BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, And Performance Incentives Related to its Energy Efficiency and Demand Response Programs.	))))))	Case No. 18-397-EL-RDR

OBJECTIONS OF INDUSTRIAL ENERGY USERS-OHIO

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Even though Duke Energy Ohio, Inc. ("Duke") was collecting rates producing $18 million to $29 million per year in revenue above a fair and reasonable level, Duke seeks to collect an additional $2 million per year in "lost" distribution revenue through its application to update its Energy Efficiency and Peak Demand Reduction Rider ("EE/PDR Rider"). Under Rule 4901:1-39-07(B), Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") objects to Duke's request to recover through its EE/PDR Rider lost distribution revenue for the period of April 1, 2016 through December 31, 2018 because its existing distribution revenue was already producing unjust and unreasonable returns. To correct for this error, approximately $6.5 million of lost distribution revenue requested by Duke should be removed from the proposed revenue requirement for its EE/PDR Rider.

I. **OBJECTION: Duke's proposed EE/PDR Rider revenue requirement and rates are overstated because Duke has failed to demonstrate it has lost distribution revenue since at least April 1, 2016*.***

Collection of so-called "lost" revenue resulting from the implementation of an EE/PDR portfolio plan is not guaranteed. R.C. 4928.66(D) provides the Public Utilities Commission of Ohio ("Commission") with the discretion to establish rules that allow an electric distribution utility ("EDU") to seek to implement a revenue decoupling mechanism to collect revenue that otherwise may be foregone from the implementation of an EE/PDR plan.[1] Pursuant to this Section, the Commission adopted Rule 4901:1-39-07(A), O.A.C., which authorizes an electric utility to file an application to recover costs associated with the implementation of an approved EE/PDR plan as well as the collection of "appropriate lost distribution revenues, and shared savings." To secure authorization for the collection of lost distribution revenue, a utility must demonstrate on the record the amount of "lost" revenue "necessary to provide [the utility] with the opportunity to recover its costs and to earn a fair and reasonable return."[2] Duke, however, cannot demonstrate that any lost distribution revenue post-April 1, 2016 is appropriate or necessary to provide Duke with the opportunity to recover its costs and earn a reasonable rate of return.

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[1] This section provides:

> The commission ***may*** establish rules regarding the content of an application by an electric distribution utility for commission approval of a ***revenue decoupling mechanism*** under this division. Such an application shall not be considered an application to increase rates and may be included as part of a proposal to establish, continue, or expand energy efficiency or conservation programs. The commission by order may approve an application under this division if it determines both that ***the revenue decoupling mechanism provides for the recovery of revenue that otherwise may be forgone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs*** and reasonably aligns the interests of the utility and of its customers in favor of those programs. (Emphasis added).

[2] *See In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case Nos. 09-1089-EL-POR, *et al.*, Opinion and Order at 26 (May 13, 2010).

To recover lost distribution revenue, the Commission has determined that a utility must be able to justify its request on the record; absent such a demonstration the Commission has denied recovery of lost distribution revenue.[3] In AEP-Ohio's first portfolio plan case, for example, several parties entered a stipulation recommending that AEP-Ohio be permitted to collect lost distribution revenue for the period of 2010 through 2012.[4] IEU-Ohio opposed that request, arguing that AEP-Ohio's testimony in support of the lost distribution revenue request failed to demonstrate that any distribution revenue was lost and instead only explained the math used by AEP-Ohio to calculate lost distribution revenue.[5] The Commission agreed that the record before it failed "to establish what revenue is necessary to provide AEP-Ohio with the opportunity to recover its costs and to earn a fair and reasonable return."[6] The Commission's decision was based in part on the time that had passed since AEP-Ohio's last rate case and, therefore, the inability to quantify AEP-Ohio's distribution costs.[7] "Without this information," the Commission concluded, it could not "determine whether the … [lost distribution revenue] proposal included in Section F of the Stipulation is reasonable."[8]

In another analogous case, the Commission denied a request by Duke to defer certain costs, in part, because Duke did not allege or demonstrate that the revenue generated from existing distribution rates did not cover the expense Duke sought authority

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[3] *Id.*

[4] *Id.* at 13-14.

[5] *Id.* at 24-26.

[6] *Id.* at 26.

[7] *See id.*

[8] *Id.*

to defer.[9] Again, in instances where a utility sought special treatment to increase the recovery of distribution revenue, the Commission required a demonstration that existing rates were insufficient to produce a level of revenue that would provide the opportunity to recover costs and earn a fair and reasonable return.

Similar to the results in the AEP-Ohio lost distribution revenue case and the Duke deferral case, in this case Duke cannot justify its request for lost distribution revenue based upon a review of the revenue produced by existing distribution rates.

