BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates.	)))	Case No. 17-0032-EL-AIR
In the Matter of Application of Duke Energy Ohio, Inc. for Tariff Approval.	))	Case No. 17-0033-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)))	Case No. 17-0034-EL-AAM

OBJECTIONS TO THE STAFF REPORT SUBMITTED BY
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. Introduction

On January 31, 2017, Duke Energy Ohio, Inc. (Duke) filed a notice of intent to file an application for an increase in its electric distribution rates with the Public Utilities Commission of Ohio (Commission).[1] On February 23, 2017, the Commission granted Duke's request to waive certain filing requirements applicable to Duke's generation and fuel related information.[2] The Commission also ordered that the test period begin April 1, 2016 and end March 31, 2017, and it set the date certain as June 30, 2016.[3] On March 2, 2017, Duke filed its application for an increase in its electric distribution rates.[4]

The Staff of the Commission (Staff) filed its Staff Report of Investigation (Staff Report)

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1 Pre-filing Notice of Duke Energy Ohio, Inc. at 1 (January 31, 2017).

2 *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates et al.*, Case Nos. 17-0032-EL-AIR et al., Entry at 4 (February 23, 2017) (February 23, 2017 Entry) and Entry at 2 (February 27, 2017) (amending the February 23, 2017 Entry nunc pro tunc).

3 February 23, 2017 Entry at 4.

4 Application of Duke Energy Ohio, Inc. for an Increase in its Electric Distribution Rates at 1 (March 2, 2017) (Application).

in the above-captioned proceeding on September 26, 2017. On October 12, 2017, Staff filed a supplement to its Staff Report. Pursuant to R.C. 4909.19, and Rule 4901-1-28, Ohio Administrative Code (O.A.C.), The Ohio Manufacturers' Association Energy Group (OMAEG) hereby respectfully submits its objections to the Staff Report.

OMAEG reserves the right to supplement or modify these objections in the event that Staff makes additional findings, conclusions, or recommendations with respect to the Staff Report. OMAEG also reserves the right to respond to objections or other issues (either in support or opposition) raised by other parties in these proceedings.

II. Objections

A. Appropriateness of Staff's Recommended Revenue Requirement and Allocation Among the Customer Classes

Although the Staff Report recommends a revenue decrease from -3.77% to -5.94%,[5] OMAEG objects to the Staff-recommended revenue requirement and resulting revenue. The recommended revenue requirement is excessive and will result in unjust and unreasonable rates. More specifically, OMAEG objects to Staff's recommended rate of return in the range of 7.2% to 7.74% as Staff failed to account for the reduced risk to Duke as the sole provider of distribution service in its service territory and as a recipient of automatic cost recovery through various riders.[6]

Duke is the exclusive provider of electric distribution service in its service territory. Further, distribution cost recovery riders, such as Duke's Delivery Capital Investment Rider, Distribution Storm Rider, Distribution Decoupling Rider, and its Uncollectable Expense – Electric Distribution Rider, among others, effectively eliminate Duke's risk of recovery for

[5] Staff Report at 6.

[6] Id. at 18. OMAEG notes that Staff's recommended rate of return on page 18 of the Staff Report is inconsistent with the rate of return indicated on Line No. 4 to Schedule A-1 of the Staff Report.

certain costs associated with the distribution system. These riders ensure that Duke will recover its dollar for dollar costs. As a result, Duke faces little risk under the current regulatory regime guaranteeing recovery of certain costs. The Staff Report fails to reduce the rate of return to sufficiently reflect Duke's reduced risk to provide electric distribution service.

Further, OMAEG objects to Staff's application of the revenue requirement reduction among the customer classes.[7] Rather, OMAEG proposes that Staff's recommended revenue requirement reduction should be allocated among the customer classes in accordance with Duke's class revenue distribution. This would result in a more equitable application of Staff's recommended revenue requirement reduction for the customer classes.

B. Delivery Capital Investment Rider (Rider DCI)

In its Application, Duke requested modification of Rider DCI[8] to include recovery for all general, intangible, and common plant, among other modifications, and to extend its term indefinitely. In its Staff Report, Staff recommended that the Commission reject Duke's proposed modifications to Rider DCI explaining that "[t]he proposed modifications are unnecessary and not germane to a distribution investment rider as has been adopted by the Commission in non-stipulated, previously contested cases in which it rendered a decision on each of the merits of such requests."[9] Notwithstanding this recommendation, Staff also recommended to continue Rider DCI is these proceedings through May 31, 2024 and establish new revenue caps.[10]

OMAEG objects to Staff's recommendation to continue Rider DCI through

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[7] See Staff Supplement to Staff Report at Table 4 (October 12, 2017).

[8] Rider DCI was established in Duke's application for an electric security plan pursuant to R.C. 4928.143. See *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service, et al.*, Case Nos. 14-841-EL-SSO, et al., Opinion and Order at 71-72 (April 2, 2015) (Duke ESP III Order).

