

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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Duke’s proposal to charge customers \$111 million for four projects (a new customer information system, a new land mobile radio system, electric vehicle and charging station subsidies, and smart city subsidies) was unreasonable when it was filed in September 2019. It would be especially unreasonable now—with the coronavirus pandemic devastating our health and economy—to add unjustified new charges to customer bills for these non-essential projects that contribute nothing to the policy in the state for providing safe and reliability service to customers.¹

The Public Utilities Commission of Ohio (“PUCO”) should deny Duke’s application in its entirety for all the reasons explained in the Office of the Ohio Consumers’ Counsel’s (“OCC”) comments: primarily, that the customer information system and land mobile radio projects should be addressed in a future base rate case,² and the electric vehicle and smart city

¹ See R.C. 4928.02(A).

² The PUCO ordered Duke to file at least one base electric distribution rate case on or before May 31, 2024. See Case No. 17-32-EL-AIR, Opinion & Order at 36 (Dec. 19, 2018) (the “Global Settlement Order”). Therefore, Duke clearly has the opportunity to seek cost recovery for these investments in a base rate case at any time between now and May 31, 2024. Likewise, nothing prevents Duke from filing a natural gas base rate case at any time.

programs are unreasonable subsidy programs that benefit relatively few customers (if any).³ The sudden and substantial financial damage to Ohioans resulting from the coronavirus further warrants rejection of new charges for these largely non-essential investments.

To protect consumers, the PUCO should adopt the following consumer-protection recommendations in response to the comments filed by various parties, in addition to those included in OCC's initial comments.

I. RECOMMENDATIONS

A. To protect consumers, any rate increases approved in this case should be deferred until after the coronavirus emergency ends.

As the Ohio Hospital Association (“OHA”) noted in its initial comments, Duke’s application to charge consumers \$111 million was filed “well before the coronavirus pandemic and the ensuing global economic downturn related to the pandemic.”⁴ Thus, OHA recommends that the PUCO “ensure the investments proposed in this application are necessary to meet the immediate reliability needs of customers in Duke’s service territory or truly provide system benefits to all customers.”⁵ OHA concludes, and OCC agrees, that “it is critical that [the] Commission be cognizant of the potential increase this case could have on customers’ rates, no matter how slight.”⁶

The PUCO is well aware of the struggles that Ohioans are facing now and the struggles they will continue to face even after the formal declaration of emergency ends. For all the reasons explained below and in OCC’s initial comments, the PUCO should reject each of Duke’s proposed charges to consumers in this case (for a new customer information system, new land

³ See generally Comments by the Office of the Ohio Consumers’ Counsel (Apr. 15, 2020) (the “OCC Comments”).

⁴ Initial Comments of the Ohio Hospital Association at 2 (Apr. 15, 2020) (the “OHA Comments”).

⁵ OHA Comments at 2.

⁶ OHA Comments at 2.

mobile radio system, for electric vehicle and charging station subsidies, and for smart city lighting pole subsidies).

If the PUCO does find that any of these new charges are appropriate, however, it should defer them to a later date. Each of the four projects should be examined and ruled upon independently based on consistency with state policy before any such determination is made to proceed with any of the projects. In this time of emergency due to the coronavirus—where consumers are dealing with lost jobs, lost wages, and associated challenges—increased charges should be deferred with minimal (if any) carrying charges until after the emergency ends (or longer). This will enable consumers to deal with the impact of the state of emergency and recover from the financial impact it has had and will continue to have.

B. Consumers should not be charged for Duke’s proposed investments because Duke has not shown that they will be cost-effective, as required by R.C. 4928.02(D).

In its recommendation, the PUCO Staff discussed some of the purported benefits of Duke’s proposal.⁷ But the PUCO Staff did not attempt to quantify or substantiate these benefits, and neither did Duke. This highlights a critical flaw in all of Duke’s proposals: Duke has not shown any of them to be cost-effective.

