**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )

Energy Ohio, Inc. for Recovery of Program )

Costs, Lost Distribution Revenue, and ) Case No. 12-1857-EL-RDR

Performance Incentives Related to its )

Save-A-Watt Programs. )

**COMMENTS**

**BY**

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**TABLE OF CONTENTS**

**PAGE**

[I. INTRODUCTION 1](#_Toc337737698)

[II. COMMENTS 2](#_Toc337737699)

[A. The Commission Should Reduce The Level Of Lost Revenues In Duke’s Calculation To Account For The Inappropriate Collection Of Generation Lost Revenues Attributed To Customers Who Shopped From January 1, 2009 Through December 9, 2009. 2](#_Toc337737700)

[B. The Commission Should Reduce Duke’s Proposed Incentive Award Calculation (And Potentially Reduce What Customers Will Pay) To Account For The Lower Market-Based Avoided Capacity Costs In   
PJM. 4](#_Toc337737701)

[C. The Commission Should Reduce Duke’s Proposed Incentive Award Calculation (And Potentially Reduce What Customers Will Pay) To Account For Duke’s Inappropriate Inclusion Of Transmission And Distribution Avoided Costs. 5](#_Toc337737702)

[D. The Commission Should Reduce Duke’s Proposed Incentive Award Calculation (And Potentially Reduce What Customers Will Pay) To Account For The Lower Company Program Savings Emanating From   
The Recent Ohio Independent Evaluator Study. 5](#_Toc337737703)

[E. The Commission Should Reduce The Level Of Energy Efficiency-Induced Lost Revenues In Duke’s Proposed Calculation (And Reduce What Customers Will Pay) To Account For Interest That Should Be Paid To Customers On Balances That Duke Held For Approximately Two Years, From December 10, 2010 Through December 31, 2011, Regarding Non-Fuel Lost Generation Revenues. 8](#_Toc337737704)

[F. The Commission Should Require Duke To Rerun Its Model And File   
Its Revised Incentive Results In This Proceeding. 10](#_Toc337737705)

[G. The Commission Should Amend The Procedural Schedule To Account For The Revised Incentive Calculations And Correlating Results. 11](#_Toc337737706)

[III. CONCLUSION 11](#_Toc337737707)

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# I. INTRODUCTION

This proceeding is important to residential customers of Duke Energy Ohio (“Duke” or “Company”) because the Public Utilities Commission of Ohio (“PUCO” or “Commission”) will determine the amount of money that they will pay for Duke’s energy efficiency and peak demand reduction (“EE & PDR”) programs. Specifically, Duke is requesting that its customers pay for what it claims to be its lost revenues associated with the energy efficiency impacts. Duke also wants customers to pay for specific percentages of avoided costs achieved through its EE & PDR programs and pay for an incentive for Duke exceeding the mandated benchmarks in the law.

In this proceeding, the Commission will review the application to true-up the distribution reliability save-a-watt rider (“Rider DR-SAW”). By opinion and order issued December 17, 2008, in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al., the Commission approved a Stipulation and Recommendation (“Stipulation”) that provided for customers to pay for Duke’s energy efficiency and peak demand efforts through Rider DR-SAW.

Rider DR-SAW was to expire on December 31, 2011. However, the Stipulation provides that Rider DR-SAW is subject to a true-up, in the second quarter of 2012, to reconcile the amount that Duke collected compared to the amount that the Commission authorized Duke to collect. On June 29, 2012, Duke filed its application to true-up Rider DR-SAW. The Office of the Ohio Consumers’ Counsel (“OCC”) appreciates the opportunity to submit comments on behalf of the 455,000 residential electricity customers of Duke, to advocate that Duke’s customers should realize the benefits of cost-effective energy efficiency and peak demand programs while paying for no more than what is just and reasonable for those efforts.

# II. COMMENTS

## A. The Commission Should Reduce The Level Of Lost Revenues In Duke’s Calculation To Account For The Inappropriate Collection Of Generation Lost Revenues Attributed To Customers Who Shopped From January 1, 2009 Through December 9, 2009.

