

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Recovery of) Case No. 13-753-EL-RDR
Program Costs, Lost Distribution)
Revenue, and Performance Incentives)
Related to its Energy Efficiency and)
Demand Response Programs.

POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45212
614-222-1330
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

Attorneys for
Duke Energy Ohio, Inc.

November 7, 2013

I. Introduction

Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) initiated this proceeding with the filing of an application (Application) for recovery of costs related to its compliance with the state of Ohio energy efficiency and peak demand reduction mandates as set forth in Chapter 4928.66, Revised Code. Subsequent to the filing of the Application, the Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), moved to intervene in this proceeding and both were granted intervention. The Commission Staff (Staff)¹ also participated in this proceeding.

Thereafter, the interested Parties filed comments and engaged in settlement discussion to resolve the sole issue that arose from the matters relevant to the Application that was filed in this proceeding. The Parties were unable to reach agreement on this one issue and therefore determined to submit the matter to the Commission for a resolution. A hearing was held on October 3, 2013 and the Company presented two witnesses to support its Application and the methodology included therein for calculating the appropriate cost recovery. OPAE and OCC also each provided a witness to support their respective contentions. Below is a discussion of the one issue that arose. There should be no doubt that the Company submitted its Application and properly calculated the shared savings mechanism that is included as part of the appropriate revenue recovery.

II. Duke Energy Ohio Properly Calculated Shared Savings

The methodology for calculating the shared savings incentive component of the revenue requirement for Rider EE-PDR in this proceeding is exactly the same as that which was filed

¹ The PUCO Staff is considered a party for the purpose of entering into the Stipulation pursuant to Sections 4901-1-10(C) and 4901-1-30, O.A.C.

and approved by the Commission in Case No. 11-4393-EL-POR, (Portfolio Case). The only question relevant in this proceeding is whether or not the Company's costs are consistent with the previously approved case and the tariff that was approved in accordance with the Stipulation and the Commission's Order in that case. In the Company's Portfolio Case, Duke Energy Ohio witness James E. Ziolkowski provided detailed calculations related to the shared savings mechanism, Staff Exhibit 1, page 1 of 5 of the attachment. In his calculations, Mr. Ziolkowski clearly and unambiguously shows the appropriate mathematical formula that includes total avoided costs, minus program costs, which yields a sum for shared savings. Measurement and Verification (M&V) is a separate line item following that is subtracted from the program cost to yield a revenue requirement.

Although OCC and OPAE now seek to argue that this methodology was not what they bargained for in the Portfolio Case, the truth is that this specific calculation was not discussed in any respect in that proceeding, although Mr. Ziolkowski was questioned briefly with respect to the methodology by counsel for the Ohio Energy Group (OEG) in the Portfolio Case proceeding.² Despite being present at the proceeding and hearing the OEG's line of questioning specifically focused on the exclusion of EM&V costs from the shared savings calculation, no party raised any concern regarding the shared savings calculation methodology at the hearing or in their respective post hearing briefs filed on June 22, 2012.

The Parties in that proceeding never once expressed a concern related to the shared savings incentive calculation methodology proposed by the Company, but rather raised a number of other concerns unrelated to how this calculation was performed. The Parties evidently neglected to undertake a review of what was submitted and approved by the Commission. In its Opinion and Order, after adopting and approving the Stipulation that was submitted, the

² Tr. at p. 39 and at 42.

Commission directed the Company to file new proposed tariffs for approval which appropriately reflect that the lost revenue recovery mechanism would only cover distribution revenue and no lost generation revenue.³ Such tariffs along with work paper detailing the Company's methodology for calculating the shared savings incentive were filed on August 22, 2012 and then again in an Amended form September 4, 2013. On September 12, 2012, the Staff of the Public Utilities Commission of Ohio submitted a Review and Recommendation wherein Staff noted the amendments made to the filed tariffs and explicitly stated that the submitted tariffs were "in compliance with the Commission's Orders in this case." Finally, the Commission issued an entry on September 26, 2012, approving the filed tariffs.

No Party in this proceeding disputes that the Application filed and the calculations of the revenue requirement were submitted in accordance with the approved tariffs in the Company's Portfolio Case. Indeed, witnesses for OCC, OPAE and Staff all admit that they didn't actually review the submitted tariffs subsequent to the approval of the Company's portfolio in order to dispute the calculation in that proceeding.⁴ Instead, one year later, the Parties now seek to have the Commission order the Company to recalculate its Rider EE-PDR in a manner contrary to what was approved by the Commission in order to comply with what they now say were their earlier unexpressed intentions. While it is unfortunate that the Parties now disagree with the shared savings calculation methodology approved by the Commission, there is nothing in the procedural record related to the prior Portfolio Case that would justify using an alternative methodology and it is improper for these Parties to now seek to penalize the Company by

³ *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, Opinion and Order, August 15, 2012 at p. 19.

⁴ Tr. p. 70, Mr. Gonzalez only reviewed the tariff filing to see that it complied with one issue, not including the one relevant to this proceeding; Tr. p. 79, Mr. Rinebolt states that OPAE did not review the tariffs; Tr. p. 87, Mr. Scheck admits that he simply "overlooked" Mr. Ziolkowski's submitted calculations.

reducing the approved revenue requirement simply because they now deem it a more appropriate accounting methodology.

III. Conclusion

For the reasons stated above, and because there is no basis upon which to do otherwise, the Company respectfully requests that the Commission approve its Application in this proceeding, as filed.

Respectfully submitted,



Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Duke Energy Business Services, Inc.
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45212
614-222-1330
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 7th day of November, 2013, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.

/s/ Elizabeth H. Watts
Elizabeth H. Watts

Ohio Partners for Affordable Energy

Colleen L. Mooney
231 West Lima Street
Findlay, Ohio 45840
cmooney@ohiopartners.com

Office of the Ohio Consumers' Counsel

Terry Etter
10 West Broad Street
Suite 1800
Columbus, Ohio 43215
Schuler@occ.state.oh.us
Kern@occ.state.oh.us

Ohio Attorney General's Office - Public Utilities

Devin Parram
180 East Broad Street, 6th Floor
Columbus OH 43215
Devin.Parram@puc.state.oh.us