BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider.	)))	Case No. 21-573-EL-RDR

CONSUMER PROTECTION COMMENTS BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

Bruce Weston (0016973)
Ohio Consumers' Counsel

Ambrosia E. Wilson (0096598)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Wilson]: (614)-466-1292
Telephone [Botschner]: (614) 466-9575
ambrosia.wilson@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

January 21, 2022

TABLE OF CONTENTS

PAGE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider.	)))	Case No. 21-573-EL-RDR

CONSUMER PROTECTION COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The Distribution Capital Investment charge ("DCI charge") enables Duke Energy Ohio, Inc. ("Duke") to bill consumers for a return on and of its distribution infrastructure investments.[1] This charge also permits Duke to bill consumers sooner than they otherwise would be charged under traditional ratemaking and without the thorough review that generally takes place under a traditional distribution rate proceeding.

The Public Utilities Commission of Ohio ("PUCO") required that Duke's DCI charge be audited annually for accounting accuracy, prudence of distribution investments, and compliance with PUCO orders.[2] This is the second full-year audit of the DCI charge occurring after the PUCO's Order approving a Settlement.[3]

Rehmann Consulting ("Rehmann" or "Auditor") performed the audit in this case as well as for the audit last year.[4] Rehmann detailed its findings in this case in an audit

---

[1] *See,* AE Entry (June 19, 2019) at ¶4; *In re Duke Energy Ohio, Inc*., Case No. 14-841-EL-SSO, et al., Opinion and Order (April 2, 2015) (*ESP 3 Case*).

[2] Case No. 17-0032-EL-AIR et al., Opinion and Order (December 19, 2018).

[3] *Id.*

[4] *See* Case No. 20-1205-EL-RDR.

report filed with the PUCO on December 3, 2021 ("Audit Report").[5] The audit involves review of the distribution capital spending and DCI Rider charges during the period from July 1, 2020 through June 30, 2021 ("Audit Period"). Among other things, the audit included the review of four quarterly DCI charge filings Duke made from October 30, 2020 to September 17, 2021.[6]

In order to protect consumers from being overcharged during this Audit Period and going forward, the Office of the Ohio Consumers' Counsel ("OCC") recommends that the PUCO adopt all the Auditor's recommended adjustments and improvements for the DCI charge.[7] Furthermore, OCC proposes two additional recommendations that would further protect consumers. First, there should be a review or confirmation in the Audit Report whether the "2020 Cap Adjustment and 2021 Cap Adjustment" included in the quarterly filings were accurate, reasonable, and justified.

The Audit Report did not address whether the DCI revenue that Duke collected from consumers exceeded the revenue caps approved in the Settlement in Case No. 17-0032-EL-AIR, et al. Those revenue caps were put in place to protect customers from paying too much. Second, the Audit Report should have (as required in the Request for Proposal issued by the PUCO Staff)[8], but did not, assess the applicable DCI Work Plans to determine if the plans comply with the Settlement in Case No. 17-0032-EL-AIR.

---

[5] *See,* Case No. 21-573-EL-RDR, Compliance Audit of the July 1, 2020 to June 30, 2021 Distribution Capital Investment Rider ("Rider DCI") Duke Energy Ohio (December 3, 2021). ("Audit Report").

[6] *See* Audit Report at 2 and Duke quarterly Rider DCI filings in Case No. 20-1530-EL-RDR.

[7] *See*, Audit Report 'Summary Findings and Recommendations by Task" at 4-16 and Table 12.

[8] *See* Request for Proposal at 2 (June 2, 2021).

II. COMMENTS

A. To protect consumers from being overcharged, the PUCO should adopt the Auditor recommendation to remove improperly included distribution plant and expense items from the Distribution charge.

Under the DCI charge, only prudently incurred expenses and used and useful distribution plant can be included and collected from consumers.[9] Accordingly, Rehmann recommended several adjustments to Duke's requested DCI revenue requirement. A summary of these and other adjustments can be found in Table 12 of the Audit Report. OCC supports the adoption of the adjustments proposed by the Auditor, as discussed below. These adjustments are reasonable and based on sound regulatory principles and they should be adopted. These adjustments would result in a reduction of approximately $2,051,041 in the revenue requirement during the Audit Period. A summary of the recommended adjustments from the Audit Report is shown in Table 1. OCC will only highlight a few of these adjustments.

