

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy, Ohio Inc. for Authority to Change) Case No. 19-1873-GE-AAM
Accounting Methods.)

**COMMENTS FOR CONSUMER PROTECTION
SUPPORTING THE PUCO STAFF'S RECOMMENDATION
TO DENY DUKE'S APPLICATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The PUCO Staff reviewed Duke's application to defer pension expenses it incurred in 2019 for later collection from customers. The PUCO Staff recommended that Duke's application should be denied because it does not meet the PUCO standards for granting deferrals. OCC agrees with the Staff. To protect Duke's 640,000 residential electric and 394,000 residential gas utility customers, the PUCO should deny Duke's application for pension accounting deferral.

Duke estimated that the pension settlement charges for 2019 that it is seeking to defer would be \$1.3 million for electric and \$539,000 for gas.¹ If Duke is permitted to defer these costs, Duke will likely seek to charge customers for the costs in the next rate case it files.

Accounting changes, like those sought by Duke, have a substantial practical impact on ratemaking, by effectively creating a test year loophole.² Under the deferral loophole, a utility can charge customers for expenses incurred months and even years outside the test year, instead of charging customers solely for the cost of rendering service

¹ Application at 5 (Oct. 7, 2019).

² See e.g., *Office of Consumers' Counsel v. Pub. Util. Com.*, 16 Ohio St.3d 21 (1985) at footnote 1.

during the discrete test period established under R.C. 4909.15(A)(4). This is contrary to the notion that there should be very limited exceptions to the test year concept—only when necessary to smooth out anomalies which would make the test year unrepresentative or misleading for ratemaking purposes.³

The PUCO Staff evaluated Duke’s request for deferral based on the following six criteria:

1. Whether the utility’s current rates or revenues are sufficient to cover the costs associated with the requested deferral;
2. Whether the costs Duke requested to be deferred are material in nature;
3. Whether the problem was outside of the Company’s control;
4. Whether the expenditures are atypical and infrequent;
5. Whether the financial integrity of the utility will be significantly and adversely affected; and
6. Whether the PUCO could encourage the utility to do something it would not otherwise do through the granting of the deferral authority.

The Staff found that Duke did not meet five of the six criteria and recommended that this application should be denied.⁴ Duke also failed to demonstrate any exigent circumstances or other good reason for the PUCO to approve the deferral request.⁵ Given

³ See, e.g., *Office of Consumers Counsel v. Pub. Util. Com.*, 67 Ohio St.2d 372, 376 (1981).

⁴ Staff Review and Recommendation at 2.

⁵ *In the Matter of the Joint Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Electric Company for Approval of a Generation Charge Adjustment Rider*, Case No. 05-704-EL-AAM, Opinion and Order (Jan. 4, 2006) at 8-9. (“FirstEnergy Deferral Order”).

that Duke failed to meet all but one of the PUCO standards for deferral, the OCC agrees with the Staff that Duke's application should be denied.

Duke asserts that the PUCO should dismiss the Staff's recommendation because it has attempted to manage its costs and that the Staff is now blaming and penalizing Duke for taking cost-management steps.⁶ Duke is attempting to misdirect the PUCO with this argument. The Staff is not attempting to penalize Duke for its cost-management steps. Instead, the Staff is reviewing Duke's application according to deferral standards that are well established and serve as consumer protection against test year loopholes.

Additionally, Duke made the decision to reduce its workforce. Duke chose to reduce its workforce and related expenses and to incur the additional pension costs in the near-term with the expectations that future costs will be lower. Duke would have the PUCO ignore the revenue side of the ledger entirely. During the period of time Duke will be deferring pension costs, Duke will be avoiding the labor expenses associated with the workforce reduction. These expenses are already built into the base rates that customers pay. All else being equal, Duke's bottom line will improve as customers pay base rates and generate revenue, the off-setting expenses will be lower as a result of the workforce reduction.

And this rebalancing of revenues and expenses will not be recognized until Duke's next base rate case. In the meantime, Duke's shareholders will be the direct beneficiaries of the workforce reduction. Thus, Duke should shoulder the near-term pension expenses rather than deferring them.

⁶ Comments of Duke at 3 (Jan. 30, 2020).

Deferrals can needlessly add costs to the amount consumers pay for utility service. They are a ratemaking exception that allow utilities to delay charging customers for expenses incurred outside of a rate case test year. Even though Duke seems to be asking for deferral of a relatively small amount for 2019 expenses (\$1.3 million for electric and \$539,000 for gas), Duke has also stated that it anticipates recognizing future settlement charges (of currently unknown amounts, but that could well exceed the 2019 expenses) in subsequent years since it has closed its pension plans to new employees.⁷ The PUCO should act to protect consumers by denying the deferral requested by Duke. As the Staff found, Duke's request does not meet the PUCO accepted criteria for approving utility deferrals.

Respectfully submitted,

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⁷ Application at 4-5 (Duke is requesting to defer not only the 2019 expenses, but also any future pension settlement accounting that may be triggered).

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 11th day of February 2020.

/s/ Ambrosia E. Logsdon
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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: Comments Comments for Consumer Protection Supporting the PUCO Staff's Recommendation to Deny Duke's Application by the Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Logsdon, Ambrosia E.