consumers under Rider CEP be audited annually.<sup>14</sup>
- The PUCO Staff properly recommended that deferral of post in-service carrying costs ("PISCC"), property tax, and depreciation expenses cease once the CEP investments begin to be recovered through rates.<sup>15</sup>
- The PUCO Staff properly recommended that Duke be required to maintain adequate records to demonstrate compliance with the Audit Report's recommendations and that any future base rate filing include information in the application showing that the Audit Report recommendations have been incorporated.<sup>16</sup>

---

<sup>11</sup> See A Report by the Staff of the Public Utilities Commission of Ohio at 8 (May 22, 2020) (the "Staff Report").at 8. See also Audit Report, Attachment LA-1, Page 2 (showing Larkin's revenue requirement adjustment, which can be used to calculate the \$3.68 monthly rate for residential customers).

<sup>12</sup> See *id.* at 8.

<sup>13</sup> See *id.* at 8, 9.

<sup>14</sup> See *id.* at 9.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.* at 7.

- The PUCO Staff properly found that it would be “prudent to monitor measures of profitability of companies that have been granted deferrals to determine if immediate regulatory recovery is necessary.”<sup>17</sup>

## II. OBJECTIONS

**Objection 1. To protect consumers, the PUCO Staff should have recommended that customers not pay new charges until after the coronavirus emergency is over (and for a reasonable time thereafter).**

Duke’s request to add a new charge to customer bills (Cap ex Rider) was filed before the coronavirus pandemic and ensuing health and financial emergency. Now, however, the PUCO is well aware of the struggles that Ohioans are facing and the struggles they will continue to face even after the formal declaration of emergency ends. The PUCO Staff makes no mention of the ongoing coronavirus pandemic. It should have.

If the PUCO approves any new charges (whether it be \$3.68 as proposed in the Staff Report or some other number), it should not allow Duke to start charging customers until a later date. In this time of emergency due to the coronavirus—where consumers are dealing with lost jobs, lost wages, and associated challenges—increased charges should be deferred with minimal (if any) carrying charges until after the emergency ends (and for a reasonable period of time thereafter). This will help consumers to deal with the impact of the state of emergency and recover from the financial impact it has had and will continue to have for years to come.

---

<sup>17</sup> See *id.* (The Staff Report, however, did not recommend any adjustment based on this statement).

**Objection 2. The PUCO Staff properly recommended limits on increases to charges to customers under the Cap ex Rider, but to better protect consumers, the limit should be based on annual investment as opposed to a rate cap.**

The PUCO Staff recommends an initial rate of \$3.68 per month for residential customers under the Cap ex Rider (four cents lower than Duke's proposed charge of \$3.72 per month).<sup>18</sup> If this recommendation is adopted, every residential Duke customer would pay nearly \$45 to Duke in the first year after approval of the new Cap ex Rider surcharge. The PUCO Staff further proposes that Duke be allowed to increase these charges by up to \$1.00 per year, though it did not explain how that number was derived.<sup>19</sup> Nor did the PUCO Staff identify how much annual investment its proposed \$1.00 per year cap would permit. In four years, customers could be paying nearly \$95 per year<sup>20</sup> under the Rider CEP surcharge if Staff's recommendation is adopted.

The PUCO Staff properly recognizes that there should be limits on the amount by which charges to customers under Rider CEP can increase each year. But rather than capping the amount of the charge (*i.e.*, limiting the increase by up to \$1.00 as proposed in the Staff Report), there should be a cap on the amount of investment that would be eligible for inclusion in rates under Rider CEP. Duke's total annual capital additions increased by an astonishing 335%% from the first year of the program in 2013 to 2018.<sup>21</sup> A cap on Duke's annual investments is clearly needed. And capping the total investment is preferable to a rate cap because it is straightforward and easier to track and evaluate than some arbitrary limit on the monthly charge that consumers

---

<sup>18</sup> See *id.* at 8.

<sup>19</sup> See *id.* at 9.

<sup>20</sup> \$3.72 plus four increases of \$1.00 would be \$7.72 per month. That would be \$92.64 per year for each residential customer.

<sup>21</sup> See Application, Ex. J, Schedule 4 at 5 (Duke's 2013 capital additions are \$21,877,330, and 2018 capital additions are \$95,136,703.  $((\$95,136,703 - \$21,877,330) / \$21,877,330) = 335\%$ )).

are required to pay. And it is not affected by changes in rate design like the number of customers and would not need to be trued up annually.

This approach can still recognize that Duke's costs for CEP may increase over time, but it also provides customers protection against over-spending or over-investment considering that Duke will face next to no regulatory lag on collecting from customers a return of and on its investments. Historically, regulatory lag has served as a check on utility investments. With the CEP, however, there is no regulatory lag, and customers should be protected from continued rapid increases in CEP capital investments similar to the 335% increase for 2013 to 2018.

