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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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2010 JUL -9 PM 2:29

IN THE MATTER OF THE REPORT OF )  
DUKE ENERGY OHIO, INC. )  
CONCERNING ITS ENERGY )  
EFFICIENCY AND PEAK-DEMAND )  
REDUCTION PROGRAMS AND )  
PORTFOLIO PLANNING )

Case No. 09-1999-EL-POR **PUCO**

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BRIEF OF THE STAFF  
OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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July 9, 2010

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BEFORE  
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IN THE MATTER OF THE REPORT OF )	
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**DISCUSSION**

This case should be relatively simple. Duke Energy Ohio, Inc. (Duke) has a portfolio of energy efficiency and peak-demand reduction programs that has been approved by the Commission. These programs were approved by the Commission as a part of the ESP case 08-920-EL-SSO. *See, In re Duke* case no. 08-920-EL-SSO, Opinion and Order December 17, 2008. After this approval, the Commission promulgated a set of rules regarding such programs. One of these rules, O.A.C. 4901:1-39-04, requires companies to submit their portfolios for review and approval. Although the review and approval of these programs has already occurred in case number 08-920-EL-SSO, the company believed, correctly, that it was necessary to have technical compliance with the later rule. Compliance has been achieved.

The rule requires that the portfolio be filed and it has been. The filing must contain a variety of information and it does. Notice must be provided and a hearing held.

This has happened. The company has the burden of proof to support its portfolio and this

burden has been met through res judicata. The Commission has already reviewed these programs and reached its decision. Thus the rule has been fulfilled.

There is only one additional matter legitimately involved in this case. The company did add one program to its portfolio. This is termed the "Home Energy Comparison Report", See Application at 7. This program is new and has not previously been considered by the Commission. It does need to be reviewed in this docket. Doing so is quite simple. The only evidence in the record, the company filing, addressing the program reveals that it should be approved. Staff has examined the program and agrees. The Collaborative has approved the program. There is no evidence to the contrary. The Commission should approve this program.

#### **OBJECTIONS**

The intervenors in the case are concerned with essentially two matters which are not relevant, the structure of DR-SAW and cost recovery for the programs. Both of these matters are quite readily dismissed.

Cost recovery is not sought in this case. Money is not at issue here. Although a company may submit a proposal for cost recovery as a part of its portfolio filing, see O.A.C. 4901:1-39-07, Duke has chosen not to do so in this case. It is anticipated that Duke will do so through a future RDR application, but recovery for the programs in this portfolio has not yet been sought by Duke in any case.

Although the question is not properly at issue here, OCC raises an interesting matter of interpretation that the Commission will need address in the appropriate future

docket. The structure of the programs approved in the ESP order would permit the recovery of lost generation revenues. This order was entered before the Commission rules were promulgated which rules do not contemplate the recovery of lost generation revenues. The ESP order requires Duke to conform to the rules. This raises the question of how did the Commission mean for these requirements to work together. Although this is not the case to speak to this matter, it will be necessary for the Commission to do so at the appropriate point in time. In dictum, the Commission may have provided a foretaste of its thinking in case number 09-283 where it said

In addition, in accordance with paragraph 32 of the stipulation approved in 08-920 on December 17, 2008, Duke agreed to conform to the Commission's rules established in Case Nos. 08-777-EL-ORD and 08-888. Notwithstanding the above, in accordance with paragraph 32, Duke has not completed the necessary filings to conform its ESP to the Commission's rules and orders and the requirements in Chapter 4901:1-39, O.A.C. including the modification of Rider DR-SAW to eliminate the recovery of lost generation revenues and the annual reconciliation.

*In re Duke*, case no. 09-283, Opinion and Order June 9, 2010 at 5. Regardless of this dictum, the question of lost generation revenues is not at issue here and the Commission should not speak to the question in this docket.

The other irrelevant matter is a group of arguments challenging the structure of the programs that the Commission has already approved in the ESP order. The time to argue about the structure of these programs was when they were being considered initially. That occurred in the ESP case. These questions have already been decided. They should not be considered again here. To do so would be to punish Duke for being proactive and

putting its programs out before the rules were effective. Punishing positive, responsible behavior is not rational and the Commission should reject these arguments.

It should be pointed out that, even if the Commission were to re-examine the structure of these programs, the result would be exactly the same. All the evidence in the case reveals that the program structure is reasonable. Arguments to the contrary are merely baseless speculation (or policy arguments already rejected). Even if these arguments were not technically improper based on res judicata, they lack any support in the record and should be rejected on their lack of merit.

