BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., Under the Commission's Proceedings During the Declared State of Emergency, for a Reasonable Arrangement with Customers Served Under Rates DS, DP, and TS.	))))))	Case No. 20-0856-EL-AEC
In the Matter of the Application of Duke Energy Ohio to Modify its Economic Competitiveness Fund Rider and Request for Waivers.	))))	Case No. 20-0857-EL-RDR

DUKE ENERGY OHIO, INC.'S APPLICATION, UNDER THE COMMISSION'S PROCEEDINGS DURING THE DECLARED STATE OF EMERGENCY, FOR APPROVAL OF A REASONABLE ARRANGEMENT WITH CUSTOMERS SERVED UNDER RATES DS, DP AND TS, CHANGE IN ACCOUNTING METHODS, TO ADJUST ITS ECONOMIC COMPETITIVENESS FUND RIDER (RIDER ECF), AND REQUEST FOR WAIVERS

I. Introduction

1. Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is an electric light company as defined in R.C. 4905.03(C) and a natural gas company within the meaning of R.C. 4905.03(E). As such, Duke Energy Ohio is a public utility subject to the jurisdiction of the Public Utilities Commission of Ohio (Commission) pursuant to R.C. 4905.02(A).

2. On March 9, 2020, the Governor of Ohio declared a state of emergency related to the emergence of the COVID-19 pandemic. Shortly thereafter, the governor

initiated a series of orders intended to mitigate the impacts of the highly contagious and life-threatening virus. Among other things, Governor DeWine banned mass gatherings, canceled in-class teaching at all K-12 schools, ordered all bars and restaurants to close (with limited exceptions), and mandated the closure of fitness centers and other establishments. As the crisis continued to build in Ohio, the governor implemented a stay-at-home order on March 23, 2020, ordering all non-essential businesses to remain closed during the emergency and all Ohioans to stay at home, with certain exceptions. Ohio's Stay-at-Home order will remain in effect until at least May 1, 2020.[1]

3. In response to the declared state of emergency, on March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and, by Entry, (March 12 Entry) directed utilities to take a series of actions aimed at ensuring service continuity and mitigating the risk of social spread of the coronavirus. In doing so, the Commission expressly directed utilities to "review . . . tariff provisions and identify areas where it may be prudent to suspend . . . otherwise applicable requirements that may impose a service continuity hardship on customers."[2] In short, the Commission directed all Ohio utilities to develop emergency plans applicable to all regulated customers in the state.

4. On March 13, 2020, the Commission issued a similar directive to utilities to review their service reconnection policies, in order to "identify areas where it may be prudent to suspend, for the duration of the emergency, otherwise applicable requirements

[1] https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/ohio-stay-at-home-order-extended-through-may-1 (accessed April 8, 2020).

[2] *In the Matter of the Proper Procedures and Practices for the Commission's Operations and Proceeding During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry, p. 3 (March 12, 2020).

that may impose a service restoration hardship on customers or create unnecessary risks of social contact" (March 13 Entry).[3]

5. Through both of these Entries, and several that followed, the Commission has exercised its authority to protect Ohio's citizens during this health crisis.

6. To address service interruptions, as directed by the Commission, on March 19, 2020, Duke Energy Ohio filed its motion to "Suspend Certain Requirements for the Duration of the State of Emergency Declared in Executive Order 2020-01D" (Motion).[4] In its Motion, the Company described the actions it had taken in response to the Commission's March 12 and March 13 Entries; including, but not limited to, suspending all disconnections for non-payment, waiving all late-payment fees, waiving electronic payment fees (credit cards, debit cards, electronic checks) for residential customers, as well as other actions intended to minimize customer contact.[5] Customers nevertheless remain obligated to pay for their utility services, as provided for under approved rate schedules.

7. Consistent with the swift actions of Governor DeWine, the Commission's initial focus was on protecting the health and well-being of customers and utility workers alike. But it is undeniable that the pandemic will also inflict substantial financial harm, including harm to those businesses that have been forced to close or have seen their production significantly reduced as a result of the state of emergency. And the

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[3] Id., Entry (March 13, 2020).
[4] *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-599-GE-UNC, Motion of Duke Energy Ohio, Inc., to Suspend Certain Requirements for the Duration of the State of Emergency Declared in Executive Order 2020-01D (March 19, 2020).
[5] Id.

