

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Authority to Adjust its) Case No. 19-1750-EL-UNC
Power Forward Rider.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval to Change its) Case No. 19-1751-GE-AAM
Accounting Methods.)

INITIAL COMMENTS OF THE KROGER COMPANY

I. INTRODUCTION

On September 24, 2019, Duke Energy Ohio, Inc. (Duke) filed an Application in Case Nos. 19-1750-EL-UNC, et al., requesting approval of its Infrastructure Modernization Plan, adjustments to Rider Power Forward (Rider PF), and for deferral authority.¹ Specifically, the Application seeks approval to include in its Rider PF costs associated with “its initial infrastructure modernization plan consisting of information system upgrades and other infrastructure investment programs (‘Infrastructure Modernization Plan.’)[.]”² According to Duke’s Application, those costs relate to a new customer information system (i.e., Customer Connect) and three new programs “inspired by the [Commission’s] PowerForward initiative.”³ In addition, Duke also is seeking to defer operations and maintenance (O&M) costs incremental to amounts in both its base electric and natural gas rates that have been or will be incurred in relation to its new Infrastructure

¹ See Application of Duke Energy Ohio, Inc. at 1-2 (September 24, 2019) (Application).

² Id. at 1.

³ Id. at 2.

Modernization Plan.⁴ Those costs date back to January 1, 2018, which pre-dates the approval of the Stipulation and Recommendation filed in Case Nos. 17-0032-EL-AIR, et al., 17-1263-EL-SSO, et al., 17-872-EL-RDR, et al., and 16-1602-EL-CSS, et al.⁵ Finally, in its Application, Duke is seeking to receive carrying charges on the deferred balance based on the actual cost of long-term debt.⁶

Kroger is one of the largest grocers in the United States, with numerous facilities served by Duke. The facilities operated by Kroger use electricity for food storage, lighting, heating, cooling, and distribution, often 24 hours a day, 7 days a week. Kroger's electric and energy needs associated with its facilities in Duke's service territory are considerable, and its electric service and the costs associated with obtaining such service from Duke will be impacted by the outcome of this proceeding. In addition, Kroger was involved in the underlying consolidated proceedings resulting in the Stipulation and Recommendation referenced by Duke.⁷ As a result, on October 31, 2019, Kroger moved to intervene in this proceeding.⁸

Pursuant to the March 11, 2020 Entry,⁹ Kroger hereby submits its initial comments in this proceeding.

⁴ Id. at 1-2.

⁵ Id. at 2; see also *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Consolidated Case Nos. 17-0032-EL-AIR, et al., Stipulation and Recommendation (Stipulation) (April 13, 2018); and Opinion and Order at 84-85 (December 19, 2018).

⁶ See Direct Testimony of Jay P. Brown (Duke) at 6 (September 24, 2019).

⁷ See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Consolidated Case Nos. 17-0032-EL-AIR, et al.

⁸ See Kroger's Motion to Intervene (October 31, 2019).

⁹ Entry at ¶ 4 (March 11, 2020).

II. COMMENTS

While Kroger generally is supportive of efforts by electric distribution utilities (EDUs) to improve and modernize their systems, Kroger has several concerns regarding the Application submitted by Duke in this proceeding.

First, under its Electric Vehicle (EV) Pilot, Duke proposes to install, own, and operate the necessary infrastructure to make a site ready for an EV charging station.¹⁰ As the Commission well knows, Ohio law has embraced a competitive market approach ever since the passage of Am.Sub.S.B. No. 3, 148 Ohio Laws, Part IV, 7962 (“S.B. 3”) in 1999, which went into effect in January 2001. Indeed, R.C. 4928.02(H) makes it is the official state policy to:

Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.¹¹

Because R.C. 4928.06 provides that the Commission “shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated,” the Commission should not easily disregard the importance of the state’s policy or construe limited exceptions to the general policy so as to allow the exceptions to renders the policy meaningless. Allowing EDU ownership and operation of EV services conflicts with this state public policy. Indeed, the Commission has recognized that EV charging infrastructure is typically on the customers’ side of the meter and thus, “the Commission believes that EV charging stations should operate within the sphere of a competitive

¹⁰ See Direct Testimony of Land W. Reynolds (Duke) at 25 (September 24, 2019).

¹¹ R.C. 4928.02(H) (emphasis added).

marketplace, especially for home and private business charging.”¹² Accordingly, to avoid the potential for any subsidies or anti-competitive practices, the Commission should reject Duke’s request to own or operate EV services.