Duke appears to have included the amount of lost generation revenues attributed to shopping customers in the total amount of lost generation revenues used in its calculation of the Rider DR-SAW true-up. That means Duke has collected from shopping customers the lost generation revenues it lost due to competition. That is wrong under the Rider DR-SAW mechanism established in the Stipulation.

In Duke’s 1999 Portfolio case,[[1]](#footnote-1) the Company indicated that it computes lost generation margins “On a monthly basis, \*\*\* by taking the tail-block rates (net of fuel, variable O&M, and any riders that are subject to a true-up) times the kWh and kW saved. The Company then reduces the lost margins \*\*\* by the percentage of load (as measured by kWh) that has switched to alternate suppliers.”[[2]](#footnote-2)

However, when asked in this case, “[w]hat were the annual shopping rates used in the calculation of those lost generation revenues,” Duke responded that “[t]he Company’s lost revenue calculation assumed no shopping.”[[3]](#footnote-3) But customers in Duke’s territory were shopping in 2009.[[4]](#footnote-4) At the end of 2008, 2.55% of the total generation for Duke’s customers was being provided by competitive retail electric suppliers.[[5]](#footnote-5) Yet, by the end of 2009, 41.54% of the total generation for Duke’s customers was being provided by competitive retail electric suppliers.[[6]](#footnote-6)

Therefore, the Company appears to have collected more generation lost revenues than it was entitled to through the January 1, 2009 through December 9, 2009 period (the limited period when the Company was allowed to collect lost generation revenue) because it did not reduce the amount of lost revenues by the percentage of load that had switched to alternate suppliers. Accordingly, the Commission should require Duke to remove the amount of lost generation revenues attributed to shopping customers from the total amount of lost generation revenues used in the Rider DR-SAW calculation true-up. Otherwise, shopping customers will end up paying more than their fair share.

## B. The Commission Should Reduce Duke’s Proposed Incentive Award Calculation (And Potentially Reduce What Customers Will Pay) To Account For The Lower Market-Based Avoided Capacity Costs In PJM.

A portion of the Duke SAW incentive is calculated based on the number of KW’s saved by the Company’s EE and PDR programs multiplied by the market-based rate, in $/year for each vintage as used in the Rider DR-SAW calculation each year.[[7]](#footnote-7) The Company takes 75 percent of the avoided capacity savings towards its incentive.

In developing its avoided capacity savings, Duke appears to have used an annual dollar per KW rate ranging from $70.00 (or $191.78 $/MW-Day) in 2009 to $75.54 (or $206.96 $/MW-Day).[[8]](#footnote-8) But Duke is a member of PJM. The Reliability Pricing Model (“RPM”) Base Residual Auction capacity clearing rates from 2009 to 2011 in PJM were lower than Duke’s figures:

* 2008/2009 $111.92 $/MW-Day
* 2009/2010 $102.04 $/MW-Day
* 2010/2011 $174.29 $/MW-Day
* 2011/2012 $110.00 $/MW-Day[[9]](#footnote-9)

Using the PJM rates as a market rate proxy for capacity reveals that the avoided capacity costs used by Duke in calculating its incentive are almost double the market rate, except for the 2010/2011 PJM year. The Company should be required to recalculate its incentive using the applicable and lower PJM capacity rates which may result in customers paying less incentive to Duke.

## C. The Commission Should Reduce Duke’s Proposed Incentive Award Calculation (And Potentially Reduce What Customers Will Pay) To Account For Duke’s Inappropriate Inclusion Of Transmission And Distribution Avoided Costs.

