

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY OHIO, INC. FOR
APPROVAL TO CHANGE ACCOUNTING
METHODS.**

CASE NO. 17-2118-GA-AAM

FINDING AND ORDER

Entered in the Journal on April 18, 2018

I. SUMMARY

{¶ 1} The Commission denies the application of Duke Energy Ohio, Inc. to establish a regulatory asset and defer, for accounting purposes, the related expenditures for constructing a landslide retaining wall in an area bordering the Ohio River.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission, pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-13-13, the Commission adopted the Uniform System of Accounts (USOA), which was established by the Federal Energy Regulatory Commission, for gas and natural gas companies in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of gas or natural gas companies operating within the state.

{¶ 4} On October 12, 2017, Duke filed an application seeking authority to establish a regulatory asset and defer, for accounting purposes, the related expenditures for constructing a landslide retaining wall in an area bordering the Ohio River.

{¶ 5} On October 24, 2017, the attorney examiner issued an Entry setting forth a procedural schedule for this proceeding and soliciting comments from interested parties.

{¶ 6} On November 21, 2017, Staff filed its review and recommendation (Staff Report). Additionally, the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) filed comments. On December 1, 2017, Duke and OCC filed reply comments.

{¶ 7} On April 16, 2018, the city of Cincinnati filed a letter in support of Duke's application.

A. *Procedural Matters*

{¶ 8} OCC and OPAE timely filed motions to intervene in this proceeding on November 6, 2017, and November 20, 2017, respectively.

{¶ 9} In its memorandum in support of its motion to intervene, OCC argues it has authority under R.C. Chapter 4911 to represent the interests of Ohio's residential utility customers and that the interests of such customers may be adversely affected by this proceeding because residential customers will likely pay charges for the deferred costs. OCC further submits that its participation will not unduly prolong or delay the proceeding and that its advocacy will significantly contribute to the full development and equitable resolution of the issues.

{¶ 10} Similarly, OPAE explains that it is an Ohio non-profit corporation with the stated purpose of advocating for affordable energy policies for low and moderate income Ohioans, many of whom are customers receiving natural gas service from Duke. OPAE asserts that those constituting its wide customer base may also be adversely affected by

the outcome of this proceeding. OPAE further submits that its participation will not cause undue delay and will contribute to the just and expeditious resolution of the issues.

{¶ 11} No memoranda contra the motions to intervene were filed.

{¶ 12} The Commission finds that the motions to intervene filed by OCC and OPAE comply with the requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, and should, therefore, be granted.

B. Summary of Application

{¶ 13} In its application, Duke explains that a portion of the Company's service area has experienced an active landslide that is endangering a 20-inch natural gas pipeline. Duke notes that the area at issue borders the Ohio River and has been subject to slow creep-type movement for more than 15 years until the movement accelerated in mid-2016, causing damage to structures and shifting of underground sewer lines. A study by the Cincinnati Department of Transportation and Engineering resulted in a recommendation that a retaining wall be constructed, and the city of Cincinnati chose one of the proposed locations above the area of the landslide, for protection of buried infrastructure owned by Duke and the city. According to Duke, the cost of replacing the natural gas pipeline through the area would be approximately \$3 million. As a beneficiary of the retaining wall, Duke agreed to pay \$3 million to the city of Cincinnati toward the cost of constructing the landslide retaining wall.

{¶ 14} In support of its request, Duke notes that testing across the area of the landslide demonstrated that, without addressing the land movement, the pipeline would be at extreme risk and that there is an urgent need to slow the current rate of movement. According to Duke, relocation of the pipeline was not an option due to the substantial time associated with proper engineering, permitting, and construction and the need to complete the work before the winter heating season.

{¶ 15} Additionally, Duke states that the pipeline is a vital and integral part of its natural gas distribution system, as it provides necessary system flexibility and reliability, and has approximately 50 connected gas service lines that could also be impacted by continued landslide movement. Duke contends that its ability to reliably serve its natural gas customers, as required by R.C. 4905.22, was in peril and that its contribution toward the retaining wall was the most prudent and reasonable means of maintaining a safe and reliable system in the impacted area, particularly as compared with the relocation of the pipeline. Duke adds that the construction expenditure is a highly irregular and unanticipated expense that is not included in base rates and arose from an urgent issue outside of its control.

{¶ 16} Accordingly, Duke requests authority to defer the \$3 million for its share of the retaining wall's construction costs. Duke concludes that Commission approval for this deferral accounting treatment is necessary for Duke to assert probability of recovery of such expenditures under generally accepted accounting principles. Duke also requests authority to recover carrying costs on the deferred balance, based on its actual cost of long-term debt. Duke proposes to record this cost as a regulatory asset on its balance sheet. Duke notes that the recovery of the deferred amount will be addressed in a separate proceeding.

