

**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 KROGER CO.

I. INTRODUCTION

The above captioned proceeding concerns Duke Energy Ohio, Inc.'s (Duke) September 2019 Application requesting approval of its Infrastructure Modernization Plan, adjustments to its Rider Power Forward (Rider PF), and deferral authority.¹ Specifically, the Application seeks approval to recover costs associated with its Infrastructure Modernization Plan through Rider PF, including the costs of the Customer Connect platform and three new programs², and deferral authority for operations and maintenance (O&M) costs incremental to amounts in both its base electric and natural gas rates that have been or will be incurred in relation to its new Infrastructure Modernization Plan.³

By way of Entry dated March 11, 2020, the Public Utilities Commission of Ohio (Commission) directed interested persons to file comments and reply comments in Case Nos. 19-

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

² Id. at 1-2.

³ Id. at 1.

1750-EL-UNC, et al. on April 15, 2020 and May 15, 2020, respectively.⁴ The Kroger Company (Kroger) and several other interested stakeholders filed initial comments to Duke's Application on April 15 and April 16.⁵ At the same time, Staff submitted its Review and Recommendation of the Application.⁶

As set forth in their initial comments, Kroger and other interested stakeholders recommended that the Commission reject Duke's proposal to own or operate Electric Vehicle (EV) charging infrastructure, as this conflicts with official state policy and is likely to have an anticompetitive impact on the market.⁷ Kroger and other intervenors also objected to Duke's request to defer costs dating back to January 1, 2018 because this would be similar in effect to retroactive ratemaking and violate Ohio law. Allowing deferral authority for such costs would also breach the Stipulation to which Duke is bound.⁸ Finally, Kroger commented that if carrying costs are permitted, they should be based upon the long-term debt rate approved in the last rate case, which is consistent with the Commission's previous orders.

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

⁴ *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).

⁵ As Kroger previously explained in its motion for leave to file comments out-of-time, a remote sever connection error occurred due to COVID-19 and remote working conditions that delayed the filing of Kroger's initial comments by two-minutes, thus the initial comments were deemed to be filed one day out-of-time.

⁶ Staff Review and Recommendation (April 15, 2020).

⁷ See Kroger's Initial Comments at 3; see also Initial Comments of the Office of the Ohio Consumers' Counsel (OCC) at 12-15; Initial Comments of the Ohio Manufacturers' Association Energy Group (OMAEG) at 8-9.

⁸ See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Consolidated Case Nos. 17-0032-EL-AIR, et al., Stipulation and Recommendation (Stipulation) (April 13, 2018); and Opinion and Order at 84-85 (December 19, 2018).

⁹ Entry at ¶ 4 (March 11, 2020).

II. REPLY COMMENTS

The Commission should deny Duke's request to recover all costs through Rider PF as it violates Ohio public policy against anti-competitive subsidies, does not relate to electric distribution, and should be assessed in the context of the COVID-19 emergency.

As part of Duke's EV Pilot Program, the EDU proposed that it own or operate EV charging infrastructure.¹⁰ Contrary to the positions set forth in the initial comments of ChargePoint, Inc. and Environmental Law Policy Center, the Commission should not authorize a subsidy of competitive services.¹¹ Indeed, in its Review and Recommendation, Staff stated "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."¹² Similarly, as Kroger and OCC explained in their respective initial comments, allowing a monopoly to participate in an already competitive market with the advantage of ratepayer subsidies is a direct violation of R.C. 4298.02(H), the statute that enumerates Ohio's official policy against anticompetitive subsidies.¹³ In short, Kroger requests that the Commission follow Staff's recommendation and reject Duke's proposal to own or operate EV charging infrastructure. While Kroger generally supports EDUs' efforts to improve and modernize their distribution systems, it cannot come at the price of quelling competition in an emerging market or disregarding clear statutory authority, as Kroger and OCC recognized in their initial comments.

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

¹¹ See ChargePoint, Inc.'s Initial Comments at 5; Environmental Law Policy Center's Initial Comments at 4.

¹² Staff Review and Recommendation, at 12 (April 15, 2020).

¹³ See Kroger's Initial Comments at 3; 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.").

Duke also attempts to recover costs in its infrastructure modernization plan that do not relate to electric distribution, in violation of R.C. 4928.143(B)(2)(h). Staff and Interstate Gas Supply, Inc. (IGS) described how Rider PF was approved pursuant to R.C. 4928.143(B)(2)(h) to enhance Duke's efforts to modernize its distribution system.¹⁴ Accordingly, all costs that Duke recovers from customers through Rider PF must relate to such efforts and enhance customers' experience.¹⁵ Staff further explained how Duke's LMR system represents neither an investment in distribution modernization nor an enhancement of customers' experience¹⁶ because the system is intended for operations and outage restoration.¹⁷ Since Duke has not met its burden of proof in showing how its LMR costs relate to distribution system modernization, Rider PF is a wholly inappropriate recovery mechanism. Kroger supports Staff and OCC's clarification that cost recovery for the LMR would be more appropriate through a base rate case.¹⁸ Staff also acknowledged that the RFP associated with this project began in November 2017, well before the Rider PF was authorized, and the LMR project was not mentioned.¹⁹ For these reasons, Kroger also opposes Duke's request to recover these costs through Rider PF as the EDU has not made an adequate showing of how this program relates to distribution system modernization, as required by R.C. 4928.143(B)(2)(h).