[9] Staff Report at 9.

[10] Id.

May 31, 2024[11] in these proceedings and the recommended revenue caps. Specifically, OMAEG objects to Staff's failure to recommend that Rider DCI terminate and that Duke recovery any costs associated with incremental plant through the rate case in accordance with R.C. 4909.18.

In its last electric security plan (ESP) case, Duke proposed the nonbypassable Rider DCI, *pursuant to R.C. 4928.413(B)(2)(h)*, seeking to recover a return on capital investment to support programs Duke considered vital to maintain customer reliability.[12] Staff and other parties to that proceeding recommended that the rider sunset at the conclusion of the ESP and that Duke recover any incremental plant in its next rate case.[13] In its ESP III Order, the Commission approved Duke's proposed Rider DCI, as modified by the order, and found that Rider DCI was authorized by R.C. 4928.143(B)(2)(h). The Commission also held that "general plant should not be included in the rider" and that "[t]he inclusion of general plant would go beyond the intent of the statute, which is geared towards reliability infrastructure."[14]

R.C. 4928.143(B)(2)(h) governs which provisions described in division (B)(2)(h) of this section may be included in an electric distribution utility's *ESP*. Neither R.C. 4909.18, nor any related statutes, authorize Duke to extend or modify Rider DCI in this proceeding. In fact, Duke also requested the same extension and modification of Rider DCI in its fourth ESP case.[15] In its ESP IV Application, Duke also requested an indefinite extension of Rider DCI and proposed modifying the structure of the rider to include distribution-related common, general, and

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[11] Staff recommends extending Rider DCI through May 31, 2024, provided that Duke files for a rate case by May 31, 2023. Id.

[12] See ESP III Order at 66.

[13] Id. at 69.

[14] Id. at 72.

[15] *In the Matter of the Application of Duke Energy Ohio, Inc., 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 Service, et al.*, Case Nos. 17-1263-EL-SSO, Application at 12 (June 1, 2017) (ESP IV Application).

intangible plant.[16] It is uncertain whether Duke is requesting the Commission to approve its proposed extension and modification of Rider DCI in both of these proceedings, or in just one. It is also uncertain whether any amount approved to be recovered under Rider DCI would be cumulative in the event the Commission grants approval in both the rate case and the ESP proceeding.

Additionally, as contemplated in the ESP III case, Rider DCI was only to be in effect until the next rate case. Upon implementation of new base rates, Rider DCI should be eliminated or, at a minimum, reset to $0. As such, OMAEG objects to Staff's proposed revenue caps set forth in the Staff Report.

Staff's recommendation to extend Rider DCI *in this proceeding* through at least May 31, 2023, is inconsistent with the statutory framework governing an application to increase electric distribution rates pursuant to R.C. 4909.18 and the fixation of those rates.[17] Accordingly, OMAEG objects to Staff's recommendation to continue Rider DCI beyond its current term. Any modifications to Rider DCI, including but not limited to extensions, is improper in this rate case and should be rejected by the Commission. Further, because Duke's proposed extension and modification of Rider DCI is duplicative of its ESP Application, it would be unreasonable to waste the Commission's and parties' time and resources litigating the merits of Duke's proposals regarding Rider DCI in this rate case proceeding.

The Commission should reject Duke's proposals regarding Rider DCI in this proceeding and find that Rider DCI should sunset on May 31, 2018, and any purported costs associated with infrastructure investment should be considered in the context of Duke's overall distribution

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[16] Id.

[17] See R.C. 4909.15.

revenues and expenses and whether it is attributed to a cost to Duke of rendering service for the test period.

C. Distribution Decoupling Rider (Rider DDR)

On November 2, 2011, the Commission approved a stipulation filed by Duke and various parties, which provided for Duke to offer an ESP.[18] The approved stipulation also provided that Duke would file an application for a distribution revenue decoupling mechanism, which it did in Case No. 11-5905-EL-RDR. In the Commission's May 30, 2012 Finding and Order issued in Case No. 11-5905-EL-RDR, the Commission approved Duke's application to implement a three-year distribution revenue decoupling pilot through Rider DDR that ran from January 1, 2012 through December 31, 2014.[19] In its ESP III Order, the Commission approved the continuation of Rider DDR until the next distribution base rate case. The Commission noted that according to Duke, Rider DDR "is intended to adjust rates between rate cases" and "Duke says it intends to maintain this rider until the next distribution base rate case."[20] Indeed, Duke's Rider DDR tariff sheet also indicates that Rider DDR rates will continue "[a]s a three-year pilot program or until [Duke's] next distribution rate case . . . ."[21] On February 10, 2017, Duke filed an application to adjust Rider DDR rates.[22] Contrary to Duke's commitment to maintain Rider DDR *until* its next

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[18] *In the Matter of Application of Duke Energy Ohio, Inc. 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 Service, et al.*, Case Nos. 11-3549-El-SSO, et al., Opinion and Order (November 22, 2011) (ESP II Order).

