

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
APPROVAL TO CHANGE ACCOUNTING
METHODS.

CASE NO. 20-1011-GE-AAM

FINDING AND ORDER

Entered in the Journal on June 17, 2020

I. SUMMARY

{¶ 1} The Commission finds that the application of Duke Energy Ohio, Inc. for approval to defer, as a regulatory asset for subsequent recovery, the incremental operating costs incurred and foregone revenue that result from implementing the Company's COVID-19 emergency response plan should be approved, subject to Staff's recommendations and modifications and consistent with this Finding and Order.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) is an electric light company and natural gas company as defined in R.C. 4905.03 and a public utility as defined in 4905.02. As such, Duke is subject to the Commission's jurisdiction pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code Chapter 4901:1-13, the Commission adopted the Uniform System of Accounts (USOA), which was established by the Federal Energy Regulatory Commission (FERC), for gas utilities in Ohio. For Ohio regulatory purposes, the system of accounts is only applicable to the extent that it has been adopted by the Commission. Therefore, the Commission may modify the USOA prescribed by FERC as it applies to Ohio utilities. Similarly, pursuant to Ohio Adm.Code 4901:1-9-05, the Commission adopted the USOA for electric utilities in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding accounting orders of the Commission. The Commission

may also require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of electric utilities.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the Ohio Department of Health has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Ohio Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 6} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission extended its winter reconnection order through May 1, 2020, and directed all utility companies in this state to review their reconnection procedures. *Emergency Case*, Entry (Mar. 13, 2020) at ¶ 6. In the March 12, 2020, and March 13, 2020 Entries, the Commission also directed all utility companies to promptly seek any necessary approval,

for the duration of the emergency, to suspend otherwise applicable disconnection or reconnection requirements that may impose a service continuity or service restoration hardship on residential and non-residential customers or create unnecessary COVID-19 risks associated with social contact. The Commission determined that such filings shall be deemed approved on an emergency basis for a period of at least 30 days effective as of the filing date or until such date as the Commission may otherwise specify, which shall not be less than 30 days.

{¶ 7} On March 19, 2020, in Case No. 20-599-GE-UNC, Duke filed an application proposing a temporary plan for addressing the COVID-19 state of emergency, which seeks the Commission's approval of certain policies, practices, and requirements the Company seeks to suspend pursuant to the Commission's March 12, 2020, and March 13, 2020 Entries and waiver of certain administrative rules. Duke proposes to suspend all disconnections for non-payment, waive all late-payment fees, waive electronic payment fees (credit cards, debit cards, electronic checks) for residential customers, waive credit reviews for reconnection, as well as other actions intended to minimize customer contact.

{¶ 8} By Entry dated March 20, 2020, the Commission directed all utility companies to suspend in-person, actual meter readings in circumstances where a meter is located inside a customer's home or similar location, as well as all other non-essential functions that may create unnecessary COVID-19 risks associated with social contact. The Commission also clarified that requests for accounting authority or incremental cost recovery related to the emergency would be addressed in each utility's individual case by subsequent entry. *Emergency Case*, Entry (Mar. 20, 2020) at ¶¶ 10-11, 13.

{¶ 9} On April 8, 2020, in the *Emergency Case*, the Commission, among other things, extended the 30-day automatic approval period for filings to suspend otherwise applicable disconnection requirements for an additional 30 days, unless otherwise ordered by the Commission. *Emergency Case*, Finding and Order (Apr. 8, 2020) at ¶ 9.

{¶ 10} On May 4, 2020, in Case No. 20-599-GE-UNC, Duke filed a second motion seeking a waiver of certain limitations on offering customers extended payment plan options detailed in Ohio Adm.Code 4901:1-18-05.

{¶ 11} On May 11, 2020, in this case, Duke filed an application seeking authority to defer, as a regulatory asset for subsequent recovery, all of the incremental operating costs incurred and foregone revenue that result from implementing the Company's emergency response plan filed in Case No. 20-599-GE-UNC.

{¶ 12} On May 19, 2020, Staff filed its review and recommendation regarding Duke's application.

{¶ 13} By Entry dated May 20, 2020, the attorney examiner directed that motions for intervention and comments be filed in this proceeding no later than May 27, 2020.

{¶ 14} On May 27, 2020, motions for intervention were filed by the Ohio Consumers' Counsel (OCC), Kroger Co. (Kroger), and Ohio Manufacturers' Association Energy Group (OMAEG). No memoranda contra were filed. The Commission finds that the motions are reasonable and should be granted.

{¶ 15} Also on May 27, 2020, OCC, Kroger, and OMAEG filed comments in this docket, respectively.

B. Review of Duke's Application and the Comments

{¶ 16} In support of its request, Duke states that, as a result of COVID-19, the Company has had to implement needed changes to its business operations and that these modifications, which come with an increase in operational costs, have all been in response to Ohio's orders and federal guidelines. Duke avers that it anticipates that it will incur materially negative financial impacts from the measures required to cope with the COVID-19 crisis, including, but not limited to: (1) incremental costs for information technology (IT) 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. Duke seeks carrying costs on the deferred amounts until recovery is complete to compensate it for the time value of money. Additionally, the Company proposes to use the rate for long-term debt, as approved in the Company's most recent base rate cases, to calculate such carrying costs. Duke proposes that the recovery of the 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. Duke represents that it will include the incremental costs in an application to adjust these riders at a future date, but within 24 months, once the scope of the costs is fully known and the state of the emergency has been lifted for Ohio. Lastly, Duke opines that the requested change in accounting procedure will not result in an increase in any rate or charge and suggests that the Commission may approve its application without a hearing.

