

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. TO ADJUST
RIDER AU FOR 2018 GRID
MODERNIZATION COSTS.

CASE NO. 19-664-GA-RDR

SECOND ENTRY ON REHEARING

Entered in the Journal on February 10, 2021

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Duke Energy Ohio, Inc.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} In Case No. 07-589-GA-AIR, et al., the Commission approved a stipulation and recommendation that, among other things, provided a process for the filing of Duke's deployment plans for the installation of an automated gas meter reading system, which would share the SmartGrid communications technology for the Company's electric system, and a method for recovering costs associated with the plans, which was designated Rider Advanced Utility (Rider AU). *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al. (*Gas Distribution Rate Case*), Opinion and Order (May 28, 2008).

{¶ 4} By Opinion and Order dated July 2, 2019, the Commission approved Duke's application to adjust Rider AU for 2017 grid modernization costs. Additionally, in light of Duke's plans to replace certain advanced metering infrastructure (AMI) components for the gas distribution system, the Commission determined that Staff, in the Company's next annual proceeding to adjust Rider AU, should thoroughly evaluate whether the Company's customers are paying charges through Rider AU for costs associated with equipment that is

no longer used and useful. Staff was directed to perform, as necessary, a field audit or other physical verification of Duke's AMI components for its natural gas operations. *In re Duke Energy Ohio, Inc.*, Case No. 18-837-GA-RDR (2018 Rider AU Case), Opinion and Order (July 2, 2019) at ¶¶ 23-24.

{¶ 5} On June 25, 2019, in the above-captioned case, Duke filed an application, along with supporting testimony, to adjust Rider AU for grid modernization deployment costs incurred in 2018, pursuant to the process approved in the *Gas Distribution Rate Case*.

{¶ 6} By Entry dated July 3, 2019, the attorney examiner established a procedural schedule to accomplish the review of Duke's proposed adjustments to Rider AU, with comments and reply comments due on October 25, 2019, and November 8, 2019, respectively. In the event all of the issues raised in the comments were not resolved, or if the Commission determined that the application may be unjust or unreasonable, Staff and intervenor testimony would be due on November 22, 2019, with Duke's supplemental testimony to be filed on November 29, 2019. Finally, the attorney examiner scheduled a hearing to occur, if necessary, on December 5, 2019.

{¶ 7} On October 25, 2019, Staff filed its review and recommendations, stating that, due to Duke's inability to provide sufficient financial information to support the locational data of its capital equipment, Staff was unable to adequately complete the audit ordered by the Commission in the *2018 Rider AU Case*. Staff, therefore, recommended that a request for proposal (RFP) be issued for the necessary audit of Duke's capital equipment and that Rider AU be suspended until the audit was completed.

{¶ 8} Duke filed reply comments on November 8, 2019.

{¶ 9} On November 21, 2019, the attorney examiner determined that the procedural schedule should be held in abeyance, pending the Commission's consideration of Staff's recommendations.

{¶ 10} By Entry issued on December 4, 2019, the Commission directed Staff to issue an RFP for audit services to review Duke's capital assets associated with Rider AU. The Commission also directed that collection of the rider charge be suspended until otherwise ordered by the Commission.

{¶ 11} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 12} On January 3, 2020, Duke filed an application for rehearing of the December 4, 2019 Entry.

{¶ 13} On January 29, 2020, the Commission granted rehearing for further consideration of the matters specified in Duke's application for rehearing.

{¶ 14} The Commission has reviewed and considered all of the arguments raised in Duke's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. Summary of the Application for Rehearing

{¶ 15} In its first ground for rehearing, Duke asserts that the Commission erred in suspending the collection of charges under Rider AU, without providing the Company any due process and without explaining the Commission's rationale as required by R.C. 4903.09. Duke claims that Staff offered no justification for its recommendation that Rider AU be suspended and that the Commission similarly offered no explanation for its decision to adopt Staff's recommendation. In support of its position, Duke notes that R.C. 4903.09 requires the Commission to set forth the reasons prompting its decisions. Duke also emphasizes that the Commission has approved the Company's annual applications to adjust Rider AU for more than ten years.

{¶ 16} In its second ground for rehearing, Duke argues that the Commission erred in suspending the collection of charges under Rider AU, in light of the fact that no new capital costs have been incurred since 2014 and prior cases considering the adjustment of rates under Rider AU have all been approved. Duke notes that the Commission has repeatedly approved the Company's SmartGrid deployment and the recovery of the consequent grid modernization costs through Rider AU, beginning in 2008 and continuing through the *2018 Rider AU Case*. According to Duke, there is no basis to suspend Rider AU in this proceeding, particularly in light of the fact that the Company's unopposed request to adjust the rider charge in the *2018 Rider AU Case* was approved by the Commission in 2019.

