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FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. For an Increases in Electric Rates.	)))	Case No. 08-0709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. For Tariff Approval.	)))	Case No. 08-0710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval To Change Accounting Methods.	)))	Case No. 08-0711-EL-AAM

OBJECTIONS TO THE STAFF REPORT OF INVESTIGATION AND SUMMARY OF MAJOR ISSUES BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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OBJECTIONS TO THE PUCO STAFF'S REPORT OF INVESTIGATION AND SUMMARY OF MAJOR ISSUES BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

Pursuant to R.C. 4909.19 and Ohio Adm. Code 4901-1-28(B), the Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in this case, hereby submits to the Public Utilities Commission of Ohio ("Commission" or "PUCO") these objections to the PUCO Staff's Report of Investigation ("Staff Report"), filed on January 27, 2009, in these dockets. The dockets concern the cases filed by Duke Energy Ohio, Inc. ("Duke" or "Company") regarding Duke's requests to increase distribution rates and make other changes to the Company's distribution tariffs. The OCC is the statutory representative of approximately 610,000 residential customers of Duke.

The OCC submits that these objections meet the specificity requirement of Ohio Adm. Code 4901-1-28. Additionally, the substance of many of the OCC's objections will be supplemented and/or supported with the testimony of witnesses whose testimony will be filed on or before February 26, 2009. The OCC's objections point to matters in the Staff Report where the PUCO Staff failed to recommend against, or actively supports, rates or service terms that contravene what is reasonable and lawful for Duke's residential consumers.

The OCC reserves the right to amend, supplement, and/or otherwise state objections in the event that the PUCO Staff changes, modifies, or withdraws its position, at any time prior to the closing of the record, on any issue contained in the Staff Report. Additionally, where PUCO Staff has indicated that its position on a particular issue is not known at the date of the Staff Report, the OCC reserves the right to later supplement its objections once PUCO Staff's position is made known. In such an event, the OCC also reserves the right to file additional expert testimony, produce fact witnesses and introduce additional evidence. Moreover, the OCC reserves the right to submit amended and/or supplemental testimony in the event that the PUCO Staff changes, modifies, or withdraws its position on any issue contained in the Staff Report. The OCC also submits that the lack of an objection in this pleading to any aspect of the Staff Report does not preclude the OCC from cross-examination or introduction of evidence or argument in regard to issues on which the PUCO Staff changes, modifies, or withdraws its position on any issue contained in the Staff Report.

Pursuant to R.C. 4903.083, the OCC submits a "Summary of Major Issues" that outlines the major issues to be determined in this proceeding. The OCC respectfully requests that these issues be included in the notices of the local public hearings in accordance with R.C. 4903.083.

II. OBJECTIONS TO THE STAFF REPORT

A. Revenue Requirements

The OCC objects to the Staff recommended revenue increase on Schedule A-1 because it is excessive due to the use of inappropriate and incorrect rate base, operating income and expense, and rate of return, as detailed below in the OCC's objections to Staff's determination regarding these matters.

The OCC objects to each component of the Staff Report's Schedule A-1 recommended revenue increase to the extent that other OCC objections have an impact on the calculation of the recommended revenue increase (e.g. rate base, operating income, rate of return).

B. Rate Base: Other Rate Base Items

1. Postretirement Benefits Transition Obligation

The OCC objects to the inclusion of the transition obligation related to Deferred Postretirement Benefits (Account 253) in rate base on page 1 of Schedule B-6 in the Staff Report. This balance does not represent investor-supplied funds, and should not be included in the rate base on which customers pay a rate of return.

2. Deferred Taxes

The OCC objects to the failure of the Staff Report to exclude certain deferred tax debit balances (Account 190) on Schedules B-6 from rate base. The deferred tax debit balances at issue increase rate base and are deferred taxes directly related to reserves or accruals that are not deducted from rate base. Consistency requires that if a given reserve or accrual is not deducted from rate base, the deferred tax debit balances that arise as a direct result of such reserves or accruals should not be included in rate base.

The following deferred tax balances (Account 190) should be eliminated from the deferred taxes on Schedule B-6 of the Staff Report:

Pension Expense
Post Retirement Health Care
Tax Interest Accrual
Property Tax
Vacation Pay Accrual – Reg. Asset
Post Retirement Life Insurance
Vacation Pay Accrual
Supplemental Pension Plan
Unamortized Debt Premiums
Duke Merger Costs – Timing
Post Emp. Benefits – FAS 112
Rate Order Lattice
Long Term Incentive Plan Expense
Hospital & Medical Expense
401K Incentive Plan Expense

C. Operating Income

1. Revenues

The OCC Objects to the Staff Report's determination of adjusted and pro forma revenues, because the test year sales to commercial customers in the Staff Report are understated.

2. Bonus and Incentive Compensation

The OCC objects to the Staff Report's inclusion in the revenue requirements of bonus and incentive compensation that are related to the attainment of financial goals. The cost of such compensation should be borne by shareholders, not customers, because the bonus and incentive compensation benefits only shareholders.

3. Severance Pay

The OCC objects to the Staff Report's inclusion of severance pay in adjusted test year operating expenses. The Company has not shown that the Severance pay is an ongoing, normal expense that the Company will incur on an annual basis prospectively.

4. Depreciation Expense - Miscellaneous Intangible Plant

The OCC objects to the Staff Report's calculated depreciation expense of \$2,081,538 on General Miscellaneous Intangible Plant on Schedule B-3.2 (page 3) of the Staff Report in that Staff fails to eliminate depreciation expense on plant that will be fully depreciated by the end of the test year.

The OCC objects to the Staff Report's calculated depreciation expense of \$3,654,991 on Common Miscellaneous Intangible Plant on Schedule B-3.2 (page 4) of the Staff Report in that Staff fails to eliminate depreciation expense on plant that will be fully depreciated by the end of the test year.

5. Commercial Activity Tax

The OCC objects to the Staff Report's adjustment to the Commercial Activity Tax on Schedule 3.18 of the Staff Report. The Staff's calculation of the adjusted Commercial Activity Tax erroneously reflects the effective tax rates for 2009 instead of for the 2008 test year.

6. Merger Savings

The OCC objects to the Staff Report's failure to specify that not only is there no evidence of actual merger savings, there is evidence that expenses have increased since the merger between Cinergy Corp. and Duke Energy Corporation in its discussion of this issue on page 13 of the Staff Report. In this case, Duke is requesting recovery of far more test year expenses than it did in the rate case before the merger.

7. Impact of OCC Objections on Operating Income

The OCC objects to each component of the Staff Report's Schedule C-1 recommended net operating income to the extent that other OCC objections have an impact on the calculation of net operating income (e.g. impact on income taxes of operating expense objections).

D. Rate of Return

1. DCF Analysis

The OCC objects to the Staff Report's short-term (5 year) growth rate, which relies only on a single indicator of growth -- analysts' forecasts of earnings per share ("EPS"). Reliance on just one statistic cannot reflect investor behavior and is not proper. Investors do not rely only on EPS projections when making short-term investments. This can be deduced from the information provided by Value Line to subscribing investors, which includes both historic and projected EPS, dividends per share, book value per share and retention growth. It is clearly improper to assume, as does the Staff Report, that investors/Value Line subscribers ignore all of these statistics and only consider EPS projections in making their investment decisions.

The OCC objects to the Staff Report's inconsistent reliance upon historic data, gross domestic product ("GDP"), for one statistic (long-term growth), while ignoring historic growth for another statistic (short-term growth). The Staff Report only considers projections of growth for its short-term growth factor and only considers historic measures of growth for its long-term growth factor. In both cases, the selection of the growth rate measure has the effect of unreasonably increasing the DCF results of the Staff Report.

The OCC objects to the Staff Report's equity issuance cost adjustment of 1.01904 because neither the Company nor the Staff has provided any evidence or made any claim that the Company will incur any common equity issuance costs.

2. Capital Asset Pricing Model Analysis

The OCC objects to the Staff Report's exclusive reliance on arithmetic growth rates from Morningstar, rather than both the arithmetic and geometric growth rates because investors have access to both and likely rely upon both. Mutual funds and Value Line report on geometric averages.

3. Capital Structure

The OCC objects to the Staff Report's use of a hypothetical capital structure for Duke Energy-Ohio, which reflects the average capital structure of a group of publicly-traded electric utilities. Using a hypothetical capital structure is inconsistent with the concept of rate of return – rate base regulation which implies that the capitalization used for rate making purposes should reflect the capital structure used to attract and raise capital for the Company. Further, Staff fails to match the Company's capital structure and its cost of debt capital. The Staff Report, in using the capital structure for the proxy companies and DE-Ohio's debt cost rate, has not properly combined capital structure and debt cost rate. Finally, using a hypothetical capital structure is inconsistent with Commission precedent.