{¶ 17} Lastly, Duke submits that the requested change in accounting procedure will not result in an increase in any rate or charge, and, therefore, the Commission may approve the application without a hearing.

C. *Staff Recommendation and Comments*

{¶ 18} In its review and recommendation, Staff explains that it reviewed Duke's application and concluded that the Company's request to defer expenses, related to constructing a landslide retaining wall in an area bordering the Ohio River, should be denied (Staff Report at 4). Initially, Staff notes that it does not oppose Duke's decision to

contribute to the cost of the retaining wall. According to Staff, the question is whether the retaining wall should be funded as a normal business expense or deferred for potential recovery in future rates. (Staff Report at 3.) In reviewing deferral requests, Staff uses the following criteria:

- (1) Are the utility's current rates or revenues sufficient to cover the costs associated with the requested deferral?

Staff argues that Duke's application does not address whether or not revenue generated by its current rates is sufficient or insufficient to cover the expenses it is seeking to defer for the retaining wall. Staff notes that customers should not be expected to pay for a new expense, when the current rates already provide the utility with sufficient revenue. (Staff Report at 3.)

- (2) Are the costs material?

Staff states that Duke's application does not address materiality of the requested deferral amount. In Staff's opinion, the \$3 million deferral request is not material, as it is less than one percent of the total operating expenses accounted for in Duke's current base rates. (Staff Report at 3.)

- (3) Are the reasons for requesting the deferral outside the utility's control?

Staff notes that an unexpected landslide is outside of Duke's control, but that Duke provided nothing in the record indicating that its pipeline is at imminent risk of damage from landslides in the area. (Staff Report at 3-4.)

- (4) Are the expenses atypical and infrequent?

Staff agrees that expenses from the landslide are atypical and likely infrequent, but points out that there is no guarantee that the retaining wall will be fully effective and that Duke will not come back seeking additional deferrals if it is not. (Staff Report at 4.)

- (5) Will the financial integrity of the utility be significantly and adversely affected, if the deferral is not granted?

Staff opines that, given the very small size of the deferral request relative to the expenses built into the Company's base rates, Duke's financial position will not be affected if the Commission denies its deferral request. (Staff Report at 4.)

{¶ 19} Staff believes this request does not meet the deferral criteria listed above and recommends that Duke's application be denied. Staff states that Duke has failed to meet its burden of proof to demonstrate that it needs or should be granted authority to defer expenses associated with its contribution towards construction of the retaining wall. (Staff Report at 4.)

{¶ 20} OPAE argues that Duke is attempting to establish a right to collect the deferred expenses from ratepayers. OPAE notes that, under Ohio law, customers pay in base rates only for expenses that are ordinary and necessary for the provision of utility service in the test year established in a base rate proceeding. OPAE further opines that the recovery of the deferred amounts should be addressed in a base rate proceeding should Duke ever seek to recover the deferrals from ratepayers. OPAE requests that the Commission find that the allowance of the deferrals is not conclusive for ratemaking. (OPAE Comments at 1-2.)

{¶ 21} OCC argues Duke's application for deferral authority should be denied. OCC opines that Duke's application fails to show that the costs associated with the retaining wall are an ordinary and necessary expense associated with providing service

to customers. Further, OCC argues that Duke's application asks for authority to create a regulatory asset that is based solely on its avoided costs of relocating a pipeline. Noting that the regulatory asset will later be used to create a charge for residential customers, OCC contends that it would be inappropriate to base the residential customer charge entirely on avoided costs, as charges based on such costs have historically only been used for wholesale and commercial customers. OCC adds that avoided costs are generally used as one of many factors in determining a rate and that such costs are used to reduce the amount customers pay, not increase it. OCC also states that Duke's application does not meet the Commission's standards for deferrals. OCC asserts that Duke has not demonstrated both exigent circumstances and good cause for its deferral request or established that the expenses in question exceed amounts already included in its base rates. Finally, OCC notes that, because Duke was not required by the city of Cincinnati to contribute to the cost of building the retaining wall, the Company's contribution should not be considered a cost of providing service to its customers. (OCC Comments at 1-7.)

{¶ 22} In its reply comments, OCC reiterates that Duke's application for deferral authority should be denied because it fails the Commission's standards and there is no basis for allowing Duke to collect from customers its voluntary contribution to the city of Cincinnati (OCC Reply at 1-9).