The Stipulation (approved by the Commission) that authorized the SAW cost-recovery mechanism does not provide for the inclusion of transmission and distribution (“T&D”) avoided costs in the calculation of the SAW incentive.[[10]](#footnote-10) And Duke’s DR-SAW detailed five-page Tariff Sheet No. 107.1 (filed with the Commission) does not include the use of T&D avoided costs in the calculation of the SAW incentive. Furthermore, Company Witness Smith, in his Supplemental Direct Testimony in Duke’s first ESP case, indicates that Company Witness Stevie “used an estimate of the green-field construction cost for new peaking plant capacity for purposes of valuing energy efficiency capacity,”[[11]](#footnote-11) not T&D. Yet it appears that Duke included T&D avoided costs in its calculation of the incentive. The T&D avoided costs range from $24 to $48 per kW/year over a 25 year modeling horizon.[[12]](#footnote-12) The Company should be required to remove all T&D related avoided costs from its incentive calculation, so that customers are not charged for an overly inflated incentive payment.

## D. The Commission Should Reduce Duke’s Proposed Incentive Award Calculation (And Potentially Reduce What Customers Will Pay) To Account For The Lower Company Program Savings Emanating From The Recent Ohio Independent Evaluator Study.

One of the key variables driving the shared savings component of the SAW mechanism are energy and demand savings attributed to Duke’s energy efficiency and peak demand reduction efforts. On August 29, 2012, the Report[[13]](#footnote-13)of an Independent Evaluator (hired by the Commission to assist in the review and monitoring of Ohio’s electric utilities’ energy efficiency programs) was filed. That Report contains the findings and recommendation from a review of the program savings estimates used by Duke over the 2009 and 2010 period.[[14]](#footnote-14) The Report lists a number of instances where Duke appears to have overestimated the energy savings of its programs. For example:

* Duke assumed the install rates for CFLs at 100 percent where the draft Ohio TRM suggests an installation rate of from 81 – 86 percent.[[15]](#footnote-15)
* “The savings estimates for kWh and therms are higher than one would expect \*\*\*.”[[16]](#footnote-16) (Issue identified by the Independent Evaluator regarding Duke’s Personalized Energy Report Program.)
* “Due to the lack of documentation and the unsubstantiated adjustments for bias discussed above, there is not enough information provided to assess the credibility of the reported savings. Given these issues, we do not recommend that these values be used to estimate savings

for future program planning.” [[17]](#footnote-17) (Issue identified by the Independent Evaluator regarding Duke’s Home Energy House Call Program.)

* “The savings value for a single 13 W CFL included in this kit is estimated at 136.5 kWh \*\*\*, which is more than three times the estimated savings using the draft Ohio TRM value for the same measure (40.4 kWh).”[[18]](#footnote-18) “Due to the issues described above, there is not enough information to assess the credibility of the reported savings.”[[19]](#footnote-19) (Issue identified by the Independent Evaluator regarding Duke’s NEED Program.)
* “The billing regression analysis also estimates potential savings of 11 to 22 percent, which is almost certainly too high based on our knowledge of other types of audit/informational programs (0-2 percent is standard).”[[20]](#footnote-20) “[W]e do not believe that the savings numbers in this report are credible \*\*\*.” [[21]](#footnote-21) (Issue identified by the Independent Evaluator regarding Duke’s Energy Efficiency Website.)

Given the questions raised by the Independent Evaluator on the credibility of some of Duke’s savings estimates, the electricity savings estimates used in the SAW filing should be reduced to correspond with the findings of the independent evaluator. Otherwise, consumers will end up paying more than what was authorized by the Commission.

## E. The Commission Should Reduce The Level Of Energy Efficiency-Induced Lost Revenues In Duke’s Proposed Calculation (And Reduce What Customers Will Pay) To Account For Interest That Should Be Paid To Customers On Balances That Duke Held For Approximately Two Years, From December 10, 2010 Through December 31, 2011, Regarding Non-Fuel Lost Generation Revenues.