[9] *See,* Case No. 17-0032-EL-AIR et al., Opinion and Order ¶ ¶113-116 (December 19, 2018).

Table 1: OCC Recommended Rider DCI Adjustments

Recommended Adjustment	Transaction Amount (Change in Distribution Plants)	Change in Revenue Requirement
Work Order with Labor and Related Charges That Should Have Been O&M	($102,411)	($12,391)
Reduce Real Property Assessed Value	($4,579,148)	($1,435,615)
Use Actual Real Property Tax Rate	7.9414%	$8,485
Use Actual Personal Property Tax Rate	9.9166%	($687,750)
Unrecorded CIAC	$318,019	($39,132)
Unrecorded Retirements	($762,000)	($187,432)
Unrecorded Cost of Removal	($614,802)	($151,224)
Exclude CWIP Differences in Deferred Tax	$1,317,745	$465,179
Duke CIAC Audit Results	($3,268)	($4,639)
Tree Trimming O&M	($41,858)	($5,151)
Missed Incentive Pay Adjustment	($5,039)	($1,371)
Total	($4,472,762)	($2,051,041)

The Auditor sampled Duke work order charges (by resource type) and found that one work order included labor charges that were recorded as capital costs that should have been recorded as operation and maintenance ("O&M") expenses.[10] The errant charges totaled to $102,411.[11] And Rehman recommended a $102,411 adjustment to the September 30, 2020 Rider DCI filing that resulted in a $12,391 one-quarter revenue requirement reduction.[12]

The Auditor also identified that Duke's real property assessed value on June 30, 2020 was $4,591,153 but increased to $9,684,439 for each of the four Rider DCI

[10] Audit Report at 6.

[11] *Id.*

[12] *Id.*

quarterly filings.[13] The Auditor stated that the large increase occurred because the real property value, which the real property assessed value is calculated on, changed from $33,347,550 to $85,490,302 in error.[14] This assessment difference impacted all four quarterly DCI filings and resulted in a one quarter recommended revenue requirement reduction of $1,435,615.[15]

Rehmann also identified that Duke used a personal property tax rate of 9.9341% for the December 31, 2020, March 31, 2021 and June-30, 2021 Rider DCI Filings when the actual personal property tax bills supported a rate of only 9.9166%.[16] The Auditor maintains that the rate difference occurred because actual personal property tax bills are received after the Rider DCI Filings are made.[17] Rehmann states that the rate difference impacted three quarterly DCI charge filings and resulted in a one quarter overstatement of the revenue requirement of $687,750 (which would lead to a reduction in charges to consumers).[18]

Rehmann also recommended additional adjustments based on PUCO Staff's filed observations. PUCO Staff observed that cost of removal ("COR") unit charges was recorded for four of the 25 work orders totaling $693,506, but only $56 retirement unit charges were recorded. The Auditor noted that if retirements are not timely recorded, then property tax, depreciation, and commercial activities tax expense are overstated.[19]

---

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Audit Report at 7.

[19] *Id.*

Therefore, Rehmann recommended a revenue requirement reduction totaling $187,432 for the four quarterly Rider DCI filings.[20]

Additionally, Rehmann recommended that Duke implement process improvements by December 31, 2022 to provide more timely estimates for retirements as project work orders are being set up.[21] Similarly, Rehmann indicated that PUCO Staff observed instances where work orders had cost of removal estimates of $608,756, but Duke only recorded a little more than $6,000 in actual cost of removal.[22] The Auditor noted that without timely cost of removal true-ups, property tax, depreciation, and commercial activities tax expenses are overstated.[23] Therefore, after quantifying the impacts of the untimely recording of cost of removal, Rehmann recommended a revenue requirement reduction of $151,224 for the quarterly Rider DCI filings.[24] And it recommended that Duke implement process improvements by December 31, 2022 to improve the accuracy and timeliness cost of removal estimates.[25]

Regarding Duke's adherence to its Vegetation Management policy and Danger/Hazard Tree Removal Capitalization Guidelines, the Auditor recommended that the requirement to send tree trimming invoices back to the tree trimming contractor when the invoice has incorrectly recorded capital versus operations and maintenance ("O&M") charges be communicated to all Duke Departments that use tree trimming contractors.[26]

---

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Audit Report at 7-8.

