**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs Through 2016. | ::::: |  Case No. 14-1580-EL-RDR |

**REPLY COMMENTS**

SUBMITTED ON BEHALF OF THE STAFF OF

THE PUBLIC UTILITIES COMMISSION OF OHIO

# INTRODUCTION

 On September 9, 2014, Duke Energy Ohio (“Duke”) filed an Application seeking approval to continue the cost-recovery mechanism, including its uncapped shared savings component, for its current Energy Efficiency (EE) Portfolio Plan. On October 22, 2014, the Commission issued a procedural Entry in this docket requesting Initial Comments to be filed by December 5, 2014 and Reply Comments to be filed on January 9, 2015. Staff did not submit Initial Comments in this case, but is submitting Reply Comments.

# BACKGROUND

 In Commission Case No. 11-4393-EL-RDR, Duke proposed a new recovery mechanism, Rider EE-PDR, in which Duke could recover program costs and an incentive payment for its EE Portfolio Plan. In a Stipulation in that case, signed by some of the parties and approved by the Commission, the cost recovery mechanism for the Company’s five year EE Portfolio Plan was approved.[[1]](#footnote-1) However, in the Stipulation, it was agreed that the incentive mechanism would expire at the end of the fourth year of the plan (2015) and that all interested parties, no sooner than the third quarter of 2014, were permitted to assess the incentive mechanism and to consider whether they support its use for 2016.[[2]](#footnote-2)

 The Company’s EE Portfolio Plan and cost recovery mechanism were again addressed in Case No. 13-0431-EL-POR. Again, a stipulation was signed by some of the parties and approved by the Commission. The Stipulation affirmed that:

the mechanism for recovering costs from the Company’s cus­tomers, including recovery of prudent program costs incurred, lost distribution revenues and an incentive mecha­nism**,** shall expire at the end of 2015, as controlled by the Stipulation and Recommendation agreed to in Case No. 11-4393-EL-RDR, and adopted and approved by the Commis­sion on August 15, 2012. At 5.[[3]](#footnote-3)

 However, the stipula­tion went on to state that “in the event no such agreement is reached, interested parties may [could] seek the Commission’s approval in 2015 for use in 2016.”[[4]](#footnote-4)

 On June 13, 2014, Governor Kasich signed into law Senate Bill 310. Senate Bill 310 provides that an electric distribution utility with an energy efficiency portfolio plan shall either (1) “continue to implement the portfolio plan with no amendments to the plan, for the duration that the Public Utilities Commission originally approved” or (2) “seek an amendment of the portfolio plan.”[[5]](#footnote-5) If a utility amends its portfolio plan then a customer of the electric distribution utility may opt out of participating in the utility’s energy efficiency portfolio plan.[[6]](#footnote-6)

 In this case, Duke has requested the Commission to continue its current cost recovery mechanism for the remaining year of its approved EE Portfolio Plan (2016). The cost recovery mechanism would recover prudent program costs incurred, lost distri­bution revenues, and an incen­tive or shared savings mechanism for 2016. However, Duke has requested that if the Commission determines the continuation of the existing cost recovery and incentive mechanism through the end of 2016 is not appropriate, the Commission provides the Company thirty days from the date of the Commission order to amend its portfolio plan.

# INTERVENOR INITIAL COMMENTS

 Seven parties filed Initial Comments in this case including: Ohio Partners for Affordable Energy (OPAE), The Office of the Ohio Consumers’ Counsel (OCC), Kroger, Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Energy Group (OEG), the Ohio Manufacturers’ Association (OMA), and the Envi­ronmental Advocates comprised of the Natural Resources Defense Council (NRDC), the Environmental Law and Policy Center (ELPC) and the Ohio Environmental Council (OEC).

 The Environmental Advocates support the view that the Company’s Application is an extension of the Company’s currently approved EE Portfolio Plan through 2016. The Environmental Advocates argue that the Company’s Application involves a single issue, shared savings, and does not alter its EE portfolio of programs. In general, Staff agrees with this position. While the Stipulation in the most recent Duke EE Portfolio Plan case states that all of the cost elements regarding its EE programs would expire at the end of 2015, the Stipulation further provides that “in the event no such agreement is reached, interested parties may [could] seek the Commission’s approval in 2015 for use in 2016.”[[7]](#footnote-7) Consequently, the previous EE Portfolio case contemplated the continuation of the exist­ing cost recovery mechanism. Furthermore, Staff does not believe that the Company should cease recovering costs incurred to implement its EE Portfolio Plan. It would be unreasonable to require the Company to continue providing EE programs to its customers and not be able to recover prudently incurred costs. Staff recommends the Company be able to recover these costs in 2016 to implement the Company’s Commission-approved EE Portfolio Plan. Otherwise, the Company may not implement its EE Portfolio Plan for 2016 and instead pay the penalty for not doing so, if applicable. Also, it would be ineffi­cient for the Company to cease its EE programs for the year 2016 and restart the EE pro­gram at a later date.

