

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Application of)
Duke Energy Ohio, Inc., for an Adjustment) Case No. 17-2318-GA-RDR
to Rider AMRP Rates.)

In the Matter of the Application of Duke) Case No. 17-2319-GA-ATA
Energy Ohio, Inc., for Tariff Approval.)

**MERIT BRIEF
OF
DUKE ENERGY OHIO, INC.**

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I. INTRODUCTION

This is a straight-forward rider adjustment proceeding, allowing continued recovery by Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), for expenditures made to improve the safety of its natural gas distribution system. As this adjustment will result in a rate reduction for customers, the Public Utilities Commission of Ohio (Commission) should approve it without delay.

The Company began its accelerated program to replace unprotected metallic mains in 2001, with recovery allowed by the Commission through an adjustable rider, Rider AMRP (Accelerated Main Replacement Program).¹ Rider AMRP is now part of an alternative rate plan, approved by the Commission pursuant to Revised Code (R.C.) 4929.05. The most recent approval of that plan, and Rider AMRP, was granted in Duke Energy Ohio's last natural gas base rate case (2012 Rate Case), through a stipulation (2012 Stipulation) approved by the Commission – a stipulation agreed to by the Office of the Ohio Consumers' Counsel (OCC).² The processes for annual adjustment of Rider AMRP were established through the 2012 Stipulation and the Commission's approval thereof and were, with minor exceptions, intended to be identical to those previously approved by the Commission for Rider AMRP.³

Pursuant to the established procedure, the Company filed a pre-filing notice in these proceedings, in late 2017.⁴ The Company's Application and direct testimony in support thereof were filed, as usual, three months later.⁵ After a procedural schedule was established, allowing

¹ *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Rates*, Case No. 01-1228-GA-AIR.

² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order, pp. 13-14 (November 13, 2013), *approving* Stipulation and Recommendation (April 2, 2013, corrected April 24, 2013).

³ 2012 Stipulation, Sec. 4.

⁴ Duke Energy Ohio Ex. 1, Pre-Filing Notice of Duke Energy Ohio, Inc. (November 28, 2017).

⁵ Duke Energy Ohio Ex. 2, Application of Duke Energy Ohio, Inc., and Duke Energy Ohio Ex. 3, Direct Testimony of Sarah E. Lawler (February 26, 2018).

for new rates to be effective on the standard date of May 1, OCC intervened, assuring the Commission that its intervention would not unduly prolong or delay the proceedings.⁶ Nevertheless, it was only three days after intervening when OCC first asked for a delay in the schedule.⁷ Ultimately, comments were filed by both OCC and Staff of the Commission. Although Staff and Duke Energy Ohio were able to resolve their differences, as set forth in a Stipulation and Recommendation,⁸ even after the addition of more time, OCC could not reach agreement.

Therefore, in this Brief, the Company will address testimony supporting and opposing OCC's comments, as well as the Stipulation, together with the testimony filed in support thereof and in opposition thereto.

II. OCC'S COMMENTS

OCC's comments address three general issues: concerns related to the Tax Cuts and Jobs Act of 2017 (TCJA), tariff language, and the savings being passed on to customers.

A. Tax-Related Comments

i. Calculation of Pre-Tax Rate of Return

Rider AMRP collects the deferred expenses of the program, annualized property taxes, annualized depreciation expense, and a return on the incremental investment in AMRP plant. The return component of the revenue requirement is a pre-tax figure and takes into account the level of federal income taxes that are imposed on the Company, doing so through the application of a gross-up factor, called the Gross Revenue Conversion Factor (GRCF). However, one of the changes effectuated by the TCJA was the reduction of corporate income tax from 35 percent to 21 percent. Therefore, the Company voluntarily reduced the pre-tax return to reflect the changed

⁶ Motion to Intervene of the Office of the Ohio Consumers' Counsel (March 9, 2018).

⁷ Motion to Extend Procedural Schedule and Request for Expedited Ruling (March 12, 2018).

⁸ Joint Ex. 1, Stipulation and Recommendation (April 5, 2018).

federal income tax. The method for effectuating that reduction was the application of a smaller GRCF, calculated as shown in the Company's response to an OCC interrogatory and attached as an exhibit to OCC's comments.⁹ The final page of that exhibit shows the calculation of the GRCF, as agreed to by OCC in the 2012 Stipulation, which calculation was taken directly from the calculation of the GRCF by Commission Staff and set forth in its Staff Report in that case.¹⁰ The penultimate page of OCC's exhibit shows how the calculation of the GRCF in the present proceedings differed from that agreed to by OCC in the 2012 Stipulation. The only difference is the federal tax rate, which resulted in the GRCF being reduced from 1.5468532 to 1.2727273.