[19] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider*, Case No. 11-5905-EL-RDR, Finding and Order at 14-15 (May 30, 2012).

[20] ESP III Order at 76.

[21] See Duke Tariff Sheet P.U.C.O Electric No. 19, Sheet No. 122.3, Issued August 4, 2016, Effective August 30, 2016.

[22] See *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Adjust Rider DDR*, Case No. 11-5905-EL-RDR, Application (February 10, 2017).

distribution base rate case, Duke is proposing to continue Rider DDR through this proceeding.[23] Duke is also proposing the same continuation of Rider DDR in its current ESP IV Application filed June 1, 2017.[24]

OMAEG objects to the Staff Report to the extent Staff fails to recommend denying Duke's proposal to continue Rider DDR in this proceeding because (1) Rider DDR is not properly before the Commission in an application to increase its electric distribution rates, (2) Rider DDR was intended to terminate upon the approval of new distribution rates in this case, and (3) because Duke's request to continue Rider DDR is unnecessarily duplicative of its request in its ESP IV Application.

Again, R.C. 4928.143(B)(2)(h) governs which provisions described in division (B)(2)(h) of this section may be included in an electric distribution utility's *ESP*. Neither R.C. 4909.18, nor related statutes, authorize Duke to extend or modify Rider DDR.

Second, the Commission approved Rider DDR on the condition that it would continue until Duke's next distribution base rate case. The need to adjust rates between rates cases is lost with the implementation of new base rates. Accordingly, because Rider DDR was intended to terminate upon approval of base distribution rates in this proceeding, and because proposed modifications to this rider are not proper in this distribution rate case proceeding, Staff should have recommended rejecting Duke's proposed continuation of Rider DDR. Therefore, OMAEG objects to Staff's failure and recommends that the Commission reject any modifications to, and any continuation of, Rider DDR in this proceeding.

Again, litigating the merits of Rider DDR in this rate case proceeding is unnecessary given that Duke has made an identical proposal in its ESP IV Application. Even though the

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[23] See Direct Testimony of James A. Riddle at 8:3 (March 16, 2017).

[24] ESP IV Application at 13-14.

Commission should reject any continuation of, or modification to, Rider DDR, at the very least, the Commission should only consider Duke's proposal in the ESP IV case.

D. Regulatory Mandates Rider (Rider RMR)

In its application to increase electric distribution base rates pursuant to R.C. 4909.18, Duke seeks the Commission's approval to *establish* Rider RMR "to recover incremental costs associated with changes in federal, state, or local regulations or laws, including directives from the Commission, that result in costs that are not being recovered in base rates."[25] Although "Staff does not recommend approval of the proposed Regulatory Mandates Rider," Staff failed to specifically identify the rationale for recommending that Rider RMR not be approved in this proceeding.

More specifically, Staff failed to explain that Rider RMR is not authorized by R.C. 4909.18 and related statutes, or that Duke cannot show that it has incurred any costs associated with changes in regulations or law attributable to the cost of rendering public utility service in the test period. OMAEG objects to the extent Staff failed to specifically conclude that Duke's proposed Rider RMR is unlawful and improper as no costs have been incurred. At a minimum, Rider RMR is premature because Duke cannot estimate costs associated with other regulatory proceedings or directives that may occur sometime in the future.

Staff also failed to recognize that Rider RMR is inconsistent with the Commission's holding in AEP Ohio's ESP III case where the Commission rejected AEP Ohio's proposed NERC compliance and cyber security rider (Rider NCCR), finding that the placeholder rider was premature and noting the lack of specificity of future potential costs for AEP Ohio.[26]

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[25] Direct Testimony of William Don Wathen, Jr. at 6:16-21 (March 16, 2017).

[26] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.13 in the Form of an Electric Security Plan, et al.*, Case Nos. 13-2385-EL-SSO, et al., Opinion and Order at 62 (Feb. 25, 2015) (AEP ESP III Order).

Accordingly, Staff should have specifically stated that it would be more prudent for Duke to request, and for the Commission to review, specific cost recovery proposals associated with government initiatives and directives as they occur.

Further, like Rider DCI and Rider DDR discussed above, Duke proposed to establish an identical Rider RMR in its ESP IV Application.[27] As argued above, litigating duplicative riders in the ESP IV proceeding and in this rate case proceeding is a waste of time and resources. Accordingly, OMAEG objects to Staff's failure to recommend rejection of Rider RMR on specific grounds, including the illegality and inappropriateness of seeking the rider through Duke's rate case.

Respectfully submitted,

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[27] See ESP IV Application at 16.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on October 26, 2017.

/s/ James D. Perko, Jr.
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