

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Authority to Change) Case No. 20-1011-GE-AAM
Accounting Methods.)

**APPLICATION OF DUKE ENERGY OHIO, INC.,
FOR AUTHORITY TO ESTABLISH A REGULATORY ASSET**

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and states as follows:

1. Duke Energy Ohio is an Ohio corporation engaged in the business of serving approximately 743,000 electric distribution customers and approximately 422,000 natural gas distribution customers in southwest Ohio and, as such, is a public utility as defined by Revised Code (R.C.) 4905.02 and R.C. 4905.03 and subject to the jurisdiction of the Public Utilities Commission of Ohio (Commission).

2. 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.) 4901:1-9-05(A) and 4901:1-13-13(A), that electric distribution utilities and natural gas companies “shall keep their books of accounts and records in accordance with the uniform system of accounts from time to time prescribed by the federal energy regulatory commission except to the extent that the provisions of said uniform system of account are inconsistent in any way with any outstanding orders of the public utilities commission of Ohio.”¹

¹ 4901:1-13-13(A) is quoted above; Rule 4901:1-9-05(A) contains slightly different wording, but materially the same directive.

Further, O.A.C. 4901:1-13-13(B) and 4901:1-9-05(B) specifically authorize the Commission to require the creation and maintenance of additional accounts.

3. Pursuant to R.C. 4905.22, Duke Energy Ohio has an obligation to “furnish necessary and adequate services and facilities” to its electric distribution and natural gas customers in southwest Ohio.

4. 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. On April 30, 2020, the stay-at-home order was updated to a stay-safe order, which provided for a gradual, phased re-opening of businesses in Ohio, taking precautions to protect human health.²

5. 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

² <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf> (accessed May 4, 2020).

requirements that may impose a service continuity hardship on customers.”³ In short, the Commission directed all Ohio utilities to develop emergency plans applicable to all regulated customers in the state.

6. 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 that may impose a service restoration hardship on customers or create unnecessary risks of social contact” (March 13 Entry).⁴

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

8. 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).⁵ 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, return check charges, reconnection fees, and residential customers’ electronic payment fees (credit cards, debit cards, electronic checks) (collectively, “the Fees”), as well as other actions intended to minimize customer contact.⁶ On May 4, 2020, the Company filed

³ *In the Matter of the Proper Procedures and Process 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).

⁴ *Id.*, Entry, p. 2 (March 13, 2020).

⁵ *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).

⁶ *Id.*

a second motion, this time seeking a waiver of certain limitations on offering customers extended payment plan options in O.A.C. 4901:1-18-05.⁷

9. As an essential business with the critical obligation to maintain electric and natural gas services for more than one million individuals affected by the pandemic, Duke Energy Ohio has had to implement needed changes to its business operations. Among other things, the Company has had, and will continue, to provide employees with the appropriate personal protective equipment to facilitate necessary entries into customers' premises so that vital infrastructure work can continue. Information technology changes have been needed to implement remote work practices designed to mitigate the risk of social spread. These modifications, which come with an increase in operational costs, have all been required in response to Ohio's orders and federal guidelines.

10. In addition to the incremental additional operational costs incurred to continue its critical business operations during the pandemic, the Company is, as noted above, taking actions to ensure service continuity for customers. But in waiving the Fees and suspending disconnections for non-payment, the Company is incurring incremental additional financial losses. The financial losses incurred in responding to the COVID-19 pandemic, including forgoing the types of revenue streams afforded through tariffed charges for late payment return check charges, and reconnections, are all costs being incurred by the Company.

11. On April 24, 2020, the Staff of the Public Utilities Commission of Ohio (Staff) issued a report and recommendation in Case No. 20-856-EL-AEC, *et al.*, indicating its belief that "suspending disconnections and removing financial barriers to reconnection or continuity of

⁷ *In the Matter of the Proper Procedures and Processes for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-599-GE-UNC, Second Motion of Duke Energy Ohio, Inc., to Suspend Certain Limitations on Payment Plan Offerings in Ohio Administrative Code Section 4901:1-18-05 (May 4, 2020).

service such as waiving reconnection fees, late fees and credit card processing fees are appropriate actions under the circumstances.”⁸

12. While appropriate under the circumstances, the Company’s actions result in additional loss of revenue and increases in costs that is in addition to the overall load loss experienced due to the governor’s actions to close non-essential businesses during the declared state of emergency. The Company may, by Commission direction or approval, take additional actions and incur additional costs, in response to the declared state of emergency, that are incremental to that which is reflected in its base electric and natural gas rates. As such, the Company is requesting authority to defer all incremental costs incurred or yet to be incurred since the date of the declared state of emergency.

