

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Adjustment to the) Case No. 21-618-GA-RDR
Capital Expenditure Program Rider Rate.)

**CONSUMER PROTECTION RESPONSE TO AUDIT REPORT SUPPLEMENT AND
STAFF REVIEW AND RECOMMENDATION SUPPLEMENT
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

Just over six months ago, the PUCO approved a Settlement between Duke Energy and the PUCO Staff. The PUCO, in approving the Settlement, authorized Duke to charge residential consumers nearly \$105 million over the next two years for Duke's ever-increasing capital expenditures under its Capital Expenditure Program ("CEP"). OCC opposed the Settlement. In allowing Duke's charges, the PUCO then set a cap on what Duke could charge residential consumers. Duke's residential charges for these expenditures were capped at *increases* of \$2.92 and \$2.70, respectively.¹

But now the PUCO Staff has filed a supplemental audit report.² In it the auditor recommends allowing Duke to charge residential consumers above the cap established in the Settlement and the PUCO's Order for 2020.³ The PUCO Staff is supporting the auditor's

¹ Case No. 19-791-GA-ALT, Opinion and Order (April 21, 2021) at para. 83; Settlement at 4.

² Supplement to Report for Plant-In-Service & Capital Expenditure Program Audit Duke Energy Ohio, Inc. (Natural Gas) - ISSUE: Adjustment #7—Premature Plant-in-Service Date (November 8, 2021).

³ The auditor recommends a charge of \$9.31 for Duke's 2020 CEP charge. Enforcing the caps ordered by the PUCO would result in a charge on consumers of \$8.93.

recommendation to allow Duke to charge consumers above the cap.⁴

To protect consumers, the 2020 cap on Duke's charges should be enforced by the PUCO.

II. RECOMMENDATIONS

A. To protect consumers, the 2020 cap on Duke's CEP charges should be enforced by the PUCO.

In its initial report, dated October 14, 2021, the auditor recommended making an adjustment (decrease) to Duke's capital expenditures charge for Premature Plant-in-Service (plant that was not in service during the relevant timeframe).⁵ After the auditor filed the report, Duke provided additional information to the auditor sometime between November 3, 2021 and November 8, 2021. Duke's information led the auditor to conclude that its initial adjustment was not warranted.⁶ The PUCO Staff then filed the supplemental audit report, on November 8, 2021.

In the supplemental report, the auditor recommends a monthly charge to residential consumers of \$6.23 for 2019 CEP investments and \$9.31 for 2020 CEP investments.⁷ That recommendation reflects a higher increase (\$.38 more) for 2020 than permitted under the Settlement and PUCO Order. The auditor's recommended monthly CEP charge for 2020 is above the cap that the PUCO ordered to limit increases for residential consumers regarding Duke's 2020 CEP charge. The PUCO's Staff's recommendation that exceeds the limit in its Settlement and in the PUCO's Order should be rejected.⁸

⁴ Staff Review and Recommendation Supplement to Staff's Review and Recommendation (November 8, 2021).

⁵ See Supplemental Report at 2-3.

⁶ See *id.*

⁷ See *id.* at 3, Table 3.

⁸ Case No. 19-791-GA-ALT, Opinion and Order (April 21, 2021) at para. 83; see also Settlement at 4.

Accepting the auditor's recommendation of a \$6.23 monthly CEP charge for 2019 for purpose of this response, the *most* the 2020 monthly charge can be is \$8.93 (\$6.23+\$2.70). It cannot be \$9.31, as the auditor has recommended and PUCO Staff has accepted. The PUCO should reject its Staff's recommendation for adoption of the auditor's new recommendation to give Duke more money at consumer expense.⁹

III. CONCLUSION

To protect consumers, the 2020 cap on Duke's CEP charges should be enforced by the PUCO, to prevent a higher charge to consumers. Duke is already proposing to charge consumers more than is reasonable for its CEP, based on a too-high rate of return and for financial incentives for employees that do not benefit consumers. Consumers should not be forced to pay even more for charges that are inconsistent with PUCO orders.¹⁰

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⁹ Notwithstanding this response, OCC reserves all of its rights to challenge Duke's application, all audit reports, all staff recommendations, and to otherwise make any other consumer protection recommendations in this case.

¹⁰ R.C. 4905.54; *In the Matter of the Complaint of Orwell Natural Gas Company*, Case No. 16-2419-GA-CSS, Entry (November 21, 2017) at para. 18 ("under R.C. 4905.54, the Commission has explicit jurisdiction to enforce compliance with Commission orders and directives.").

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Consumer Protection Response was served on the persons stated below via electronic transmission, this 18th day of November 2021.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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11/18/2021 4:58:42 PM

in

Case No(s). 21-0618-GA-RDR

Summary: Response Consumer Protection Response to Audit Report Supplement
and Staff Review and Recommendation Supplement by Office of The Ohio
Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of
Michael, William J.