[25] *Id.* at 8.

[26] *Id.*

And it recommended that Audit Period plant in-service be reduced by $41,858 and a revenue requirement reduction of $5,151.[27]

The PUCO should adopt the Auditor's recommendations to remove improperly included distribution plants and expenses items from Duke's Distribution Rider so that consumers are not overcharged.

B. To protect consumers, the PUCO should order Duke to demonstrate and the Auditor to verify that Duke has not charged consumers more than is permitted under caps placed on the DCI charge.

One way to protect customers from paying too much for distribution infrastructure investments and related property and commercial activities taxes through the DCI charge is by capping the amount customers pay annually. In its Opinion and Order approving Duke's current electric security plan ("ESP"), the PUCO established annual revenue caps on the DCI charge for the period beginning 2018 through May 2025.[28]

Duke continued its practice of making corrections to its quarterly DCI charge filings during the Audit Period filing through an amended 2nd Quarter Report in 2021.[29] Accordingly, a problem that OCC raised last year remains with this audit. There is insufficient information from Duke's quarterly filings or the Audit Report to demonstrate whether the actual amount of the DCI charge collected during the audit period was within

[27] Audit Report at 15-16.

[28] *See,* PUCO Case No. 17-0032-EL-AIR et al., Opinion and Order ¶113 (December 19, 2018). Specifically, the annual DCI revenue caps are: $32 million for 2018; $42.1 million for 2019 or $46.8 million if Duke achieved both reliability standards; an additional $14 million over previous cap for 2020 or up to $18.7 million if Duke achieved both reliability standards; for years 2021 through 2024, the Rider DCI revenue cap will be increased by an additional $18.7 million, each year; and for the period of January 1 through May 31, 2025, the Rider DCI revenue cap will be between the range of $62.4 million and $66.3 million depending on the Company's reliability performance in prior years.

[29] *See,* PUCO Case No. 20-1530-EL-RDR, Revised Tariff Pages, PUCO No. 19, Rider DCI Amended 2nd Quarter Report (September 17, 2021).

the annual revenue cap. There is also no publicly filed information on how to reconcile the difference, if any, between the total DCI charge collection from consumers and annual revenue caps.

Additionally, and which OCC previously raised in comments for the previous audit period, Duke's 3rd Quarter DCI Report indicated that the "2020 Cap Adjustments" included in the filing were solely "based on discussions with PUCO staff in recognition of the revenue caps established in Case No. 17-1263-EL-SSO."[30] There is no description or documentation regarding the discussions with the PUCO Staff or whether any such cap adjustments proposed by Duke are reasonable or justified either in the DCI quarterly filings or the Audit Report.

To protect consumers from being overcharged through the DCI charge, and to improve regulatory efficiency and transparency, OCC requests that the PUCO adopt the following recommendations:

(1) Duke should document its discussions with the PUCO Staff regarding any cap adjustments in its DCI quarterly filings;

(2) In the next compliance audit, there should be a full audit of the actual DCI charge collection from consumers to date and any over or under collection should be accounted for in future DCI charge revenue requirements.

C. For consumer protection, and for consumers to receive the reliable service they pay for, the PUCO should require a review of the DCI programs that are supposed to improve reliability as part of the annual DCI compliance audit and required under the Settlement.

The Settlement in Case 17-0032-EL-AIR between Duke and several non-residential parties, approved by the PUCO,[31] requires Duke to file an Annual DCI Work

---

[30] *See,* PUCO Case No. 20-1530-EL-RDR, Third Quarter Schedules and Tariff Pages, Attachment B page 1 of 15, Notes (3) (October 30, 2020).

[31] Case No. 17-0032-EL-AIR, Opinion and Order ¶ 119 (December 18, 2018).

Plan report detailing the specific programs that the Utility seeks to include in the DCI for ultimate collection from consumers. The DCI Work Plan is intended to specifically identify those expenditures (programs) that will help reduce the number of customer minutes interrupted ("CMI") following consumer power outages.[32]

The PUCO has two different reliability standards that are used to assess the reliability provided to consumers. These standards include a System Average Interruption Frequency Index ("SAIFI") and a Customer Average Interruption Duration Index ("CAIDI"). SAIFI is a measure of the average number of outages customers experience in a year and CAIDI is a measure of the duration of such outages.

