FILE

14

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak Demand Reduction Programs and Portfolio.	)))))	Case No. 09-1999-EL-POR

REPLY BRIEF OF DUKE ENERGY OHIO, INC.

Amy B. Spiller
Associate General Counsel
Elizabeth H. Watts (Counsel of Record)
Assistant General Counsel
Duke Energy Business Services LLC
139 East Fourth Street
Rm 2500, Atrium II
P.O. Box 960
Cincinnati, OH 45201-0960
tel: (513) 419-1810
email: amy.spiller@duke-energy.com
email: elizabeth.watts@duke-energy.com

REPLY BRIEF OF DUKE ENERGY OHIO, INC.

For its reply to the Initial Brief of the Office of the Ohio Consumers' Counsel (OCC), The Natural Resource Defense Council, (NRDC), The Environmental Law & Policy Center, (ELPC), Ohio Partners for Affordable Energy, (OPAE) and The Ohio Environmental Council, (OEC), Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) incorporates by reference its Merit Brief filed on July 9, 2010, and further states as follows.

I. Introduction

As recognized by the Staff of the Public Utilities Commission (Staff) in its Brief, "this case should be relatively simple." And in submitting this filing, that is exactly what the Company anticipated – a simple case. In fact, it is still very simple case despite efforts of intervenors to complicate both the facts and the application of the law.

Rule 4901:1-39-04, O.A.C., requires that electric companies submit portfolios of energy efficiency and peak demand reduction programs to the Public Utilities Commission of Ohio (Commission) for review and approval. To comply with the Commission's more recently enacted rules for energy efficiency and demand reduction, Duke Energy Ohio submitted its portfolio of programs for approval. Such a submission was procedural in nature as the Company had already obtained the Commission's substantive approval of these programs through 2011. Approval in this docket should be a very simple decision. The Company's programs have been under way for over 19 months and should be permitted to continue through the Company's current electric security plan (ESP) term, which ends in 2011.

II. Argument

The OCC and the NRDC raise only three objections to the Company's filing. Two of these three objections are inconsequential given prior commitments and collaboration. OCC and NRDC asked the Commission to require Duke Energy Ohio to undertake field verification of measures installed in its Energy Efficiency Education Programs for Schools and to describe changes in program design or implementation that have occurred or have been planned since the Commission approved the Company's application for an ESP. In response to these two objections, it should be noted that Duke Energy Ohio and the Parties stipulated to measurement and verification of energy efficiency in the ESP case.[1] With respect to program design changes that have occurred or been planned since the ESP, Duke Energy Ohio has not made any such changes other than that which was discussed by Duke Energy Ohio witness Theodore E. Schultz in response to cross-examination, all of which were discussed with the Duke Energy Community Partnership collaborative prior to execution. And there is one new program proposed in this filing. Thus, there really is not anything to report.

The OCC and NRDC, however, reach far beyond the boundaries of this case to suggest that the Company is not entitled to recover lost generation revenue based on the assertion that the ESP stipulation was made subject to the Commission's final "Green Rules" in Case Nos. 08-777-EL-ORD and 08-888-EL-ORD.[2] The illogical flaws inherent in the OCC and NRDCs argument are apparent in their explicit recognition of the other elements included in the save-a-watt (SAW)

---

[1] *In the Matter of Duke Energy Ohio, Inc.'s Application for an Electric Security Plan*, Case No. 08-920-EL-SSO, (Stipulation and Recommendation, October 27, 2008, paragraph 13i).

[2] *In the Matter of the Adoption of Rules for Standard Service Offers, Corporate Separation, Reasonable Arrangements and Transmission Riders, Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, and, *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221*, Case No 08-888-EL-ORD.

rider in the ESP case. The elements of the SAW program include a number of different pieces, all of which make a whole. It would be wrong for the Commission to alter this program in midstream and to take away one element of a total agreement. For the OCC and NRDC to now seek to invoke compliance with the Green Rules to avoid the bargain previously settled in the ESP case is wrong.

A. The Application Did Not Include a Request for Cost Recovery.

The Green Rules require that the Company submit its portfolio of programs for approval in Rule 4901:1-39-04, O.A.C. The Company complied with that requirement. OCC and NRDC argue about the Company's recovery of costs, which are not relevant in this docket. Cost recovery may be accomplished (but is not required to be) under Rule 4901:1-39-07. The application in this matter was made under the former and not the latter. There is no need to determine a plan for cost recovery until the expiration of the ESP term, which ends at the end of 2011.

