

**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.)

**REPLY COMMENTS OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

On September 24, 2019, Duke Energy Ohio, Inc. (Duke or the Company) sought to include costs associated with its Infrastructure Modernization Plan in its Power Forward Rider (Rider PF).¹ Duke also sought deferral authority for Operations and Maintenance (O&M) costs incremental to amounts already included in its base electric and natural gas rates that have been or will be incurred in relation to its Infrastructure Modernization Plan (Plan).²

On April 15, 2020, the Staff of the Public Utilities Commission of Ohio (Commission) filed a report on Duke's application.³ Several stakeholders filed initial comments on April 15, 2020 and April 16, 2020⁴ that addressed the legality, amount, and design of Duke's proposed cost

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

² Id.

³ Staff's Review and Recommendation (April 15, 2020) (Staff Report).

⁴ As explained in OMAEG's motion for leave to file comments one day out-of-time, OMAEG's comments were filed on April 16, 2020 due to a remote server connection error that occurred during COVID-19's remote working

recovery and the Plan's components, including the Customer Connect platform, Land Mobile Radio (LMR), Electric Vehicle (EV) Pilot Program, and Smart Cities Infrastructure Acceleration Program. As directed by the Commission,⁵ the Ohio Manufacturers' Association Energy Group (OMAEG) hereby files its reply comments in the above-captioned case.

As asserted by OMAEG and other stakeholders, Duke's request to unlawfully recover costs unrelated to modernizing Duke's distribution system, Duke's request to unlawfully defer costs that do not satisfy the Commission's criteria, Duke's request to unlawfully defer past costs, and Duke's request to install, own, and operate EV charging stations and subsidize investment into the EV competitive market should be denied.

II. REPLY COMMENTS

A. The Commission Should Reject Duke's Proposal to Recover All of its Costs Associated with its Infrastructure Modernization Plan Through Rider PF.

1. The Commission Should Evaluate Duke's Application in Light of the Current Emergency.

As an initial matter, it is imperative that the Commission evaluate Duke's proposals to include the costs of its Infrastructure Modernization Plan in Rider RF and to defer the associated O&M costs, in light of the COVID-19 emergency. As The Ohio Hospital Association (OHA) noted in its initial comments,⁶ Duke filed its application in September of 2019, well before COVID-19 and, therefore, it must be re-evaluated under the current circumstances. OHA expressed concerns regarding potential rate increases and the impact of Duke's application on customers as "customers may be facing the most dire financial crisis that our country has faced

requirements that caused OMAEG's comments to not be uploaded to the Commission's docketing system until 5:35 p.m. on the day that they were due.

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust its Power Forward Rider*, Case Nos. 19-1750-EL-UNC, et al., Entry at ¶ 4 (March 11, 2020).

⁶ The Ohio Hospital Association, Initial Comments at 2.

since the Great Depression.”⁷ OHA also commented that hospitals who are leading the fight against COVID-19 are projecting drastic decreases in revenue.⁸ OMAEG shares OHA’s concerns about potential rate increases during this difficult time and the resulting impact on manufacturers and the economy. Similar to hospitals, many manufacturers are also losing revenue while incurring unprecedented COVID-19 expenses. OMAEG also shares others’ concerns that Duke’s application lacks detailed information on customer rate impacts for the costs that Duke seeks to include in Rider PF, as well as a clear cost allocation and rate design proposal for Duke’s Plan.⁹

Duke itself asserted that it does not know and has not undergone any attempts to assess the effort and costs associated with the consolidated billing functionality in the Customer Connect platform,¹⁰ yet the Company requested to defer for later recovery from customers \$36,281,850 in O&M costs associated with the platform.¹¹ This lack of clarity exacerbates OMAEG and other stakeholders’ concerns about the rate impact of this proceeding on Duke’s customers, especially during this challenging time. Accordingly, OMAEG respectfully requests that the Commission bear in mind customers’ challenges, as it has done throughout the emergency, when it evaluates Duke’s application.