 With respect to the incentive or shared savings mechanism, the Commission ordered that the parties should work toward some type of agreement no sooner than the third quarter of 2014. Staff is aware that the Company did reach out to parties, but no such agreement was reached in 2014. Normally, additional time would have been availa­ble for negotiating a settlement, but Senate Bill 310 introduced uncertainty as to whether or not the Company’s filing should be viewed as an attempt to amend its plan. A number of parties, IEU-Ohio, OEG, OPAE, and Kroger, advocate that the should Commission deny or dismiss the Company’s Application because in their view it is a significant modi­fication to the Company’s already approved EE Portfolio Plan. Such an interpretation would allow customers, who so choose, to opt out of the Company’s energy efficiency programs. However, Staff does not view this Application request as a significant modifi­cation to the Company’s EE Portfolio Plan, but rather an extension of the current cost recovery mechanism with a shared sav­ings provision. The Company’s EE Portfolio Plan and incentive mechanism was contemplated and approved by the Commission long before Senate Bill 310 was adopted. Therefore, the Company should be able to recover the costs necessary to effectuate the Plan.

 If the Commission were to approve the Company’s request for an extension of the cost recovery and a shared savings mechanism for 2016, Staff rec­ommends the following modifications to the Company’s Plan:

* 1. The Company should not be allowed to use accrued banked savings to earn shared savings in a future year. The primary purpose of allowing the use of banked savings to meet energy efficiency requirements, is to provide recog­nition that the currently required energy efficiency savings have already been achieved by the Company in a *prior* period. This has no relationship to the purpose of shared savings, which is to incentivize the Company to optimize its implementation of its portfolio plan in the *current* period. Therefore, in 2014 and going forward, the Company should only be able to use banked savings to satisfy energy efficiency mandates, not to achieve additional recovery under the shared savings mechanism. Staff notes that it made this same recommendation in Staff’s Policy Proposal for Incentiviz­ing Utility Energy Efficiency Performance in First Energy’s EE Portfolio Case in 2011.
	2. The Staff also recommends the Commission apply a shared savings cap of $6.5 million per year after tax. Unlike the other electric utilities in the State, Duke currently does not have a cap for its shared savings recovery. A $6.5 million cap would limit Duke customers’ exposure to unlimited shared sav­ings recovery by the Company and would be in alignment with the other Ohio EDUs. Staff calculated this recommended $6.5 million annual cap by taking the weighted average of FirstEnergy, AEP Ohio, and DP&L’s approved shared savings cap based on the adjusted baseline sales for FirstEnergy, AEP Ohio, and DP&L for the most recent three year period.

Respectfully submitted,

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**On behalf of the Staff of**

**The Public Utilities Commission of Ohio**

# PROOF OF SERVICE

 I hereby certify that a true copy of the foregoing **Reply Comments** submitted on behalf of the Staff of the Public Utilities Commis­sion of Ohiowas served electronic mail upon the following Parties of Record, this 9th day of January, 2015.

/s/ Katie L. Johnson

**Katie L. Johnson**

Assistant Attorney General

**Parties of Record:**

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1. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR *(“Case No. 11-4393”)* (Opinion and Order at 17) (Nov. 18, 2011). [↑](#footnote-ref-1)
2. *Case No. 11-4393* (Stipulation and Recommendation at 5) (Nov. 18, 2011). [↑](#footnote-ref-2)
3. *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs*, Case No. 13-0431-EL-POR *(“Case No. 13-0431-EL-POR”)* (Stipulation and Recommendation at 5) (Sep. 6, 2013). [↑](#footnote-ref-3)
4. *Case No. 13-0431-EL-POR* (Stipulation and Recommendation at 5) (Sep. 6, 2013). [↑](#footnote-ref-4)
5. Senate Bill 310 Section 6(A). [↑](#footnote-ref-5)
6. *Id*. at Section 8. [↑](#footnote-ref-6)
7. *Case No. 13-0431-EL-POR* (Stipulation and Recommendation at 5) (Sep. 6, 2013). [↑](#footnote-ref-7)