{¶ 17} In its third ground for rehearing, Duke contends that the Commission erred in suspending the collection of charges under Rider AU, as the tariff clearly states that the rider is already subject to reconciliation, including refunds as the result of Commission-ordered audits. Duke, therefore, argues that the suspension of Rider AU is punitive to the Company, given that there has been no allegation or evidence that its continued AMI investment was imprudent. Duke adds that a prolonged suspension of Rider AU will have a significant financial impact on the Company by decreasing its revenues by approximately \$2.6 million on an annual basis. Duke requests that Rider AU be reinstated at its previously approved level until the Commission issues a substantive decision in this matter.

{¶ 18} In its fourth ground for rehearing, Duke maintains that the Commission erred in suspending the collection of charges under Rider AU, while performing a third-party audit that is overbroad and unreasonable in scope, as the prudence of the Company's AMI meter investments should not be at issue. Duke notes that the RFP to obtain audit services specified that the audit will review, among other things, the prudence of the Company's jurisdictional rate base with respect to Rider AU's AMI components. Duke notes that the only capital costs in Rider AU consist of the incremental investment between April 1, 2012, and December 31, 2014. Duke asserts that the Commission should not reconsider the prudence or other merits of the original investments in this proceeding, as the Commission already approved the SmartGrid deployment in the Company's 2007 and 2012 rate cases.

According to Duke, a finding of imprudence at this point would amount to unlawful hindsight judgment. *City of Cincinnati v. Pub. Util. Comm.*, 67 Ohio St.3d 523, 620 N.E.2d 826 (1993). Duke adds that the disallowance of any Rider AU costs would have a direct and proportional impact on the Company's excess accumulated deferred income taxes that would otherwise flow back to customers pursuant to the Tax Cuts and Jobs Act of 2017 and the Company's application in Case No. 18-1830-GA-UNC, et al.

C. Commission Conclusion

{¶ 19} Upon review, the Commission finds that Duke's application for rehearing should be denied in its entirety. Initially, we find that Duke's application for rehearing is effectively moot, in light of the Finding and Order issued today by the Commission in this case. In the February 10, 2021 Finding and Order, the Commission has approved a joint stipulation and recommendation (Stipulation) filed by Duke and Staff on December 9, 2020, that resolves all of the issues raised in this proceeding. With regard to Rider AU, the Stipulation provides that, consistent with the accounting treatment authorized for Duke's electric system assets in Case No. 17-32-EL-AIR, the remaining net plant in service in Rider AU will be placed in one or more dedicated accounts and treated as dying assets; that recovery will be obtained in the Company's next natural gas base rate case; and that the rider will be discontinued. February 10, 2021 Finding and Order at ¶ 28.

{¶ 20} Aside from the full resolution of the issues in this proceeding through the issuance of the February 10, 2021 Finding and Order, the Commission finds no merit in Duke's application for rehearing. With respect to Duke's first ground for rehearing, we fully explained, in the December 4, 2019 Entry, the basis for our decision to issue the RFP for audit services to review Duke's capital assets associated with Rider AU and to suspend collection of the rider charge. The Commission noted that, in regard to the physical verification of Duke's gas AMI components ordered in the *2018 Rider AU Case*, Staff attempted to perform a physical inspection to verify the existence and valuation of the capital assets. Duke, however, was unable to provide sufficient financial information to support the locational data of the assets, which the Company did not dispute or even address in its response to

Staff's review and recommendations. As to Duke's claim that it was not provided due process regarding the suspension of the Rider AU charge, the Company filed comments in response to Staff's recommendation that the charge be suspended and the Commission considered those reply comments in the December 4, 2019 Entry. December 4, 2019 Entry at ¶¶ 10-13. With respect to Duke's second and third grounds for rehearing, we find that the Company's arguments are irrelevant, as the approval of recovery of Rider AU costs in prior annual adjustment cases and the existing reconciliation language in the tariff have no connection to our decision to suspend the rider charge in this proceeding. The Commission found it necessary and appropriate to suspend the Rider AU charge until the completion of a third-party audit, based on Duke's inability in this case to provide Staff with sufficient financial information to support the locational data of the assets. Finally, in its fourth ground for rehearing, Duke argues that the scope of the third-party audit is overbroad and unreasonable in that the RFP directed the auditor to consider the prudence of the Rider AU capital assets. The RFP, however, makes clear that the primary focus of the audit is the used-and-useful nature of the assets. Further, given Duke's inability to provide sufficient records to Staff, we find that the scope of the audit was appropriate and warranted under the circumstances.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Duke's application for rehearing be denied. It is, further,

{¶ 23} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

COMMISSIONERS:

Approving:

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

SJP/kck

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2/10/2021 2:13:49 PM

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Case No(s). 19-0664-GA-RDR

Summary: Entry denying the application for rehearing filed by Duke Energy Ohio, Inc. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio