

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set Its Gas and Electric Recovery Rate for 2010 SmartGrid Costs Under Rider AU and Rider DR-IM and Mid-Deployment Review of AMI/SmartGrid Program |) |) |) |) |) |
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Case No. 10-2326-GE-RDR

**APPLICATION OF DUKE ENERGY OHIO, INC.,
FOR WAIVER OF A CERTAIN PROVISION OF
THE JUNE 13, 2012, OPINION AND ORDER
AND REQUEST FOR EXPEDITED TREATMENT**

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and hereby respectfully requests a waiver, issued on an expedited basis, of one condition of the Public Utilities Commission of Ohio's (Commission) June 13, 2012, Opinion and Order in this proceeding. Specifically and as further explained herein, Duke Energy Ohio seeks a waiver of the condition that it file a base electric distribution rate case "in the first year after full deployment of SmartGrid"¹ given the changed circumstances that now exist.

I. PROCEDURAL HISTORY

A. Duke Energy Ohio's SmartGrid Program

In 2009, Duke Energy Ohio initiated the deployment of a SmartGrid network, consisting of investments in advanced metering infrastructure (AMI) and distribution automation (DA) for its electric and natural gas customers in southwest Ohio. The electric SmartGrid program had been approved by the Commission in 2008, as part of Duke Energy Ohio's first electric security

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set its Gas and Electric Recovery Rate for 2010 SmartGrid Costs Under Riders AU and Rider DR-IM and Mid-Deployment Review of AMI/SmartGrid Program*, Case No.10-2326, Stipulation, at pg. 7 and Opinion and Order, at pg. 15 (June 13, 2012)

plan.² Over the ensuing several years and consistent with Commission authorization, the Company has filed to true up the rider, Rider DR-IM, through which revenue requirements related to its SmartGrid program are recovered.³ Importantly, the revenue requirement recovered under Rider DR-IM recovers not only costs but also ensures that customers receive the benefit of savings associated with SmartGrid investments, including AMI.

In 2010, in connection with an annual Rider DR-IM adjustment and as part of this proceeding, the Company's SmartGrid program also underwent an extensive independent review.⁴ This proceeding was ultimately resolved by way of a Stipulation and Recommendation to which all of the intervening parties and Commission Staff consented (2010 SmartGrid Stipulation).⁵ In that Stipulation, Duke Energy Ohio committed to filing a base electric distribution rate case within a year of the full deployment of SmartGrid, defined in the Stipulation as the point in time when the Staff determines that full deployment has occurred. The parties agreed that "Full deployment shall mean that all SmartGrid hardware and systems necessary to generate the benefits set forth in Attachment 2, Column 2015" as outlined in that stipulation.⁶ Significantly, the commitment regarding the rate case filing was intended to allow for the full level of benefits attributed to AMI and DA to be reflected in base rates rather than those same benefits to flow through the Rider DR-IM.⁷ The Commission approved this commitment in its June 13, 2012, Opinion and Order.

On October 22, 2015, Commission Staff filed a letter addressing only the status of the Company's SmartGrid deployment efforts. Therein, Staff concluded that full deployment had

² *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No.08-920-EL-SSO, *et al.*, Opinion and Order, at pg. 43 (December 17, 2008).

³ *Id.*

⁴ Entry (October 27, 2010).

⁵ Stipulation and Recommendation, at pp. 19-20 (February 24, 2012).

⁶ *Id.* at footnote 4.

⁷ *Id.*, pg. 7.

occurred.⁸ As such and absent the relief requested herein, Duke Energy Ohio would file a base electric rate case proceeding no later than October 22, 2016. But subsequent to the Commission's June 13, 2012, decision in this proceeding, other proceedings have been initiated, other Commission decisions rendered, and critical issues identified but unresolved, changing the circumstances that existed when the 2010 SmartGrid Stipulation was executed and justifying a waiver of the requirement to file an electric base distribution rate case. These proceedings and the requested relief are discussed below.

B. Commission's Investigation into the Retail Market

On December 12, 2012, the Commission initiated an investigation into Ohio's competitive retail market.⁹ Therein, the Commission sought input from stakeholders and addressed a variety of questions related to the continued development of the retail market, including questions related to demand-side management, time-differentiated pricing, and AMI.¹⁰ After receiving extensive comments and after conducting workshops, in February 2014, the Commission established, *inter alia*, the Midwest Development Working Group (MDWG) and agreed with Staff that the MDWG should:

[A]nalyze and propose policies and procedures for improving any information exchange and competitive retail enhancements that would benefit development of the retail electric market.¹¹

Additionally, the Commission also adopted Staff's recommendation and required electric distribution utilities (EDUs) to file amended tariffs that specify the terms, conditions, and

⁸ Notice of Staff Determination, at pg. 1 (October 22, 2015).