{¶ 17} In its recommendation, Staff states that it has reviewed Duke's deferral request based on the six criteria that Staff uses to evaluate requests for deferral authority while acknowledging the unique circumstances presented by the COVID-19 pandemic:

- (1) *Is the current level of costs included in the last rate case insufficient?* Staff states that the costs included in the rates are insufficient. Although the exact amount of the deferral is unknown, Staff avers that many of the expenses incurred as part of the emergency plan are above and beyond the amount included in Duke's base rates, which is, therefore, insufficient. However, Staff posits that some expenses incurred in implementing Duke's emergency plan may represent costs currently collected in rates, and thus not incremental to rates. For example, Staff explains that an IT employee (whose labor cost is fully recovered in base rates) may work on implementing the necessary IT changes to suspend disconnection notices as part of the emergency plan. Although this is new work directly attributable to

Duke's emergency plan, deferring this cost would result in double-recovery of the employee's labor expense. Notwithstanding the potential issue of double-recovery, Staff believes that Duke's approach is reasonable, as a significant portion of the costs incurred as part of the emergency plan will be incremental to base rates. Nonetheless, Staff states that it must perform its due diligence to ensure double-recovery does not occur as a result of the deferral while simultaneously avoiding any hindrance to the implementation of the emergency plan.

- (2) *Are the costs requested to be deferred material in nature?* Staff states that, although it cannot determine at this time whether the costs are material in nature, there is a reasonably probable chance that the total costs will end up being material, particularly in light of Duke's suspension of Commission approved fees and the Company's reduction in load and increased costs. Staff believes that the combining effects of the increased expenses and foregone revenue will most likely be material in nature.
- (3) *Is the problem outside of the utility's control?* Staff states that the COVID-19 pandemic is not within Duke's control. Staff avers that implementation of Duke's emergency plan represents the actions the Company can control in response to the COVID-19 pandemic. Staff ensures that it will review the expenses to confirm they are prudent and incremental in nature and that the foregone revenue is appropriate for recovery at the time recovery is sought.
- (4) *Are the expenditures atypical and infrequent?* Staff states that Duke's incurred expenses and foregone revenues are atypical and infrequent, as the COVID-19 pandemic is an exceedingly rare occurrence.
- (5) *Would the costs result in financial harm to the utility?* Staff states that, although it cannot determine at this time whether Duke will be financially harmed, there is

a realistic chance that the Company would experience such harm if its deferral request is denied.

- (6) *Could the Commission encourage the utility to do something that it would not otherwise do by granting the deferral authority?* Staff notes that the Company states in its application that granting this deferral request will encourage the utility to continue taking proactive steps to provide relief to customers while appropriately preserving its financial integrity.

{¶ 18} Based on Staff's analysis of Duke's application and evaluation of the six criteria, Staff recommends that deferral authority be granted for both expenses and revenues and that recovery of any deferred revenues be in compliance with Accounting Standards Codification (ASC) 980-605-25-4, but without carrying charges because of the timely nature associated with satisfying the requirements of ASC 980-605-25-4. Staff also recommends that Duke's external auditors work with Staff during the annual financial audits of the Company's Rider UE-ED and Rider UE-G Plan. Finally, Staff requests that the Commission emphasize that recovery is not guaranteed until the deferred amounts have been reviewed and addressed in appropriate future proceedings, in which the question of recovery of the deferred amounts, including, but not limited to, issues such as prudence, proper computation, proper recording, reasonableness, and any potential double-recovery, will be considered.

{¶ 19} In response to Duke's request for deferral authority, OCC believes that the Commission should hold Duke to the same consumer protections as Ohio Power Company d/b/a AEP Ohio and The Dayton Power and Light Company regarding deferring costs for later collection from consumers in relation to the COVID-19 emergency plans. *See In re Ohio Power Co. d/b/a AEP Ohio*, Case No. 20-602-EL-UNC, et al., Finding and Order (May 6, 2020) at ¶ 54; *In re The Dayton Power and Light Co.*, Case No. 20-651-EL-UNC, et al., Finding and Order (May 20, 2020) at ¶ 44. Specifically, OCC recommends that the Commission adopt Staff's recommendations to require a thorough review of deferred amounts before

approving collection from consumers. OCC points out that, in both cases, Staff explained that cost collection is not guaranteed until the deferred amounts have been reviewed and addressed in a future proceeding and that the deferred amounts will be reviewed for prudence, proper computation, proper recording, reasonableness, and any potential double-recovery. OCC believes that Duke's future proceeding should also address the question of collection of the deferred amount, including the issues of prudence, proper computation, proper recording, reasonableness, and any potential double-collection.

