BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider	**)** **)** **)**	**Case No. 11-5905-EL-RDR**

COMMENTS
by the
NATURAL RESOURCES DEFENSE COUNCIL
and the OHIO ENVIRONMENTAL COUNCIL

I. Introduction

On December 8, 2011, Duke Energy Ohio, Inc. ("Duke" or "Company") filed an application at the Public Utilities Commission of Ohio ("PUCO" or "Commission") for approval of a three-year pilot program for a Distribution Decoupling Rider ("Rider DDR") that "that adjusts distribution rates between distribution base rate cases to remove the link between sales and distribution revenues."[1] The Natural Resources Defense Council ("NRDC") and the Ohio Environmental Council ("OEC") jointly submit these comments, in accordance with the Attorney-Examiner's January 5, 2012 Entry.[2] For the reasons presented below, NRDC and OEC respectfully request the Commission approve the Company's Rider DRR pilot, with the one modification as presented in the comments below.

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[1] *In the Matter of Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider*, Case No. 11-5905.EL-RDR, Testimony of James E. Ziolkowski (attached to the Application) at 3 (December 8, 2011).
[2] Id., Attorney-Examiner's Entry at ¶3(b), which lists February 23, 2012 as the deadline for the filing of comments on the application by Staff and intervenors.

II. Comments

The Commission should approve the Company's application for approval of a Rider DDR as it provides a straightforward method of encouraging customer and utility energy efficiency efforts and forwards Ohio's stated policy goals. The proposed Rider DDR would add a balancing mechanism atop the Company's existing distribution rates in the covered rate classes.[3] It removes the Company's need to collect revenues determined to be lost from customer and utility energy efficiency efforts in the covered rate classes and removes the Company's throughput incentive in the covered rate classes. It also allows the Commission and parties to gain experience with and determine the extent of benefits realized from a form of decoupling new to Ohio. In addition, adopting the proposed DDR would align Ohio regulation with Ohio policy which, similar to other states, encourages substantial investments in energy efficiency to reduce projected increases in demand and exert downward pressure on wholesale electricity capacity and energy prices.

A. Rider DDR, as Proposed Would Add a Balancing Mechanism Atop the Company's Existing, PUCO-Approved Rate Design.

Rider DDR would apply to all metered rate schedules except DS, DP, and TS. In the covered rate classes, Rider DDR would add a new balancing mechanism atop the existing distribution rate design, leaving the underlying rate design intact. The balancing mechanism would collect from or refund to customers the difference between revenues actually collected (for the weather-adjusted usage in covered rate classes) and authorized revenues previously approved by the Commission. Authorized revenues are those revenues that were calculated for

[3] *In the Matter of Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider*, Case No. 11-5905.EL-RDR, Testimony of James E. Ziolkowski (attached to the Application) at 4 states: "Rider DDR will apply to all metered rate schedules, except for Rates DS, DP, and TS, which were excluded pursuant to the terms of the ESP Stipulation. Rider DDR will not apply to unmetered rates such as lighting. Rate GS-FL, and Rate 23 SFL-ADPL." (December 8, 2011).

collection in per-kW or per-kWh rates (that is, at the test-year level of consumption) and approved by the PUCO in Duke's most recent distribution rate case.[4] Over a year, the Company will accrue positive or negative differences in a rate class-specific balancing account, to be refunded to/or collected from applicable customers in the following year. The Rider DDR is a pilot; the mechanism will operate only until the 2014 difference is collected from or returned to customers. The Company will file a report after the end of the pilot detailing results and recommending that the pilot be continued or discontinued.

Rider DDR would adjust annually to ensure the Company collects its customer and weather-adjusted, authorized distribution revenues in the covered rate classes, no less and no more. Rider DDR alone indicates nothing regarding proper rate design. Rate design is an issue that will continue to be handled in rate cases; NRDC and OEC reserve their rights to argue for rate design changes in any future rate case proceeding.

B. Rider DDR Will Remove the Company's Need to Collect Lost Distribution Revenues.

Currently lost revenue adjustment mechanisms ("LRAMs") charge customers for the revenue a utility forgoes when it operates energy efficiency programs that reduce customer energy usage. The Commission has, in earlier cases, expressed discomfort with continued collection of lost distribution revenue by Ohio electric distribution utilities.[5] The members of the Ohio Consumer and Environmental Advocates share the Commissioners' concern with continued recovery of lost distribution revenues by Ohio EDUs. LRAMs have many drawbacks as stated in a recent FAQ on Decoupling in the *Electricity Journal*:

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[4] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates*, Case Nos. 08-709-EL-AIR, et al, Opinion and Order at 19 (July 8, 2009).