13. Duke Energy Ohio anticipates that it will incur materially negative financial impacts from the measures required to cope with the COVID-19 crisis, including, among other things, (1) incremental costs for information technology modifications that may be or have been required, (2) incremental costs for special cleaning, (3) incremental costs for protective equipment, (4) costs associated with waiving residential electronic payment fees (5) lost miscellaneous revenues and cost recovery due to suspended tariffed charges, and (6) any other cost or lost revenue directly attributable to the COVID-19 crisis that is not being recovered in base rates or in riders. As a result of the governor’s stay at home orders, Duke Energy Ohio has seen significant load reductions, which are likely to continue for the foreseeable future. Even as Ohio transitions back to normal, the Company’s revenues from sales of electricity will continue to be lower, making its

⁸ *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. 20-856-EL-RDR, et al., Staff Report, p. 3 (April 24, 2020).*

ability to cover these incremental operational costs increasingly difficult. As discussed in greater detail below, Duke Energy Ohio seeks deferral authority for such amounts.

14. 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 operations of non-essential businesses during this crisis. Moreover, as an essential business, the Company cannot stem its losses by just shutting down. Rather, as an electric and natural gas utility, the Company has an obligation to serve its customers and must continue to have adequate resources and facilities available to deliver safe and reliable utility service, even during these circumstances. The resulting temporary reduction in cash revenue is a burden to the Company during a time when liquidity is a challenge throughout the industry. In addition, the above-described actions the Company has already taken in response to the Commission's previous entries addressing 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. For these reasons, Duke Energy Ohio seeks carrying costs on the deferred amounts until recovery is complete to compensate it for the time value of money. The Company proposes to use the rate for long-term debt, as approved in the Company's most recent base rate cases, Case No. 17-32-EL-AIR, *et al.*, for electric, and Case No. 12-1685-GA-AIR, *et al.*, for gas, to calculate such carrying costs.

15. This application requests authority for the accounting treatment described above. Recovery of any incremental operational costs, including the loss of miscellaneous revenues, deferred under this application will be addressed in a separate proceeding after the total incremental impact is fully known, as detailed further below.

16. The requested change in accounting procedure will not result in any increase in any rate or charge. The Commission may approve this application without a hearing.

17. In some recent deferral authority proceedings, Staff has delineated six criteria that it believes the Commission has historically considered in determining whether to grant such authority. Those criteria are described by Staff as:

- Whether the current level of costs included in the last rate case is insufficient;
- Whether the costs requests to be deferred are material in nature;
- Whether the problem was outside of the Company's control;
- Whether the expenditures are atypical and infrequent;
- Whether the costs would result in financial harm to the Company; and
- Whether the Commission could encourage the utility to do something it would not otherwise do through the granting of deferral authority.⁹

It is critical to note, however, that the Commission does not require an applicant to meet each and every one of the criteria identified by Staff. For example, in the same case cited above, the Commission granted the deferral request based on its determination that the expenditure being considered was atypical or infrequent and that the Commission could thereby encourage the applicant to take an action that the Commission deemed desirable.¹⁰

18. Regarding the aforementioned criteria that Staff considers, the Company submits that all six militate in favor of granting deferral authority:

- The current level of costs included in the last rate case is insufficient for responding to the declared state of emergency; the costs incurred in

⁹ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Grid Modernization Opt-Out Tariff and for a Change in Accounting Procedures Including a Cost Recovery Mechanism*, Case No. 14-1160-EL-UNC, *et al.*, Prefiled Testimony of David M. Liphtratt, pp. 5-6 (October 2, 2015).

¹⁰ *Id.*, Opinion and Order, p. 7 (April 27, 2016).

response to the emergency are incremental to what is reflected in base electric distribution and natural gas rates. Indeed, the Fees waived and other actions taken in response to the declared state of emergency to date are now incremental costs to the Company or resulting in lower revenues. For example, as previously mentioned, one component of the Fees is reconnection fees which are treated as miscellaneous revenues for rate-making purposes and are deducted from the Company's revenue requirement in a rate case. These reconnection fees are intended to compensate the Company for its costs. Waiving reconnection fees means the Company absorbs these costs without compensation. Likewise, the electronic payment fees, which third-party payment processing vendors charge directly to customers for paying their bill by credit card or debit card, have become an incremental cost to the Company in the current emergency. Currently, to assist customers, Duke Energy Ohio is covering the costs of the third-party electronic payment processing for residential customers. This represents a new and additional cost being incurred by the Company that is not reflected in base rates. Likewise, the incremental investments made, including, but not limited to, personal protective equipment for employees, and IT upgrades in response to the emergency, are new and additional to what was previously included in base rates.

- The incremental costs and lost revenues to be deferred are material in nature. Indeed, the Company's suspending the collection of many Commission-approved fees is a direct impact to the Company's revenues.

Base electric and natural gas rates are already built upon the assumption of regular ongoing collections. The Company's current rates are based upon an assumption of a particular level of sales, at a particular charge. This material financial impact is further exacerbated by the fact that Duke Energy Ohio has been seeing significant reductions in customers' loads (and therefore revenues) as a result of the governor's declared state of emergency. As the Company continues to experience reduced load and increased costs in response to the COVID pandemic, its revenues will continue to decline, impeding its ability to maintain its financial integrity while providing customers with safe and reliable utility service.