From January 1, 2009 through December 9, 2009, the Company was allowed to collect energy efficiency induced non-fuel related lost generation revenues through Rider DR-SAW. But on December 15, 2010, the Commission in its Opinion and Order in Duke’s Portfolio Case No. 09-1999-EL-POR, directed the Company to “remove lost generation revenues from its Rider DR-SAW beginning on December 10, 2009, the effective date of Chapter 4901:1-39,O.A.C.”[[22]](#footnote-22)

Accordingly, in that December 15, 2010 Order, the Commission directed Duke “to ***immediately*** remove recovery of any lost generation revenues from Rider DR-SAW.”[[23]](#footnote-23) The Commission also found that in light of its directive that Duke “immediately remove lost generation revenues from Rider DR-SAW \*\*\*” and that any over recovery by Duke between December 10, 2009 and the effective date of the revised tariffs would be credited back to customers.[[24]](#footnote-24)

But the generation lost revenues were not “immediately” removed from the rider. In Company witness Ziolkowski’s Direct Testimony in this case he states that, “[o]n February 16, 2011, the Company filed a revised Rider DR-SAWR[[25]](#footnote-25) tariff sheet and supporting work papers that reflected the removal of lost generation revenues beginning on December 10, 2009. As the Commission has not issued an Order approving the revised rates, the revised rates were not implemented.”[[26]](#footnote-26) The Company apparently addresses this matter with the filing of this case on June 29, 2012, where it removed the lost generation revenues from its incentive calculation beginning on December 10, 2009.[[27]](#footnote-27)

Duke complied with the deadline for filing the revised tariffs according to the Commission’s February 9, 2011 Entry on Rehearing,[[28]](#footnote-28) But Duke did not return the amounts to customers given there was not a further ruling from the PUCO to do so. This is a very unusual situation given that the PUCO asked for “immediate” removal of generation related lost revenues. The result is that Duke’s customers have unfortunately been paying for lost generation distribution revenues since December 10, 2009, even though the PUCO earlier ruled that customers should not be paying.

Accordingly, the PUCO should require Duke to pay its customers interest (at a rate of 7.29%[[29]](#footnote-29)) on the lost generation revenue collected and held by the Company in Rider DR-SAW post 2009. That is the fair result for customers in this very unusual situation. That total amount of interest should be subtracted from the remaining distribution lost revenues the Company contemplates collecting, if any, after adjustments to Duke’s calculation is made.

## F. The Commission Should Require Duke To Rerun Its Model And File Its Revised Incentive Results In This Proceeding.

OCC’s recommendations will reduce Duke’s overall the avoided cost revenue below the $90 million estimated by Company witness Ziolkowski.[[30]](#footnote-30) Lowering the avoided cost revenue estimate may lead to a lower incentive payment by customers. Without Duke rerunning the SAW model with the necessary adjustments outlined above, it is difficult to estimate whether OCC’s adjustments reduce the avoided cost revenue below the 15 percent of total program cost metric that the Company is using to determine its $14.1 million incentive.[[31]](#footnote-31) This information is important to ascertain as the Company is only allowed to collect the lesser of the earned revenues consistent with the calculated earnings cap or the earned avoided cost revenues associated with the actual impacts claimed. Therefore, the Commission should instruct Duke to rerun its model and file its revised incentive results in this proceeding.

## G. The Commission Should Amend The Procedural Schedule To Account For The Revised Incentive Calculations And Correlating Results.

Given the complexity of the SAW cost-recovery model, Duke should be required to give a detailed presentation to interested stakeholders explaining its revised calculations and correlating results. And the parties should be given the opportunity to file comments and reply comments in regards to the Company’s revised results. Finally, the October 23, 2012 hearing date should be continued so that the parties will have adequate time to review and conduct discovery on the revised calculations and prepare and file comments and testimony. This proposed process reflects that there is a significant amount of money at stake for customers and the issues should be heard before a decision is made on how much customers will pay.

# III. CONCLUSION

The OCC, on behalf of Duke’s residential customers, appreciates the opportunity to submit these comments in response to Duke’s request that its residential customers pay more for its energy efficiency and peak demand programs. OCC’s comments are directed at advocating that Duke’s customers should realize the benefits of Duke’s programs, at just and reasonable rates, and that Duke fully adhere to the Stipulation that provided for the implementation of Rider DR-SAW.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission, this 11the day of October, 2012.