2. The Commission Should Deny Recovery of Costs Unrelated to Distribution Infrastructure Modernization.

R.C. 4928.143(B)(2)(h) permits EDUs to file infrastructure modernization plans to support the utility’s distribution infrastructure.¹² As Staff and Interstate Gas Supply, Inc. (IGS) correctly

⁷ Id.

⁸ Id.

⁹ Ohio Energy Group, Initial Comments at 1.

¹⁰ Duke Response to IGS-INT-02-022 (March 25, 2020).

¹¹ Staff’s Review and Recommendation at 2 (April 15, 2020) (Staff Report).

¹² Staff Report at 6; IGS Initial Comments at 8.

explained, Rider PF was authorized under R.C. 4928.143(B)(2)(h) to support Duke's distribution grid and modernization efforts.¹³ "[T]he Commission established Rider PF to 'recover costs associated with the modernization of the distribution system and an enhanced customer experience.'"¹⁴ Therefore, any costs recovered from customers through Rider PF must relate to Duke's modernization of its distribution system and an enhanced customer experience.¹⁵

As explained by Staff, Duke's LMR communication system is not an investment in distribution modernization and does not directly enhance the customer experience.¹⁶ Rather, it is used during operations and outage restoration.¹⁷ Duke has not demonstrated that the costs it seeks to recover associated with its LMR system are related to distribution modernization, and thus, are not recoverable through Rider PF. As Staff and the Office of the Ohio Consumers' Counsel (OCC) asserted, cost recovery for the project would, therefore, be more appropriate through a base rate case.¹⁸ Staff also noted that the RFP associated with this project was initiated in November 2017, but Rider PF was not authorized until December 19, 2018 and the LMR project was not referenced.¹⁹

¹³ Staff Report at 1, 6; IGS Initial Comments at 8 (citing to Global Settlement Stipulation at 16).

¹⁴ Staff Report at 6.

¹⁵ Staff Report at 6.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.; see also OCC's Comments at 2 ("The rate case process balances the interests of both customers and the utility. The utility has an opportunity to collect its costs and earn a reasonable return on its investment. And customers are protected because they only pay for property that is used and useful in providing utility service to them, with the investment being valued at a date certain that falls within the test year.") and 6-7.

¹⁹ Id. at 6-7.

Similarly, as explained further below, Duke has not demonstrated that the costs it seeks to recover associated with its EV Pilot Program are related to modernizing its distribution system, and thus, the costs are not recoverable through Rider PF.²⁰

Accordingly, the Commission should deny cost recovery for any costs that are not related to modernizing Duke's distribution system and enhancing the customer experience.

3. Duke's Proposed EV Pilot Program is Anticompetitive and Unlawful.

Duke's proposal to require customers to subsidize investments in its EV Pilot Program should be rejected.²¹ As previously explained by OMAEG,²² granting recovery of costs for a competitive investment effectively transforms commercial and industrial customers into investors in Duke's business venture and transfers Duke's business risks to ratepayers. OCC correctly stated that providing a monopoly utility with customer-funded subsidies to invest into an already competitive industry violates Ohio public policy.²³

EDU ownership and operation of competitive EV charging services would also violate Ohio law which promotes innovation and competition.²⁴ Allowing EDUs a fixed rate of return on competitive investments would afford EDUs an advantage not enjoyed by other entities, and subsequently diminish competition in the EV services market. Subsidies funded by captive customers harm competitive markets and distort market prices and should not be allowed.²⁵

²⁰ Staff Report at 6; IGS Initial Comments at 8.

²¹ Application at ¶¶ 3, 5.

²² OMAEG Comments at 9.

²³ OCC Initial Comments at 12 (quoting R.C. 4298.02(H), which provides it is Ohio's policy to "[e]nsure 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.").

²⁴ OCC Initial Comments at 12-15; Kroger Initial Comments at 3-4.

²⁵ OCC Initial Comments at 13 ("Markets will serve customers well and are preferred over monopolies for the competitive electric vehicle market.").