As is evident and as noted by Duke Energy Ohio witness Sarah Lawler in her Direct Testimony,¹¹ the Company's Application included an approved pre-tax rate of return that reflected the federal income tax rate reduction.¹² And Ms. Lawler explained further, in her Supplemental Direct Testimony,¹³ that the Company made no changes in its calculation of the GRCF other than the change in the tax rate.¹⁴

Regardless of the fact that the AMRP, together with the associated GRCF, has been calculated in precisely this way for many years, OCC inexplicably now believes that the GRCF is incorrect. OCC points to the inclusion of an "uncollectible account expense factor" in the GRCF and argues that uncollectible expenses should not be included in Rider AMRP. OCC is wrong, however. Whether the amount shown for uncollectible expenses is or is not includable in the rider is irrelevant, as the "uncollectible account expense factor" does not represent bad debt. Rather, as explained by Ms. Lawler, this factor is directly tied to revenue (that is, receivables)

⁹ OCC Ex. 4, OCC Comments, Exhibit A (March 28, 2018).

¹⁰ 2012 Rate Case, Staff Report of Investigation (January 4, 2013)

¹¹ Duke Energy Ohio Ex. 3, Direct Testimony of Sarah E. Lawler (February 26, 2018) (Lawler Direct).

¹² *Id.* at pg. 3, lines 6-8.

¹³ Duke Energy Ohio Ex. 4, Supplemental Direct Testimony of Sarah E. Lawler (April 5, 2018) (Lawler Supplemental).

¹⁴ *Id.* at pg 3, lines 15-16.

and includes a collection fee and an adjustment for the time value of money.¹⁵

The OCC witness discussing this issue did not address what was represented by the “uncollectible account expense factor,” apparently just taking it at face value based on the name of the factor.¹⁶ Further demonstrating OCC unawareness of the actual nature of the uncollectible account expense factor, OCC’s witness asserted that our calculation should be identical to other natural gas utilities’ calculations of the gross-up factor.¹⁷ If those other companies do not sell their receivables, there is no reason for the uncollectible account expense factor. The situations are not comparable.

As the Commission understands, alternative rate plans, such as Rider AMRP, are approved through very specific processes under R.C. Chapter 4929. OCC, through its uninformed comment, is seeking a change in the approved plan, although it does not express it as such. Duke Energy Ohio’s calculation of the GRCF was performed in precisely the same manner as it was when the Rider AMRP process was last approved by the Commission, and to which the OCC previously agreed. This comment should be ignored.

ii. First Four Months

OCC’s second income-tax-related comment asked that the Commission, in the present proceedings, require the Company to credit customers for what it alleges is an “over-collection” of federal income taxes during the first four months of 2018.¹⁸ Duke Energy Ohio does not assert that adjustment to Rider AMRP rates proposed in these proceedings will address the implications of the TCJA on Rider AMRP rates that the Company has been collecting under Commission-approved tariffs since January 1, 2018. However, the Commission is already

¹⁵ *Id.* at pg. 3, lines 7-12.

¹⁶ OCC Ex. 1, Direct Testimony of Daniel Duann, Ph.D, pg. 5, line 8, through pg. 6, line 12 (April 5, 2018) (Duann Direct).

¹⁷ *Id.*, pg 6, lines 5-12.

¹⁸ OCC Ex. 4, OCC Comments, pg. 4; Duann Direct, pg. 9, line 1, through pg. 11, line 14.

investigating issues concerning the TCJA on a broad basis, as it relates to all jurisdictional utilities.¹⁹ Among other things, the Commission’s TCJA COI will investigate how to handle 2018 rates that were charged to customers because they were the “filed rates” at the time they were charged, even though they had not yet been adjusted to address the TCJA.²⁰ Multiple parties have filed comments in the TCJA COI and it is clear that there is a significant lack of consensus as to how the Commission should deal with the impact of the TCJA on existing, Commission-approved, “filed rates.”

The issue that OCC raises here is being addressed by the Commission in the TCJA COI and is thus outside the scope of these proceedings.

iii. Deferred Liabilities

Referring directly to the TCJA COI, OCC next asks the Commission to duplicate here a directive that is already in place. OCC points out that the Commission has required all jurisdictional utilities to record a deferred liability equal to the estimated reduction in federal income taxes resulting from the TCJA. OCC, for an unexplained reason, thinks it important for the Commission to “reinforce” that requirement.²¹

As testified to by Ms. Lawler, the Company has already recorded estimates of such a deferred liability, in response to the Commission’s order in the TCJA COI.²² No “reinforcement” is necessary.