B. Lost Generation Revenues are Only One Part of the SAW Rider.

The OCC and the NRDC argue that the Company is not entitled to generation lost revenues. In the same paragraph, they recognize that SAW is comprised of other distinct elements that make Duke Energy Ohio's SAW program quite different from other demand side management (DSM) programs.[3] Picking one element - cost recovery - out of the program that was approved as a total package is illogical and unfair to the Company and to all of the parties that stipulated a settled agreement in the ESP case. SAW was one element among many that was bargained for in the process of resolving the ESP, and cost recovery is only one element of

[3] Initial Post-Hearing Brief by The Office of the Ohio Consumers' Counsel and The Natural Resources Defense Council at p.11.

the SAW program. If the parties think it appropriate to now argue in favor of a decreased level of cost recovery, then the SAW program is inherently in question and therefore the integrity of the entire settlement in the ESP is in question. Many of the parties that settled in the ESP case are not parties to this case and may similarly reject OCC's and NRDC's most recent arguments.

Likewise, as noted by Staff, in the bargained-for exchange which culminated in a stipulation, the Company does not explicitly get any program costs unless it meets its avoided cost targets. This is a substantially different arrangement from that which had historically been the case and the parties to the ESP were well aware of this. Additionally, SAW includes provisions mandating that the Company exceed the SB221 targets for energy efficiency and peak demand reduction in order to share in any savings.

The rule in question, 4901:1-39-07, O.A.C., does in fact specify elements to be included in a cost recovery mechanism, such as lost distribution revenues and shared savings. This rule is permissive and does not state that lost generation revenues may not be included. Also, the rule should not be relevant with respect to Duke Energy Ohio until the completion of its ESP term at the end of 2011. And it is further not relevant since Duke Energy Ohio has not sought cost recovery in this case. OCC and NRDC's assertion that the Company's collection of lost generation revenues is contrary to this rule is of no consequence since the rule has no application here.

OCC and NRDC's assertion that Duke Energy Ohio can offer and sell into the wholesale market or through bilateral contract the capacity freed up through DSM fails to recognize that, even if true, does not provide any double recovery. First, if any such sale occurs, there would be a significant difference between the retail price and the wholesale price. Likewise, it neglects to

recognize the business risk the Company has agreed to accept in the SAW program in return for the cost recovery agreed upon. In the worst case scenario, the Company could recover nothing.

Finally, Duke Energy Ohio is dismayed by OCC and NRDC's over wrought suggestion that the Company is ignoring an order of this Commission. The Company is not doing so and would not do so and OCC and NRDC's suggestion to the contrary is inappropriate.

C. The List of Programs to Be Approved Is Contained in Exhibit TES-1 Attachment to Mr. Schultz's Supplemental Testimony in this Case.

OPAE starts its argument with the assertion that the programs to be approved in this case are in question. Thereafter OPAE supports this assertion with reference to another docket, thereby creating confusion rather than clarifying anything. Programs and analyses contained in Case No. 10-317-EL-EEC[4], have no bearing on this case. If the programs included in that docket are in error for any reason, such clerical issues may be addressed in that docket. For this case, the only programs at issue are those that are contained in the attachment TES-1 to Mr. Theodore Schultz Supplemental Testimony (Duke Energy Ohio Exhibit 2). These are the same programs that were approved as part of SAW in the Stipulation in the ESP case and are therefore the same programs for which Duke Energy Ohio now seeks approval in order to comply with the Commission's rules. There is one additional program that was added in for purposes of this docket, and that program is the Home Energy Comparison Report, which was included and described in the Company's application.[5]

---

[4] *In the Matter of the first Annual Energy Efficiency Status Report of Duke Energy Ohio, Inc.*, Case No. 10-317-EL-EEC.

[5] Application at page

D. OPAE's Critique and Review of the Portfolio is Premature.

OPAE complains that despite the filing of thousands of pages of evaluation report in the 10-317-EL-EEC case, Duke Energy Ohio Witnesses were unable to add illumination. This is again an understandable response since the evaluation of these programs was filed in a separate docket. Questions regarding materials filed in a completely separate docket are improper. The witnesses presented were available to respond to questions about this case and the programs submitted for approval in both the ESP case and in this case. Understandably, they were not prepared to anticipate and respond to questions regarding matters relevant only in a wholly separate case.