Under R.C. 4928.02(D), it is state policy to encourage smart grid programs only if they are “cost-effective.” As explained in OCC’s initial comments, Duke’s proposals are not smart grid proposals, so they should not be charged to customers through a smart grid rider.⁸ But if the PUCO does consider them to be smart grid investments (and thus eligible to be charged to customers through the PowerForward Rider), then Duke should be required to show that they will be cost-effective, meaning the benefits to consumers will be greater than the costs. And the

⁷ Staff Recommendation at 4 (Apr. 15, 2020).

⁸ OCC Comments at 2-8.

PUCO left no doubt that any PowerForward investment must be supported with well-reasoned and demonstratable cost-benefit analysis:

Furthermore, in requests for grid modernization investment, it only makes sense that an EDU include a cost/benefit analysis with the application. This way, the Commission and stakeholders can transparently evaluate whether a grid modernization investment should be made in the first place. Applications for investment should demonstrate that benefits generated by the project will exceed costs on a net present value basis.⁹

Duke has not done so, or even attempted to do so. We know how much Duke is proposing to charge consumers: more than \$100 million. But there is little evidence of how much customers will save. Just vague references to intangible benefits like “increased transparency and information,”¹⁰ “increased customization of communications,”¹¹ “ready access to customer account histories,”¹² “reduced system downtime,”¹³ “improved targeted communications during outages,”¹⁴ “reduced errors and delays in the handling of complex bills,”¹⁵ “automation of more complex billing options,”¹⁶ “more tailored customer preferences,”¹⁷ and “universal bill-format.”¹⁸ Duke has not shown that these vague benefits, if they have any quantifiable value at all, come close to outweighing the more than \$100 million that Duke is proposing to charge customers.

⁹ PUCO PowerForward Roadmap at 27 (Aug. 29, 2018), available at <https://www.puco.ohio.gov/industry-information/industry-topics/powerforward/powerforward-a-roadmap-to-ohios-electricity-future/>

¹⁰ Direct Testimony of Amy B. Spiller at 10 (Sept. 24, 2019) (the “Spiller Testimony”).

¹¹ Spiller Testimony at 10.

¹² Spiller Testimony at 11.

¹³ Spiller Testimony at 11.

¹⁴ Spiller Testimony at 11.

¹⁵ Spiller Testimony at 11.

¹⁶ Staff Recommendation at 4.

¹⁷ Staff Recommendation at 4-5.

¹⁸ Staff Recommendation at 5.

C. Duke began implementing its proposed Customer Information System before the PowerForward Rider was approved, so it should not be allowed to charge customers on an accelerated basis through the rider.

The PUCO Staff opposes Duke’s proposal to charge customers \$11.8 million for its Land Mobile Radio investment through its PowerForward Rider in part because “through the Company’s enterprise-level decision-making process, it initiated the LMR [Land Mobile Radio] communications system replacement well before the current rider recovery mechanism even existed.”¹⁹ As the PUCO Staff noted, the PowerForward Rider was not created until December 2018, but Duke issued an RFP for the LMR project in November 2017.²⁰ At the same time, the PUCO Staff supports Duke’s proposal to charge customers for its new Customer Information System through the PowerForward Rider. But this is inconsistent. The Customer Information System, just like the Land Mobile Radio project, was already in the works before December 2018 when the PowerForward Rider was approved.

According to Duke witness Hunsicker, “the first deliverable of the Customer Connect Program was successfully deployed” in June 2018, six months before approval of the PowerForward Rider.²¹ Indeed, it appears that Duke may have begun implementing the new Customer Information System as early as January 2018, given that Duke is seeking a deferral of costs for that system all the way back to January 2018.²² Thus, following the PUCO Staff’s reasoning regarding the Land Mobile Radio investment, Duke should not be allowed to charge customers for the new Customer Information System through the PowerForward Rider.

¹⁹ Staff Recommendation at 6-7.

²⁰ Staff Recommendation at 6-7.

²¹ Direct Testimony of Retha Hunsicker at 15 (Sept. 24, 2019) (the “Hunsicker Testimony”).