In the alternative, if the PUCO does adopt a rate cap, it should be lower than \$1.00. The PUCO Staff says that the cap should be "no greater than \$1.00 per year for residential customers," which suggests that the Staff would be amenable to a lower cap.<sup>22</sup> The PUCO Staff likewise says that Duke should "work with Staff to identify reasonable and meaningful annual caps."<sup>23</sup> And while the PUCO Staff at one point suggests a \$1.00 rate cap, it also acknowledges that a cap on spending, as OCC proposes above, would also protect customers.<sup>24</sup>

---

<sup>22</sup> See Staff Report at 9.

<sup>23</sup> See *id.* at 8.

<sup>24</sup> See *id.* (stating that a cap on "spending, revenue requirement, rate, etc." could be used "to keep costs under control and to ensure rate payers are not burdened with excessive and unnecessary plant investments").



**Objection 3. Instead of recommending that it file an alternative regulation case by December 31, 2024, the PUCO Staff should have recommended that Duke file a base rate case by December 31, 2022.**

The PUCO Staff recommends that the CEP Rider stop on December 31, 2024 unless Duke files a new alternative rate plan application under R.C. 4929.05 requesting reauthorization for the rider.<sup>25</sup> Instead of recommending this, the PUCO Staff should have recommended that Duke has to file a base rate case by December 31, 2022.

A base rate case would assist consumers by subjecting Duke's rates to a full and complete review, allowing interested parties to identify an appropriate rate of return on Duke's rate base, needed adjustments to rate base, and operational savings. Further, a base rate case evaluates more than a single issue and considers if utility programs result in increased revenue or decreased spending. Duke's last base rate case was in 2012. Allowing Duke to charge consumers under the CEP Rider (without an intervening base rate case review) means that its base rates would go unreviewed for an undetermined period of time. It is unjust and unreasonable to deny consumers the benefits of decreased costs in Duke's base rates through 2024 and beyond as Staff proposes.

**Objection 4. To protect consumers, any charges to customers under Rider CEP should be calculated using the most recently available customer count.**

Duke's proposed rate (\$3.72 per month for each residential customer) is based on the average customer count from 2018.<sup>26</sup> Duke counted 4,836,307 bills in 2018, which is equivalent to a customer count of 403,026.<sup>27</sup> It appears that the Staff Report used this same number to calculate its proposed rate of \$3.68 per month for each residential customer.<sup>28</sup> The charge to customers under Rider CEP should not be based on total bills from 2018 because this data is

---

<sup>25</sup> See *id.* at

<sup>26</sup> See Application, Ex. J, Work Paper 8.6.

<sup>27</sup> 4,836,737 / 12.

<sup>28</sup> See *generally* Staff Report (not making any adjustment for customer count).

outdated. Instead, the most recently available customer count should be used.<sup>29</sup> For example, the number of bills used to calculate residential consumers' Rider AMRP rate in Case No. 19-1769-GA-RDR, which was filed on February 26, 2020, provides a more up to date customer count. The residential bills reported issued in that case was 4,872,985, which is equivalent to a customer count of 406,082.<sup>30</sup> This updated customer count would result in a lower rate under either the Application or the Staff Report. When and if the PUCO approves charges to consumers under Rider CEP, Duke should provide to the PUCO Staff the most recently available customer count, which should then be used to calculate the appropriate rate.

**Objection 5. Duke's replacement of older infrastructure should result in operational savings, and those operational savings should be passed on to customers through the CEP Rider.**

From 2013 to 2018, Duke spent nearly \$342 million on capital investments that it seeks to include in Rider CEP.<sup>31</sup> During that period, Duke more than quadrupled its annual spending on distribution improvements from \$21.9 million in 2013 to more than \$94.6 million in 2018.<sup>32</sup> With this increased and significant spending on infrastructure, Duke's maintenance and other costs should be lower. In the absence of a base rate case, however, customers will not receive the benefits of such cost reductions.

If customers are required to pay for this new infrastructure on an expedited basis through Rider CEP, it is only fair that they receive the benefits of such investment (lower maintenance costs) on an expedited basis as well. Neither the Application nor the Staff Report recommend

---

<sup>29</sup> See, e.g., *In re Suburban Natural Gas Co.*, Case No. 18-1205-GA-AIR, Opinion & Order (Sept. 26, 2019) (rates to be recalculated using updated customer counts as new plant is added to rates).

<sup>30</sup> *In the Matter of the Annual Application of Duke Energy Ohio, Inc. for an Adjustment to Rider AMRP Rates*, Case No. 19-1769-GA-RDR, Duke Application Attachment A, Schedule 14 (Feb. 26, 2020).

<sup>31</sup> See Application, Ex. J, Schedule 1 (\$341,830,234 cumulative investment through 12/31/18).

<sup>32</sup> See *id.*, Schedule 4.

any credit to customers for operational savings resulting from capital expenditure program investments. But they should have. Duke's Accelerated Main Replacement Program ("AMRP"), which also involved replacement of pipeline infrastructure, included an operation and maintenance savings offset to the AMRP Rider. Rider CEP should as well. Therefore, Duke should be required to include an offset now to the Rider CEP revenue requirement for any operational savings resulting from its capital expenditures under the capital expenditure program.