*/s/­­­­­­­­­­­­­­­\_Melissa R. Yost\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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1. PUCO Case No. 09-1999-EL-POR. [↑](#footnote-ref-1)
2. Company Response to OCC-INT-01-001(f), PUCO Case No. 09-1999-EL-POR (attached as OCC Attachment 1). [↑](#footnote-ref-2)
3. Company Response to OCC-INT-01-003 (b) (attached as OCC Attachment 2). [↑](#footnote-ref-3)
4. <http://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2009/4Q2009.pdf> [↑](#footnote-ref-4)
5. ttp://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2008/4Q2008.pdf [↑](#footnote-ref-5)
6. <http://www.puco.ohio.gov/emplibrary/files/util/MktMonitoringElecCustSwitchRates/SWITCH%20RATES%20SALES/2009/4Q2009.pdf> [↑](#footnote-ref-6)
7. *See* Duke Tariff Sheet No. 107.1, page 3 of 5. [↑](#footnote-ref-7)
8. OCC- POD 1-004 Attachment 4, Avoided Costs (attached as OCC Attachment 3). [↑](#footnote-ref-8)
9. PJM Document #699093, page 15. http://www.pjm.com/markets-and-operations/rpm/~/media/markets-ops/rpm/rpm-auction-info/20120518-2015-16-base-residual-auction-report.ashx [↑](#footnote-ref-9)
10. *See* Stipulation and Recommendation (October 27, 2008), paragraph 13 on pages 18-27, PUCO Case No. 08-920-EL-SS0. [↑](#footnote-ref-10)
11. Supplemental Direct Testimony of Paul G. Smith (September 16, 2008), PUCO Case No. 08-920-EL-SSO, page 3. [↑](#footnote-ref-11)
12. OCC- POD 1-004 Attachment 4, Avoided Costs. (attached as OCC Attachment 3). [↑](#footnote-ref-12)
13. Report of the Ohio Independent Evaluator, 2009 and 2010 Ohio Efficiency Programs, prepared for PUCO by Evergreen Economics (August 29, 2012), PUCO Case No. 12-665-EL-UNC. [↑](#footnote-ref-13)
14. *Id.* at 32-48. [↑](#footnote-ref-14)
15. *Id.* at 34. [↑](#footnote-ref-15)
16. *Id.* at 35. [↑](#footnote-ref-16)
17. *Id.* at 36. [↑](#footnote-ref-17)
18. *Id.* at 37. [↑](#footnote-ref-18)
19. *Id.*  [↑](#footnote-ref-19)
20. *Id*. at 38. [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. PUCO Case No. 09-1999-EL-POR, Opinion and Order (December 15, 2010) at page 16. [↑](#footnote-ref-22)
23. *Id.* (Emphasis added.) [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. There are two SAW riders in Duke’s Tariff Schedule. Rider DR-SAW, Energy Efficiency Recovery Rider that demonstrates how the rider is calculated, and Rider DR-SAWR, Energy Efficiency Recovery Rider Rate that determines the residential and non-residential rate according to the provisions of Rider DR-SAW. [↑](#footnote-ref-25)
26. Direct Testimony of James E. Ziolkowski at 6. [↑](#footnote-ref-26)
27. *Id.* at 6. [↑](#footnote-ref-27)
28. The Commission’s December 15, 2010 Order required Duke to file revised tariffs with the Commission for review and approval within seven days of the issuance of the Order. Duke later requested and received an extension of time to file revised tariffs (within seven days after the Commission issued its entry on rehearing.) PUCO Case No. 09-1999-EL-POR, Entry on Rehearing at paragraph 19 (February 9, 2011.) Duke filed its revised tariffs within seven days of the Commission’s Entry on Rehearing. Direct Testimony of James E. Ziolkowski at 6. [↑](#footnote-ref-28)
29. Discount Rate used in DSMORE Model, OCC- POD 1-004 Attachment 3 CALC (attached as OCC Attachment 4). [↑](#footnote-ref-29)
30. Direct Testimony of James E. Ziolkowski Attachment JEZ – 2, page 2 of 6. [↑](#footnote-ref-30)
31. *Id*. [↑](#footnote-ref-31)