

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio to adjust and Set Its Gas and )  
Electric Recovery Rate for SmartGrid ) Case No. 09-543-GE-UNC  
Deployment Under Rider AU and Rider )  
DR-IM )

In the Matter of the Application of ) Case No. 09-544-GE-ATA  
Duke Energy Ohio for Tariff Approval )

In the Matter of the Application of )  
Duke Energy Ohio to Change its ) Case No. 09-545-GE-AAM  
Accounting Methods )

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**REPLY COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel submits these Reply Comments regarding Duke Energy-Ohio's ("Duke") proposed recovery of costs associated with its SmartGrid deployment during 2008. The SmartGrid is Duke's approach to advanced metering infrastructure and distribution infrastructure modernization. Duke filed its application ("Application") for recovery on June 30, 2009. The Public Utilities Commission of Ohio ("Commission") established a procedural schedule through an Attorney Examiner Entry dated August 19, 2009, allowing parties to file comments on October 8, 2009. The OCC, the Staff of the Public Utilities Commission of Ohio ("Staff") and The Kroger Co. filed Comments. OCC files the following Reply

Comments regarding the Comments filed on October 8, 2009 for the Commission's consideration.

## II. COMMENTS

### A. **The Staff Should Complete Its Audit Of Expenditures And Activity Through The End Of 2008 Before Parties Should Be Required To File Final Comments And At Least 30 Days Before A Hearing Date.**

In the Staff's Comments the Staff stated "at the time of this writing, the Staff audit is still in progress."<sup>1</sup> Many of the discussions in the Staff's Comments do not give readers sufficient information to be able to effectively reply to the Staff conclusions and recommendations and accordingly OCC cannot make substantive Reply Comments to Staff conclusions and recommendations at this time. For example, Staff recommends a reduction in plant totaling \$47,721 in electric meter plant additions on WDW-1, Schedule 2 for January through March 2008, that Duke reported were also included in the date certain balance of Duke's recent distribution rate case. But WDW-1, Schedule 2 reveals a total of \$57,438 worth of electric meter plant additions for the time period of January through March 2008. This inconsistency is not explained in Staff's comments.<sup>2</sup>

In addition, some of Staff's proposed adjustments, as presented in their Comments, are not clear. Staff recommends "not offsetting deferred balances by their associated deferred taxes" and states that this is consistent with a Commission decision in recent FirstEnergy rate case.<sup>3</sup> The point at issue in the cited FirstEnergy rate case was whether carrying charges on distribution deferrals during the distribution deferral period should be applied to the balance of the distribution deferrals or to the balance of

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<sup>1</sup> Staff Comments at 2.

<sup>2</sup> Id at 3-4

<sup>3</sup> Id at 8

distribution deferrals net of related deferred income taxes. It is not clear if Staff's recommendation in the current case relates to the SmartGrid deferral balance upon which Duke is to apply carrying charges (as shown in Schedules 4 and 10) or to the overall revenue requirement shown on Schedule 1. If Staff is recommending the revenue requirement calculation not reflect a deduction to Rate Base for deferred income taxes related to the SmartGrid deferral balance, the FirstEnergy decision is not applicable.<sup>4</sup> While not knowing which position(s) Staff is recommending, OCC can note that the FirstEnergy decision is not final and that OCC has asked for rehearing on this very issue.

It is understandable that Staff's Comments were written based on an "audit in progress"<sup>5</sup> and may thus reflect lack of sufficient information, detail and clarity at this time. For this reason, the Commission should give parties an additional opportunity to respond after Staff completes its audit and issues its final conclusions and recommendations relating to the audit and verification process on expenditures and activity through the end of 2008. The audit for all issues addressed in the Staff Comments through page 11 should be fully addressed in a completed audit report before other parties should be required to file final comments. Due to the current lack of clarity on issues, the Commission should grant parties an opportunity to receive further answers and clarification from the Staff once the final audit is completed, either through a formal discovery process or through informal discovery.

Moreover, because the hearing date is set for November 16, 2009, and the Staff audit has not been completed by October 19, 2009, the Commission should continue the

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<sup>4</sup> *In re Ohio Edison Co., The Cleveland Electric illuminating Co., Toledo Edison Co.*, Case No. 07-551-EL-AIR, Opinion and Order (January 21, 2009) at 10.

<sup>5</sup> *Id.* at 2.

hearing until a date that is at least 30 days after the Staff issues an audit report.

Typically, hearings are held much later than the release of an audit report.<sup>6</sup>

**B. Broader Issues Outside The Audit And Verification Process,  
Regarding Costs And Activities During Specific Audit Periods, May  
Be Addressed Through The Collaborative.**

OCC agrees with the Staff that some of the audit activities can be ongoing<sup>7</sup> but not those associated with costs that are being collected through Rider DR-IMF in this case. On the other hand, the determination of how cost recovery will be offset by benefits not yet recognized<sup>8</sup> would be an appropriate matter for the collaborative process not just for future cases but also for this case if a collaborative process can be arranged in a timely fashion.

Duke's recovery of the costs of the deployment of the SmartGrid should be dependent upon meeting the implementation milestones<sup>9</sup> that Staff identified in its Comments. The Staff identified three compliance principles that are central to benefits that residential customers should begin to realize if they are paying for the costs of implementing the SmartGrid: customer access to pricing and usage information, availability of time-differentiated rates, and reductions of momentary interruptions.<sup>10</sup> It will be important for customers to begin experiencing these benefits from the SmartGrid as they are paying for its deployment.

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<sup>6</sup> See Ohio Adm. Code 4901:1-14 (A) "At least sixty days after the filing of each audit report required under paragraph (c) of rule 4901:1-14-07 of the Administrative Code, the commission shall hold a public hearing \* \* \* and *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-1003-EL-ATA et. al., Entry ¶ 3 (staff report due August 14, 2009; hearing scheduled September 29, 2009).

<sup>7</sup> Staff Comments at 12.

<sup>8</sup> Id. at 12-15.

<sup>9</sup> Id. at Comments at 15.

<sup>10</sup> Id. at Comments at 15-18.

In order to ensure that customers benefit from the SmartGrid while they are paying for it, the collaborative should establish specific objectives that Duke must meet on each of the compliance principles before the recovery amounts are adjusted upward for customers to pay. Duke should not recover additional costs until these objectives are met.

### **III. CONCLUSION**

In its Comments the Staff reveals that it has not completed the audit of Duke's SmartGrid expenditures and activity through the end of 2008. Moreover, the Staff Comments are not thorough enough about its conclusions and recommendations for parties to knowledgeably comment. For this reason, the Commission should give parties another opportunity to file Comments on a finalized audit report with regard to Duke's SmartGrid expenditures and activity through the end of 2008. Additionally, the Commission should continue the hearing so that there is more time between the issuance of a completed audit report and the hearing.

On broader matters, such as recognizing operational benefits and implementing compliance principals, the collaborative process may be a more appropriate venue.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 20th day of October 2009, the foregoing *Reply Comments by the Ohio Consumers' Counsel* have been served via First Class Mail, postage prepaid, to the following persons.

  
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