{¶ 20} Kroger and OMAEG recommend that the Commission review Duke's application with respect to the challenges that the Company's customers face. Kroger and OMAEG point out that utilities are not guaranteed a return on investments and must bear their share of costs and burdens during the emergency, especially when it comes to discretionary revenues. Kroger states that Duke's customers will not be able to defer for future recovery expenses or lost revenue associated with the COVID-19 emergency and, as such, customers will continue to be under financial pressure. Kroger believes that Duke's request to recover discretionary, foregone revenue and add carrying costs to the deferral until the unrecovered balance is fully recovered will worsen the situation. Similarly, OMAEG argues that Duke's deferral request will likely result in utility rate increases to customers during or after the emergency and that passing on a utility's costs to customers through riders that are over and above established base rates harms those customers and guarantees a utility's profits. Finally, OMAEG agrees with Staff that carrying charges on the deferred amounts should not be authorized and that the inclusion of carrying costs will only continue to harm customers that are already in difficult economic situations.

{¶ 21} Kroger and OMAEG state that they have significant concerns regarding Duke's application. Kroger and OMAEG posit that Duke failed to demonstrate through its application that it meets the six criteria the Commission uses to review requests for deferral authority. Specifically, Kroger and OMAEG believe that Duke failed to show that: (1) costs included in the Company's last rate case are insufficient; (2) the Company's emergency plan's costs are material; (3) the Company would incur financial harm without deferral

authority; and (4) the Company lacked control over the implementation of its emergency plan. Kroger and OMAEG argue that, without adequate information included in Duke's application, the Commission should reject Duke's application for deferral authority.

{¶ 22} Kroger and OMAEG share Staff's concern that there is the potential for double-recovery, as it is unclear at this time whether Duke is seeking to defer costs that are already covered in base rates. Because the level and type of costs for which Duke is seeking deferral authority, as well as how those costs will be allocated and recovered from customers, are unknown and uncertain, OMAEG has significant concerns regarding the impact of the Company's deferral request on customers' rates in the future. OMAEG also agrees with Staff that it is important to protect customers from paying twice for the same costs. Kroger requests that the Commission clarify, as it has done in other emergency proceedings, that Duke is not entitled to double-recovery, and customers should not have to absorb costs not incremental to base rates that they already are paying. OMAEG recommends that Duke's emergency plan be limited initially to a 90-day period.

{¶ 23} Additionally, Kroger takes issue with the level and type of operating costs and foregone revenue for which Duke is seeking deferral authority, stating that the Supreme Court of Ohio and the Commission have previously ruled that utilities cannot obtain cost recovery for discretionary expenses incurred to bolster their image, without showing that customers receive a direct and primary benefit. Similarly, OMAEG believes that ratepayers should not compensate Duke's acts of goodwill as these expressed acts of goodwill represent foregone revenue associated with discretionary revenue. Finally, Kroger opines that, if recovery of pandemic-related costs through a rider is permitted, the Commission should ensure that the rider bears the same demand charge/energy charge composition as Duke's underlying base rates for that type and kind of revenue and the Commission should examine Duke's pre-pandemic earnings and rate of return to determine if excess earnings exist that can be used to offset any alleged revenue shortfalls.

C. *Commission Conclusion*

{¶ 24} Although we acknowledge the concerns raised by Staff and the intervenors, we find that Staff has offered a reasonable approach to Duke's request for deferral authority. Consequently, as recommended by Staff, the Commission grants deferral authority for both expenses and foregone revenues, although we do not authorize carrying charges on the deferral. Additionally, the Commission finds it appropriate to direct the Company's external auditors to work with Staff during the annual financial audits of the Company's Rider UE-ED and Rider UE-G Plan. The Commission also directs Duke to track any costs that it avoids due to the emergency. Finally, we emphasize that recovery is not guaranteed until the deferred amounts have been reviewed and addressed in an appropriate future proceeding, in which the question of recovery of the deferred amounts, including, but not limited to, issues such as prudence, proper computation, proper recording, reasonableness, and any potential double-recovery, will be fully considered by the Commission.

{¶ 25} Upon thorough review of Duke's application, Staff's recommendations, and the intervenors' comments, the Commission finds that the application is reasonable and should be approved, subject to Staff's recommendations and modifications, and consistent with the above findings.

III. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That Duke's application be approved, subject to Staff's recommendations and modifications and consistent with this Finding and Order. It is, further,

{¶ 28} ORDERED, That Duke take all necessary steps to carry out the terms of this Finding and Order. It is, further,

{¶ 29} ORDERED, That the motions to intervene in this proceeding filed by OCC, Kroger, and OMAEG be granted. It is, further,

{¶ 30} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

LLA/hac

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Case No(s). 20-1011-GE-AAM

Summary: Finding & Order approving the application of Duke Energy Ohio, Inc. for approval to defer, as a regulatory asset for subsequent recovery, the incremental operating costs incurred and foregone revenue that result from implementing the Company's COVID-19 emergency response subject to Staff's recommendations and modifications and consistent with this Finding and Order. electronically filed by Kelli C King on behalf of The Public Utilities Commission of Ohio