

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Duke Energy Ohio, Inc., for an Increase) Case No. 22-507-GA-AIR
in Natural Gas Rates.)

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Approval) Case No. 22-508-GA-ALT
of an Alternative Form of Regulation.)

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Tariff) Case No. 22-509-GA-ATA
Approval.)

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Approval) Case No. 22-510-GA-AAM
to Change Accounting Methods.)

**AMENDED MOTION OF DUKE ENERGY OHIO, INC.,
TO SET TEST PERIOD AND DATE CERTAIN UNDER R.C. 4909.15(C)
AND FOR WAIVER OF CERTAIN FILING
REQUIREMENTS CONTAINED IN O.A.C. 4901-7-01**

Comes now Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), by and through counsel, and, as the Applicant herein, states that it plans to file an application for approval of an increase in its natural gas rates on or about June 30, 2022. In connection with its application, Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) (1) issue an order allowing Duke Energy Ohio to use a test period of January 1, 2022, through December 31, 2022, with a date certain of March 31, 2022; and (2) grant Duke Energy Ohio a waiver, pursuant to O.A.C. 4901-7-01, from certain filing requirements contained in O.A.C. 4901-7-01, Appendix A.

The grounds for this motion are set forth in the accompanying memorandum.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Test Period and Date Certain

Duke Energy Ohio intends to file an application for an increase in rates for its natural gas distribution service on or about June 30, 2022. The Company proposes to use the twelve months ending December 31, 2022, as the test year for the filing, and March 31, 2022, as the date certain for determining rate base.

II. Request for Waivers Under O.A.C. 4901-7-01

Pursuant to O.A.C. 4901-7-01, the Commission may grant a waiver from the standard filing requirements for an application for an increase in rates for good cause shown. In determining whether good cause exists for a waiver, the Commission is guided by the following:

- (A) A request for waiver of any of the provisions of the standard filing requirements must set forth the specific reasons in support of the request. The commission shall grant the request for a waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission shall give due regard, among other things, to:
 - (i) Whether other information, which the utility would provide if the waiver is granted, is sufficient so that the commission staff can effectively and efficiently review the rate application.
 - (ii) Whether the information, which is the subject of the waiver request, is normally maintained by the utility or reasonably available to it from the information which it maintains.
 - (iii) The expense to the utility in providing the information, which is the subject of the waiver request.¹

Duke Energy Ohio respectfully requests that the Commission grant it a waiver, pursuant to O.A.C. 4901-7-01, from certain filing requirements set forth in O.A.C. 4901-7-01, Appendix A, Chapter II, insofar as said requirements relate to the version of the standard filing requirements to be followed in these proceedings, the Company's natural gas utility operations, transmission,

¹ O.A.C. 4901-7-01, Appendix, Chapter II, Para. (A)(4)(d).

generation and fuel supply, resource planning, embedded cost of short-term debt, providing electronic links in place of paper copies, confidentiality, and construction work in progress. Duke Energy Ohio submits that good cause exists for the aforementioned waivers and respectfully requests that the Commission grant the Company a waiver from the standard filing requirements discussed more fully below.

A. Waiver Related to the Version of Standard Filing Requirements to be Followed in these Proceedings.

As the Commission is aware, its standard filing requirements (SFRs) for base rate cases have recently been reviewed.² The revisions to the SFRs found in the Appendix to O.A.C. 4901-7-01 have been filed with the Joint Committee on Agency Rule Revisions but are not yet effective.

The Company has been preparing this Application over a period of several months and has not been able to predict whether new rules would or would not be effective on the date of filing. Therefore, in an abundance of caution, the Company chose to follow the new requirements, even though they might not be effective on that date.

To the extent necessary, the Company asks for a waiver of compliance with the previous rules. For the remainder of this Memorandum in Support, references to rules will cite to the new version of the SFRs.

B. Waiver Related to Electric Utility Operations, Electric Transmission, Generation and Fuel Supply, and Resource Planning

Information related to the Company's electric utility operations is not relevant to these proceedings and is subject to the Commission's review in the context of an electricity utility rate case. As such, good cause exists to grant a waiver, in these proceedings, from filing requirements that pertain to the Company's electric utility operations.

² *In the Matter of the Commission's Review of the Standard Filing Requirements for Rate Increases in Ohio Adm. Code Chapter 4901-7*, Case No. 19-2103-AU-ORD, Finding and Order (Oct. 20, 2021).

Duke Energy Ohio intends, in these proceedings, only to seek an increase in natural gas distribution rates and it will not request an increase in any rates associated with electric distribution, transmission, or generation, including fuel, since the Company no longer directly owns any electric generation facilities, in the underlying case. Accordingly, information related to directly owned electric distribution, transmission, generation, and fuel is not relevant to Duke Energy Ohio's requested increase in natural gas distribution rates and production of said information would not enable an efficient or effective review of the Company's application.