Commission's March 12 Entry expressly makes provision for the temporary alteration of approved tariffs in order to address the financial impacts of the COVID-19 pandemic.[6]

8. Duke Energy Ohio's current distribution rates were recently established and approved as part of the Commission's December 19, 2018, Order in Case No. 17-32-EL-AIR, *et al.*[7] Pursuant to R.C. 4909.03, all rates approved by the Commission shall be in force and effect for two years from the date they take effect, or until changed or modified by the Commission . . ..[8] As such, the Company's cost of providing electric distribution service and associated charges were recently reviewed by this Commission and found to be fair, just, reasonable, and compensatory.[9]

9. As a result of the General Assembly's express grant of authority, the Commission may take specific action to provide relief to business customers while still protecting the financial strength of Duke Energy Ohio so that it may continue providing safe, reasonable, and reliable utility service during this unprecedented situation. Under R.C. 4905.31, the Commission may approve reasonable arrangements between a customer or group of customers and a utility in a variety of circumstances, including where such arrangement addresses job retention and economic development. Further, R.C. 4905.31(E) allows the implementation of a financial device to recover both costs of

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[6] *In the Matter of the Proper Procedures and Practices for the Commission's Operations and Proceeding During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry, p. 3 (March 12, 2020). *See* also, Commission Meeting March 20, 2020, at 5:45, acknowledging that billing impacts resulting from the declared state of emergency will be addressed, available at: https://www.puco.ohio.gov/media-room/puco-webcast/?recordID=803 (accessed April 8, 2020).

[7] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, *et al*.

[8] R.C. 4903.03

[9] Pursuant to R.C. 4909.15 *et seq.*, the Commission is to determine just, reasonable and compensatory rates for utilities.

implementation and revenues that are otherwise foregone as a result of such an arrangement.[10]

10. As directed by the Commission's March 12 and March 13 Entries and consistent with its initial emergency plan filed under Case No. 20-599-GE-UNC, Duke Energy Ohio proposes to provide temporary relief to certain non-residential customers that may be adversely impacted by the governor's declarations. Specifically, the Company is proposing a balanced and equitable reasonable arrangement that will temporarily reduce the currently approved demand ratchet in applicable non-residential rates during the summer of 2020 and enable Duke Energy Ohio to recover the lost revenues from those classes of customers. The demand ratchet reduction would last until the billing cycle for September 2020, at which time the Company will revert back to its currently effective and Commission-approved base distribution rates for these customer classes, which shall be in place until such time as the rates are modified by the Commission as part of an electric base rate proceeding.

II. Reasonable Arrangement Proposal

A. Temporary Reduction in Demand Ratchets During the Declared State of Emergency.

11. Duke Energy Ohio's non-residential customers served on Rate Schedules DS (Service at Secondary Distribution Voltage), DP (Service at Primary Distribution

[10] R.C. 4905.31(E) permits "Any other financial device that may be practicable or advantageous to the parties interested. In the case of a schedule or arrangement concerning a public utility electric light company, such other financial device may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, *including recovery of revenue foregone as a result of any such program*; any development and implementation of peak demand reduction and energy efficiency programs under section 4928.66 of the Revised Code; any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of the advanced metering implementation; and compliance with any government mandate." (Emphasis added.)

Voltage), and TS (Service at Transmission Voltage) are billed based on demand. They are subject to a minimum bill provision that sets a floor on billing demand at 85 percent of their peak demand established in the prior summer period (for billing purposes, summer is June through September). Consequently, for the upcoming summer period in 2020, customers will have a minimum bill that is based upon a peak demand—and thus business activity—that occurred during the summer of 2019.

12. Minimum demand charges are not unusual, and are prevalent throughout the utility industry for non-residential rate design. They represent fixed costs to serve customers that are unaffected by usage and are part of the overall rates approved by the Commission to recover the Company's costs to serve.

13. For many of Duke Energy Ohio's non-residential customers, the recent COVID-19 emergency has resulted in the cessation of business activity. For others, the emergency has significantly reduced activity. For those non-residential customers that are not subject to minimum demand provisions, their charges for electric service will go down mostly proportionate to any reduction in their usage. For customers on Rate Schedules DS, DP, and TS, the ratchet limits the amount of reduction in their bills for intermittent reductions in load. R.C. 4905.31 provides a path for the Commission to address this situation in a way that helps protect and preserve the financial strength of Duke Energy Ohio but also provides temporary relief for businesses that may be adversely impacted by minimum billing and demand provisions. Ohio law provides an opportunity to account for the reduction in customer business operations and the impact to the utility's loss in load/revenues, thereby providing temporary relief from these

otherwise reasonable minimum billing provisions and to encourage the retention of jobs during this health crisis and as a path toward economic recovery thereafter.

14. For some customers on Rate Schedules DS, DP, and TS that have significantly reduced or perhaps even eliminated their load on Duke Energy Ohio's delivery system as a result of the COVID-19 pandemic, their revenue stream may have been also reduced, making their ability to pay the existing minimum bill provisions difficult during this time.

15. As discussed above, providing financial relief to some of the most affected commercial and industrial businesses in a utility's service territory will assist those businesses in weathering the economic crisis that many will endure over the next several months. Such assistance advances the state's policy goals in that ensuring the continuity of these impacted businesses is vitally important to minimizing job losses in Duke Energy Ohio's service territory.

16. Therefore, and as indicated by the Commission as appropriate, the Company proposes to temporarily modify the minimum billing provisions for Rate Schedules DS, DP, and TS such that the applicable ratchet is lowered from 85 percent to 50 percent of the summer peak for 2019. Duke Energy Ohio's proposal to adjust the minimum billing demand provisions of Rate Schedules DS, DP, and TS is expressly conditioned on Commission approval to defer and recover the amount of the delta revenue and of all waivers requested herein.

17. The modification of the aforementioned tariffs will only be effective for billing through September 2020 because after September 2020 any negatively impacted customer's billing demand will reset per the terms of the aforementioned Rate Schedules.

If the crisis is still continuing at that time, the reset will result in lower billing demand under the existing terms because the demand floor will then be based on demand established during summer of 2020, and therefore based upon business activity that is representative of business activities during the crisis. If the crisis has subsided by that time, then the reset will reflect the customer's new ongoing demand and the need for relief will be assumed to have passed.

18. A reduction in the minimum billing demand provisions of Rate Schedules DS, DP, and TS will provide some relief for those non-residential customers that have been most impacted by the COVID-19 pandemic. Although the temporary modification to the tariffs may also benefit customers that are not negatively impacted by the crisis, Duke Energy Ohio believes that the number of such customers will be minimal. Those customers that are not negatively impacted by the crisis will, by definition, be much less likely to fall below 85 percent of the prior summer's peak and therefore unlikely to benefit from this relief. Regardless, the critical need for relief for those customers most impacted by the crisis necessitates this temporary rate relief.

19. Duke Energy Ohio submits that a reduction in the current demand ratchet to 50 percent – as compared to a greater reduction or elimination of the ratchet – appropriately balances the interests of all non-residential customers on the affected Rate Schedules and yields an equitable outcome in respect of amounts to be recovered via the Company's Economic Competitiveness Fund Rider (Rider ECF).

20. Duke Energy Ohio proposes to apply this reasonable arrangement to all customers on rates DS, DP, and TS and therefore its proposal is consistent with R.C. 4905.33[11] and R.C. 4905.35.[12]

21. Duke Energy Ohio will defer the difference between amounts actually billed to customers using the temporarily reduced ratchet and the amounts that would have been billed using the currently applicable ratchets and to record a regulatory asset in this amount. The final amount of such regulatory asset will be calculated by October 15, 2020.

B. Recovery of Delta Revenues and Request to Modify Rider ECF

22. R.C. 4905.31(E) provides that a utility's reasonable arrangement may also include a "device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program . . .."[13]

23. Duke Energy Ohio proposes to defer and recover the delta revenues via its currently approved Rider ECF over a period of one year, subject to a final true-up, beginning January 1, 2021, as described more fully below.

24. Rider ECF was approved by the Commission for use as the Company's mechanism to recover the costs of Commission-approved reasonable arrangements. Duke Energy Ohio requests a modification to Rider ECF to allocate the foregone revenues

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[11] R.C. 4905.33 prohibits a utility from charging greater or lesser compensation for any services rendered, or to be rendered, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.

[12] R.C.4905.35 prohibits undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.

[13] R.C. 4905.31(E).

under Commission-approved rate schedules, also referred to as delta revenues,[14] for this particular reasonable arrangement solely to the rate classes that will benefit from the reduction of the demand ratchet. In other words, Duke Energy Ohio requests that the Commission consider a waiver, as more fully explained below, such that only Rates DS, DP, and TS be assessed the deferred delta revenues. The recovery of the delta revenues will be allocated to customers under Rates DS, DP, and TS based on a combination of the relative base distribution revenue for each rate class as approved in the Company's then most recent electric base distribution rate case and the allocation of transmission revenue requirement in the Company's then most recently approved base transmission rider (Rider BTR). Recovery of the allocated share of delta revenue will be on a per kW or kVA basis, as applicable per the underlying Rate Schedule.