⁹ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No.12-3151-EL-COI, Entry, at pg. 2 (December 12, 2012).

¹⁰ *Id.*, pp. 3-5.

¹¹ *Id.*, Finding and Order at pg. 23 (March 26, 2014).

charges associated with providing interval customer energy usage data (CEUD) to competitive retail electric service (CRES) providers based upon existing capabilities.¹²

In this Finding and Order, the Commission also stated that EDUs should offer time-differentiated rates through their AMI/SmartGrid programs and should recover the costs of doing so through their AMI/SmartGrid riders.¹³ Notably, the Commission directed EDUs to participate in the MDWG to assist in the future development of proper data exchange protocols to improve the ability for CRES providers to offer time-differentiated rates.¹⁴

In conjunction with its investigation into the retail market, the Commission was also engaged in a rule-making case wherein it was considering changes to rules related to customer data security and privacy.¹⁵ In its Finding and Order in that rule review proceeding, the Commission revised the rules to clearly define CEUD and to provide requirements for proper disclosure of CEUD.¹⁶ In so doing, the Commission created new processes that would require EDUs to obtain specific, written customer authorization and to maintain such authorizations for verification upon request.¹⁷ Although Duke Energy Ohio had been providing CEUD for a limited number of customers monthly since as early as 2001, the Company had not been previously required to receive and retain the specific customer authorization. Rather, that requirement become applicable, as ordered by the Commission, after the December 20, 2014, effective date of the relevant rule revision. These Commission decisions necessarily impact the functioning of AMI, its capabilities, and the capabilities of related systems.

¹² *Id.*, at pg. 35.

¹³ *Id.*, pg. 38.

¹⁴ *Id.*

¹⁵ *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD, Finding and Order, at pp. 28-30 (January 15, 2014).

¹⁶ *Id.*

¹⁷ *Id.*, pg. 55.

C. Duke Energy Ohio's Request to Amend its Certified Supplier Tariff

Pursuant to the Commission's Order in the Retail Market Investigation, the Company submitted an application to amend its Certified Supplier Tariff in Case No. 14-2209-EL-ATA. In its Application, the Company explained its current capabilities and that, with respect to providing granular residential interval CEUD to CRES providers, there was a need for significant stakeholder involvement.¹⁸ At the time the Application was filed, the Company anticipated that such details were yet to be discussed in the MDWG, the formation of which had just been identified by the Commission. The Company had previously, consistent with a stipulation in an ESP proceeding, created a supplier portal that provided the ability for CRES providers to obtain CEUD, but the new requirement to maintain specific customer authorization, as mentioned above, caused a need to rework that portal to enable the more recently required function.

In the tariff amendment proceeding, some parties disputed the Company's ability to provide CEUD, at least insofar as how they believed such information should be provided. Indeed, in their comments, Direct Energy and the Retail Energy Supply Association made reference to the fact that Duke Energy Ohio did not live up to its commitments.¹⁹ Thus, although Staff observed that full SmartGrid deployment had been achieved, various intervenors contradicted that determination and sought modifications to the existing AMI and related systems not originally conceived in the Company's approved SmartGrid program.²⁰ After reviewing the comments submitted, the Commission thereafter established a procedural schedule and, importantly, identified the four questions to be addressed in the case. Specifically, the

¹⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., to File for Tariff Approval*, Case No. 14-2209-EL-ATA, Application, at pg. 2 (December 16, 2014).

¹⁹ *Id.*, Initial Comments of Direct Energy Services, LLC, and Direct Energy Business, LLC, at pg. 2, and Initial Comments of The Retail Energy Supply Association, at pg. 2.

²⁰ *Id.*, Comments of Ohio Partners for Affordable Energy, at pp. 3-5 (March 6, 2015) and Initial Comments of Direct Energy Services, LLC, and Direct Energy Business, LLC, at pp. 9-13 (March 6, 2015).

Commission will issue a future decision in which it addresses the following questions related to the provision of CEUD from AMI meters:

- (a) What AMI CEUD is Duke currently collecting, and what are its system capabilities? This includes granularity of data, frequency of data collection, duration of data stored, and the ability to validate, estimate, and edit AMI data.
- (b) What type of CEUD should be available to CRES providers? This includes how frequently and via what method.
- (c) What are the estimated costs to provide AMI CEUD to CRES providers and what is the appropriate cost recovery mechanism?
- (d) What is a realistic timeframe for implementing a CEUD sharing system?²¹

As the Commission's order suggests, there are unresolved issues with regard to the specific type of CEUD that should be made available to CRES providers and the comprehensive process pursuant to which that may properly occur.