- The current state of emergency is unquestionably outside the Company's control. The Company could not possibly have predicted this pandemic and the associated financial and operational impacts at the time of its last base rate case. Furthermore, most of the measures taken by the Company in response to the pandemic have been either specifically requested or strongly encouraged by the Commission. Indeed, the Company was directed by the Commission to suspend its disconnections except for instances of safety and to review its service disconnection policies, practices, and tariff provisions and identify areas where it may be prudent to suspend, for the duration of the emergency, otherwise applicable requirements that may impose a service continuity hardship on customers.¹¹ The governor's declared state of emergency and closure of non-essential businesses is unprecedented and

¹¹ March 12 Entry p. 3.

outside the control of Duke Energy Ohio and all of the impacted customers. And even as businesses begin to gradually receive legal permission to reopen, many will not immediately do so, and many of those who do open will do so at significantly reduced levels of operation. As explained above, the Company has already taken a number of actions in response to the Commission's March 12 and March 13 Entries and is continuing to examine its policies, practices, and tariffs, to identify other possible actions to relieve hardships on its customers and maximize public safety. Such actions are not without cost and, therefore, support the need for the Company's Application in these proceedings.

- The circumstances leading to the governor's declaration, the Commission's directives, and the Company's actions in response thereto are atypical and infrequent. As mentioned above, the current health crisis has been called unprecedented, with Governor DeWine ordering the closure of non-essential businesses.¹² It is indisputable that a pandemic with such extreme impacts has not occurred with any degree of regularity, let alone in the last several decades.
- The costs incurred and those yet to be incurred and the lost miscellaneous revenues are significant and will cause the Company financial harm. Maintaining the financial strength of the utility is necessary to ensure it can continue to provide safe, reliable and reasonable service to its customers, especially during the current crisis.

¹²<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).

- Granting the requested deferral authority will encourage the Company to continue taking proactive steps to provide relief to customers while appropriately preserving its financial integrity during this time when the provision of essential utility service is of paramount importance. The Commission should encourage utilities to take such actions and provide rate relief to customers, but in ways that do not sacrifice utility cash flows and financial strength. Indeed, granting the requested deferrals will provide such encouragement, for the benefit of customers.

19. Some of the aforementioned Fees that have been waived include revenue lost as a result of the Commission's directives and the Company's response thereto. The Financial Accounting Standard Board (FASB) provides authoritative guidance on Generally Accepted Accounting Principles (GAAP) and has issued a standard applicable to a regulatory deferral involving revenue, Accounting Standards Codification (ASC) 980-605. This standard requires all of the following for the proper creation of a regulatory asset for deferral of revenues:

- An order from the 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.
- Additional revenue will be collected within twenty-four months following the end of the annual period in which they are recognized.

In order for the Company to satisfy these requirements and defer the forgone revenues, a clear recovery mechanism must be established. If no clear recovery mechanism is established, then the forgone revenues would not be eligible for deferral under GAAP.

20. A simple deferral authorization without a clear recovery mechanism does not meet this standard. Therefore, in order to meet this standard, Duke Energy Ohio proposes that the recovery of these incremental costs and lost revenues occur through an existing mechanism such as the Company's electric and natural gas distribution uncollectible expense recovery mechanisms, Rider UE-ED, and Rider UE-G, respectively. The Company will include the incremental costs in an application to adjust these riders at a future date, but within twenty-four months, once the scope of costs is fully known and the state of emergency has been lifted for Ohio.

21. The Company's request herein is similar to requests for which the Staff has already expressed support. In Case No. 20-604-EL-AAM, the Staff issued a report on April 15, 2020, and acknowledged that potentially all of the Commission's six criteria could be met for Ohio Power Company's (Ohio Power) request to defer incremental COVID-19 costs. Similarly, in Case No. 20-0650-EL-AAM, *et al.*, Staff recommended approval of the Dayton Power & Light Company's (DP&L) COVID-19 deferral application, also finding that the Commission's deferral criteria could be met. By order issued May 6, 2020, the Commission granted deferral authority to Ohio Power for its incremental expenses and forgone revenues incurred in response to the COVID-19 pandemic.¹³ Given the similarity of the circumstances for Ohio Power, DP&L, and Duke Energy Ohio, the Company submits that approval of its request for deferral authority is also appropriate.

22. Duke Energy Ohio has established accounting codes to track its expenses and lost revenue attributable to the COVID-19 crisis.

23. Given the extraordinary crisis presented by the emergence of COVID-19 and the likelihood that the incremental operational costs and lost miscellaneous revenue incurred by Duke

¹³ *In the Matter of the Application of Ohio Power Company for Approval of its Temporary Plan for Addressing the COVID-19 State of Emergency*, Case No. 20-602-EL-UNC, Finding and Order p. 22 (May 6, 2020).

Energy Ohio in response to this crisis will be significant, the Company is seeking expedited approval for the authority to create an accounting deferral for its electric and natural gas businesses.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission approve this Application as submitted.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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Summary: Application Application of Duke Energy Ohio, Inc., for Authority to Establish a Regulatory Asset electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and Kingery, Jeanne W and D'Ascenzo, Rocco O. Mr. and Vaysman, Larisa