The Settlement permitted Duke to relax its CAIDI standard from 122 minutes in 2017 to over 134 minutes during years 2018 – 2020, and up to 137 minutes by 2022.[33] This means that unfortunately for consumers, if Duke meets its new relaxed standards, the Utility can spend more consumer money through the DCI rider.

Duke filed its 2020 DCI Work Plan on December 2, 2019 and its 2021 DCI Work Plan on December 1, 2020.[34] A review of the 2020 and 2021 Work Plans by OCC reveal that there are no specific programs intended to reduce consumer minutes interrupted even though this was a requirement of the Settlement.[35] The expected reliability improvements

---

[32] Case 17-0032-EL-AIR, Stipulation and Recommendation (April 13, 2018) at 14; *see*, Opinion and Order ¶ 119 (December 19, 2018).

[33] *Id*. at 13.

[34] *See,* Case Nos. 17-032-EL-AIR, et. al, Duke Energy Ohio, Inc.'s Annual Distribution Capital Investment Workplan Report (December 2, 2019) ("2020 DCI Workplan) and Duke Energy Ohio, Inc.'s Annual Distribution Capital Investment Workplan Report (December 1, 2020) ("2021 DCI Workplan).

[35] *See,* Case 17-0032-EL-AIR, Stipulation and Recommendation (December 19, 2018) at 41; and Opinion and Order ¶¶ 117-119 (December 19, 2018).

for most (if not all) of the programs are to reduce the number of consumers interrupted which improves the SAIFI, but at the potential expense of increasing the CAIDI.[36]

The Audit Report in this case should have, but did not, assess the 2020 and 2021 DCI Work Plans to determine if the plans comply with the Settlement in Case No. 17-0032-EL-AIR.[37] The Auditor was directed to make this determination as part of the Request for Proposal issued in this case.[38] Accordingly, the Auditor should have reviewed the DCI Work Plans and acknowledged that Duke's DCI Work Plans do not have any specific programs intended to improve customer minutes interrupted. In addition, the Auditor should have reviewed the $165 million that Duke planned to spend in 2020 and the $157 million that Duke planned to spend in 2021 for reliability types of programs. The Auditor also should have assessed whether the spending for each program is achieving the expected reliability improvement, and whether the spending is cost effective and whether the expenses are being prudently incurred.

Going forward, to protect consumers, the PUCO should require that the Auditor in the next DCI audit review performs a comprehensive assessment of the programs included in the 2022 DCI Work Plan that was filed in Case No. 17-0032-EL-AIR on December 1, 2021.

---

[36] *See,* Duke Energy Ohio, Inc.'s Annual Distribution Capital Investment Workplan Report at 11-12 (December 2, 2019) and Duke Energy Ohio, Inc.'s Annual Distribution Capital Investment Workplan Report at 11-12 (December 1, 2020).

[37] *See* Case No. 17-0032-EL-AIR, et. al., Opinion and Order at 41 (December 19, 2018).

[38] *See* Request for Proposal at 2 (June 2, 2021).

III. CONCLUSION

By law, consumers may be charged only what are just and reasonable rates for adequate and reliable utility service.[39] To accomplish this, the PUCO should adopt OCC's recommendations, along with the Auditor's recommendations, that are directed at enforcing the annual revenue cap, improving record-keeping and reporting, removing improper costs from the distribution improvement rider, and verifying that the DCI Work Plans comply with the Settlement in Case 17-0032-EL-AIR.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
Counsel of Record
Amy Botschner O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Wilson]: (614)-466-1292
Telephone [Botschner]: (614) 466-9575
ambrosia.wilson@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov
(willing to accept service by e-mail)

---
[39] R.C. 4905.22.

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Consumer Protection Comments was served via electronic transmission upon the following parties of record this 21st day of January 2022.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
Assistant Consumers' Counsel

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

SERVICE LIST

kyle.kern@ohioago.gov
thomas.shepherd@ohioago.gov

Rocco.DAscenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.Vaysman@duke-energy.com

Attorney Examiners:
matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov