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**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO** 2010 NOV 24 PM 4:38

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| In the Matter of the Application of Duke Energy Ohio to Adjust and Set Its Gas and Electric Recovery Rate for 2009 SmartGrid Costs Under Rider AU and Rider DR-IM. | ) | Case No. 10-867-GE-RDR |

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


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**November 24, 2010**

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| In the Matter of the Application of Duke<br>Energy Ohio to Adjust and Set Its Gas and<br>Electric Recovery Rate for 2009<br>SmartGrid Costs Under Rider AU and<br>Rider DR-IM. | )<br>)<br>)<br>)<br>) | Case No. 10-867-GE-RDR |

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## I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits these comments regarding Duke Energy-Ohio's ("Duke") proposal to collect from customers the costs associated with its SmartGrid deployment during 2009. Duke filed its application for recovery on July 26, 2010 ("Application"). The Public Utilities Commission of Ohio ("Commission" or "PUCO") established a procedural schedule through an Attorney Examiner Entry dated October 6, 2010, allowing parties to file comments on November 24, 2010. OCC files the following comments on Duke's proposal, for the Commission's consideration.

## II. COMMENTS

### A. Duke Has Not Demonstrated That The Costs It Proposes To Collect From Customers For The SmartGrid Deployment Were Reasonably Incurred.

The costs that Duke proposes to collect in this case are costs to be collected through a rider that originated from an electric security plan ("ESP") case[1] under R.C. 4928.143. The parties agreed that Duke's collection of costs from residential customers is subject to due process.[2] Duke has the burden of proof and has failed to establish that the costs it proposes to from customers for the SmartGrid deployment are reasonable.

As part of Stipulation that was reached to settle the ESP case, the parties agreed upon a projected SmartGrid electric deployment schedule through 2014 that included projected operating expenses.[3] Duke failed to meet that projected deployment schedule in 2009. Duke only deployed $33.1 million of the $59.9 million it had projected.[4] In other words, Duke has deployed only 55% of the meters it had projected that it would deploy in the ESP Stipulation.

Yet, at the same time, Duke proposes to collect slightly more than 60% of the 2009 operating expenses that were projected in the ESP Stipulation.[5] It is not clear from Duke's application why Duke has so much more in operating expenses than it had projected. Duke does not discuss or explain this discrepancy. Duke has the burden of

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[1] *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, Application (July 31, 2008) ("ESP").

[2] *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, Opinion and Order at 17. (December 17, 2008).

[3] Stipulation Attachment 3, page 1 of 2.

[4] Direct Testimony of Peggy A. Laub (July 26, 2010) at Attachment PAL-1, Schedule 1.

[5] ESP Stipulation Attachment 3, Page 1 of 2. (Duke projected that it would incur $4.159 in operational expenses during 2009 but is requesting recovery of $7 million in this case).

proof at hearing to demonstrate that this discrepancy is reasonable, but Duke has made no attempt to do so.[6]

To exacerbate the discrepancy, Duke proposes to recover $1.12 per month from the electric customers or 75% of the $1.50 cap it agreed upon in the ESP Stipulation.[7] Accordingly, while Duke has deployed only 55% of the SmartGrid investment it projected, Duke is proposing to collect from customers 75% of the cap. Duke failed to establish why the charge is so high relative to the amount of deployed investment nor has it explained why its operational expenses are so high. In order to collect these costs, Duke would have to meet a burden of proof at hearing to show that the increased operational expenses were prudently incurred, especially since Duke has only deployed 55% of what the investment Duke projected to deploy.[8] Moreover, Duke has the burden of proof to show that its collection of 75% of the $1.50 cap agreed to in the stipulation is reasonable, when Duke has only deployed 55% of the Smart Grid investment.[9]

Some of the operating expenses that are unexplained include an annualized depreciation of $1,775,979, although the projected amount was only $1,575,818. This excess of actual annualized depreciation over the projected amount is especially peculiar, given that the actual plant installations was only 55% of the projected plant installations. Again, Duke should not be permitted to collect the related costs from customers unless it proves that the costs are reasonable. In this example, Duke has failed to show why the additional costs are reasonable.

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[6] *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan,* Case No. 08-920-EL-SSO, Opinion and Order at 17. (December 17, 2008).

[7] Direct Testimony of Peggy A. Laub (July 26, 2010) at Attachment PAL-1, Schedule 13.

[8] R.C. 4928.143.

[9] R.C. 4928.143.

In the 2008 ESP projections, Duke broke down the operating expenses into smaller categories, such as IT and Communications costs. The same breakdown does not appear in this case. Moreover, Duke claims that the common facility costs to gas and electric service have simply been allocated to the services by number of customers. This allocation seems intuitively inappropriate given that some of benefits will only apply to one group of customers. Therefore it would be inappropriate for the customer group that did not receive any benefit to share in the cost. When OCC asked on discovery for more specifics regarding the category of costs, Duke did not provide any information on costs associated with operating expense categories.[10]

### B. Duke Failed To Net The SmartGrid Investment Grant Against Costs In 2009 To Reduce Rate Base For 2009, Even Though Some Of The Funds From The SmartGrid Investment Grant Were Allocated For 2009.

Without a credit of the 2009 SmartGrid Investment Grant to customers Duke is charging customers too much. Duke's failure to credit the 2009 SmartGrid Investment Grant ("SGIG") against the 2009 SmartGrid costs is unfair and unreasonable and is a violation of R.C. 4928.02, which states:

> It is the policy of this state to do the following throughout this state:
>
> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. . .

[10] See eg. Duke Response to OCC-POD-02-033, OCC-INT-01-32, OCC-INT-02-092.

Moreover, Duke's failure to credit the 2009 SGIG payments against the 2009 SmartGrid costs is contrary to the Commission's long held requirement that public utilities credit customers with emission allowances and their proceeds that utilities receive.[11]

Duke received $4.027 million from the federal SmartGrid Investment Grant ("SGIG") for work that it has done on the SmartGrid from August through December 2009.[12] But Duke has not netted that grant money against the 2009 costs Duke proposed to collect from customers.

Duke states that it did not provide customers with a credit for the SGIG dollars rewarded for work done during 2009 because Duke did not actually receive the funds until 2010.[13] Duke's argument is not reasonable because $4.027 million was intended for use by Duke during 2009. A credit of this amount of money would reduce Duke's revenue requirement by approximately $500,000.

### C. Duke Must Account For The Savings And Benefits The System Accrues Based Upon SmartGrid Deployment And Should Credit The Savings And Benefits To Customers As Soon As Possible.

In this case, Duke is recovering its electric SmartGrid investment through Rider DR-IM that was approved as part of the Duke Electric Security Plan settlement ("SSO settlement"). The SSO settlement provides that the savings and benefits that SmartGrid deployment provides to the Duke system are to be netted against the SmartGrid

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[11] See eg. *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of the Ohio Edison Company and Related Matters,* Case No. 93-04-EL-EFC, Opinion and Order (February 24, 1994) and *In the Matter of the Regulation of the Electronic Fuel Component Contained Within the Rate Schedules of the Cincinnati Gas & Electric Company and Related Matters,* Case No. 94-103-EL-EFC, Opinion and Order (June 8, 1995).

[12] Duke Response to Staff DR-020-001.

[13] Duke Response to OCC-INT-01-038.

deployment costs.[14] Duke has not provided such information. The Commission should require Duke to demonstrate how it has been diligent in identifying and recording the full range of system benefits it realizes as the SmartGrid deployment evolves. Rather than provide the information about savings and benefits identified, Duke has stated:

> Response will be included in the mid-deployment program summary and review to be filed in 2011....[15]

During the September 17, 2009 collaborative meeting, Duke described how the installation of digital line sensors and other equipment in the Queensgate area of Cincinnati prevented a 66-minute outage for approximately 2,000 customers within 10 days of its installation. Currently Duke is recovering costs in its distribution base rates, just implemented in 2008 for dealing with such outages.[16] But Duke now claims that it has only benefited from the salvage of electromechanical meters at an amount of less than $10,000.[17]

Previously, OCC urged the Commission to require Duke to develop a process that ensures that Duke will identify all such savings that occur during 2009 and should credit those savings against the cost of SmartGrid deployment.[18] If Duke does not timely credit the costs of SmartGrid deployment against all SmartGrid benefits or costs avoided through the SmartGrid, the avoided utility costs or benefits will constitute an unfair and unreasonable revenue enhancement for Duke.