**Objection 6. To protect consumers, the PUCO should not authorize Duke to charge customers a 9.16% before tax rate of return on CEP investments.**

Duke proposed a 9.16% pre-tax rate of return to be charged to customers under Rider CEP, which is based on its authorized rate of return from its last rate case.<sup>33</sup> The PUCO Staff did not recommend any change to this proposed rate,<sup>34</sup> and neither did the Audit Report<sup>35</sup> For the following reasons, that pre-tax rate of return should not be used for Rider CEP.

First, a utility's rate of return is intended to reflect the utility's risk as seen through the eyes of an investor. When a utility is allowed to charge customers for capital investments on an accelerated basis through a rider, as opposed to through a rate case, the risk is lower than when capital investments are recovered through a base rate case.<sup>36</sup> Thus, the rate of return should also be lower.

---

<sup>33</sup> See Audit Report at 5-3.

<sup>34</sup> See generally Staff Report.

<sup>35</sup> See Audit Report at 5-3.

<sup>36</sup> See, e.g., *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, Opinion & Order (Feb. 25, 2015) (utility's proposed return on equity was too high because it did not "adequately account for the Company's reduced exposure to risk from regulatory lag in light of the DIR and numerous other riders"); *In re Dayton Power & Light Co.*, Case No. 16-395-EL-SSO, Opinion & Order ¶ 115 (Oct. 20, 2017) ("riders allow utilities to maintain reliability by reducing regulatory lag").

Second, Duke's last rate case was resolved more than 8 years ago in 2012.<sup>37</sup> Market conditions have changed since 2012. In Vectren's most recent base rate case, resolved less than a year ago, the PUCO approved a 7.48% after-tax rate of return.<sup>38</sup> The PUCO similarly approved a 7.26% after-tax rate of return for Suburban Natural Gas in 2019.<sup>39</sup> These are substantially lower than Duke's proposed 9.16% before-tax rate of return, which is based on an after-tax rate of return of 7.73% approved in 2012 for Duke.<sup>40</sup> This 9.16% rate of return is particularly unreasonable because it is based on a 5.32% stipulated cost of debt,<sup>41</sup> which exceeds a reasonable cost of debt under the current debt market conditions.<sup>42</sup>

The rate of return for charges to consumers under Rider CEP should be based on current market conditions, including Duke's current cost of debt and capital structure, and a reasonable return on equity of no more than 9.60%. The average return on equity for gas utilities in 2019 was 9.71, and that number dropped to 9.35% in the first quarter of 2020.<sup>43</sup> A reasonable return on equity for Duke's Rider CEP would therefore be no more than 9.60%. A before-tax rate of return based on OCC's recommendation can be calculated accordingly and it should be applicable to the CEP Rider.<sup>44</sup>

---

<sup>37</sup> See Case No. 12-1685-GA-AIR, Opinion & Order (Nov. 13, 2013).

<sup>38</sup> See Case No. 18-298-GA-AIR, Opinion & Order (Aug. 28, 2019).

<sup>39</sup> See Case No. 18-1205-GA-AIR, Opinion & Order (Sept. 26, 2019).

<sup>40</sup> See Case No. 12-1685-GA-AIR, Opinion & Order at 76 (Nov. 13, 2013).

<sup>41</sup> See *id.* at 13.

<sup>42</sup> See Application, Exhibit J, Schedule 1.

<sup>43</sup> See S&P Global Market Intelligence, RRA Regulatory Focus, Major Rate Case Decisions – January – March 2020 (Apr. 27, 2020).

<sup>44</sup> For illustration purpose, given a 9.60% return on equity and 5.32% stipulated cost of debt, and using the same capital structure used by Duke, the after-tax rate of return will be 7.60% and the before-tax rate of return will be 9.00%.

### III. CONCLUSION

New charges—nearly \$45per year—should not be added to customers’ bills in the middle of the coronavirus pandemic and financial emergency. To protect consumers from paying unreasonable rates under Duke’s proposed capital expenditure program rider, the PUCO should adopt OCC’s consumer-protection objections.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Amy Botschner-O’Brien (0074423)

Ambrosia E. Logsdon (0096598)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, 7th Floor

Columbus, Ohio 43215-4213

Telephone [Michael]: (614) 466-1291

Telephone [Botschner-O’Brien]:

(614) 466-9575

Telephone [Logsdon]: (614) 466-1292

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

[ambrosia.logsdon@occ.ohio.gov](mailto:ambrosia.logsdon@occ.ohio.gov)

(willing to accept service by e-mail)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Objections was served on the persons stated below via electronic transmission, this 22nd day of June 2020.

/s William J. Michael  
William J. Michael  
Assistant Consumers' Counsel

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

### **SERVICE LIST**

[Steven.Beeler@ohioattorneygeneral.gov](mailto:Steven.Beeler@ohioattorneygeneral.gov)

[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)

[Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)

[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)

Attorney Examiners:

[Stacie.cathcart@puco.ohio.gov](mailto:Stacie.cathcart@puco.ohio.gov)

[Sarah.parrot@puco.ohio.gov](mailto:Sarah.parrot@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/22/2020 4:03:29 PM**

**in**

**Case No(s). 19-0791-GA-ALT**

Summary: Objection Objections by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.