²² Application at 12, 14 (Sept. 24, 2019) (“The costs reflected in these two programs are costs that have been incurred since January 1, 2018, (*i.e.*, Customer Connect)...”); Direct Testimony of Jay P. Brown at 3 (Sept. 24, 2019) (“the Company is requesting deferral authority of O&M expenses incurred since January 1, 2018. ... The Company is proposing to amortize the O&M expenses incurred after January 1, 2018 over a five-year period.”) (the “Brown Testimony”).

D. Energy marketers, and not customers, should pay for investments primarily designed to benefit marketers.

IGS and Direct want Duke's new Customer Information System to accommodate "supplier consolidated billing."²³ According to IGS, supplier consolidated billing is where a shopping customer receives a single bill for its distribution and generation charges, but instead of receiving it from the distribution utility, it receives it from the marketer.²⁴ As they note, in approving the PowerForward Rider, the PUCO stated that Duke's Customer Information System "should accommodate" supplier consolidated billing.²⁵ But the PUCO said nothing about who should pay for this capability.

In determining who should pay for it, the PUCO should ask itself: who wants this capability? Certain energy marketers like IGS and Direct are the ones seeking this capability, not consumers or consumer advocates, and apparently not even all energy marketers. Duke's current system is capable of providing consumers with consolidated bills that include both Duke's and the marketers' charges, so supplier consolidated billing is redundant from the customer's perspective. And in fact, it is unjust and unreasonable for customers to pay for Duke's consolidated bills and also for supplier consolidated bills when there is no benefits in redundant billing. Today there more than 170 marketer offers for electricity²⁶ and 79 marketer offers for natural gas to consumers,²⁷ without supplier consolidated billing and (without most of the

²³ Initial Comments of Interstate Gas Supply, Inc. at 3 (Apr. 15, 2020) (the "IGS Comments"); Initial Comments of Direct Energy Business, LLC and Direct Energy Services, LLC at 6 (Apr. 15, 2020) (the "Direct Comments").

²⁴ IGS Comments at 3, footnote 11.

²⁵ Global Settlement Order ¶ 239.

²⁶

<http://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=NaturalGas&TerritoryId=10&RateCode=1>

²⁷

<http://energychoice.ohio.gov/ApplesToApplesComparision.aspx?Category=NaturalGas&TerritoryId=10&RateCode=1>

marketers) even asking for supplier consolidated billing. Given some of the larger marketers' aggressive push for this capability, these marketers must believe that *they* will receive a competitive benefit from it. And if marketers want this capability, then they should be the ones paying for it, not customers.

E. Customers should not be charged for unregulated goods and services through their electric bills.

IGS argues that Duke should be required to “include the capability for [marketers] to include non-commodity charges on the Duke-issued utility bill.”²⁸ The PUCO should reject this proposal. As IGS notes in its comments, the PUCO recently ordered a change to its rules that would allow utilities and marketers to charge customers for unregulated products through the distribution utility bill.²⁹ But as OCC explained in its application for rehearing in that case—which the PUCO granted and remains pending PUCO consideration—this rule change is unlawful.³⁰ Unless and until the new rule goes into effect (which it has not yet), IGS's reliance on the rule is premature.

F. The PUCO did not direct Duke to include charges to customers for its Customer Information System through the PowerForward Rider.

In its recommendation, the PUCO Staff seems to suggest that it was the PUCO, and not Duke, that wants Duke to install and charge customers for a new Customer Information System. According to the PUCO Staff, “Duke was directed by the Commission to include a proposal to upgrade its CIS in the current case and recover the costs through Rider PF.”³¹ This makes it

²⁸ IGS Comments at 4-5.

²⁹ IGS Comments at 5.

³⁰ Case No. 17-1842-EL-ORD, Application for Rehearing by the Office of the Ohio Consumers' Counsel at 9-11 (Mar. 27, 2020).

³¹ Staff Recommendation at 4.

sound like it was the PUCO's idea, and Duke is just following orders. But that is not at all what happened.

