

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Duke)
Energy Ohio, Inc.'s Distribution) Case No. 19-1287-EL-RDR
Capital Investment Rider.)

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Distribution Capital Investment Rider (“Rider DCI” or “Distribution Charge”) permits Duke Energy Ohio, Inc. (“Duke”) to expedite charging customers for its spending on its distribution system. Rehmann Consulting (“Rehmann” or “Auditor”), the independent auditor hired by the PUCO, found that over \$13 million was inaccurately recorded and recommended that customers should not be charged (approximately \$880,052 during the audit period) as a result of Duke’s accounting errors.¹

The PUCO Staff, Duke, and the Office of the Ohio Consumers' Counsel (“OCC”) filed initial comments on the Audit Report on February 28, 2020. Both the PUCO Staff and the OCC support the Auditor’s findings and recommendations. In addition, OCC replies to several of Duke’s recommendations that would be harmful for consumers if adopted by the PUCO.

¹ See OCC Comments at 2.

II. REPLY

A. **The PUCO should adopt recommendations made by the Auditor, supported by the PUCO Staff and the OCC, to remove incentive compensation charges from the Distribution Capital Investment Rider so that customers are not overcharged.**

Duke has been required since September 30, 2018 to treat capitalized incentive pay accrued since July 1, 2016 as an offset to distribution rate base in future Distribution Charge filings.² But the Auditor found that all incentive pay included in Retirement Works In Progress (“RWIP”) since July 1, 2016 was not properly offset. The Auditor recommended that \$66,361 of additional incentive pay offset (a \$19,527 reduction to the revenue requirement) that must be removed from the Rider.³ The OCC and the PUCO Staff supported this recommendation.⁴

Duke, however, disagrees with the Auditor’s recommendation. Duke asserts that it agreed to remove incentive pay related to earnings for incremental capital in future rates from Rider DCI and the PUCO approved that approach.⁵ But Duke is misreading the PUCO’s Order. Although the PUCO Order refers to “rates going forward” it does not tie the adjustment to future rates, but rather requires the credit to be made now to avoid customers overpaying in the future. The Order states:

so as not to include the value of the employee bonus expenses for incremental investment in Rider DCI and Rider PF in its Ohio jurisdictional *rates* going forward...Duke shall include a credit in Rider DCI or Rider PF, as applicable, for the estimated revenue requirement impact of capitalizing employee bonus expenses for incremental

² See Auditor Report at 13 (The total offset through the June 30, 2019 Rider DCI is \$1,090,193).

³ *Id.*

⁴ See OCC Comments at 2-4.

⁵ See Duke Comments at 10; See also Case No. 17-0032-EL-AIR, Opinion and Order at 37 (December 19, 2018) (“Rate Case Opinion and Order”).

investment for its Ohio retail customers so as to net out the cost of the bonus expenses.⁶

To protect consumers from being overcharged for electric service, consistent with the PUCO Order in Duke's rate case, the PUCO should adopt the Auditor's recommendation as supported by the PUCO Staff and OCC.⁷

B. The PUCO should adopt recommendations made by the Auditor, supported by the PUCO Staff and the OCC, to provide a separate detailed audit for any Contributions in Aid of Construction to protect customers from paying for a return on customer supplied capital.

Duke should not earn a return on plant that its investors did not fund.

Contributions in Aid of Construction ("CIAC") is not investor-funded capital and it is inappropriate to charge customers for a return on this capital. Duke agrees with the Auditor that it did not properly bill and collect CIAC from customers during this audit period and agrees to a reduce its revenue requirement for missing or untimely CIAC entries.⁸

But Duke also expresses its "disbelief" that there is a "systemic" issue which would warrant a wholesale re-audit.⁹ Duke has not explained its "disbelief," and even if it had, the results of the present audit paint a different picture. As OCC explained in its comments, this is not the first time that Duke's lax accounting of CIAC has created overcharges to customers.¹⁰ Moreover, Duke was supposed to fix this issue before,¹¹ but

⁶ See Rate Case Opinion and Order at 37 (emphasis added).

⁷ *Id.*

⁸ See Duke Comments at 7-8.

⁹ *Id.*

¹⁰ See OCC Comments at 6.