Second, with respect to Duke’s request for authority to defer the incremental O&M costs that it incurred dating back to January 1, 2018, this request is akin to retroactive ratemaking. Specifically, while deferral authority may not technically be retroactive ratemaking since it is not ratemaking,¹³ approving Duke’s request for deferral authority here and allowing it to include those costs in rates immediately raise nearly identical concerns of retroactive ratemaking that the Supreme Court of Ohio previously addressed in *re Application of Columbus S. Power Co.*¹⁴ Duke is asking this Commission to retroactively defer costs incurred for future collection, but is also asking the Commission to set its future rates under Rider PF now to allow Duke to recoup those past losses immediately. This would violate long-standing Supreme Court of Ohio precedent.¹⁵ To the extent Duke lost 2018 revenues associated with costs incurred in 2018 for implementation of its Infrastructure Modernization Plan, Duke should have sought deferral authority or recovery of the costs when the costs were incurred or when the Commission authorized Rider PF in December 2018, instead of waiting until this Application. Moreover, allowing Duke to have deferral authority for past losses dating back to January 1, 2018 before the Stipulation was entered

¹² PowerForward: A Roadmap to Ohio’s Electricity Future at 20, available at <https://www.puco.ohio.gov/industryinformation/industry-topics/powerforward/powerforward-a-roadmap-to-ohios-electricity-future>.

¹³ See *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM, Entry at ¶ 7 (November 12, 2009) (“deferrals do not constitute ratemaking.”) (citing *Elyria Foundry Co. v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305).

¹⁴ *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St. 3d 512, 514, 947 N.E.2d 655, 660.

¹⁵ *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254, 259, 141 N.E.2d 465, 469 (“Under present statutes a utility may not charge increased rates during proceedings before the commission seeking same and losses sustained thereby may not be recouped.”).

and before the Stipulation was approved would effectively amount to rewriting the Stipulation which established Rider PF as a placeholder set at zero.¹⁶ If there were costs known, they should have been made known to the parties in that proceeding. Therefore, the Commission should reject Duke's request for deferral authority of past revenue losses dating back to January 1, 2018.

Finally, contrary to Duke's request for carrying costs based upon the actual cost of long-term debt,¹⁷ the Commission should reject that request. If carrying costs are permitted, they should be based upon the long-term debt rate approved in the last rate case. For example, as to Rider DSR in the electric rate case, the Stipulation stated that "any over- or under-recovery of costs under Rider DSR is eligible for carrying costs at the Company's most recently approved long-term debt rate."¹⁸ This language supports that the actual cost of debt is an inappropriate amount to use for the carrying charge calculation.¹⁹ Given the Commission's prior directives on how to properly calculate carrying charges, if approved, Duke's carrying costs should be set at the long term debt rate.

III. CONCLUSION

As set forth above, Duke's ownership and operation of EV charging services is likely to have anti-competitive consequences and is contrary to Ohio public policy. Likewise, it is contrary to the law to allow Duke to defer costs dating back to January 1, 2018. For the foregoing reasons,

¹⁶ See Stipulation.

¹⁷ Direct Testimony of Jay P. Brown (Duke) at 6 (September 24, 2019).

¹⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods*, Case No. 17-034-EL-AAM, Opinion and Order (Jt. Ex. 1 at 15-16) (December 19, 2018).

¹⁹ See also *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 09-712-GA-AAM, Entry at ¶8 (November 11, 2009) (using "embedded debt only interest rate.").

Kroger requests that the Commission adopt the recommendations set forth in its initial comments herein.

Respectfully submitted,

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0068774) (Counsel of Record)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

Email: paul@carpenterlipps.com

(willing to accept service by email)

Counsel for The Kroger Company

CERTIFICATE OF SERVICE

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/s/ Angela Paul Whitfield
Angela Paul Whitfield

thomas.lindgren@ohioattorneygeneral.gov
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com
mleppla@theOEC.org
ctavenor@theOEC.org
larry.sauer@occ.ohio.gov
christopher.healey@occ.ohio.gov
nvijaykar@elpc.org
ccox@elpc.org
Jeanne.kingery@duke-energy.com
Larisa.vaysman@duke-energy.com
Rocco.dascenzo@duke-energy.com
bojko@carpenterlipps.com
bethany.allen@igs.com
joe.oliker@igs.com
michael.nugent@igs.com
mpritchard@mcneeslaw.com
dborchers@bricker.com
kherrnstein@bricker.com
jspottswood@bricker.com
dparram@bricker.com
gpiacentino@wp-lawgrpuc.com
dromig@amandapowers.com

Attorney Examiners:

Lauren.augostini@puco.ohio.gov
Nicholas.walstra@puco.ohio.gov

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Summary: Notice Initial Comments of The Kroger Company electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.