#### **ATTORNEY EXAMINER'S REQUEST**

The bench requested that the parties provide a history of efficiency programs at Duke. That history follows:

##### **History of Duke Energy Ohio Energy Efficiency/DSM**

Duke Energy of Ohio originally requested and received approval to apply for energy efficiency/DSM programs in its Market Based Standard Service Offer Case in 2003. This Case was 03-93-EL-ATA. Subsequent to that request, the Company filed for approval of 10 energy efficiency programs in January, 2006. The Company filed an amended application of the energy efficiency programs on August 16, 2006 in case No. 06-91-EL-UNC, 06-92-EL-UNC, and 06-93-GA-UNC. The Staff responded to these proposed programs through its Staff Report filed on January 12, 2007. The Commission approved ten residential programs, two commercial and industrial programs, and R&D program on July 11, 2007. These programs formed the genesis of their energy efficiency

programs which have continued to this day under Senate Bill 221. The recovery of costs for these programs included administration, rebates, lost revenue margins, and potentially utility incentive payments. Other parties including IEU-Ohio, OCC, OEG and OPAE, had requested and received intervention in these cases. The Company in its application had included in its request the recovery of lost generation revenues minus the fuel component inclusive of its O&M expenditures. Staff viewed the recovery of such lost distribution revenues to be reasonable in light of the fact that the Company was willing to limit lost revenue margin recovery to three years for all energy efficiency programs and measures. Typically, almost all energy efficiency measures last longer than three years, so that Staff felt this was a reasonable bargain. No other party intervened to say otherwise at that time, up until the negotiations of the Company's ESP case in the fall of 2008.

Under Senate Bill 221, there was a substantial section devoted to energy efficiency standards known as Section 4928.66 requiring Ohio's electric utilities to achieve annual energy efficiency savings through the end of 2025. Also, the electric utilities were permitted to file for electric security plans under this bill. Duke Energy of Ohio filed an electric security plan, Case No. 08-0920, in the fall of 2008 which included the portfolio of their energy efficiency programs already approved by the Commission to be expanded to meet their annual goals. However, the utility incentives for the cost recovery of energy efficiency programs going forward would be different than what was under Rider DSM. The energy efficiency programs going forward would now be recovered under what is

labeled as Rider SAW (known as Save-A-Watt). Under this arrangement, the Company could not recover any program costs unless the Company met its avoided cost targets for the program in question. If the program costs exceeded the Company's avoided costs, the Company would forego all cost recovery for that program. This type of recovery mechanism and risk is quite different than the typical way in which most electric utilities recover their costs associated with energy efficiency. Also, the Company would have to exceed its annual SB 221 goals in order to receive a shared savings incentive. Such a shared savings incentive is based on a sliding scale, based on the Company's overall performance in exceeding the annual benchmarks. At this time, OCC had discovered that the Company was receiving lost generation margin recovery for the current programs in effect, and expressed their concerns about this piece of cost recovery going forward into the future. Also, there were no Commission rules in effect at that time to delineate this issue. The OCC however, did sign on to the stipulation which included many other things that were beneficial to their constituent group. In the ESP stipulation, there was a placeholder, para. 32 put in which states in part,

"..., DE-Ohio shall conform to the Commission's ESP rules as set forth in Case Nos. 08-777-EL-ORD and 08-888-EL-ORD."

The Commission's green rules were actually signed and went into effect over a year later on December 10, 2009. Within the green rules was a section entitled **Recovery Mechanism, O.A.C. Section 4901:1-39-07** for the cost recovery a Company's Energy Efficiency Portfolio Plan. This section in para. (A) states that an electric utility may

submit a request for recovery of an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, of costs due ..., **appropriate lost distribution revenues, and shared savings."**

However, this rule language is permissive and does not state that an electric utility may not receive generation lost revenues. Since the ESP was signed, the Company has requested and received lost generation revenue cost recovery as well as other related DSM cost recovery for those programs in effect since July 2007. The Company did not request any cost recovery associated with their Energy Efficiency Portfolio Plan filing, Case No. 09-1999, because they felt they had already reached an agreement on this issue in the ESP stipulation and also they were not required to do so according to the Commission's rules. The Company's Portfolio Plan does include one additional program which was not included in their original filing.

### **SUMMARY**

In sum, the only issue in the case is whether the one new program should be approved. The record shows that it should. The intervenors have chosen not to address this matter. They would deflect the Commission into matters not at issue, either cost recovery (which will be considered in a future case) or program structure (which has already been approved in an earlier case). The correct approach is to decide that which is at issue here and that is merely the approval of the "Home Energy Comparison Report" program. It should be approved. Nothing more is needed.



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the Initial Brief of the Staff of the Public Utilities Commission of Ohio was served this 9th day of July, 2010 by U.S. postage paid mail or electronic mail upon the persons listed below.

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