

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke :
Energy Ohio, Inc., for Approval of a Grid : Case Nos. 14-1160-EL-UNC
Modernization Opt-Out Tariff and a : 14-1161-EL-AAM
Change in Accounting Procedures :
Including a Cost Recovery Mechanism. :

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

The Staff of the Public Utilities Commission of Ohio (“Staff”) has set forth a valid and reasonable list of deferral criteria that it uses to evaluate deferral requests.¹ In its Post-Hearing Brief, Duke Energy Ohio (“Duke” or “the Company”) mischaracterizes Staff Witness Lipthrott’s testimony regarding the criteria, as well as the origin and application of the criteria in past cases. The deferral criteria originated from an application filed by a company in a past case, and Staff has developed it into the six criteria presented in this case. Several of the criteria have been used by the Commission in past cases to

¹ See Prefiled Testimony of David M. Lipthrott (“Lipthrott Test.”) at 5-6 (Oct. 2, 2015).

review deferral requests. The Commission should apply Staff's deferral criteria to Duke's deferral request in this case and deny deferral.

DISCUSSION

A. The deferral criteria used by Staff to evaluate deferral requests is consistent with the Commission's review of past deferral requests.

The deferral criteria is supported by previous Commission decisions. Most recently, in Case No. 15-222-GA-AAM, Staff filed Review and Recommendations that listed the criteria.² Staff used the criteria there to review the deferral request and make its recommendation.³ The Commission granted Ohio Gas's deferral request, adopting Staff's recommendations in their entirety.⁴ By adopting Staff's recommendations, the Commission accepted Staff's use of the deferral criteria to evaluate the request.

Mr. Liphtratt properly represented the origin of Staff's deferral criteria. As Mr. Liphtratt testified, in Case No. 98-1701-WS-AAM, Citizens Utilities Company of Ohio put forth two of the six criteria now used by Staff for reviewing deferral requests: the problem is outside the control of the applicant and the expenditures are atypical and

² *In the Matter of the Application of the Ohio Gas Company for Approval to Change Accounting Methods*, Case No. 15-222-GA-AAM ("*In re Ohio Gas Co.*") (Staff's Review and Recommendations at 3) (May 15, 2015).

³ *Id.*; see also Tr. at 164.

⁴ *In re Ohio Gas Co.* (Finding and Order at 6) (Jul. 29, 2015); see also Tr. at 164. Although the deferral criteria is not listed in the Finding and Order, Duke need only look to Staff's Review and Recommendations to see what the Commission adopted in its Finding and Order.

infrequent.⁵ Mr. Lipthrott stated that the Citizens case was only the starting point for the criteria used today and it “began to grow from there.”⁶ The Commission does indeed acknowledge the criteria that Citizens put forth.⁷ The Commission ultimately decided to deny the deferral because Citizens did not provide sufficient information on the financial impact of the costs on the Company,⁸ which is actually another criterion for evaluating deferral requests.⁹

In its brief, the Company lists several cases in which the Commission granted a deferral for one-time costs.¹⁰ The Company, however, overlooked the reasoning used by the Commission in several of those cases. While the Commission may not have listed and numbered the criteria, it still used several of the criteria in its analysis in the cases

⁵ Tr. at 165; *see also In the Matter of the Application of Citizens Utilities Company of Ohio for an Order Approving Deferred Accounting for Year 2000 Compliance Costs*, Case No. 98-1701-WS-AAM (“*In re Citizens Utilities Co.*”) (Application at 3-4) (Dec. 29, 1998).

⁶ Tr. at 165.

⁷ *In re Citizens Utilities Co.* (Finding and Order at 1) (Apr. 29, 1999).

⁸ *Id.* at 2.

⁹ Lipthrott Test. at 5 (listing “financial harm to the Company” as a criterion).

¹⁰ Duke Brief at 3-4.

provided.¹¹ For instance, in Case No. 12-3224-GA-AAM, the Commission analyzed the deferral request by considering that the costs incurred were a necessary cost of doing business (outside of the control of the company), could negatively impact earnings if not deferred (financial harm to the company), and were not recovered in base rates (current level of costs included in the last rate case was insufficient).¹² In Case No. 14-1615-GA-AAM, the Commission again used several of the deferral criteria.¹³ It considered that the costs were incurred in complying with federal law (outside of the control of the company), may compromise the company's financial integrity if not deferred (financial harm to the company), and were not recovered in base rates (current level of costs included in the last rate case was insufficient).¹⁴ The criteria used by Staff here is found throughout the cases provided by Duke.

