

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Duke :
Energy Ohio, Inc.'s Distribution Capital : Case No. 18-1036-EL-RDR
Investment Rider. :

**REPLY COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF
OHIO**

I. BACKGROUND

On April 2, 2015, the Public Utilities Commission of Ohio (Commission) modified and approved an application for an Electric Security Plan (ESP) filed by Duke Energy Ohio, Inc. (DEO) for the period June 1, 2015, through May 31, 2018.¹ In the SSO Opinion and Order, the Commission established a Distribution Capital Investment (DCI) rider to allow for the recovery of capital costs for distribution infrastructure investments. The DCI rider was to be reviewed by Staff or an independent auditor annually for accounting accuracy, prudence, and compliance with the Commission's SSO Opinion and Order.²

In the instant case, on June 28, 2018, the Commission issued an Entry directing the Staff of the Public Utilities Commission of Ohio (Staff) to issue a Request for

¹ *In the Matter of the 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*, Case No. 14-841-EL-SSO, *et. al.*, Opinion and Order (April 2, 2015) (SSO Opinion and Order).

² *Id.* at 70-72.

Proposal (RFP) to acquire audit services to assist the Commission with the review of DEO's DCI rider. On August 1, 2018, Rehmann Consulting (the Auditor) was selected as the contractor and was directed to file a final audit report on December 7, 2018. The Auditor filed its report (the Audit Report) on December 7, 2018.

On January 11, 2019, the Attorney Examiner issued an Entry establishing February 26, 2019 as the filing deadline for Comments on the Auditor Report and March 12, 2019 as the deadline for the filing of Reply Comments. On February 26, 2019, DEO, the Office of the Consumers' Counsel (OCC) and Staff filed Comments. These are Staff's Reply Comments.

II. REVIEW AND RECOMMENDATIONS

DEO concurs with the Plant Held for Future Use and Transmission Plant adjustments recommended by the Auditor as being appropriate but argues that to extend the quantification of plant recovered in the DCI in periods prior to July 1, 2017 is an out of period adjustment and is therefore inappropriate.³ The review of the costs in this case do not involve plant that was simply not included or excluded timely. This is plant that was not authorized to be recovered in the DCI in the first place. This plant was neither in service, nor was it distribution plant, both of which are requirements for costs to be recovered through the DCI. Indeed, DEO including this plant in the DCI may be considered a violation of the Commission's SSO Order.⁴ To bring DEO back into

³ Duke Comments at 1-2.

⁴ *In the Matter of the 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,*

compliance with the Commission's SSO Order, this plant, and the impact of its erroneous recovery through the DCI, needs to be eliminated. To allow DEO to include ineligible plant in the DCI could provide an incentive for DEO to be less mindful of the plant that gets booked to this rider.

DEO disagrees with the capitalized tree trimming adjustment recommended by the Auditor for several reasons.⁵ DEO supported this recommendation in the Stipulation in Case No. 17-1118-EL-RDR approved by the Commission.⁶ This recommendation, including how the amount of the adjustment was determined, is included in the Task section in the 2017 DCI Compliance Audit.⁷ The Commission should require DEO to comply with the Stipulation and the Commission's Order.

DEO accepts the Auditor's adjustment related to Contributions in Aid of Construction (CIAC) but rejects the recommendation to simultaneously establish a customer billable amount upon the receiving of a signed agreement from the customer on a billable amount.⁸ DEO indicates, without providing any specifics, that its current

Accounting Modifications, and Tariffs for Generation Service, Case No. 14-841-EL-SSO, *et. al.*, Opinion and Order at 66-72 (April 2, 2015) (SSO Opinion and Order).

⁵ DEO Comments at 7.

⁶ *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 17-1118-EL-RDR, Stipulation and Recommendation at 5 (Apr. 30, 2018).

⁷ *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 17-1118-EL-RDR, Compliance Audit of Rider DCI at 17 (Nov. 28, 2017) (2017 Audit Report).

⁸ Duke Comment at 3-4.

processes are adequate to identify the non-billed CIAC issue.⁹ Staff notes that this is not the first time DEO has neglected to collect CIAC from customers. In the 2016 Audit, the Auditor describes the first unbilled CIAC.¹⁰ If the Commission does not adopt the Auditor's recommendation at this time, Staff recommends that there be a detailed review and assessment by the Auditor in the next DCI audit which evaluates the effectiveness of DEO's processes with ensuring that CIAC is properly billed to its customers.