To support its application, Duke relies on historical information from 2013 to 2017 and projected information for 2018. Although Duke has several pending applications to adjust its EE/PDR Rider, the last Commission-approved update to Duke's EE/PDR Rider took effect on May 1, 2014.[10] That update was based on projected costs through the end of 2013.[11] In the pending application filed on March 29, 2018, Duke provides a true-up of costs for 2013, a review of the historical costs from 2014 through 2017, and the recovery of projected costs through the end of 2018. In support of Duke's application, Mr. Ziolkowski states in Attachment JEZ-1 that the annual amount of lost distribution revenue is as follows:[12]

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[9] *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 (Apr. 18, 2018) ("*Duke Deferral Case*").

[10] *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 13-753-EL-RDR, Direct Testimony of James E. Ziolkowski at Attachment JEZ-1 (Mar. 28, 2013); and Revised Tariff Pages PUCO Tariff No. 19 (Apr. 9, 2014).

[11] *Id.*

[12] Direct Testimony of James E. Ziolkowski, Attachment JEZ-1 at page 15 of 15 (Mar. 29, 2018). In Attachment JEZ-1, page 15 of 15, Mr. Ziolkowski identifies the 3-year total of lost distribution revenue for 2012-2014 and provides references to the former cases where those amounts were originally identified. In one of these former cases, the 2013 and 2014 annual portion of lost distribution revenue was separately identified as $1,742,720 and $2,108,108, respectively. *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 15-534-EL-RDR, Direct Testimony of James E. Ziolkowski, Attachment JEZ-1, page 10 of 10 (Mar. 30, 2015) (testimony included with Part 1 of the Application filing).

2013	$1,742,720
2014	$2,108,108
2015	$1,940,545
2016	$2,137,750
2017	$2,801,537
2018	$2,097,400

The above-identified lost distribution revenue, along with other cost and revenue components, flows through to the total revenue requirement and rates that Duke seeks authorization of in this proceeding.[13]

The claims concerning lost distribution revenue, however, are not credible when compared to the recent Staff findings in Duke's pending distribution rate case. In the rate case, Duke sought to increase its base distribution rates based on a test period of April 1, 2016 through March 31, 2017. The Staff of the Commission has completed a review of Duke's pending request to increase its distribution rates and determined that Duke's existing distribution rates were producing revenue well in excess of the level necessary to provide Duke with an opportunity to recover its costs and earn a fair and reasonable rate of return.[14] To this end, the Staff recommended a distribution revenue decrease in the range of $18.4 million to $28.9 million.[15]

Based upon the Staff Report in the rate case, Duke cannot demonstrate that it had "lost" distribution revenue beginning with the test year in the rate case on April 1, 2016. Initially, Duke's application, like AEP-Ohio's flawed application, provides a mathematical

[13] Direct Testimony of James E. Ziolkowski, Attachment JEZ-1, page 15 of 15 (Mar. 29, 2018).

[14] *See In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al.*, Staff Report at 6 (Sep. 26, 2017).

[15] *Id.* A stipulation and recommendation has been filed that, if approved, would resolve the rate case. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al.*, Stipulation and Recommendation, (Apr. 13, 2018).

tabulation of lost distribution revenue but not a cost justification for the request.[16] Furthermore, such a quantification would be impossible in light of the comprehensive audit and recommendation reflected in the Staff Report. Simply put, Duke has not "lost" $2 million per year in distribution revenue; it has found $18 million to $29 million per year above the level necessary to provide Duke with the opportunity to recover its costs and earn a fair and reasonable rate of return. Duke's request for lost distribution revenue beginning with the start of the test year in the rate case, April 1, 2016, is not justified.

To rectify Duke's unjustified request for lost distribution revenue post-April 1, 2016, the Commission should reduce Duke's proposed revenue requirement for its EE/PDR Rider by $6.5 million. This reflects the removal of Duke's 2016 request post-April 1, 2016 (9/12ths of $2,137,750), the removal of Duke's request for 2017 ($2,801,537), and the removal of Duke's request for 2018 ($2,097,400). In a future proceeding, Duke could seek to demonstrate an appropriate amount of lost distribution revenue following the effective date of new distribution rates in Case Nos. 17-32-EL-AIR, *et al.*

II. <u>CONCLUSION</u>

Duke seeks to update its EE/PDR Rider rates based on a true-up and projection of costs that includes lost distribution revenue. The Commission Staff, however, has determined that for the test period of April 1, 2016 through March 31, 2017, Duke's existing distribution rates were producing revenue between $18 million and $29 million above the level necessary to provide Duke with the opportunity to recover its costs and earn a fair and reasonable return. Because Duke's distribution rates are already producing a substantial windfall for Duke, there is no basis to determine that the

[16] *See* Direct Testimony of James E. Ziolkowski at 4-6 (Mar. 29, 2018); Testimony Attachment JEZ-1 (Mar. 29, 2018).

implementation of Duke's EE/PDR plan resulted in "lost" distribution revenue for this same period of time. Additionally, Duke fails to provide the cost information the Commission previously required. Because Duke cannot demonstrate it had lost distribution revenue post-April 1, 2016 the Commission should modify Duke's application to remove the unjustified request for nonexistent lost distribution revenue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Objections of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 30th day of April 2018, *via* electronic transmission.

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