Thus, in the interest of administrative economy, Duke Energy Ohio requests a waiver from the following standard filing requirements (SFRs) to the extent they require the production of electric distribution-, transmission-, generation- or fuel-related information:

1. Five-year capital expenditures budget (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(1));
2. Five-year financial forecast (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(2));
3. Underlying assumptions (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(3));
4. Five-year projection of revenue requirements O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(4));
5. Balance sheet items (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(5));
6. Identified elements of a statement of changes in financial position (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(6));
7. Executive summary of applicant's corporate process (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(8));
8. Executive summary of applicant's management policies, practices, and organization (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (B)(9));
9. Materials and supplies (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (C)(7));
10. Depreciation expense (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (C)(8));
11. Prior plant in service data (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (C)(12));

12. Depreciation reserve (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (C)(15));
13. Construction projects that are 75 percent complete (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (C)(16));
14. Data requirement for surviving dollars by vintage year of placement (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (C)(17));
15. Chart of accounts (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(6));
16. Monthly managerial reports (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(7));
17. Depreciation study (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(8));
18. Labor contracts (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(9));
19. Corporate budget by month (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(11));
20. Detailed Description of Process to Forecast Sales (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(13));
21. Standard journal entries (O.A.C. 4901-7-01, Appendix A, Chapter II, Para. (D)(15));
22. All revenue requirements schedules (O.A.C. 4901-7-01, Appendix A, Chapter II, Section (A));
23. All rate base schedules (O.A.C. 4901-7-01, Appendix A, Chapter II, Section (B));
24. All operating income schedules (O.A.C. 4901-7-01, Appendix A, Chapter II, Section (C));
25. All rate of return schedules (O.A.C. 4901-7-01, Appendix A, Chapter II, Section (D)); and
26. All rates and tariffs schedules (O.A.C. 4901-7-01, Appendix A, Chapter II, Section (E)).

C. Waiver Related to Confidentiality of Tax Information

The Commission's SFRs also require a natural gas utility to provide copies of certain specified federal and state income tax information when it files its rate increase application.³ To ensure that the information in its federal income tax returns remains confidential, the Company

³ SFRs, Chapter II, Para. (C)(9).

requests that it be permitted instead to make the required information available to Staff, on a confidential basis, at the time of filing the Application.⁴ The Commission has previously granted such requests.⁵ The Company also requests that it be provided a waiver from providing the natural gas state income tax return as the Company does not file a natural gas only state tax return.

D. Waiver Related to Construction Work in Progress

Chapter II, Section B, Para. (D), of the Commission's SFRs, requires utilities to "[p]rovide a list of all construction projects in progress at the date certain which have been included in the proposed rate base" and certain other information about those projects.⁶ Duke Energy Ohio is not including any Construction Work in Progress (CWIP) balances in the rate base it is proposing in this proceeding. In addition, no CWIP allowances were included in the Company's rate base in its most recent prior rate increase case, Case No. 12-1687-GA-AIR, *et al.* Consequently, the Company believes that the information requested in Schedules B-4, B-4.1, B-4.2 (CWIP), and SFRs, Chapter II, Section B, Para. (I) (Schedule B-9 Mirrored CWIP Allowances), as well as that in SFRs, Chapter II, Para. (C)(3) (CWIP included in rate base in prior case) and SFRs, Chapter II, Para. (C)(16) (projects that are seventy-five percent complete), to the extent CWIP would be included in the referenced schedules, is inapplicable. Accordingly, to the extent that it is necessary for the Company to obtain waivers of the requirement to submit CWIP-related information specified in the foregoing provisions of the Standard Filing Requirements, Duke Energy Ohio requests that the Commission grant such a waiver.

⁴ See SFRs, Chapter II, Para. (C)(9).

⁵ See *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Electric Distribution Rates*, Case No. 21-887-EL-AIR, *et al.*, Entry (Oct. 20, 2021); *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Entry (May 6, 2020); and *In the Matter of the Application of Columbus Southern Power Company and Ohio power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, *et al.*, Entry (Feb. 23, 2011).

⁶ SFRs, Chapter II, Section B, Para. (D).