OCC recommended that costs for projects whose actual spend is 25% above their initial budget be disallowed in instances where sufficient documentation does not exist to justify the over-expenditure.¹¹ The Auditor recommended that DEO conduct its follow-up ARC Rules review more timely.¹² The two recommendations are two separate concerns of the same issue. While the disallowance for the non-documentation of exceeding the budget is something for the Commission to consider, Staff notes that running the ARC Rules within six months of the plant being placed in FERC Account 106 is necessary to have the documentation required in order to assess the reasonableness of the cost overrun. As DEO has recommitted to running the ARC Rule follow-up within

⁹ *Id.*

¹⁰ *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 16-1437-EL-RDR, Compliance Audit of Rider DCI at 6 (Dec. 9, 2016) (2016 Audit Report).

¹¹ OCC Comments at 6.

¹² *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 18-1036-EL-RDR, Compliance Audit of Rider DCI at 27 (Dec. 7, 2018) (2018 Audit Report).

six months of plant being booked to FERC Account 106 (and therefore already included in the DCI plant balances for recovery), Staff recommends that the Commission accept DEO's acceptance of the Auditor's recommendation and run the ARC Rule within six months of plant being recorded in FERC Account 106. Of course, if sufficient documentation does not exist to explain or justify the cost overrun, the Commission should consider disallowing those costs. However, Staff recommends the Commission give further consideration to variances which are plus or minus a certain parameter around the budgeted amount. This will encourage estimates to be accurate as opposed to excessive – in order to keep the actual spend below the budget estimates. In order to consider what the variance threshold should be, Staff reminds the Commission that, in its comments, Staff recommended that the use of 25% as the threshold be examined for its reasonableness.

DEO agrees with recommendation to bring current its unitization backlog.¹³ However, DEO requests until March 2021 as the deadline.¹⁴ This deadline is too distant. This has been an issue known to DEO for several years. In the 2016 and 2017 audits, the Auditor had highlighted and made recommendations regarding DEO's unitization backlog and indeed DEO had made plans to address the issue, but no timeline was developed for resolution.¹⁵ Therefore DEO has not made significant progress in resolving

¹³ Duke Comments at 6.

¹⁴ *Id.* at 6-7.

¹⁵ *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 16-1437-EL-RDR, Report Compliance Audit of Rider DCI 2016 Audit Report at

this issue. To ask for another two years to resolve the matter, involving non-unitized plant going back over 20 years, indicates that this issue is not receiving concerted focus by DEO. Staff notes that it is using DEO's own guidelines for the one-year deadline. Furthermore, Staff notes that this one year deadline is actually longer than DEO's guidelines from last year which indicated that seven month's was its goal for unitization. In the alternative, if the Commission wishes to give DEO until March 31, 2021, Staff renews its recommendation that any unitization occurring over one year from being placed in plant in service which results in an increase in the DCI revenue requirement be disallowed for recovery. This recommendation will assist DEO in accelerating and maintaining its unitization efforts.

Staff continues to recommend that Retirement Work in Progress (RWIP) be brought current. Staff suggested similar timeframes to unitization because it was viewed that unitization may highlight errors in recording plant to RWIP. Similar to the issue with unitization, the RWIP balance has been increasing. This causes dysfunction in ensuring the proper net salvage (salvage credits less costs of removal which typically results in negative net salvage) is recorded at the FERC Plant 300 account level for depreciation, especially when, as in the case with DEO, a large percentage of RWIP goes back to before July 1, 2017.

7 (Dec. 9, 2016) (2016 Audit Report); *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider*, Case No. 17-1118-EL-RDR, Compliance Audit of Rider DCI at 5 (Nov. 28, 2017) (2017 Audit Report).

Lastly, Staff accepts DEO's assertion that no further action is necessary with respect to the TCJA and EDIT at this time.¹⁶ DEO made the adjustment in its February 2019 DCI Quarterly Filing. The Auditor will follow-up in the next audit to ensure the adjustment was properly calculated.

Respectfully submitted,

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¹⁶ DEO Comments at 4-6.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Comments** 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 12th day of March, 2019.

/s/ Steven L. Beeler

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Summary: Comments electronically filed by Ms. Tonnetta Scott on behalf of PUC