{¶ 23} On reply, Duke argues that the requested deferral is based on an actual expenditure of \$3 million that Duke paid towards the engineering work and construction of the retaining wall. Noting that "ordinary and necessary" is not an appropriate standard, Duke further argues that OCC's argument that the expenses were not ordinary and necessary is not based on law or fact and should be ignored. Duke states that its application does meet the Commission's criteria for deferrals because the Commission often grants deferral authority without considering every one of the factors listed in the Staff Report. Duke opines that it is not a requirement that each and every one of the

factors be demonstrated or even discussed. Lastly, Duke asserts that Staff erred in its evaluation of the criteria. (Duke Reply at 1-10.)

D. Commission Conclusion

{¶ 24} The Commission evaluates applications for authority to establish a regulatory asset and to defer incurred expenses based primarily on a utility's demonstration of the following factors: whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral; whether the costs are material; whether the reason for requesting the deferral is outside the utility's control; whether the expenses are atypical and infrequent; and whether the financial integrity of the utility will be significantly and adversely affected, if the deferral is not granted. *See, e.g., In re Duke Energy Ohio, Inc.*, Case No. 16-387-GA-AAM, Opinion and Order (Jan. 4, 2017); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1741-GA-AAM, Opinion and Order (Nov. 3, 2016); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1238-GA-AAM, Finding and Order (July 6, 2016); *In re Duke Energy Ohio, Inc.*, Case No. 09-1097-GA-AAM, Finding and Order (Mar. 24, 2010); *In re The Dayton Power & Light Co.*, Case No. 08-1332-EL-AAM, Finding and Order (Jan. 14, 2009); *In re Citizens Utilities Co. of Ohio*, Case No. 98-1701-WS-AAM, Finding and Order (Apr. 29, 1999); *In re The Ohio Suburban Water Co.*, Case No. 92-1130-WW-AAM, Entry (Dec. 17, 1992); *In re The Cincinnati Gas & Elec. Co.*, Case No. 90-2017-EL-AAM, Entry (Mar. 14, 1991). Further, the Commission may, at its discretion, grant a deferral to incent a utility.

{¶ 25} After evaluating the application based on the Company's demonstration of factors commonly used by the Commission, we find that Duke has not shown, on balance, that its deferral request should be approved. In its application, Duke states that its contribution is an irregular and unanticipated expense that is not included in its base rates (Duke Application at 5). The Company, however, has not alleged that it cannot cover its expenses with the revenue generated from its current rates, or shown that the \$3 million contribution is material in nature. Additionally, the Company's application

provides no evidence that, if the deferral request is denied, Duke's financial integrity will be adversely impacted. According to Staff, given the small amount of the deferral request relative to the expenses reflected in Duke's base rates, the Company's financial position will not be affected (Staff Report at 4). Duke also states that the construction of the retaining wall was an urgent issue and that its contribution to the city of Cincinnati for construction of the retaining wall is a reasonable expense towards maintaining a safe and reliable system (Duke Application at 5). While we agree that a landslide is an atypical and infrequent occurrence and that Duke appropriately coordinated with the city of Cincinnati to address the issue, the Company's cost associated with building the retaining wall is part of maintaining a safe and reliable system. Therefore, after consideration and weighing of the factors the Commission commonly uses to evaluate deferral applications, the Commission finds Duke's application to establish a regulatory asset and defer expenses incurred for construction of a retaining wall should be denied.

{¶ 26} Finally, the Commission's consideration of Duke's deferral application does not constitute ratemaking and, therefore, a hearing is not necessary. *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176.

III. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the motions to intervene filed by OCC and OPAE be granted. It is, further,

{¶ 29} ORDERED, That Duke's application for authority to establish a regulatory asset and defer expenses incurred for construction of a retaining wall be denied. It is, further,

{¶ 30} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 31} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



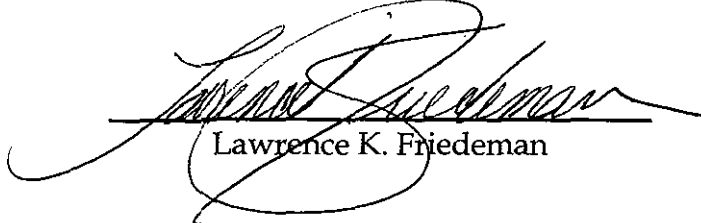
Asim Z. Haque, Chairman



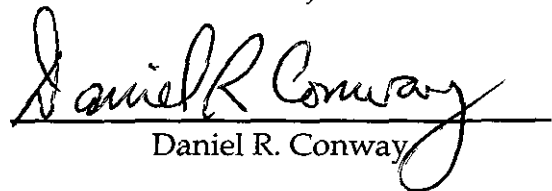
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

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Barcy F. McNeal
Secretary