E. Waiver Related to Embedded Cost of Short-Term Debt

Chapter II, Section D, Para. (D)(1), of the Commission's SFRs requires natural gas utilities to "[p]rovide supporting schedules as of the date certain or most recent available historic calendar quarter for * * * [e]mbedded cost of short-term debt, if any, [on] Schedule D-2." Section D, "Rate of Return," relates to the rate fixation requirements in R.C. 4909.15. In 1999, the Supreme Court of Ohio summarized the ratemaking process under R.C. 4909.15 as follows:

R.C. 4909.15(A) requires the commission to determine the following: the valuation of the utility's property in service as of a date certain, i.e. its rate base; a fair and reasonable return on that investment; and the expenses incurred in providing service during the test year. Once these determinations are made, the commission, pursuant to R.C. 4909.15(B), computes the gross annual revenues to which the utility is entitled by adding the dollar return on the utility's investment to the utility's test-year expenses. Pursuant to R.C. 4909.15(C), the commission then determines the utility's revenues during the test period. If the revenues received by the utility during the test year are less than the gross annual revenues to which the utility is entitled, the commission must set new rates that will raise the necessary revenue.⁷

A public utility's "cost of debt" is part of its capital structure. As the Commission explained in a 1975 opinion:

Each of the sources of permanent funds which make up the capital structure (long term debt, preferred stock and common equity) have costs associated with them. Such costs are, in effect, the annual interest rates the utility must pay to the suppliers of these various forms of capital. When these costs have been determined, they are multiplied by the percent of the capital structure the component with which they are associated represents, the sum of the products equalling the weighted cost of capital to the company. Under the analysis, the resulting percentage is considered to be evidence of a fair rate of return, and is applied to the statutory rate base to determine the dollar return to which an applicant utility is entitled.⁸

However, the "Commission has consistently rejected the inclusion of short-term debt in the capital structure[,] because short-term debt is not a permanent source of capital, the amounts vary

⁷ *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 86 Ohio St.3d 53, 54 (1999) (citations omitted).

⁸ *In the Matter of the Application of The Cincinnati Gas & Electric Co. for an Increase in its Electric Rates*, Case No. 72-415-Y, Opinion and Order on Rehearing, 1975 Ohio PUC LEXIS 1, 7-8 (Oct. 17, 1975).

over time, and its cost is relatively volatile.”⁹ The Supreme Court of Ohio has approved that approach, holding that “the exclusion of short-term debt in ascertaining the cost of capital [is] neither unlawful nor unreasonable. The commission's approach [is] in conformity with testimony to the effect that capital structure, by generally accepted definitions, does not include short-term debt.”¹⁰ Additionally, the SFRs follow that approach by excluding short-term debt from the classes of capital in the Rate of Return Summary.¹¹

Because short-term debt is not part of a public utility’s capital structure, and because the Commission and the Ohio Supreme Court have affirmed the exclusion of short-term debt in calculating a public utility’s cost of capital, Duke Energy Ohio requests that the Commission waive the requirement to submit Schedule D-2 or any other information on Duke Energy’s embedded cost of short-term debt.

III. Conclusion

The narrow scope of the waivers as requested herein will not prejudice any party of record in its review and evaluation of Duke Energy Ohio’s application. On the contrary, by not unnecessarily complicating the docket with irrelevant information, an efficient and expeditious review is ensured.

⁹ *In the Matter of the Applications of Columbia Gas of Ohio, Inc. to Establish a Uniform Rate for Natural Gas Service within the Company's Lake Erie Region, Northwestern Region, Central Region, Eastern Region, and Southeastern Region*, Case Nos. 88-716-GA-AIR, *et al.*, Opinion and Order, 1989 Ohio PUC LEXIS 1069, 133-134 (October 17, 1989) (citations omitted).

¹⁰ *Masury Water Co. v. Pub. Util. Com.*, 58 Ohio St.2d 147, 149, 389 N.E.2d 478 (1979).

¹¹ See SFRs, Chapter II, Section D, Para. B. Note that, in the “Definitions” section of Chapter II of the SFRs, Section D (Rate of Return), at paragraph (E)(7), the Commission includes a definition of “Return on average total capital.” That paragraph defines “Return on average total capital” to mean “Income available for fixed charges” divided by “Average total capitalization including short-term debt.” However, none of the Schedules in Section D still uses the phrase “Return on average total capital[.]” which further supports the conclusion that short-term debt is irrelevant to determining rate of return.

For the reasons set forth herein, Duke Energy Ohio respectfully requests that the Commission grant its request for waiver from certain of the Commission's standard filing requirements, as set forth in O.A.C. 4901-7-01, as discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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AAM**

Summary: Motion Amended Motion of Duke Energy Ohio, Inc., To Set Test Period and Date Certain Under R.C. 4909.15(C) and For Waiver of Certain Filing Requirements Contained in O.A.C. 4901-7-01 electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Kingery, Jeanne W. and Vaysman, Larisa and Akhbari, Elyse Hanson