II. DISCUSSION

Circumstances have changed since the Commission's June 13, 2012, Opinion and Order in this proceeding. Importantly, resolution of the pending issues in Case No. 14-2209-EL-ATA has the potential to impact Duke Energy Ohio's current AMI, the costs associated with any changes or revisions to that AMI and supporting infrastructure, and the attributes of that AMI. And it must further be recognized that modification to AMI and related systems, as they exist today, has the potential to amend the benefits attributed to the Company's SmartGrid program, including those inuring to customers.

In addition to these significant changes related to AMI CEUD and customer data privacy, the Company requires additional time to create an efficient and cost-effective proposal that will enable the Company to provide needed system changes to provide large quantities of AMI

²¹ Id., Entry, at pg. 5.

CEUD to CRES providers. In connection with this effort, the Company will be in a position to propose a cost recovery mechanism that can be effectively considered in a proceeding that may be initiated for that purpose.

Further, the attributes of Duke Energy Ohio's AMI have been undeniably linked to broader, statewide considerations that, in the opinion of the Commission, warranted input from the MDWG. And, importantly, the Commission's vision of Ohio's future has been more clearly defined. As Chairman Haque recently observed:

Many states have opened dockets and are undertaking "utility 2.0" or "utility of the future" grid modernization endeavors. The State of Ohio is due for this conversation. For some time now, I've wondered how we could possibly persuade the electric utilities to have conversations with us about the future of their industries; how they expect to incorporate next generation (and often third) party technologies into the distribution grid, how they expect to cater to millennial consumers who want more control and understanding over how and what they consume, how to better incorporate clean technologies into everything they do, etc. These conversations could yield revolutionary endeavors that would surely benefit the public interest.²²

Duke Energy Ohio is amenable to such a conversation as, like the Commission Chairman, it appreciates the transformative potential of innovation. But this conversation is multi-faceted and should not be hurried for the sole purpose of meeting a deadline that had been established under different circumstances. Rather, Duke Energy Ohio requires additional time to conduct a more holistic review of the interaction between AMI and CEUD and arrive at a model for its business that unleashes the tremendous potential noted by the Commission.²³

²² *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, *et al.*, Opinion and Order, Concurring Opinion of Asim Z. Haque, at pg. 5 (March 31, 2016) and *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison company for Authority to Provide for a Standard Service Offer pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order, Concurring Opinion of Asim Z. Haque, at pg. 5 (March 31, 2016).

²³ *Id.*

It was anticipated in 2012 that the full complement of benefits associated with or derived from AMI would be known and identifiable upon the deployment of the AMI. Although benefits confirmed in the 2010 SmartGrid Stipulation have been returned to customers through the rider, intervening and unanticipated events have caused the circumstances to change, further raising the potential for additional benefits to be realized and for the expectations of the Commission to be achieved. As such and until other matters have been fully and finally resolved, it is reasonable to excuse Duke Energy Ohio from initiating a base electric rate case by October 2016. The advisability of this request is further confirmed by the ongoing benefits customer will receive solely as a function of the continuation of Rider DR-IM. Pursuant to the 2010 SmartGrid Stipulation, Duke Energy Ohio agreed to guarantee to return the value of operational savings to customers annually via Rider DR-IM, provided that rider was maintained in its current form. For the most recently filed Rider DR-IM²⁴ the level of guaranteed savings is shown to increase from \$6.2 million to almost \$13 million, thereby providing a significant near-term benefit mostly to residential customers. And to the extent a rate case is delayed and the Company's pending Rider DR-IM request approved, this current benefit level will remain, until further action is taken by the Commission.

III. CONCLUSION

For the reasons stated herein, Duke Energy Ohio respectfully requests that the Commission waive one condition of its June 13, 2012, Opinion and Order, thereby excusing the Company from initiating a base electric distribution rate case by October 22, 2016. Due to the impending deadlines in the current procedural schedule in the tariff amendment case, Duke Energy Ohio seeks expedited treatment from the Commission on this application pursuant to

²⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM for 2015 Grid Modernization Costs*, Case No. 16-1404-EL-RDR (June 29, 2016)

O.A.C. 4901-1-12(C). Duke Energy Ohio is unable to certify that no party objects to the issuance of an expedited ruling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 15th day of September 2016, to the following parties:


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