25. Duke Energy Ohio proposes to implement this change to Rider ECF, with Commission approval to recover the delta revenues, accumulated for bills rendered from May 1, 2020, through September 30, 2020, over a reasonable period, not to exceed twelve months (except for a final true-up), beginning January 1, 2021.

26. As it relates to the delta revenues under the reasonable arrangement, such revenue represents compensation the Company is otherwise entitled to receive. Although the Company's proposal allows for full recovery of the delta revenues, it is not without cost. The temporary reduction in cash revenue is a burden to the Company during a time when liquidity is a challenge throughout the industry. For this reason, Duke Energy Ohio seeks a carrying cost on the unrecovered balance of the delta revenue until fully

[14] 4901:1-38-01 defines Delta Revenue as the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the Commission.

recovered to compensate it for the time value of money. The Company proposes to use the rate for long-term debt, as approved in Case No. 17-32-EL-AIR to calculate such carrying cost.[15] Indeed, public utilities are not immune to the financial challenges during this crisis and Duke Energy Ohio is experiencing a reduction in load and associated revenues due to the lack of operation on non-essential businesses during this crisis. In addition, other actions that the Company has taken in response to the Commission's previous Entries (*e.g.* waiver of reconnection and other fees, suspension of disconnections, etc.,) in response to this crisis have impacted the Company's revenues and its cash flows. Finally, the recent volatility in the debt and equity markets have increased pressure on liquidity for most industries, including utilities. As such, the recovery of the revenues lost from the temporary modification of minimum demand/billing provisions is reasonable and should be approved by the Commission as proposed by the Company.

27. Under R.C. 4905.13, the Commission "may establish a system of accounts to be kept by public utilities" and "may prescribe the manner in which such accounts shall be kept." Under this authority, the Commission has determined, through the promulgation of Ohio Administrative Code (O.A.C.) 4901:1-9-5(A), that electric utilities "shall keep their books of accounts and records in accordance with the uniform system of accounts prescribed by the federal energy regulatory commission except to the extent that the provisions of said uniform system of accounts are inconsistent in any way with the outstanding accounting orders of the commission." Further, O.A.C. 4901:1-9-5(B)

[15] Duke Energy Ohio is not seeking to accrue carrying costs on the deferred balance during the period of the declared state of emergency, however, the Company proposes to accrue carrying costs beginning on the lifting on the state of emergency until the delta revenue is fully recovered.

specifically authorizes the Commission to require the creation and maintenance of additional accounts.

28. The Financial Accounting Standard Board provides authoritative guidance on Generally Accepted Accounting Principles, and has issued a standard applicable to a regulatory deferral involving revenue, Accounting Standards Codification (ASC) 980-605. This standard requires the following for the proper creation of a regulatory asset for deferral of revenues:

- An order from Commission that allows for automatic adjustment to future rates. Verification of the adjustment to future rates by regulatory would not preclude the adjustment from being considered automatic;
- Additional revenue is determinable and probable of recovery; and
- Additional revenue will be collected within 24 months following the end of the annual period in which they are recognized.

Using Rider ECF to recover the delta revenue from the proposed reasonable arrangement will enable Duke Energy Ohio to defer the revenue consistent with ASC 980-605. However, a simple deferral authorization without a clear recovery mechanism would not meet this standard. Therefore, although other costs that may be deferred may be captured solely through a regulatory asset deferral, it is imperative that the Commission specify in its order that Rider ECF is the recovery mechanism for the delta revenues associated with the proposed reasonable arrangement. If the Commission is inclined not to approve the Company's recovery of the delta revenues through Rider ECF, then the Commission should consider the Company's proposal to reduce the demand charges in the aforementioned rates as withdrawn.

29. The Company's proposal in this Application will not result in any increase in any rate or charge. The delta revenues represent revenue the Company would otherwise collect through the currently approved demand ratchets the DS, DP, and TS Rate Schedules. The Company is merely deferring collection of these delta revenues for a period of time and, instead, planning to collect them through a different mechanism. Therefore, there is no "increase" in rates and the Commission may approve this application without a hearing.