The PUCO approved a settlement, as a package, that included one provision stating that Duke would file a future *request* to upgrade its Customer Information System. By approving the settlement as a package, the PUCO was not predetermining that Duke should be allowed to charge customers for its new Customer Information System on an accelerated basis through a rider. It was merely agreeing that under the settlement, Duke would in fact make such a request. The PUCO retains the authority to review that request on the merits and reject the request, as OCC recommends. The PUCO should reject any notion that it has already decided, in a previous case, that costs for the Customer Information System are properly included in Rider PF.

G. The PUCO Staff's and others' concerns with Duke's Customer Information System proposal underscore the fact that Duke has failed to take into account stakeholder input and instead designed the system in whatever way it felt was best for Duke, not for customers.

Several parties, including the PUCO Staff, raised various concerns with the design of Duke's proposed Customer Information System. The PUCO Staff, for example, notes that Duke's proposed system does not include a grievance address system, which would "provide[] the capability to receive, document, track, acknowledge, escalate, forward, and act on a customer's complaint."³² This is an important feature that protects consumers, yet despite the substantial cost that Duke is seeking to charge customers, Duke's proposed system lacks this feature. Marketers IGS and Direct Energy also assert that the proposed Customer Information System lacks various capabilities that would benefit marketers by allowing them to offer different types of products to consumers.³³ And while OCC does not necessarily agree with these

³² Staff Recommendation at 5.

³³ See IGS Comments at 3-7; Direct Comments at 6-7.

marketers' proposals, they again show that Duke is designing a system to meet its own objectives, not one that accommodates stakeholder interests. Further, Duke has not shown that its new Customer Information System will provide important features for consumers, like a price-to-compare on natural gas bills, the ability to separate gas and electric charges as required by the recent ruling in Case No. 19-1593-GE-UNC, or a shadow billing message that permits shopping customers to be kept informed about the standard service offer rate and charges.

H. The coronavirus is reducing the demand for electric vehicles, thus making Duke's electric vehicle and electric vehicle charging subsidies an even more unreasonable cost for consumers to pay.

Some intervening parties support Duke's proposal to subsidize electric vehicles and electric vehicle charging stations. These include environmental advocates³⁴ and ChargePoint, a company that sells electric vehicle charging products and thus would welcome an infusion of money (*i.e.*, subsidy) into its business, paid by utility customers against their will.³⁵ The PUCO should reject Duke's electric vehicle charging proposal for all the reasons explained in OCC's initial comments (such subsidies violate R.C. 4928.02(H), markets are preferred over monopolies, low-income customers would subsidize high-income customers, and the automotive industry should pay for electric vehicle initiatives³⁶).

But the effects of the coronavirus emergency further support a denial of electric vehicle subsidies. Most fundamentally, right in the middle of a national and state health and financial emergency is simply not the time to add hidden taxes to customers' utility bills to prop up the electric vehicle industry. (Indeed, there is never a good time for this type of regressive tax.) And

³⁴ Comments of the Environmental Law & Policy Center at 2-7 (Apr. 15, 2020) (the "ELPC Comments"); Comments of the Ohio Environmental Council & Sierra Club at 3-16 (Apr. 15, 2020) (the "OEC/Sierra Club Comments").

³⁵ Comments of ChargePoint, Inc. at 1-7 (Apr. 15, 2020) (the "ChargePoint Comments").

³⁶ See OCC Comments at 12-15.

more to the point, there have been numerous recent reports (discussed below) that the coronavirus emergency is reducing the demand for electric vehicles.

Environmental advocates Ohio Environmental Council and Sierra Club cite an analysis by MJ Bradley, which, according to these environmental advocates, projected billions of dollars of benefits for Ohio from electric vehicles over the next 30 years.³⁷ The PUCO should give no weight to this study. OEC and Sierra Club conveniently omit that MJ Bradley performed this analysis *on behalf of Duke Energy*, the very utility seeking to now charge customers for electric vehicle subsidies.³⁸ The MJ Bradley analysis, even if well-intentioned, is far from an objective analysis of the potential benefits to customers from electric vehicles. Indeed, many of MJ Bradley's clients are utilities, transportation companies, and environmental advocates, all of whom have an interest in a conclusion that electric vehicles bring benefits to the customers that are forced to subsidize them.³⁹

Further, this study was completed in June 2018, nearly two years ago, and long before the coronavirus pandemic. Numerous recent reports suggest that consumer demand for electric vehicles is down. In a frequently cited report by Wood Mackenzie, global sales of electric vehicles are projected to drop 43% in 2020 due to the coronavirus pandemic.⁴⁰

Duke is proposing subsidies for a network of electric vehicle charging stations. These subsidies make even less sense if there will be fewer electric vehicles on the road than previously

³⁷ OEC/Sierra Club Comments at 5.

³⁸ See MJ Bradley Study at 19 (“This study was conducted by M.J. Bradley & Associates for Duke Energy.”) available at <https://mjbradley.com/sites/default/files/OH%20PEV%20CB%20Analysis%20FINAL.pdf>.

³⁹ See <https://www.mjbradley.com/node/62>.

⁴⁰ See, e.g., <https://www.utilitydive.com/news/global-ev-sales-will-drop-43-in-2020-due-to-covid-19-lower-oil-prices-wo/575750/>; <https://www.greentechmedia.com/articles/read/electric-vehicle-sales-set-to-crash-in-2020-as-coronavirus-bites-and-oil-stays-cheap>; <https://www.cnbc.com/2020/05/01/coronavirus-could-help-tesla-retain-ev-lead-as-traditional-automakers-pare-back-electric-investments.html>; <https://www.caranddriver.com/news/a32215444/recession-ev-electric-car-buying-slower/>

projected. It does not make sense to double down on electric vehicle charging station subsidies at the exact same time that customers are substantially reducing their demand for electric vehicles. That could lead to unused charging station infrastructure and ultimately stranded assets, paid for by consumers without providing benefits justifying the cost.

I. The PUCO should not adopt Ohio Energy Group’s proposed allocation of costs, which would benefit non-residential customers at residential customer expense.

Ohio Energy Group (“OEG”) proposes that the PUCO adopt one of two potential cost allocation methodologies for Duke’s proposed \$111 million in charges to consumers. One option, according to OEG, is to allocate costs on the basis of distribution revenues, exempting transmission voltage customers who do not take service from the distribution system.⁴¹ The other option is to allocate costs between residential and non-residential customers on the basis of distribution revenues.⁴² According to OEG, “[e]ither approach would be reasonable to adopt in this proceeding since they both allocate the costs of distribution system upgrades based upon class usage of the distribution system, consistent with principles of cost causation.”⁴³ The PUCO should reject OEG’s proposal.

First, as OCC explained in its initial comments, the Customer Information System and Land Mobile Radio investments are more properly addressed in Duke’s next base rate case, so allocation issues should be addressed there.⁴⁴ Second, the PUCO should reject Duke’s electric vehicle and smart cities proposals outright, so there would be nothing to allocate. Further, OEG’s cost-allocation recommendation ignores the fact that Duke is proposing four separate programs

⁴¹ Comments of the Ohio Energy Group at 1-2 (Apr. 15, 2020) (the “OEG Comments”).

⁴² OEG Comments at 2.

⁴³ OEG Comments at 2.

⁴⁴ OCC Comments at 2-8.

(Customer Information System, Land Mobile Radio, Electric Vehicles, and Smart Cities), so a one-size fits all approach to cost allocation does not make sense.

Cost causation is an important consideration in allocating costs, as OEG states. Indeed, the principle of cost causation itself suggests that Duke's electric vehicle and smart city proposals should be rejected altogether. The cost causers for electric vehicles and electric vehicle charging stations are electric vehicle owners and charging stations owners, not all utility customers. Electric vehicle and charging stations owners, as the cost causers, should pay for these investments. Likewise, the cost causers for the smart city proposal are the cities, not all utility customers. The cities should pay for them.