¹¹ *Id.* (This same issue was raised in the previous audit of the DCI rider. In fact, to resolve that audit, Duke agreed, as part of a settlement, to implement enhanced controls to ensure that CIAC is billed on a timely, complete, and accurate basis by January 1, 2020).

has not.¹² This is contrary to Duke's belief that there is no systemic problem with Duke's accounting controls for the recording of CIAC. OCC previously recommended in its initial comments that the PUCO should disallow in this audit, and any future audits, any CIAC that has not been properly recorded.¹³ This recommendation bears repeating on Reply. Doing so will protect customers against paying a return on non-investor supplied capital through Rider DCI. By not reflecting the proper CIAC amounts, the amount Duke charges its customers is overstated and customers are charged more than is just and reasonable.

To protect consumers from being improperly charged, the PUCO should adopt the Auditor's recommendation as supported by its Staff and OCC, with OCC's additional recommendation.

C. The PUCO should adopt the Auditor's recommendation that Duke be required to conduct a separate detailed audit of distribution plant orders to protect consumers from unreasonable charges.

The Auditor recommended that all distribution plant work orders that have a correlated transmission plant work order and charged to Rider DCI from July 1, 2018 to June 30, 2019, be reviewed by Duke staff for appropriate charging between distribution and transmission plant.¹⁴ The Auditor further recommended that any detected overcharges should be quantified in a report for the revenue requirement impact and the impact applied to the December 31, 2019 Rider DCI filing.¹⁵ OCC agrees with the

¹² *Id.* (In its follow-up here, the Auditor found that out of 25 work orders it sampled, more than half of them (13) were improperly charged to customers or not recorded at all).

¹³ *Id.* at 7.

¹⁴ *See* Audit Report at 12.

¹⁵ *Id.*

Auditor's recommendation in principle, but recommends that if there are overcharges customers' rates should be reduced starting with the next Rider DCI filing.

Duke disagrees with this recommendation and states the review would be difficult and unduly burdensome to perform and impossible during the recommended timeframe.¹⁶ Duke also believes the "enhanced" control the Auditor is seeking and Duke is agreeing to regarding invoices and payroll time sheets¹⁷ is sufficient.¹⁸ With the December 31, 2019 Rider DCI filing already made, there is no reason why Duke cannot perform this review and impact application in the context of that filing.

On the other hand, the Auditor's "enhanced" control proposed and agreed to by Duke regarding timesheets and payroll is not an appropriate substitute for this review and quantification which more adequately protects customers. Duke has already agreed that it improperly charged transmission plant to Rider DCI,¹⁹ and this by itself justifies a more complete review with a separate report. A "second review and signature" is insufficient to adequately protect customers in this case. The PUCO should adopt the Auditor's recommendation to protect consumers.

¹⁶ See Duke Comments at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 2.

D. The PUCO should adopt the Auditor's recommendations for enhanced documentation to check Duke's compliance with its Vegetation Management Guidelines.

The Auditor made specific recommendations for enhanced tree removal documentation to evaluate whether Duke is complying with its Vegetation Management Guidelines.²⁰ Duke disagrees with these recommendations.²¹

First, Duke disagrees with taking before and after images of removed danger trees.²² Duke argues that taking these images would not be helpful in determining whether a tree should be categorized as a capitalized cost or instead a maintenance expense. Duke also claims it would be an administrative and financial burden and is beyond the scope of contracted foresters.²³

Duke misses the point of this recommendation. The Auditor did not recommend the photos for assistance in determining capital cost versus maintenance expense. Instead, the Auditor recommendation was to evaluate Duke's compliance with Vegetation Management Guidelines and ascertain that tree-trimming costs were prudently incurred and reasonable and necessary. Second, it is difficult to imagine that taking and storing photos of trees prior to removal is a substantial financial or administrative burden on Duke. Duke certainly has the wherewithal to document regulatory compliance with PUCO rules and guidelines. And in fact, it would be imprudent and unreasonable for Duke to charge customers for costs that it is unable to

²⁰ See Audit Report at 10-12.

²¹ See Duke Comments at 6-8.

²² *Id.*

²³ *Id.* at 6.

support. The PUCO should require Duke to document, capture and store danger tree images prior to authorizing charges under the Rider DCI.

Second, Duke disagrees with the recommendation that the Distribution Tree Removal Form should include the height of a dead, dying, or diseased tree or length of a leaning tree compared to the distance from a power line.²⁴ Duke disagrees because it claims the measurements required would be beyond the current scope of work on current unit-based contracts.²⁵ And even if it was not, the data would be a rough estimate because it would not be practical to give measuring wheels and range finders to all field personnel performing this work.²⁶ Duke's negligence in establishing sufficient documentation standards in the work performed by its tree-trimming contractors is concerning.