Furthermore, Kroger recommends that the Commission deny Duke's requests for deferral authority as the request is an unlawful attempt at retroactive ratemaking and does not meet the

¹⁴ Staff Review and Recommendation at 1, 6; IGS Initial Comments at 8 (citing to Global Settlement Stipulation at 16).

¹⁵ Staff Review and Recommendation at 6.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.; see also OCC's Initial 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.

Commission's stated criteria. In its Application, Duke sought deferral authority for the incremental O&M costs that it incurred dating back to January 1, 2018.²⁰ As Kroger and OCC noted in their respective initial comments, while deferral authority is technically not ratemaking, granting Duke's request would have an identical impact to retroactive ratemaking.²¹ Duke is asking this Commission to retroactively defer costs incurred for future collection while simultaneously asking the Commission to set its future rates under Rider PF now to allow Duke to recover those past losses immediately. In its initial comments, OCC explained how approving Duke's deferral request for deferral authority here would violate long-standing Supreme Court of Ohio precedent.²² Relatedly, Staff noted how Duke began replacing its LMR system well before the Rider PF recovery mechanism ever existed.²³ Kroger agrees with both OCC and Staff's assessments and recommends that the Commission reject Duke's request for deferral authority of past revenue losses dating back to January 1, 2018.

In addition, Kroger agrees with Staff's recommendation that the Commission should deny Duke deferral authority for its O&M costs associated with its LMR and EV Pilot Program.²⁴ Staff concluded that Duke's requests failed to meet several criteria that it uses to evaluate the granting of deferral authority, including materiality of costs²⁵, circumstances outside of the EDU's control²⁶, and the likelihood of the EDU taking similar actions without deferral authority.²⁷ In addition, other stakeholders, including OCC²⁸ and Ohio Energy Group (OEG)²⁹, explained that

²⁰ Application at ¶ 20.

²¹ OCC's Initial Comments at 20.

²² Id. at 19 – 21

²³ Staff Review and Recommendation, at 12 (April 15, 2020).

²⁴ Id. at 16-17.

²⁵ Id. at 6 & 16.

²⁶ Id. at 15-18.

²⁷ Id.

²⁸ OCC's Initial Comments at 17.

²⁹ OEG's Initial Comments at 1.

Duke's application lacks sufficient information for the Commission to determine that the deferral criteria is met. Duke acknowledged that it does not know and has not undertaken any steps to assess the efforts and costs associated with the consolidating billing functionality of the Customer Connect platform³⁰ but the EDU requested deferral for \$36,281,850 in O&M costs for the platform alone.³¹ Simply parroting back the criteria to the Commission does not make a sufficient showing that deferral authority is necessary for these costs. Due to the unlawful nature of Duke's deferral request and its inability to meet the Commission's criteria for deferral authority, Kroger recommends that the Commission deny Duke's request.

Finally, Kroger shares the concerns articulated in the initial comments of the Ohio Hospital Association (OHA) about the impact of potential rate increases during this pandemic and its already detrimental impacts on the economy. As OHA pointed out, Duke's Application was filed in September 2019 – before COVID-19, before businesses were forced to shut down, and before employees were laid off or otherwise lost their jobs.³² As such, Kroger joins OHA in its request that Duke's Application be re-evaluated under the current economic and pandemic circumstances faced in the State of Ohio.

III. CONCLUSION

As set forth above, Duke's ownership and operation of EV charging infrastructure is likely to have anti-competitive consequences and is contrary to Ohio public policy. Duke unlawfully seeks to include costs unrelated to distribution system modernization in its Rider PF. Likewise, it is contrary to the law to allow Duke to defer costs dating back to January 1, 2018. Finally, Duke also has failed to meet the criteria that the Commission uses to evaluate requests for deferral

³⁰ Retha Hunsicker, Response to IGS-INT-02-022 (March 25, 2020).

³¹ Staff Review and Recommendation, at 2 (April 15, 2020).

³² OHA's Initial Comments at 2.

authority. For the foregoing reasons, Kroger requests that the Commission adopt the recommendations set forth in its initial and reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on May 15, 2020 upon the parties listed below.

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This foregoing document was electronically filed with the Public Utilities

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5/15/2020 5:16:20 PM

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Case No(s). 19-1750-EL-UNC, 19-1751-GE-AAM

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