Further, with respect to the Land Mobile Radio, the PUCO should consider who benefits most from the investment. As Duke explained, the Land Mobile Radio investment is designed primarily for purposes of improving reliability.⁴⁵ While reliability is important to residential consumers, a reliable distribution system provides substantially more financial benefits to nonresidential customers whose businesses rely on a reliable system and cannot tolerate system outages. The cost of each minute of an outage can be a financial impact totaling thousands of dollars for some businesses while the impact for most residential customers is generally valued by inconvenience rather than dollars. Thus, fairly allocating costs based on the derived benefits would make more sense than allocating costs based on distribution revenues.

⁴⁵ Direct Testimony of Randy L. Turner at 11-12 (Sept. 24, 2019) (the "Turner Testimony").

J. Armada Power’s proposal for a smart water heater program should not be adopted without further evaluation of the actual costs and benefits to consumers and the competitive nature of the water heater device.

In its initial comments, Armada Power proposes additional charges to consumers for a smart water heater program.⁴⁶ According to Armada Power, a smart water heater device is a cost-effective way for all-electric PIPP customers to save money. OCC appreciates Armada’s desire to save money for low-income residential consumers. But the PUCO should be skeptical about the potential benefits of this proposed subsidy program.

The PUCO should be aware that Armada’s proposal is in its own self-interest, as its primary business appears to be selling the very devices for which it now seeks a customer-funded subsidy. The main page of Armada’s website highlights the company as the “smarter way to manage water heating.”⁴⁷ Armada sells a product called the LCS2400 Grid Optimizer, which appears to be the device that would be installed in customers’ homes under Armada’s proposal.⁴⁸ Armada’s self-interest means that the PUCO cannot rely on Armada’s cost-benefit analysis. An independent review of the proposal is necessary to verify whether customers might actually benefit from Armada’s proposal.

And in fact, the Armada proposal could actually be harmful for PIPP customers. All electric PIPP customers pay 10% of their monthly household income as their PIPP installment payment.⁴⁹ A load control device installed on their water heater can mean despite PIPP

⁴⁶ Armada Power, LLC’s Comments on Duke Energy Ohio, Inc.’s Application for Approval of its Infrastructure Modernization Plan, Adjustment to Rider Power Forward, and Request for Deferrals (Apr. 15, 2020) (the “Armada Power Comments”).

⁴⁷ See <https://www.armadapower.com/>

⁴⁸ See <https://www.armadapower.com/hardware>

⁴⁹ Ohio Adm. Code 122:5-3.

customers paying their full obligation under rules, they may not have hot water when needed. Such inferior electric service is discriminatory and contrary to Ohio energy policies.⁵⁰

Further, if the PUCO were to adopt Armada's proposal or one like it, Duke should not be allowed to own the water heater optimizer. As Armada acknowledges, the technology it sells "is a behind the meter service, which typically is considered a competitive service."⁵¹ Armada tries to downplay this concern by noting that PIPP customers cannot shop for their electricity with an electric marketer and thus "cannot be marketed to."⁵² It is true that PIPP customers cannot shop for retail electric service. But it is patently false to suggest that companies like Armada are not allowed to market or sell their behind-the-meter products to PIPP customers. While it may be true that PIPP customers may have more trouble affording the up-front cost of advanced technologies, the solution to that problem is not monopoly utility ownership of competitive behind-the-meter products. If Armada's proposal is adopted in any form, the PIPP customer should have sufficient benefits to purchase and own the product, not Duke.

Finally, Armada's proposal is an energy efficiency or peak demand reduction program and not a form of grid modernization. And while utility grid modernization might serve as a platform for customers to engage in energy efficiency and peak demand reduction, it should not be used as an excuse for more captive customer-funded subsidies. In passing recently-passed House Bill 6, the General Assembly decided that utilities should no longer be required to offer customer-funded energy efficiency and peak demand reduction programs. Armada's proposal would serve as an end-around to this public policy decision by shifting customer-funded subsidies from utility energy efficiency riders to utility grid modernization riders.

⁵⁰ R.C. 4928.02(A).

⁵¹ Armada Power Comments ¶ 17.

⁵² Armada Power Comments ¶ 17.

K. If Duke is allowed to charge customers for any of its proposals through Rider PF (which it shouldn't be), those charges should not begin until Duke proves that the investments are used and useful in providing utility service to consumers.

Duke is proposing to install a new Customer Information System that will go into service in Ohio in 2022 or later⁵³ and a Land Mobile Radio system that may not go into service until 2021.⁵⁴ Yet Duke also proposes that it be allowed to immediately start charging customers for these investments through Rider PF. As OCC explained in its initial comments, these investments should only be charged to customers if they are shown to be used and useful in a future base rate case.⁵⁵

The PUCO Staff made a similar recommendation. Although the PUCO Staff supports Duke charging customers for the Customer Information System through Rider PF, it recommended that Duke not be allowed to charge customers “until Staff deems the CIS is used and useful and placed into service.”⁵⁶ OCC disagrees that customers should pay for the Customer Information System through Rider PF at all. But if the PUCO does allow such charges, then it should adopt its Staff’s recommendation that those charges not begin until the Customer Information System is found to be used and useful and the associated expenses are deemed prudent expenditures. Customers should not begin paying for a system long before it provides any benefits to them.

⁵³ See Hunsicker Testimony at 10 (projecting “late 2022” as the deployment date for Ohio).

⁵⁴ Staff Recommendation at 6.

⁵⁵ This is consistent with how customers in practically every other state where Duke is deploying the new CIS will be paying for the system. And considering that the new CIS has nothing to do with grid modernization or providing any real quantifiable benefits for customers, collection of costs outside a rate case are ill advised.

⁵⁶ Staff Recommendation at 15.

L. To protect consumers, the PUCO should deny Duke’s request to retroactively defer costs it has incurred for its Customer Information System and Land Mobile Radio.

1. The PUCO should not modify its six-part test to make it easier for utilities to obtain deferrals, as Duke and the PUCO Staff implicitly suggest.

Parties generally agree that the PUCO considers six factors when evaluating a utility’s request for a deferral. The PUCO Staff cited six factors in its review in recommendation,⁵⁷ OCC and OMA cited six factors in their initial comments,⁵⁸ and Duke cited six factors in its application.⁵⁹

In its application, however, Duke cited the incorrect fifth factor. According to Duke, the fifth factor is “whether the costs would result in financial harm to the Company.”⁶⁰ The PUCO Staff repeated this error in its recommendation.⁶¹ This is not the fifth factor of the PUCO’s test for deferrals, and it never has been. Instead, the fifth factor is “whether the financial integrity of the utility will be significantly and adversely affected if the deferral is not granted.”⁶²

In none of the cases that the PUCO staff cited for the six factors did the PUCO state that the fifth factor requires a mere showing of “financial harm.”⁶³ To the contrary, the PUCO has repeatedly said that the utility must do more: it must show that its “financial integrity” will be

⁵⁷ Staff Recommendation at 14.

⁵⁸ OCC Comments at 16; Comments of the Ohio Manufacturers’ Association Energy Group at 2-3 (Apr. 16, 2020) (the “OMA Comments”).

⁵⁹ Application at 12-13.

⁶⁰ Application at 13.

⁶¹ Staff Recommendation at 14.

⁶² OCC Comments at 16.

⁶³ See *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1238-GA-AAM, Finding & Order (July 6, 2016) (“If the deferral is not granted, will the costs result in *significant* financial harm to the applicant.”) (emphasis added); The PUCO Staff also cited *In re Duke Energy Ohio, Inc.*, Case No. 09-1097-GA-AAM, Finding & Order (Mar. 24, 2010); *In re Dayton Power & Light Co.*, Case No. 08-1332-EL-AAM, Finding & Order (Jan. 14, 2009), *In re Citizens Utilities Co. of Ohio*, Case No. 98-1701-WS-AAM, Finding & Order (Apr. 29, 1999). See Staff Recommendation at 14, footnote 33. It is not clear why these case were cited, as there is no mention of the six-factor test or any of the six factors.