Staff seemed to express similar concerns about Duke’s proposal to install, own, and operate EV infrastructure behind the meter, stating that there are potential for anticompetitive practices and concluded that “a rebate program can provide direct incentives for investing in EV charging infrastructure without the potential for anti-competitive practices associated with the Company installing, owning, and operating infrastructure behind the meter.”²⁶ Staff acknowledged that it would be administratively easier to operate a rebate program because Duke would not need to take title to and become responsible for maintenance behind the meter on a customer’s property.²⁷

As previously stated,²⁸ Duke’s proposal to establish mandatory new service to separately meter all EV Supply Equipment (EVSE) that will be connected using Duke make-ready investments for the Commercial Level II Program are unreasonable and would create obstacles for implementation.²⁹ Duke stated that the participant must allow for Duke to “analyze load characteristics and customer behavior in connection with the EV charging program.”³⁰ There is no reason why new service and a meter must be required as Level II EVSE already has the capacity to internally meter electric usage data. Since this data is available via a network connection and can be shared with Duke upon request, Duke’s proposal would needlessly increase utility costs and would not meaningfully improve Duke’s ability to analyze participant usage programs.

ChargePoint, Inc. (ChargePoint) incorrectly asserted that Duke’s make-ready investments will lead to innovation, ensure the growth of the competitive EV services market, and reduce installation cost barriers,³¹ as the majority of commercial and industrial customers already have

²⁶ Staff Report at 12.

²⁷ Id. at 13.

²⁸ OCC Comments at 9-10.

²⁹ Duke Testimony (Reynolds) at 23 (September 24, 2019).

³⁰ Id.

³¹ ChargePoint, Inc. Initial Comments at 5.

the ability to install the necessary conduit to power a Level II EVSE via in-house staff or by hiring an electrician, and to serve this load with their existing electrical service. Therefore, the EV Pilot program's make-ready investments are unlikely to significantly reduce installation cost barriers. As explained above, OMAEG also disagrees with the Environmental Law Policy Center's (ELPC) comments that Duke's Commercial Level II proposals will lay a foundation for growth in the EV market.³² Duke's Commercial Level II proposals are likely to create unnecessary obstacles for commercial and industrial customers seeking to participate in the EV services market. Instead, the Commission should direct Duke to offer a rebate style incentive for businesses installing Level II EVSE, as Staff has recommended.³³

OMAEG also opposes Duke's proposed Electric School Bus Program to the extent Duke intends to "retain ownership rights to the EV School Bus battery and may remove and repurpose it at the end of its useful life..."³⁴ OMAEG similarly believes that granting an EDU ownership rights over such equipment would also diminish competition in the EV services market.

Furthermore, as explained above, R.C. 4928.143(B)(2)(h) permits EDUs to file an infrastructure modernization plan to support the utility's distribution infrastructure.³⁵ Rider PF was approved to support Duke's distribution grid and modernization efforts.³⁶ Therefore, any costs recovered from customers through Rider PF must relate to modernizing Duke's distribution system.³⁷ Duke has not demonstrated that the costs it seeks to recover associated with its EV Pilot

³² Environmental Law Policy Center Initial Comments at 4.

³³ Staff Report at 12-13.

³⁴ Duke Testimony (Reynolds) at 17 (September 24, 2019).

³⁵ Staff Report at 6; IGS Initial Comments at 8.

³⁶ Id. (citing to Global Settlement Stipulation at 16); see also Staff Report at 1, 6.

³⁷ Staff Report at 6.

Program are related to modernizing its distribution system, and thus, are not recoverable through Rider PF.

As such, Duke's proposal to install, own, and operate infrastructure behind the meter or equipment not related to modernizing the distribution system and require its customers to subsidize those investments is unlawful, anticompetitive, against the policy of the state, and should be rejected. OMAEG does, however, support Staff's recommended alternative of a rebate program,³⁸ but requests that the Commission clarify that Duke is not allowed to retain ownership rights or assume responsibility for maintenance of any infrastructure or equipment purchased by program participants receiving a rebate across the EV Program.

B. The Commission Should Deny Duke's Request for Deferral Authority.

1. Duke's Request for Deferral Authority Fails to Satisfy the Commission's Criteria.

As explained in OMAEG's initial comments,³⁹ Duke's request to defer O&M costs does not meet several, if any, of the six criteria that the Commission uses to evaluate whether deferral authority should be granted:

1. whether the current level of costs included in the last rate case insufficient;
2. whether the costs requested to be deferred are material in nature;
3. whether the problem was outside of the Company's control;
4. whether the expenditures are atypical and infrequent;
5. whether the costs would result in financial harm to the Company; and

³⁸ Staff Report at 12-13; see also OMAEG Comments at 10.

³⁹ OMAEG Comments at 2-4.

6. whether the Commission could encourage the utility to do something it would not otherwise do through the granting of deferral authority.⁴⁰

More specifically, the current level of costs included in the last rate case are sufficient, the costs requested to be deferred are not material in nature, and/or the costs will not result in financial harm to Duke. Additionally, Duke's costs are not "outside of the Company's control" because Duke had discretion in the timing and manner in which it deployed the components of its Infrastructure Modernization Plan, including the Customer Connect platform and LMR. Additionally, it is unclear that the granting of deferral authority "could encourage the utility to do something it would not otherwise do." For example, because of the strain on internal resources and financial constraints associated with Duke's initial customer information system, it appears as if the Company's subsequent investment in the new Customer Connect platform was already incentivized regardless of whether deferral authority is granted.⁴¹ Lastly, Duke's O&M costs for its LMR are not "material in nature" when compared to the Company's operating expenses for electric and gas distribution.⁴²

Staff also recommended denying Duke's deferral authority requests for O&M costs associated with its LMR and EV Pilot programs.⁴³ The Staff Report detailed how the costs included in Duke's last distribution rate case are sufficient to recover the costs from the LMR and

⁴⁰ *In re Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods*, Case No. 17-2118-GA-AAM, Opinion and Order at ¶ 24 (April 18, 2018); *In re Commission's Investigation of the Financial Impact of the Tax Cuts & Jobs Act of 2017 on Regulated Ohio Utility Cos.*, Case No. 18-47-AU-COI, Opinion and Order at ¶ 20 (December 19, 2018).

⁴¹ See Duke Testimony (Hunsicker) at 4 (September 24, 2019) (explaining how "because of the existing limitation with the current CIS, the Company's employees must perform complex billing functions manually").

⁴² OMAEG Comments at 4.

⁴³ Staff Report at 16-17.

EV Pilot programs.⁴⁴ Staff stated how Duke’s LMR replacement efforts began well before Rider PF ever existed and that the costs that Duke requested to defer are not material in nature.⁴⁵ Staff also found that Duke did not need deferral authority to implement the Customer Connect or LMR, and that the EV Pilot Program fell outside an EDU’s obligation to provide safe and reliable electric services.⁴⁶ Finally, Staff concluded that Duke controlled aspects and timing of deploying Customer Connect and LMR, and that the EV Pilot program was “not outside the Company’s control.”⁴⁷ Staff’s conclusions support OMAEG’s assertion that it is inappropriate to grant Duke deferral authority for the O&M costs requested in this proceeding.

Similarly, OCC identified criteria that Duke failed to satisfy. For example, OCC explained how Duke “made no attempt to show that current revenues are insufficient to cover the costs” and how the application does nothing to demonstrate that the costs are actually material.⁴⁸ OCC also asserted that Duke’s O&M costs for its LMR are not “atypical or infrequent” when the Company has repeatedly invested in such technology over the last three decades.⁴⁹ Finally, OCC questioned the financial harm to Duke should the deferral authority not be granted, because yet again, Duke failed to provide sufficient information in its application to satisfy this criterion.⁵⁰

OMAEG concurs with Staff and OCC that Duke’s application lacked the requisite information to demonstrate that it satisfied the Commission’s criteria for granting deferral

⁴⁴ Id.

⁴⁵ Id. at 6 & 16 (finding that Duke’s highest estimated annual spend for LMR is roughly \$277,000, representing 0.075% of operating expenses included in electric distribution rates and Duke’s requests to defer gas costs amount to \$194,872 or 0.06% of total gas operating expenses).

⁴⁶ Id. at 15-18.

⁴⁷ Id.

⁴⁸ Office of the Ohio Consumers’ Counsel Initial Comments at 17.

⁴⁹ Id. at 18.

⁵⁰ Id.

authority for all of its requested costs. Consequently, Duke has not met its burden of proof and the Company's request for deferral authority should be denied.

2. Duke's Request for Deferral Authority is an Unlawful Attempt to Collect Past Costs through Rider PF.

Duke filed an Application in September of 2019 seeking authority to defer the incremental O&M costs that the Company incurred as of January 1, 2018. This application comes after the Commission authorized the establishment of Rider PF in December of 2018, but set the rider at zero.⁵¹ The Supreme Court of Ohio has made it clear that "utility ratemaking by the Public Utilities Commission is prospective only."⁵² In its initial comments, OMAEG and others asserted that although granting deferral authority is not technically retroactive ratemaking because it is not ratemaking, Duke's request for deferral of past costs is akin to retroactive ratemaking, which Supreme Court of Ohio precedent has consistently prohibited.⁵³ Duke is also requesting that the deferred amounts be immediately included in Rider PF.⁵⁴ Duke's request to defer costs incurred from January 1, 2018 to present and collect through future rates would violate this consistent precedent forbidding retroactive ratemaking and contravenes legislative authority.⁵⁵ OCC also explained that should the Commission grant Duke deferral authority for its past O&M costs, "then the rule against retroactive ratemaking would be rendered a nullity."⁵⁶

⁵¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase of its Electric Distribution Rates*, Case No. 17-0032-EL-AIR, *et. al*, Opinion and Order (December 19, 2018).

⁵² *Lucas Cty. Comm'rs v. Pub. Util. Comm. of Ohio* (1997), 80 Ohio St. 3d 344, 348, 686 N.E.2d 501, 504 (1997).

⁵³ See OMAEG Comments at 3-4; OCC Comments at 19-22; Kroger Initial Comments at 4 (all citing *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 259 (1957) and *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, 514-15 (2011)).

⁵⁴ OCC Comments at 21.

⁵⁵ OCC Comments at 20; Kroger Initial Comments at 4; OMAEG Comments at 6.

⁵⁶ OCC Comments at 21.

As previously mentioned, Staff explained that Duke “initiated the LMR communications system replacement well before the current rider recovery mechanism even existed.”⁵⁷ This observation further supports that Duke sought deferral authority for past costs, which if approved, would violate Ohio law. Additionally, as Kroger argues, to the extent Duke incurred costs in 2018 for the implementation of its Plan, Duke should have sought deferral authority or cost recovery when those costs were incurred or when the parties reached a settlement authorizing Rider PF as approved in December 2018, but it did not.⁵⁸ And waiting until after the Stipulation that established Rider PF at zero was executed and approved and asking for cost recovery of 2018 costs is essentially rewriting the settlement.⁵⁹

Therefore, OMAEG requests that the Commission deny Duke’s request for deferral authority for any past O&M costs.

III. CONCLUSION

For the foregoing reasons, OMAEG requests that the Commission adopt the recommendations set forth in its initial comments and reply comments, deny Duke’s request to unlawfully recover costs unrelated to modernizing Duke’s distribution system, deny Duke’s request to unlawfully defer costs that do not satisfy the Commission’s criteria, deny Duke’s request to unlawfully defer past costs, and reject the Company’s proposals that would stifle competition or needlessly increase rates in the already competitive EV services market.

⁵⁷ Staff Report at 6-7.

⁵⁸ Kroger Initial Comments at 4-5.

⁵⁹ Id.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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