

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

- In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates. ) Case No. 08-709-EL -AIR
- In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval. ) Case No. 08-710-EL-ATA
- In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods. ) Case No. 08-711-EL-AAM
- In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point. ) Case No. 06-718-EL-ATA

ENTRY ON REHEARING

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke), formerly known as the Cincinnati Gas & Electric Company, is an electric light company as defined in Section 4905.03(A)(4), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. As such, Duke is subject to the jurisdiction of the Commission.
- (2) On May 19, 2006, Duke filed an application, in Case No. 06-718-EL-ATA (rider case), for approval of its proposed Rider BDP, which would authorize a tariff for its Backup Delivery Point Capacity Rider. On July 25, 2008, Duke filed applications, in Case Nos. 08-709-EL-AIR, 08-710-EL-ATA, and 08-711-EL-AAM (collectively, rate cases), for approval of an increase in electric rates and related applications for tariff approval and approval of a change in accounting methods.
- (3) The change in accounting methods that was proposed in the rate cases would have allowed Duke to defer costs associated with its future electric distribution investments on an interim basis until such costs were reflected in retail rates. Duke proposed implementation of a new distribution rider mechanism, Rider DR, to recover those deferred costs, as well as other electric distribution

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system investments. Subsequent to the filing of the rider cases, the Commission approved, with certain modifications, a stipulation between the parties in Duke's standard service offer case. That stipulation agreed to the creation of a different rider, Distribution Rider – Infrastructure Modernization, that is similar to Rider DR proposed in the rate cases.

- (4) On December 22, 2008, Duke filed a motion to provide for the recovery of certain expenses related to the September 14, 2008, windstorm caused by Hurricane Ike. In its motion, Duke proposed two approaches. First, it suggested that it narrow the scope of the proposed Rider DR and change its name to DR-IKE. Rider DR-IKE, as it is proposed to be narrowed, would allow Duke to accumulate, as a regulatory asset, and to defer for future recovery in the appropriate account, the actual operation and maintenance costs incurred as a result of that storm. Duke suggested that, until fully recovered, it would apply a carrying charge, based upon its most recently approved average cost of long-term debt. Duke proposed that Rider DR-IKE be initially set at zero. Duke would then apply in a future application to set and adjust the rider, with recovery amortized over three years. Alternatively, Duke suggested that it would make appropriate test-year adjustments in these proceedings to amortize the restoration costs over three years for recovery in a manner similar to rate case expense, providing that such adjustment for costs and carrying charges does not result in a net increase to the revenue requirement to a level above that set forth in its July 25, 2008, application.
- (5) On January 14, 2009, the Commission approved Duke's request to modify its accounting procedures to defer incremental operating and maintenance expenses associated with the September 14, 2008, wind storm, with carrying costs. The Commission specifically stated that the "determination of the reasonableness of the deferred amounts and the recovery thereof, if any, will be examined and addressed in a future proceeding before the Commission."
- (6) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing in respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

- (7) On February 13, 2009, the Ohio Consumers' Counsel (OCC) filed an application for rehearing, raising one assignment of error. OCC argues that "the Commission erred when it failed to order that the reasonableness and lawfulness of the deferred amounts and any collection thereof from customers will be examined and addressed in a future rate case under R.C. 4909.18, 4909.15, and related statutes."
- (8) OCC asserts that a full review of the deferred amounts and the prudence of the activities that generated those deferrals is essential and that such a review can only be accomplished within a future distribution rate case. OCC claims that the Supreme Court of Ohio has "stated . . . that any recovery of the deferrals from customers would be considered in a rate case." (OCC application for rehearing at 3, citing *Elyria Foundry Co. v. Public Util. Comm.*, 114 Ohio St.3d 305, 309, 2007-Ohio-4164 at ¶22.) OCC concludes that the Commission should not consider permitting Duke to recover these costs until the costs and associated activities are reviewed in the next distribution rate case.
- (9) On February 24, 2009, Duke filed a memorandum contra the application for rehearing. Duke points out that the Commission has the authority under Section 4905.13, Revised Code, to establish a system of accounts for public utilities and to prescribe the manner in which accounts must be kept. It also references the recent *Elyria Foundry* decision by the Supreme Court of Ohio, upholding the Commission's ability to approve deferrals for distribution-related expenses, allowing the Commission to review the deferrals in a rate proceeding to ensure that they are reasonable and appropriately incurred, and are clearly and directly related to specifically necessary infrastructure improvements and reliability needs. Duke emphasizes that this is precisely the situation here: It sought creation of a regulatory asset to defer distribution-related investments and expenses directly attributable to damage sustained by Hurricane Ike and has made a recovery proposal as part of the present rate proceeding. Duke also notes that a delay in the recovery of these deferrals will cause the interest charges to continue to accrue, thereby increasing costs to customers.

Duke further argues that its proposal will level out the recovery of the expenses related to Hurricane Ike and that either of its proposed alternatives for recovery will result in no overrecovery. It explains that the proposed Rider DR-IKE would spread recovery

out over a defined period of time and would ultimately expire when the costs are recovered. Alternatively, if the expenses were to be recovered in rates, the rates would ultimately be readjusted in the next distribution rate case. Both possibilities, Duke states, would allow the Commission and intervenors to consider the reasonableness and prudence of the expenses prior to recovery, either in this rate case or in a subsequent rider proceeding. Finally, Duke points out that the staff report filed in the rate case addresses Duke's electric delivery system, making consideration of these expenses particularly appropriate.

- (10) We do not find OCC's arguments to be persuasive. Duke's December motion proposed, as we have described, two options for recovery of the deferred amounts, neither of which would require postponing consideration of recovery until the next distribution rate case. Duke's first proposal is that Rider DR, which was included in its rate case application, be renamed Rider DR-IKE, be initially set at zero, and be narrowed to encompass only recovery of the deferred expenses that are the subject of OCC's application for rehearing. It also proposed that Rider DR-IKE be adjusted in a separate proceeding, with an opportunity for due process. Under this approach, we would decide, during the present proceedings, whether to allow the designated rider to be the vehicle for recovery of these deferrals but would adjust the level of the rider in the subsequent proceeding described by Duke.

Alternatively, Duke requested that recovery of the deferrals be accomplished through the rates that are being set in this distribution rate case. Under this approach, the Commission would consider the level of recovery in the present proceedings. Rates set by the rate case are based on test-year expenses, which include the expenses related to Hurricane Ike.

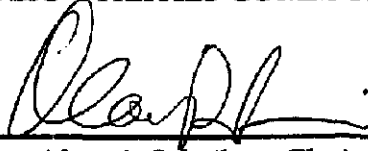
The Commission will determine, in our opinion and order in these proceedings, the appropriate methodology for recovery, if at all, of Duke's deferred wind storm expenses, on the basis of applicable law and the evidence before it at that time. Therefore, rehearing on this issue is denied.

It is, therefore,

**ORDERED**, That OCC's application for rehearing be denied. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

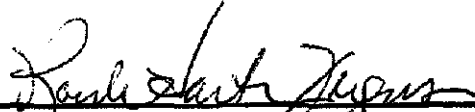
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



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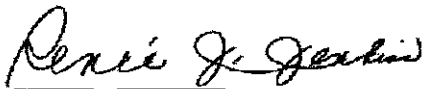


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Renee J. Jenkins  
Secretary