“significantly and adversely affected.” In *In re Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods*, just two years ago, the PUCO cited the fifth factor as “Will the financial integrity of the utility be significantly and adversely affected, if the deferral is not granted?”⁶⁴ Even more recently (December 2018) in the PUCO’s investigation of the Tax Cuts and Jobs Act of 2017, the PUCO again cited the fifth factor in the same way.⁶⁵ In another recent case, again involving Duke, the PUCO again cited the standard as requiring a significant and adverse effect on the financial integrity of the utility.⁶⁶ The PUCO used this identical language in recent cases involving other utilities as well.⁶⁷

This is not a distinction without a difference. Showing “financial harm” is so easy as to be meaningless. If a utility can show that it would suffer a single dollar of losses, that would be a “financial harm.” But it clearly would not be a significant and adverse impact on the utility’s financial integrity.

The PUCO should not make it easier for utilities to obtain deferrals by requiring a mere showing of “financial harm.” It should reiterate, as it has in numerous recent cases, that the fifth factor requires the utility to show that its *financial integrity* will be *significantly* and *adversely* affected in the absence of a deferral. And as OCC explained in its initial comments, Duke has not done so, and cannot do so, here.⁶⁸

⁶⁴ Case No. 17-2118-GA-AAM, Opinion & Order (Apr. 18, 2018).

⁶⁵ Case No. 18-47-AU-COI, Third Entry on Rehearing ¶ 20 (Dec. 19, 2018).

⁶⁶ Case No. 16-387-GA-AAM, Opinion & Order ¶ 8 (Jan. 4, 2017).

⁶⁷ See Case No. 15-1741-GA-AAM, Opinion & Order ¶ 8 (Nov. 3, 2016) (Vectren); Case No. 15-1712-GA-AAM, Opinion and Order ¶ 8 (Nov. 3, 2016) (Dominion).

⁶⁸ OCC Comments at 18.

2. The PUCO should not grant Duke any deferral for its electric vehicle charging proposal because Duke did not ask for a deferral.

In its filing, the PUCO Staff recommended that the PUCO not grant Duke any deferral for its electric vehicle charging proposal.⁶⁹ To reach this conclusion, the PUCO Staff applied the PUCO's six-factor test.⁷⁰ But there is a more fundamental reason that the PUCO should not allow Duke to defer any costs related to its electric vehicle proposal: Duke did not ask for any such authority. In its Application, Duke seeks a deferral only for the Customer Information System and Land Mobile Radio.⁷¹ Thus, the PUCO need not apply the six-factor test to the electric vehicle proposal.

M. There is no need to modify the procedural schedule at this time.

In its initial comments, IGS recommends that the PUCO amend the procedural schedule, including potentially resolving this case through a "paper hearing" with no cross examination of witnesses.⁷² OCC agrees with IGS that it is important to "strike the right balance between safety, due process, and expediency."⁷³ But it is not clear that a paper hearing is feasible in a case like this, with numerous issues, numerous parties, and more than \$100 million in charges to customers at stake.

Further, the PUCO need not address this issue at this time. Any potential hearing in this case is like to occur months from now, regardless of the current coronavirus emergency. When and if it appears that a hearing in this case is necessary, parties can work together and with the PUCO to find a reasonable path forward. The PUCO and parties should wait and see how this

⁶⁹ Staff Recommendation at 17-19.

⁷⁰ *Id.*

⁷¹ Application at 12.

⁷² IGS Comments at 12.

⁷³ IGS Comments at 12-13.

case unfolds, and how the coronavirus emergency continues to evolve, before attempting to address the manner in which a hearing might be held or not held in this case.

II. CONCLUSION

The PUCO should reject Duke’s proposal to charge customers \$111 million on an accelerated basis for its proposed “smart grid” investments. During and after the coronavirus emergency, customers need *lower* bills, not higher bills resulting from new rider charges for nonessential utility services. This case presents the PUCO with an opportunity to protect consumers by denying or, at the very least, delaying the financial impact on consumers from Duke’s proposals. The PUCO should put consumers first.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 15th day of May 2020.

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