¹¹ See, e.g., *In the Matter of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods*, Case No. 09-371-GA-AAM (Entry at 2-3) (Jul. 8, 2009) (granting deferral because the expenses were “a necessary business cost,” outside of the company’s control); *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 09-712-GA-AAM (Finding and Order at 3) (Nov. 12, 2009) (granting deferral because the costs were incurred “in compliance with Ohio regulations and federal statutes); *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedures for Certain Storm-Related Service Restoration Costs*, Case No. 12-2281-EL-AAM (Finding and Order at 2) (Dec. 19, 2012) (granting deferral of expenses that are incremental to base rates); *In the Matter of the Application for Approval to Establish a Regulatory Asset*, Case No. 12-3224-GA-AAM; *In the Matter of the Application for Authority to Establish a Regulatory Asset*, Case No. 14-1615-GA-AAM.

¹² *In the Matter of the Application for Authority to Establish a Regulatory Asset*, Case No. 12-3224-GA-AAM (Finding and Order at 2-3) (Oct. 30, 2013).

¹³ *In the Matter of the Application for Authority to Establish a Regulatory Asset*, Case No. 14-1615-GA-AAM (Finding and Order at 15-19) (Dec. 17, 2014).

¹⁴ *Id.*

In providing those cases, Duke also sought to show that the Commission has granted deferral requests in past cases for one-time costs and requests that the Commission do so here. However, Mr. Liphtratt explains that “each case is unique” and must “be reviewed as a whole.”¹⁵ Duke must prove that deferral is warranted here based on the criteria provided by Staff.

The deferral criteria has been standardized by Staff recently in order to provide for a more uniform review of deferral requests. That is evident in recent cases, such as 15-222-GA-AAM and the case before us now.¹⁶ The fact that the criteria have been compiled into a list and numbered does not mean that they are new to Staff or the Commission. A careful reading of the authority provided by Mr. Liphtratt and Duke reveals that this criteria is not “random and unsupported;” it did not “originate out of nowhere.” It is supported by past cases and should be applied here by the Commission.

¹⁵ Tr. at 166.

¹⁶ On December 9, 2015, Staff filed a letter recommending deferral in Case No. 15-855-GA-AAM. Staff listed the criteria in that letter.

B. The one-time fixed charge for IT system change costs should not be granted deferral because it does not meet the deferral criteria.

Duke has not met the criteria set forth by staff for determining the deferral of costs. Duke has not shown that the level of costs included in the last rate case was insufficient.¹⁷ In fact, Duke ignores that criteria and criticizes Staff for not proposing an alternative method for recovering IT costs.¹⁸ Because Staff found that the IT costs were included in base rates,¹⁹ Duke is already recovering these costs. There is no need to suggest another method for recovery. Staff also found that the IT costs were not material in nature and would not cause financial harm to the Company if not granted deferral. And the costs are not atypical or infrequent. Therefore, the one-time fixed charge for IT system change costs must not be granted deferral.

The Commission cannot rubber stamp the Company's application simply because the Company is aware of their costs. Duke is only in the best position to provide sufficient information concerning its costs to the Commission for review. Because Duke has failed to do that, the Commission should deny deferral and grant recovery as proposed by Staff.

¹⁷ See OCC Ex. 3, Testimony of James D. Williams at 11-12 (Sep. 18, 2015) (Duke claims information requested by OCC was not available to confirm its total annual costs for billing system changes incurred during the test year for its last electric distribution rate case and what it has incurred each year since its last distribution rate case.).

¹⁸ Duke Brief at 5.

¹⁹ Liphtratt Test. at 6.

CONCLUSION

The Commission should apply the deferral criteria set forth by Staff to review Duke's deferral request. Because Duke's IT costs do not meet the deferral criteria, the Commission should deny deferral.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 15th day of December, 2015.

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Summary: Reply Brief submitted by Assistant Attorney General Natalia Messenger on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio