

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Establishing the Clean)
Air Fund Rider Pursuant to R.C.) Case No. 20-1143-EL-UNC
3706.46.)

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

As a result of the 2019 enactment of Am. Sub. H. B. 6 (H. B. 6), the Public Utilities Commission of Ohio (Commission) is required to establish a rider to collect \$170 million annually from all of the Ohio electric customers of regulated electric distribution utilities (EDUs). As a part of that process, the Commission must determine how to allocate the revenue requirements to the EDUs.¹ This case was opened by Staff of the Commission, through the filing of Staff's recommendations for compliance with that requirement. The attorney examiner assigned to this proceeding established a schedule allowing for reply comments to be filed on or before July 27, 2020. Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), offers the following reply comments in compliance with that schedule.

Ohio Manufacturers' Association Energy Group (OMAEG) disagrees with Staff's recommendation that Commercial Activity Tax (CAT) be included in the cost recovery from all customers. The rationale espoused by OMAEG is that the CAT is imposed on electric distribution utility (EDU) services and the Clean Air Fund Rider (Rider CAF) has nothing to do with EDU services. OMAEG proposes that the ultimate recipients of the Rider CAF proceeds should be responsible for paying the CAT. OMAEG also posits that nothing in H. B. 6 specifically allows EDUs to pass CAT through to customers.

¹ R.C. 3706.46.

R.C. 5751.02 levies the CAT on each “person” doing business in the state of Ohio. The CAT is specifically imposed on the “person” receiving the gross receipts and is **not** imposed on a purchaser. A review of the definition section of Chapter 5751. demonstrates that a public utility that is a “combined taxpayer” owes the CAT in respect of “taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code.”²

OMAEG apparently believes that this last provision, requiring a utility to pay the CAT only on receipts attributable to public utility activity would exclude Rider CAF. What OMAEG is ignoring is that H. B. 6 requires the EDU to charge its customers under Rider CAF (and receive the customers’ payments) solely because the EDU operates as an EDU. It is the EDU’s “public utility activity” that requires the payments under Rider CAF. Thus, OMAEG’s position is unsupportable.

It is also noteworthy that OMAEG argues that H. B. 6 would have had to include a provision allowing an EDU to pass the CAT through to customers. While Duke Energy Ohio does not disagree that H. B. 6 contains no such provision, tracking the dollars reveals that such an outcome must have been intended. If, for example, an EDU collects \$100 in revenues from a customer, the EDU then owes \$0.26 to the state for the CAT. If the EDU owes the Clean Air Fund \$100, it must collect \$100.26 from the customer in order to pay the state’s CAT plus the amount owed to the Clean Air Fund. If this were not the case, then this would be an unfunded mandate, essentially requiring the EDU’s shareholders to pay the CAT.

In a separate issue, OMAEG also comments on the cost cap of \$2,400 per month for nonresidential customers eligible to self-assess. It points to statutory language stating that the

² R.C. 5751.01(A), (C), (D), and (E).

per-customer monthly charge for self-assessing industrial customers should be capped, noting that such language does not apply to non-residential, non-industrial customers.

Although OMAEG can point to a federal form that identifies customers as industrial or otherwise, what OMAEG does not seem to comprehend is that the tariffs of the various EDUs in Ohio define and categorize customers differently. Some EDUs classify customers as industrial or commercial based on their Standard Industry Classification (SIC) code, while others classify customers as industrial or commercial simply based on which tariff they are served under. The result of such differences is that a given customer with locations in different parts of the state could end up being charged differently in different EDUs' territories, if the customers have to be categorized as industrial or otherwise.

Duke Energy Ohio appreciates the opportunity to comment on Staff's recommendations.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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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 27th day of July, 2020, to the following parties.

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