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[14] *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan,* Case No. 08-920-EL-SSO, Duke ESP Stipulation and Recommendation, Attachment 3, page 1 of 2.

[15] See, eg., Response to OCC-POD-01-003.

[16] *In the Matter of the Application of Duke Energy Ohio for an Increase in Electric Rates,* Case No. 08-709-EL-AIR, Opinion and Order (July 8, 2009).

[17] Response to OCC-INT-02-086.

[18] *In the Matter of the Application of Duke Energy Ohio to Adjust and Set Its Gas and Electric Recovery Rate for SmartGrid Deployment Under Rider AU and Rider DR-IM,* Case No. 09-543-GE-UNC OCC Comments (October 8, 2009).

### D. Duke Should Be Permitted To Collect Costs Associated With The Deployment Of Investment Only To The Extent That The Investment Is Used And Useful.

The Commission has long held that utilities may not collect a rate of return on investments that are not yet used and useful.[19] The Commission should apply that same standard in this instance. The Company has not shown that every investment it has included in the application is in fact used and useful. Unless the Company does show that each asset for which it is seeking a return is actually used and useful, the asset should not be incorporated in rate base.

In fact, the Company's response to certain OCC discovery requests indicates that some of the assets that are currently deployed are not used and useful:

> The 1,964 nodes reported as being in production in 2009 referred to the nodes associated with meters that were certified in 2009. The remaining nodes (difference between 4,847 and 1,964) represent those that were installed in 2009, configured and stabilized in 2009, and awaiting meter association and certification.[20]

If a node has not been associated with a meter that has been certified, the node is not used and useful, should not be included in rate base and the Company should collect a return on it. Therefore, Duke should not collect a return on the 2,883 nodes that are not associated with a certified meter in the example above. This is particularly true when, as discussed above, Duke is not netting experienced benefits and savings against costs.

[19] See eg., *In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service,* Case No. 87-689-EL-AIR (March 15, 1988) at *7 and *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water And Sewer Services Provided to its Entire Service Area,* Case No. 09-391-WS-AIR, Opinion and Order at *35.

[20] Response to OCC INT-02-096.

### E. Duke's Allocation Of Costs Between Gas And Electric Customers Is Not Justified.

Duke states that in the current application it allocates common costs between gas and electric services based on the number of customers on each service or 61% for electric service and 38.16% on gas service.[21] This is the same allocation factor used to allocate costs between electricity and gas service for the communication nodes, the AMI system software, and the information technology costs.[22] But Duke has not justified that the allocation is appropriate for all of those costs.

In fact, common sense would dictate otherwise. Duke's allocation of any costs associated with technology that facilitates billing for dynamic and time of use pricing to gas customers who will not receive such billing is patently unfair. Duke has not identified a reasonable reason for applying any allocation of costs that are associated with technology that facilitates billing for dynamic and time of use pricing to gas customers. The Commission should order Duke to establish a reasonable allocation methodology on an item-by-item basis, because the allocation methodology for some of the costs is counter-intuitive and without further justification seems unreasonable and contrary to R.C. 4928.02(A).

## III. CONCLUSION

OCC appreciates the opportunity to comment on Duke's SmartGrid cost recovery application. As stated above, the Commission should not permit Duke to collect the proposed SmartGrid costs from customers until and unless Duke is able to:

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[21] Response to OCC-INT-01-001 and 002.

[22] Response to OCC INT-01-032.

- Demonstrate that its installation of only 55% of the investment during 2009 justifies it recovering 75% of the originally proposed cap;

- Demonstrate that its much higher than projected operating expenses are prudent;

- Credit 2009 SGIG funds against the 2009 costs of SmartGrid;

- Apply all 2009 and pre-2009 savings and benefits from SmartGrid against SmartGrid costs;

- Demonstrate that all assets were used and useful during 2009; and

- Demonstrate that Duke's allocation of costs between gas and electric customers is just and reasonable.

Otherwise, Duke's proposed collection of SmartGrid costs from customers would be unlawful.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments has been served via regular U.S. Mail, postage prepaid, to the following persons on this 24th day of November 2010.

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