As part of this comment, OCC also proposes that the Commission should require that the Company maintain a deferred liability to reflect any impact of the TCJA on accumulated

¹⁹ *In the Matter of the Commission’s Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (TCJA COI).

²⁰ Duke Energy Ohio Ex. 4, Lawler Supplemental, pg. 4, lines 13-16.

²¹ OCC Ex. 4, OCC Comments, pg. 4.

²² Duke Energy Ohio Ex. 4, Lawler Supplemental, pg. 4, lines 17-21.

deferred income taxes (ADITs).²³ It also repeats its opinion, expressed in the TCJA COI, that the Company should return excess ADITs to customers.

Ms. Lawler also addressed this issue, assuring the Commission and OCC that Duke Energy Ohio has recorded such a liability, pursuant to the Commission's order in the TCJA COI.²⁴ The Commission is considering this issue in its investigation; the OCC's desire for an immediate return of excess ADITs to customers is outside the scope of these proceedings.

B. Tariff Language

In response to a recent decision of the Supreme Court of Ohio,²⁵ OCC seeks an amendment of the language of Rider AMRP. Specifically, OCC asks that the Commission mandate the addition of the following sentence: "Any charges to customers under this tariff that are later determined unlawful, imprudent, [*sic*] unreasonable by the PUCO or Supreme Court of Ohio are refundable to customers."

OCC has previously sought the addition of this same²⁶ language in other Duke Energy Ohio riders, attempting, among other things, to circumvent the existing statutory process under R.C. 4903.16 for challenging the legality of rates. The Commission specifically considered OCC's proposed amendment, and its justification on the basis of the *Ohio Edison* case, and disagreed. "To the extent OCC recommends tariff language addressing customers [*sic*] refunds based on decisions of the Ohio Supreme Court, OCC's proposal exceeds the scope of the *Ohio Edison Case*."²⁷

²³ OCC Ex. 4, OCC Comments, pg. 4.

²⁴ Duke Energy Ohio Ex. 4, Lawler Supplemental, pg. 4, line 22, through pg. 5, line 4.

²⁵ *In re Rev. of Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, Slip Op. 2018-Ohio-229 (*Ohio Edison*).

²⁶ The adjectives in the amendment previously sought by OCC were in a different order and included the word "or," which was missing in the comments in these proceedings.

²⁷ *In the Matter of the Reports Enclosing Quarterly Rider DCI Schedules and Tariffs of Duke Energy Ohio, Inc.*, Case No. 17-2088-EL-RDR, *et al.*, Finding and Order, ¶ 9 (March 28, 2018).

The same proposal by OCC, based on the same rationale and in the same circumstances, must result in the same outcome. OCC's language should not be adopted. Rather the Commission should approve the tariff amendment that has been agreed to by Staff and the Company, as set forth in the Stipulation and as discussed below.

C. Savings Associated with the AMRP Program

OCC's final concern relates, again, to the structure of the AMRP Rider – a structure that has been in place for many years and has been agreed to repeatedly by OCC.

To ensure that customers, who are paying for the AMRP Program, receive monetary benefits (as well as benefits related to safety and reliability) from the work the Company has performed, the AMRP includes a requirement that the Company pass along to customers a minimum level of "guaranteed savings." Ms. Lawler explained the situation in her testimony, pointing out that guaranteed annual savings of \$929,670 were agreed to in the 2010 amendment of Rider AMRP rates.²⁸ She continued, pointing out that the 2012 Rate Case resulted in the inclusion of \$617,138 of that guaranteed amount in base rates, leaving \$312,532 of guaranteed savings that are not currently in base rates. As shown in the Company's Application, that amount has been included in calculation of the revenue requirement.²⁹

Not only was OCC involved in the 2010 AMRP adjustment and the 2012 Rate Case, it signed the stipulation in both of those cases. It is, therefore, collaterally estopped from arguing against the current calculation of guaranteed savings. Nevertheless, OCC's comments suggest that the rate proposed by the Company in these proceedings would provide a minimum guaranteed savings of only \$312,532, entirely ignoring the savings that have already been built into base rates. And, even though OCC apparently finds savings that are built into base rates to

²⁸ *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates*, Case No. 10-2788-GA-RDR, Opinion and Order (May 4, 2011), *approving* Stipulation and Recommendation (April 8, 2011).

²⁹ Duke Energy Ohio Ex. 4, Lawler Supplemental, pg. 5, lines 15-23.

be worthy of ignoring, it asks the Commission to require the Company to file an application in another base rate case, in order to build in additional savings.³⁰

Ms. Lawler explained that, in contrast to OCC's unsubstantiated belief that there are additional savings to be passed on, it is evident that the actual 2017 gas main repair expenses were approximately half a million dollars more than the gas main repair expenses that are in base rates. Thus, as Ms. Lawler stated, "there are no other savings the Company could provide."³¹

Ms. Lawler also explained why a base rate case at this time would not likely result in long-term benefits to customers. As previously noted, gas main repair expenses are now higher than what is reflected in current rates. Furthermore, retaining the current Rider AMRP allows customers to benefit from the yearly depreciation of the assets, resulting in a lower revenue requirement each year.³² Continuing the Rider AMRP ensures that customers pay no more or no less than the actual cost of the program.

If OCC wishes to bring a complaint against the Company regarding its base rates, it certainly has the ability to do so. However, the Commission should not order Duke Energy Ohio to make such a filing at this time.

III. STIPULATION

Commission Staff and the Company entered into a Stipulation that resolves all of the issues in the case, other than those raised by OCC and discussed above. The Stipulation was supported by the testimony of Ms. Lawler, who confirmed that it is the product of serious bargaining among capable and knowledgeable parties, it does not violate any important regulatory principles or practice, and it benefits the public interest.³³ OCC, of course, disagrees

³⁰ OCC Ex. 4, OCC Comments, pg. 7.

³¹ Duke Energy Ohio Ex. 4, Lawler Supplemental, pg. 6, lines 1-9.

³² *Id.* at pg. 6, lines 10-22.

³³ *Id.* at pg. 7, line 1, *et seq.*

with all three prongs of the test.

As to whether the Stipulation represents the product of serious bargaining among capable, knowledgeable parties, OCC complains that it was not in agreement with the stipulation. Thus, OCC believes that there is no diversity of interest.³⁴ The Commission has explicitly stated that its three-pronged test for stipulations, as approved by the Supreme Court of Ohio, does not include a requirement that signatory parties demonstrate a diversity of interests.

The three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate a diversity of interest requirement for signatory parties. The Commission has repeatedly determined that we will not require any single party, including OCC, or class of customers to agree to a stipulation in order to meet the first criterion of the three-part test.³⁵

Furthermore, even a cursory review of Staff's comments in these proceedings will demonstrate that Staff disagreed with certain aspects of the Company's Application. Just because Staff and the Company were able to reach agreement does not mean that they started from the same position.

The Stipulation absolutely was the product of serious bargaining among capable, knowledgeable parties.

OCC also claims that the Stipulation violates important regulatory principles or practices, because OCC believes that the charges have not been shown to be just and reasonable.³⁶ This claim is simply a restatement of its substantive arguments against the Application. OCC ignores the fact that Rider AMRP, as an alternative rate plan, has been approved by the Commission as reasonable and appropriate, in accordance with the requirements of R.C. Chapter 4929. Rider

³⁴ OCC Ex. 3, Supplemental Direct Testimony of James Williams (Williams Supplemental), pg. 5, line 13, through pg. 6, line 9.

³⁵ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for its Residential and Commercial Customers*, Case No. 16-1309-GA-UNC, *et al.*, ¶ 59 (citations omitted).

³⁶ OCC Ex. 3, Williams Supplemental, pg. 7, line 10, through pg. 9, line 4.

AMRP is still an approved plan, regardless of whether OCC believes that a rate case should be filed. The Stipulation does not violate any important regulatory principles or practices.

Finally, OCC argues that the Stipulation does not benefit customers and the public, as it does not establish rates that reflect all of the benefits of the TCJA and because the Company has not filed for a base rate case.³⁷ Again, though, OCC is merely restating its substantive arguments against the Application. It entirely ignores the fact that the proposed rates do reflect the impact of the TCJA's reduction of the corporate income tax, on a going-forward basis, thus immediately lowering customers' rates. Moreover, it ignores the fact that the remainder of the issues related to the TCJA are under consideration by the Commission in the TCJA COI. The Stipulation does benefit customers and the public.

IV. CONCLUSION

The Commission should approve and adopt the Stipulation filed in these proceedings and allow Rider AMRP rate reductions to benefit Duke Energy Ohio's customers as of May 1, 2018.

Respectfully submitted,
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³⁷*Id.* at pg. 6, line 11, though pg. 7, line 8.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Duke Energy Ohio, Inc., was served on the following parties via ordinary mail delivery, postage prepaid, and/or electronic mail delivery on this 16th day of April, 2018.

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