[5] *In the Matter of the Application of the Cleveland Electric Illuminating Company, Ohio Edison Company and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism*, Case Nos. 09-1947-EL-POR, et al, Concurring Opinions of Chmn. Snitchler and Comm. Roberto at 2 (March 23, 2011).

- LRAMs do not remove the throughput incentive: a utility still keeps revenue it generates above its authorized revenue and is motivated to boost sales.

- In jurisdictions where program evaluation, measurement, and verification standards are weak, or where a Technical Reference Manual[6] has not been finalized, utilities can game a LRAM by running an energy efficiency program that looks good on paper but saves little or nothing in practice, such as a behavior change program that does not use experimental design. The utility keeps the revenue associated with the unsaved energy while also collecting lost revenues for ineffective programs.

- LRAMs lead a utility to avoid investing in market transformation programs. Unless a program can be measured and evaluated with high confidence, it cannot generate ''lost revenues'' in a LRAM. This biases a utility to implement only programs from which savings can be easily evaluated, and still provides a disincentive for utilities to argue for stronger efficiency codes, proactively promote efficiency in conversations with customers, or otherwise use its relationships with customers to increase efficiency.

- LRAMs are costly. Lost revenues are generally collected for the amount of time an efficient device installed by an energy efficiency program is operating (potentially decades), or until a rate case resets rates for new levels of consumption in a service territory. In fall 2009, FirstEnergy in Ohio proposed a compact fluorescent light bulb give-away program that would have distributed two CFLs to each residential customer in its service territory. FirstEnergy's LRAM would have added between $12.60 and $30.8042 to the program's $7 per-customer implementation cost.

- LRAMs are imprecise: there is no check to see if the ''lost revenue'' is really needed to cover fixed costs. In a situation where high load growth is diminished by energy efficiency, remaining sales may be more than adequate to recover fixed costs, yet the utility may be entitled to a LRAM anyway, creating a regulated windfall.[7]

Unlike an LRAM, decoupling as proposed in Rider DDR prevents the Company from earning more than its Commission-authorized per-customer revenues and possibly undermining real customer energy efficiency savings. Rider DDR is a type of "creative mechanism" for

[6] The TRM has been the subject of extensive effort and comment in a separate proceeding before the Commission. *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC.

[7] Sullivan D, Wang D, Bennett D, "*Essential to Energy Efficiency, but Easy to Explain: Frequently Asked Questions about Decoupling*," *Electricity Journal* 2011; 24(8):56-70.

ensuring the Company does not have to explicitly collect lost revenues from its energy efficiency efforts, and instead will only collect revenues when it is actually under-collecting its authorized revenue requirement for reasons other than weather (as discussed below).

C. The Commission Should Adopt a Symmetrical Cap to Shield Customers From Volatile Rider Adjustments as the Only Modification to the Proposed Mechanism.

The only modification recommended is that the Commission should employ a cap on annual rate adjustments to prevent volatility. An annual 3% cap adjustment to distribution rates, with balances carrying forward, should be adopted as part of a decoupling mechanism implemented in Ohio to protect customers from excessive increases. Any carrying charges should be at the long term cost of debt.

D. Rider DDR Will Actually Remove the Company's Throughput Incentive.

Traditionally, utilities recover fixed costs from consumption (volumetric) charges. When sales fall, utilities may not recover all their fixed costs, and when sales increase, utilities may collect more than their authorized fixed costs and reasonable return. Motivated by this *throughput incentive*, utilities may have no reason to encourage energy efficiency despite policies promoting it. Removing the throughput incentive is thus an important contributor to a utility business model that allows both utilities and customers to benefit from energy efficiency.

Rider DDR removes the Company's throughput incentive in the covered rate classes. If the Company successfully delivered energy efficiency programs and sales fell below customer and weather-adjusted test year sales, the Company would collect a surcharge to make up the difference. If the Company collected more than customer and weather-adjusted test year sales, customers would receive refunds. Because the Company would have to return over-collections, the Company would no longer have a short term incentive to encourage per-customer sales of

energy. The Company would still have incentives to encourage economic growth, of course, because authorized revenues would be adjusted for increases in the number of customers compared to the test year.

