BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., to Adjust	)	Case No. 12-1811-GE-RDR
Rider DR-IM and Rider AU for 2011	)	
SmartGrid Costs.	)	

COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

On June 20, 2012, Duke Energy Ohio, Inc. ("Duke" or "Company") filed an Application for riders to collect from customers the Company's actual spending on its SmartGrid program in 2011.[1] The SmartGrid program is meant to promote energy efficiency through the use of advanced technologies in the Company's distribution systems. Through Rider DR-IM, the Company proposes to collect $3.30 per month from each residential electricity customer for SmartGrid costs.[2] Through Rider AU, Duke proposes to collect $2.40 per month from each residential gas customer for SmartGrid costs, and to give the Company's gas-only customers in Adams County, Georgetown and Lebanon a credit of $1.36 per month.[3]

In accordance with the procedural schedule established by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this case on October 12, 2012,[4] the Office of the Ohio Consumers' Counsel ("OCC") submits Comments on the Application.

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[1] See Application at 1.

[2] See id., Direct Testimony of Peggy Laub (June 20, 2012) ("Laub Testimony"), Calculation of Rider DR-IM, Schedule 13.

[3] See Laub Testimony, Calculation of Rider AU, Schedule 13. According to Ms. Laub, Duke provides only gas service in Adams County, Georgetown and Lebanon. The customers are given a credit reflecting the common costs of the electric and gas SmartGrid programs and the allocable project management organization costs. See id. at 6.

[4] See October 12 Entry at 3-4.

This rider proceeding is the first since the Company, the PUCO Staff, OCC, Ohio Partners for Affordable Energy, Direct Energy Services, LLC, and Direct Energy Business Services, LLC entered into a Stipulation regarding Duke's SmartGrid deployment earlier this year.[5]

As part of the Stipulation, Duke committed to maintain Rider DR-IM as the means to collect SmartGrid investment through the year in which full SmartGrid deployment occurs.[6] The Company also agreed, beginning with this Rider DR-IM filing, to collect the electric share of SmartGrid costs incurred through December 31, 2011. Further, for each Rider DR-IM filing for the following three years (i.e., 2012-2014), the Company would include, as a benefit to customers, the electric distribution share of operational savings derived from the audit and assessment of Duke's SmartGrid program conducted by MetaVu, Inc. in Case No. 10-2326-GE-RDR.[7] The total savings identified in MetaVu's report for 2011 was \$2.38 million.[8]

In addition, in order to mitigate the impact of the rate increases attributable to Rider DR-IM, Duke agreed to defer collection of all or a portion of O&M, depreciation, and/or property taxes expenses normally collected in the Rider DR-IM revenue

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[5] *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, Stipulation and Recommendation (February 24, 2012). The Commission approved the Stipulation without modification in an Opinion and Order dated June 13, 2012.

[6] Stipulation, Section II.b. Under the Stipulation, "full deployment" means that all SmartGrid hardware and systems necessary to generate the benefits set forth in Column 2015 of Attachment 2 to the Stipulation. The point in time when full deployment occurs or has been achieved will be determined by the PUCO Staff based upon information provided by the Company. Id., n. 4.

[7] Id., Section II.b.

[8] Id.

requirement for 2011 and 2012.[9] For 2011, the Stipulation provides for a $3.86 million reduction in the revenue requirement for Rider DR-IM.[10]

The Stipulation also provides that costs and savings attributable to SmartGrid flowed through Rider DR-IM will not also be flowed through electric distribution base rates if new base rates are established before full deployment.[11] The Company has filed a case to establish new electric distribution rates.[12]

As for the gas SmartGrid, the Stipulation provides that the 2011 annual revenue requirement for Rider AU will reflect $1.041 million in savings.[13] The savings are to be allocated to gas distribution per Attachment 1 to the Stipulation.[14] The Stipulation also provides that if the Company files for new gas distribution rates before full deployment, the revenue requirement for gas distribution rates will include (1) all prudently incurred SmartGrid costs allocable to gas and (2) a guaranteed level of savings to benefit customers by netting savings against costs. These savings will be at the level established in Attachment 1 to the Stipulation, net of gas SmartGrid savings that are already included in the test year.[15]

Duke has filed a gas distribution rate case.[16] In that case, the Company proposes to combine "all of the current fixed charges on the customer's bill into one fixed

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[9] Id., Section II.c.

[10] Id.

[11] Id., Section II.f.

[12] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 12-1682-EL-AIR, et al., Application (July 9, 2012).

