

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

The charges that consumers pay for their utility service should be determined as part of a fair, just, and reasonable process. Unfortunately for consumers, the October 23, 2019 Entry in this case thwarts a fair, just, and reasonable process, thereby harming consumers.

The Public Utilities Commission of Ohio (“PUCO”) should grant this, the Office of the Ohio Consumers’ Counsel’s (“OCC”) Application for Rehearing, because the PUCO’s October 23, 2019 Entry is unreasonable and unlawful for the following reasons:

ASSIGNMENT OF ERROR 1: In violation of R.C. 4903.09, the PUCO unlawfully and unreasonably did not address OCC's argument that the Settlement violates regulatory principles and practices.

ASSIGNMENT OF ERROR 2: In violation of R.C. 4903.09, the PUCO unlawfully and unreasonably concluded that consumers are not harmed by including transmission costs in a distribution rider.

The reasons in support of this Application for rehearing are set forth in the accompanying memorandum in support. The PUCO should grant rehearing and abrogate its Entry as recommended herein.

Respectfully submitted,

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I. INTRODUCTION

The PUCO's Entry is unlawful and unreasonable because it did not meaningfully address OCC's demonstration that allowing Duke to charge consumers for transmission-related expenses through the Distribution Charge violates regulatory principles and practices. Further, the PUCO's Entry is unlawful and unreasonable because it concluded that consumers are not harmed by including transmission costs in a distribution rider.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” OCC filed a motion to intervene in this proceeding, which was granted.¹

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”

The statutory standard for modifying a portion of the Entry is met here. The PUCO should grant rehearing and abrogate the Entry as specified in this Application, because the PUCO’s ruling was unreasonable and unlawful as described below.

¹ OCC’s motion to intervene was granted in the Entry.

III. ERROR

ASSIGNMENT OF ERROR 1: In violation of R.C. 4903.09, the PUCO unlawfully and unreasonably did not address OCC's argument that the Settlement violates regulatory principles and practices.

In its briefing, OCC demonstrated that the Settlement violates several important regulatory principles and practices.² First, it violates R.C. 4928.143³ because that statute allows only for *distribution* charges, not *transmission* charges. But the Settlement allows Duke to charge consumers for transmission-related expenses through the Distribution Charge. Second, it violates R.C. 4928.02⁴ and 4909.22.⁵ Allowing Duke to charge consumers for transmission costs contradicts state policy by contributing to unreasonably priced retail electric service.

In its Entry, the PUCO all but ignored OCC's arguments. It merely said that "we do not find any important regulatory principles are violated by" the Settlement and "[w]e additionally conclude that the Stipulation does not contravene any important regulatory principals."⁶ The PUCO is required under R.C. 4903.09 to address OCC's arguments specifically. Its failure to do so violates R.C. 4903.09.⁷

² See, e.g., OCC's Initial Brief at 11-13.

³ The Distribution Charge was approved as a rider in Duke's electric security plan case. See Case No. 14-841-EL-SSO.

⁴ Enumerates state policy requiring utilities to provide consumers with adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.

⁵ Permits utilities to charge only just and reasonable rates.

⁶ See Entry at 10.

⁷ *In re Commission Review of the Capacity Charges of Ohio Power Co.*, 147 Ohio St. 3d 59, 70-71 (2016).

ASSIGNMENT OF ERROR 2: In violation of R.C. 4903.09, the PUCO unlawfully and unreasonably concluded that consumers are not harmed by including transmission costs in a distribution rider.

The PUCO concluded: “As Rider BTR has a higher rate of return than Rider DCI, we do not find that ratepayers are harmed” by allowing Duke to include transmission costs in the Distribution Charge.⁸ That conclusion is not supported by record evidence. It *assumes* that the regulatory body responsible for reviewing and approving transmission costs – FERC – would have approved the transmission costs at issue. But there is no record evidence that FERC approved the transmission costs (it did not) or that it would. In fact, the record evidence shows that the Settlement permits Duke to inappropriately charge consumers for transmission costs without any reason to believe that FERC has, or would, approve those costs.⁹

Because the Entry is not supported by record evidence, and in fact is contrary to the record evidence, it is unreasonable and unlawful.¹⁰

IV. CONCLUSION

To protect consumers from unreasonable and unlawful charges, the PUCO should grant rehearing and abrogate its Entry. This would help to safeguard that Duke’s charges to consumers and the electric distribution service provided are lawful, fair, just, and reasonable.

⁸ See Entry at 10.

⁹ See Hearing Transcript at 33.

¹⁰ See, e.g., R.C. 4903.09; *OCC v. PUC*, 111 Ohio St.3d 300 (2006).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for Rehearing has been served via electronic transmission upon the following parties of record this 22nd day of November 2019.

/s/ William J. Michael
William J. Michael
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.