OPAE notes further that the programs contained in the 10-317-EL-EEC docket do not align with the market potential study, which OPAE correctly notes is of more recent vintage that the programs submitted for approval in the ESP case and in this case. This is true because the market potential study was completed in February of 2009, long after the ESP case and the programs approved in the SAW program were stipulated. In fact, by that time, the programs had begun and were underway for two months.

Grudgingly, OPAE admits that Duke Energy Ohio appears to be achieving the targets under the rules of the statute.[6] OPAE further notes that Duke Energy Ohio has a history of operating DSM programs and that there is more information available on the efficacy of its program designs than for the average Ohio utility. Despite recognition of these facts, OPAE argues that the portfolio should be modified. This may or may not be the case. The time for doing so, will be the agreed upon time at the end of 2011. As noted by OPAE, portfolios are to

[6] Post-Hearing Brief of Ohio Partners for Affordable Energy at p. 7.

be reviewed every three years.[7] At the end of 2011, Duke Energy Ohio will have exactly three years of experience with the SAW program to review and report on and the parties will then be in a good position to look at data and results and collectively recommend next steps to the Commission for its approval. For these reasons, OPAE's request at this juncture to modify the existing portfolio of programs is premature. Moreover, many of the numbers referred to in OPAE's post hearing brief are incorrect. For instance, OPAE states that the order in Case No. 09-283-EL-RDR requires a refund of $3,243,694 by lowering the Rider SAWR rate by $0.000442 per kWh for residential customers and increasing the Rider SAWR rate for non-residential customers by $0.000150 per kWh. The order in Case No. 09-283-EL-RDR in fact, requires a refund of $3,392,633 by lowering the Rider SAWR rate by $0.000674 per kWh for residential customers and increasing the Rider SAWR rate for non-residential customers by $0.000150 per kWh.

E. The Flexibility Agreed to in the ESP Case is Essential to the SAW Program and Will Enhance the Company's Ability to Maximize Successful Programs.

OPAE, along with ELPC, OEC, OCC and NRDC argue that the Company should not be permitted flexibility in managing energy efficiency programs. These parties all agreed to such flexibility in the ESP case. Notwithstanding that agreement and the fact that these parties argue for this change despite any basis upon which to do so - since they cannot now point to any rule that such agreement contravenes - the Company is working very hard to meet its energy efficiency targets. Despite its good intentions and strong effort, there is always a risk that it may not do so. Therefore, the Company must be permitted to meet those targets with as much flexibility as can be granted under the circumstances. SB221 mandates energy efficiency targets

[7] Id.

that are extremely aggressive. Failure to meet these targets subjects Duke Energy Ohio to sanctions. It is unfair to hold the Company responsible for meeting targets while at the same time requiring it to do so with "one hand tied behind its back". As Company witness Schultz testified, the flexibility is needed because otherwise the Company cannot actively pursue successful programs and scale back on unsuccessful programs.[8] As testified to by Mr. Schultz, this flexibility would not include defunding any program entirely as such a decision would effectively eliminate a program and that decision would require Commission approval.[9] Additionally, and OPAE and other intervenors should be abundantly aware of this, Duke Energy Ohio has never made changes to energy efficiency programs without first addressing such changes with its energy efficiency collaborative. Indeed, the Company made a small change in its distribution of CFL's recently and prior to doing so, explained its plan and sought approval from the collaborative.[10] Thus, the various intervenor's concern with regard to flexibility is misplaced.

F. Prepaid Energy Programs Will Be an Effective Addition to the Portfolio

OPAE argues that prepaid billing should not be included in Duke Energy Ohio's portfolio of programs for energy efficiency. OPAE makes this assertion despite a lack of any real support for its argument. Its only reference is a vague assertion that "the literature indicates" that customers tend to use less energy with prepaid metering than when they receive a conventional bill, but establishing a baseline for comparison is difficult.[11] This sentence actually supports inclusion of the program in the portfolio rather than exclusion. OPAE has put forth no factual

[8] Testimony of Theodore Schultz at p.30.
[9] Id. at 35.
[10] Id. at 42.
[11] Id. at 13.

basis for its assertion that the program should be discontinued. OPAE ultimately concludes that if the Commission permits the inclusion of the program, the collaborative and the Commission should review any savings prior to their "counting". Duke Energy Ohio is well aware that it will be required to measure, quantify and justify any savings it claims from this program and it will most certainly do so.