[13] Stipulation, Section II.g.

[14] Id.

[15] Id., Section II.h.

[16] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates*, Case No. 12-1685-GA-AIR, et al., Application (July 9, 2012) at 4.

charge."[17] Thus, Duke proposes to combine the current Rider AU charge of $1.97 with the current customer charge and the current AMRP Rider into a single customer charge. As a result, the AMRP Rider and Rider AU would be reset to zero.[18] The Company's proposal in the 12-1685 case is to include the gas grid modernization investment as of March 31, 2012, as well as deferred costs for 2011 and the first quarter of 2012.[19] Duke proposes to amortize the expenses over a three-year period.[20]

The Company, however, also seeks to collect the gas SmartGrid investment and deferred costs for the year 2011 in the instant proceeding. Duke states that if the Commission accepts the proposal in the distribution rate case, the Company will withdraw Rider AU from this proceeding.[21] The Company thus has tied the outcome of this proceeding to the resolution of its gas distribution rate case and vice versa. The Commission's decision in the gas distribution case will impact whether Rider AU in this case should be approved and implemented or be withdrawn.

The Commission should hold this case in abeyance until the gas distribution case has been concluded. If the Commission were to make a decision regarding Rider AU based on the Application in this proceeding, the Commission would have to revisit the issue in the gas distribution rate case. That would be administratively inefficient. Because the Company, in the gas distribution rate case, has stated it would withdraw Rider AU if the Commission accepts Duke's proposal in the gas distribution rate case, it

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[17] Id., Direct Testimony of James A. Riddle (July 20, 2012) at 8.

[18] Under the Stipulation, Rider AU will continue in the future until all the gas operational savings from Stipulation Attachment 1 are credited to customers. See Stipulation, Section II.h.

[19] Case No. 12-1685-GA-AIR, Direct Testimony of Peggy A. Laub (July 20, 2012) at 24-25.

[20] Id.

[21] Id.

appears that Duke itself does not contemplate that this rider proceeding should conclude before the Commission has decided the gas distribution rate case.

In addition, any approval of Rider AU in this proceeding would cause an overlap in collections from customers for the Company's SmartGrid expenses because Duke is seeking collection of the same 2011 investment and expenses in both cases. Duke's proposal for Rider AU in the gas distribution rate case would allow the Company to collect expenses that the Company also seeks to collect through Rider AU in this proceeding. If Duke is allowed to collect gas SmartGrid investment and expenses from customers through both this proceeding *and* the gas distribution rate case, the Company would double-collect these costs from customers. The 2011 gas SmartGrid investment and expenses should be collected from customers either through Rider AU or through base rates, but not both.

If the Commission decides to move forward with this case before deciding the distribution rate case, however, it should ensure there is no overlap in the collection of SmartGrid expenses through this proceeding and the new gas distribution rates. Duke should not be allowed to double-collect SmartGrid expenses from customers. If the Commission proceeds with this case, the best course is for the Commission to dismiss the Rider AU portion of this proceeding and to address the rider in the gas distribution case, either as a stand-alone rider or as part of the single fixed charge Duke has proposed in that proceeding.

But if the Commission moves forward with the Rider AU portion of this case, it should specifically disallow the adjustment proposed in Rider AU Schedule 15 in the amount of $1,217,069. The Company proposes this adjustment to collect what it perceives is an under-collection for calendar year 2010 SmartGrid investment and costs "due to the delay in the order in Case No. 10-2326-GE-RDR."[22] However, Rider AU is not a dollar-for-dollar rider. Rider AU is based on an annual revenue requirement, which is updated each year to reflect the investment and expenses associated with that particular year. Under and over-recoveries are not calculated with each rider update. Making an adjustment in this case for a supposed under-collection from a prior case, when there is no mechanism for such an adjustment in Duke's SmartGrid rider cases, amounts to retroactive ratemaking and is unlawful.[23]

The Commission must ensure that the provisions of the Stipulation – which "has value as a whole" and "is a reasonable compromise involving a balancing of competing positions"[24] – are preserved, and that the customer benefits in the Stipulation are maintained. In order to protect consumers, the Commission should address Rider AU as OCC recommends in these Comments.

Respectfully submitted,

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[22] Direct Testimony of Peggy Laub (June 20, 2012) at 16 and Gas Schedule 15.

[23] See *Lucas County Commrs. v. Pub. Util. Comm.*, 80 Ohio St.3d 344, 686 N.E.2d 501 (1997).

[24] Stipulation at 2-3.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission this 21st day of November 2012.

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