Vegetation Management employees or contractors who perform vegetation management on electric distribution circuits are some of the most highly trained and skilled individuals in the industry. Surely with the millions of dollars that Duke collects for vegetation management from customers, it can afford to properly train and equip these personnel to document the work that they are performing to ensure compliance with the Vegetation Management Guidelines. The PUCO should require the documentation maintained on the Distribution Tree Removal Form prior to authorizing these charges under the Rider DCI.

Third, Duke disagrees with the Auditor recommendation to update the Vegetation Management Guidelines.²⁷ The Auditor recommendation is the Guidelines define that 10% of danger trees are reviewed by Duke's Vegetation Management Staff before they

²⁴ See Audit Report at 11.

²⁵ See Duke Comments at 6.

²⁶ *Id.*

²⁷ *Id.*

are removed, and a different 10% reviewed after they are removed.²⁸ Moreover, the quality assurance reviews should be documented on the Distribution Tree Removal Form.²⁹ Duke instead suggests a sliding scale audit procedure dependent upon deficiencies found during the audit would be more productive since its current draft version of its Hazard Tree Program Business Case³⁰ includes one.³¹ Duke again misses the point of this recommendation. Deficiencies have *already* been found and the Auditor's recommendation is essential in demonstrating that removed trees meet the Vegetation Management Guidelines. It would be unjust and unreasonable to permit Duke to overcharge consumers for unnecessary tree-trimming costs that fail to comply with the Vegetation Management Guidelines.

Finally, Duke disagreed with the recommendation that the PUCO should require a separate detailed audit of all tree trimming invoices charged to Rider DCI from July 1, 2018 to June 30, 2019, to identify the overcharge that occurred during this audit period.³² Duke also disagreed that any detected overcharges should be quantified in a report for the revenue requirement impact. And that customers should be credited for the overcharges in the December 31, 2019 Rider DCI filing. Finally, Duke disagreed that a Tree Trimming Supervisor should sign, date, and list on the invoice the amount of any O&M to capital overrides that the Supervisor approves.³³

²⁸ See Audit Report at 11.

²⁹ *Id.*

³⁰ Duke did not provide a copy to this draft for provide an attachment for review, so it is impossible to evaluate whether this document would be helpful.

³¹ See Duke Comments at 7.

³² See Audit Report at 12.

³³ *Id.*

Duke does not agree that there is a systemic overcharge issue that warrants a wholesale re-audit.³⁴ Duke asserts that improvements to reduce the risks of overcharges have been made and will continue.³⁵ Duke further asserts that the miscalculation of \$5,529 of tree trimming costs and a \$6,009 invoice duplication is negligible considering the size and scope of its tree trimming activities.³⁶ Finally, Duke asserts that any audit would take a considerable amount of time and would not be complete in time to apply any impact to the March 31, 2020 Rider DCI filing.³⁷ Yet again Duke has failed to explain its assertion that there is no systemic issue. A separate detailed audit of tree trimming invoices charged to Rider DCI is critical to detect any overcharges—and in some cases double-charges—in trimming costs that should not be charged to customers. Moreover, Duke has not demonstrated that the misclassification of \$5,529 of tree trimming costs and a \$6,009 invoice duplication are the only overcharges of its tree trimming costs.

The PUCO should adopt the Auditor’s recommendations necessary to safeguard Duke’s compliance with its Vegetation Management Guidelines and to protect customers from overpaying for vegetation management. However, OCC understands Duke’s concerns that the audit would take a considerable amount of time and may not be complete in time to apply the impact of the March 31, 2020 Rider DCI filing. Therefore, OCC is supportive of a short extension of time in completing the audit and applying the revenue requirement impact on a future Rider DCI filing.

³⁴ See Duke Comments at 8.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

III. CONCLUSION

By law³⁸, consumers rates must be just and reasonable in all respects. The Auditor has found that Duke's charges to customers were not just and reasonable. The Auditor found that Duke overcharged customers by more than \$13 million into the DCI filings. To protect consumers, the PUCO should adopt the Auditor recommendations along with OCC's additional recommendations that are directed at removing additional improper costs from the Distribution Capital Investment rider so that the charges are just and reasonable.

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³⁸ See R.C. 4928.02

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments were served via electronic transmission upon the following parties of record this 20th day of March 2020.

/s/ Ambrosia E. Logsdon _____
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 Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Logsdon, Ambrosia E.