G. Testimony and Supporting Program Detail Provided in this Case, Along with the Intervenor's Approval in the ESP Case, Demonstrate the Merit of the SAW Program Portfolio.

Only OPAE now argues for changes in the makeup of the portfolio of programs that were approved in the ESP case. OPAE does this despite is earlier agreement to these programs and despite that fact that the approval of the programs does not now conflict with any provision in the Commission's Green Rules. Significantly, there is no legitimate basis to change the terms of the bargain struck in the ESP case. The integrity of the ESP agreement should prevail.

The Company's Application includes a wealth of materials, supported by direct and supplemental testimony of two witnesses, and further supported by the fact that virtually all of the intervenors in the ESP case agreed to this portfolio of programs and the innovative SAW program. The elements of the SAW program are different from any other Ohio utility energy efficiency plan and provide some unique opportunities to explore cost recovery mechanisms under circumstances where the Company has accepted all of the risk. This experiment should be permitted to run its course so that the parties and the Commission can garner data and learn from the plan. It is an integrated plan that the Company put forth in good faith and that the ESP parties who are now intervenors in this case embraced. Removing the recovery of lost generation revenues from this overall plan damages the integrity of the ESP stipulation and the integrity of the SAW program. Unwinding any portion of the ESP stipulation will create risks

and questions that will permeate many other elements of the stipulation. The SAW portfolio of programs is well underway and is showing success in many instances.

H. Duke Energy Ohio's Long-Term Goals Are Designed to Meet the Requirements of SB221.

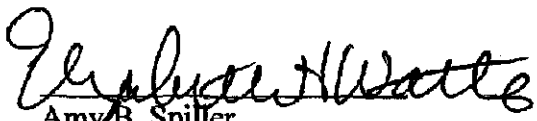
The ELPC takes issue with a statement made by Forefront Economics, Inc. and H. Gil Peach & Associates, LLC, (Consultants), regarding the achievability of technical potential for energy efficiency in the year 2025. The ELPC further suggests that the Commission should strike any negative reference to obtaining the 2025 benchmark from the Portfolio. Duke Energy Ohio appreciates ELPC's efforts to be positive about the future of energy efficiency in Ohio. However, reaching the goals set by state policy is only possible if all stakeholders are forthright and realistic about the process. Asking the Company to omit language from its portfolio will not change the facts. Duke Energy Ohio is on target to comply with the requirements of SB221 and will continue to make every possible effort to remain in compliance. Notwithstanding the efforts of the Company and of its customers, the goal may not be achievable. However, the Company will do its part to achieve the maximum energy efficiency and peak demand reduction levels possible.

III. Conclusion

This is indeed a very simple case. The programs submitted herein are identical to the programs discussed in the Supplemental Testimony of Dr. Richard Stevie in the ESP case which was submitted again in this case and which matches with the programs listed in the application in this case. These programs were agreed to by all the parties in this case and were approved by the Commission. There is no request for cost recovery so the issue raised by intervenors with respect to generation lost revenues is not relevant here. For the reasons set forth here and above,

the Commission should approve Duke Energy Ohio's portfolio of energy efficiency and peak demand reduction programs as requested in this case.

Respectfully submitted,



Amy B. Spiller
Associate General Counsel
Elizabeth H. Watts (Counsel of Record)
Assistant General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street
Rm 2500, Atrium II
P.O. Box 960
Cincinnati, OH 45201-0960
tel: (513) 419-1810
email: amy.spiller@duke-energy.com
email: elizabeth.watts@duke-energy.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon all parties to this proceeding by depositing the same in the United States Mail, postage prepaid, this 23rd day of July, 2010, addressed as follows:

Michael E. Heintz
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212

Henry Eckhart
Natural Resources Defense Council Counsel
50 West Broad Street, Suite 2117
Columbus, Ohio 43215-3301

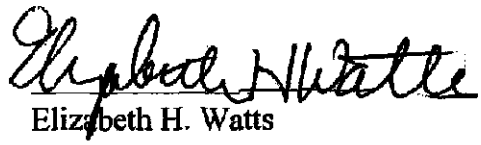
Will Reisinger
Trent Dougherty
Ohio Environmental Council
1207 Grandview Avenue
Columbus, Ohio 43212

Joe Clark
McNees Wallace & Nurick, LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215

Terry Etter
Office of the Ohio Consumer's Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima St.
P.O. Box 1793
Findlay, Ohio 45839-1793



Elizabeth H. Watts