III. Request for Waivers

30. The Commission has authority to grant waivers of its administrative regulations for good cause. Specifically, as it relates to reasonable arrangements, 4901:1-38-02(B) allows the Commission to waive *any* requirement of Chapter 4901:1-38, other than a requirement mandated by statute, for good cause shown.[16] Duke Energy Ohio submits that good cause exists to grant certain waivers of specific portions of regulations that are otherwise applicable to reasonable arrangements. Indeed, in crafting and approving these regulations, it is highly unlikely that the present emergency circumstances were contemplated. As such, good cause exists to consider deviation from certain of the regulations.

31. Duke Energy Ohio requests, as part of its approval of this reasonable arrangement, that the Commission grant waiver of O.A.C. 4901:1-38-06,[17] which would otherwise require all customers that are a party to the reasonable arrangement to submit an annual report to the Company. A waiver is reasonable given that the reasonable

[16] O.A.C. 4901:1-38-02(B)
[17] O.A.C. 4901:1-38-06

arrangement is limited in terms of duration to the upcoming summer months impacted by this declared state of emergency, and the arrangement is intended to temporarily reduce the demand ratchet in the Company's tariffs in a manner that is applicable equally to all impacted customers. Further, because Duke Energy Ohio is proposing that the reasonable arrangement apply to all customers that are being served under Rates DS, DP, and TS in a non-discriminatory manner, the Company submits that an annual report by each and every customer is unnecessary and impracticable, and would likely be overly burdensome to all parties, as well as the Commission. Rather, Duke Energy Ohio proposes to provide the Commission with a quarterly report on the deferred revenues, the number of customers benefitting from the reduction, and the balance recovered and to be recovered under Rider ECF.

32. Duke Energy Ohio requests, as part of its approval of this reasonable arrangement, that the Commission grant waiver of O.A.C. 4901:1-38-08(A)(4) to only charge non-residential customers served under Rate Schedules DS, DP, and TS, which are benefitting from the temporary reduction in the demand ratchet the accumulated lost revenues that result from this temporary reduction. O.A.C. 4901:1-38-08(A) provides, in relevant part, that the amount of revenue recovery from a reasonable arrangement "shall be spread to all customers in proportion to the current revenue distribution between and among classses..."[18] Given the unique circumstances that give rise to the need for the reasonable arrangement, and to not unfairly harm residential customers that are also impacted by the declared state of emergency, the Company submits that a waiver of

[18] O.A.C. 4901:1-38-08.

O.A.C. 4901:1-38-08(A)(4) insofar as limiting recovery of lost revenues to those customers that are benefitting from the demand ratchet reduction is reasonable.

33. To the extent the circumstances associated with the declared state of emergency and the need for expeditious solutions do not permit the default process or filing requirements for reasonable arrangements found in O.A.C. 4901:1-38, the Company requests waivers of any additional regulations, that the Commission deems necessary in order to enable this reasonable arrangement to become effective as expeditiously as possible and the requested cost recovery to occur.

IV. Attachments to the Application

34. Attachment A to this Application includes copies of the Company's currently applicable Rate Schedules DS, DP, and TS.

35. Attachment B to this Application includes copies of the Company's currently applicable Rate Schedules DS, DP, and TS marked up for the proposed changes.

36. Attachment C to this Application includes clean copies of the Company's proposed temporary Rate Schedules DS, DP, and TS.

THEREFORE, consistent with the information provided above, Duke Energy Ohio respectfully requests that the Commission approve the Company's request to temporarily modify the tariff provisions in Rate Schedules DS, DP, and TS; to authorize deferral of the delta revenue attributable to this temporary change and to allow recovery of the deferred delta revenues via Rider ECF over a period of one year beginning January 1, 2021. In order to provide this relief to affected customers, the Company requests an

order by the Commission in sufficient time to implement the demand ratchet reductions with the May 2020 billing cycle.

Because this is a filing not for an increase in rates, the Commission may approve this application without a hearing.

DUKE ENERGY OHIO, INC.

Respectfully submitted,

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Summary: Application Duke Energy Ohio, Inc.'s Application Under the Commission's Proceeding During the Declared State of Emergency, for Approval of a Reasonable Arrangement with Customers Served Under Rates, DS, DP and TS, Change in Accounting Methods, to Adjust its Economic Competitiveness Fund Rider (Rider ECF), and Request for Waivers electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Kingery, Jeanne W and Vaysman, Larisa