E. Rates and Tariffs

1. Revenue Distribution

The OCC objects to the Staff Report's methodology used to deviate the allocation of costs among classes from the allocation suggested by Duke's cost-of-service study. The methodology is arbitrary and results in allocating the rate increase in a way that is not reasonably proportionate to the cost of serving the classes, and that is unfair and unlawful.

2. Tariffs

The OCC objects to the Staff Report's failure to recognize that three rate base deductions should be reflected in the Staff's residential customer charge calculation: accumulated deferred income taxes for electric meters and transformers in the amount of $33,754; accumulated deferred income taxes on property taxes in the amount of $210,325; and contributions in aid of construction in the amount of $1,143,794.

The OCC objects to the Staff Report's arbitrary failure to recommend that reductions in revenue requirements should be reflected in the calculation of the customer charge so that the customer charge should reduce with reductions in the revenue requirements.

The OCC objects to the Staff Report's failure to recognize that the total costs to be paid by residential customers through the customer charge should be reduced by miscellaneous charges paid by residential customers. The Company already recovers $302,499 of the $42,008,395 of the customer-related costs to serve residential customers through amounts paid by residential customers for reconnection and bad checks.

F. Reliability and Service Quality

The OCC objects to the Staff Report's failure to recommend that Duke provide its customers OCC's correct telephone number, 1-877-742-5622, on its Final Disconnection Notice, rather than the incorrect number, 1-800-282-9448, that is currently on Duke's current Final Disconnect Notice.

The OCC objects to the Staff Report's failure to recommend that Duke provide the option of allowing its customers to pay their deposits in three (3) monthly installments. This payment option was stipulated to and approved by the Commission in *Columbia Gas of Ohio,* Case No. 08-72-GA-AIR, Opinion and Order (December 3, 2008) and in *Dominion East Ohio,* Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008).

OCC objects to the Staff's failure to consider and propose distributed generation as a means of addressing reliability within the Company's service territory. Specifically, renewable energy, including programs that encourage the company to purchase the renewable energy credits from customer-sited facilities, should be required. Further, any and all barriers to distributed generation that may exist with respect to interconnection, net-metering or standby rates should be ordered to be removed. Duke should be required to have available upon a customer's request, customer-friendly data that addresses these matters in sufficient detail.

G. Proposed Accounting Modification and Distribution Rider.

The OCC objects to the Staff Report's recommendation that the Commission establish a procedural schedule to afford interested parties the opportunity to participate in implementation of Rider DR-Ike when the only appropriate procedure for recovery of the Rider DR-Ike costs is a future distribution rate case. Duke's activities and costs associated with the restoration of service during the windstorm have not been properly reviewed by the Staff in its Report and therefore Duke should not recover costs until its next distribution rate case filing.

III. SUMMARY OF MAJOR ISSUES

R.C. 4903.083 requires (regarding the scheduling of local public hearings) that the Commission must list in the notice to customers "a brief summary of the then known major issues in contention . . ." by the parties. For this notice, the Commission should include the major issues in a form that is understandable and accurate for customers. To accomplish the General Assembly's objective to notify customers of their opportunity to participate in hearings, the Commission should include the following as major issues in this proceeding:

1. The amount of additional revenue that Duke will be authorized to collect through increasing its distribution rates charged to consumers, including the proper treatment of various taxes, the eligibility of some distribution expenditures for special regulatory treatment, and the treatment of labor expense, and the rate increase for customers, expressed as a percentage increase in distribution rates;
2. The appropriate profit (expressed as a percentage) Duke will have an opportunity to earn from the charges for distribution service to consumers, including the appropriate profit that should be considered in connection with the service quality provided to distribution customers of the Company;
3. The fair and equitable percentage of any increase in revenue that residential customers should pay, and the fair and equitable amount of revenue that should be allocated to residential customers rather than other customers and the degree to which these revenues should be collected through a fixed charge versus a charge based upon the amount of electricity that is consumed;
4. The fair and equitable design of rates so as to be consistent with the determinations in the ESP settlement and so as to foster energy

conservation and energy efficiency and to send the appropriate signals;

5. The appropriate procedure for the Commission to consider the prudence of Duke's activities and expenses in Duke's restoration of service after the 2008 windstorm; and

6. The appropriate recovery mechanism for prudently incurred costs relating to Duke's restoration of service following the 2008 windstorm.

The OCC respectfully requests that these issues be included in the notices of the local public hearings in accordance with R.C. 4903.083.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Objections to the PUCO's Staff Reports and Summary of Major Issues by the Office of the Ohio Consumers' Counsel,* was served by Regular U.S. Mail Service, postage prepaid, to all below parties this 26th day of February, 2009.

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