Rider DDR removes the throughput incentive more effectively than the Company's alternative: The formulaic distribution rider proposed in the Electric Security Plan ("ESP") proceeding.[8] That mechanism would have left the throughput incentive in base distribution rates intact, and would only "decouple" revenue associated with incremental investments. The DDR effectively removes the throughput incentive in base distribution rates in the covered rate classes.

E. Rider DDR Would Provide the Commission and Parties Experience With a Form of Decoupling New to Ohio.

As already noted, the actual revenues to which authorized revenues will be compared in Rider DDR will be weather-adjusted. This means that, in order to determine actual revenues, the Company will weather-adjust actual consumption according to its forecasting methodology, and multiply that consumption by non-rider per-kW and per-kWh distribution charges. This ensures that the mechanism will not collect from or refund to customers revenues that were under-collected or over-collected as a result of abnormal weather. This weather adjustment makes the Company's mechanism different from that previously approved by the Commission for Ohio Power Company and Columbus Southern Power Company.[9] There is no *a priori* reason why weather should be included or excluded from decoupling mechanisms: Neither customers nor utilities control the weather. But in times of abnormal weather the Company's Rider DDR will mean less revenue will have to be cleared in the balancing account than in AEP's mechanism, all

[8] *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation*, Case Nos. 11-3549-EL-SSO, et al, Application at 31-32 (June 20, 2011).
Service.
[9] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company […]for an Increase In Distribution Rates*, Case Nos. 11-351-EL-AIR, et al, Opinion and Order at 9-10 (December 14, 2011).

things being equal. This could have impact on public perception of decoupling mechanisms in Ohio. The performance of the weather-adjusted DDR should provide the Commission with useful information as it determines the optimal policy to remove Ohio EDUs' throughput incentive.

F. Rider DDR Will Align Ohio Regulation With Ohio Policy.

Adoption of Rider DDR will ensure that the Company's energy efficiency efforts -- or efforts to support distributed generation -- do not endanger its ability to recover its cost of service in the covered rate classes. In doing so, Rider DDR will:

- Support the provision of energy services at a reasonable cost (a goal of Ohio policy as expressed in Ohio Revised Code Section 4928.02(A) and (L)),
- Reduce the use of fossil fuel-based energy (a goal of Ohio policy as expressed in Ohio Revised Code Sections 4928.02(D), (J) and (M), 4928.64 and 4928.66),
- Support the increased use of distributed generation in the covered rate classes (a goal of Ohio policy as expressed in O.R.C. 4928.02(C), (F), (K), (M)), and
- Encourage innovation in the provision of energy services (a goal of Ohio policy as expressed in O.R.C. 4928.66 and O.R.C. 4928.02(D)).

G. In Adopting Rider DDR, the Commission Would Make the Same Decision as the States that Invest the Most in Energy Efficiency.

In 2010, seven of the 10 states with the highest per-capita investment in electric energy efficiency programs, and eight of the 10 states with the highest per-capita investment in natural gas energy efficiency programs had decoupling in place or had adopted decoupling as state policy.[9] Over the last few years utility regulators around the country have increasingly adopted decoupling policies. Half the states in the nation now have policies to break the link between recovery of fixed costs and sales for natural gas and electric utilities.

III. Conclusion

The Commission should adopt the Company's Rider DDR with a cap.[10] Other than this change, the mechanism as proposed should be adopted, as it removes the need for the Company to explicitly collect "lost revenues" from customers, removes the throughput incentive, provides useful information for the Commission's investigation of means to remove the throughput incentive, and aligns Ohio regulation with Ohio policy supporting and encouraging energy efficiency and distributed generation. The Natural Resources Defense Council and the Ohio Environmental Council request Rider DDR, with the cap, be approved by the Commission.

Respectfully submitted,

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[10] Discussed in Section C above.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Comments by the Natural Resources Defense Council and the Ohio Environmental Council* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on February 23, 2012.

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Summary: Comments as Amended electronically filed by Mr. Christopher J Allwein on behalf of Natural Resources Defense Council and Ohio Environmental Council