

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Recovery of Program Costs,) Case No. 12-1857-EL-RDR
Lost Distribution Revenue and Performance)
Incentives Related to its Save-A-Watt Programs.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
COMMENTS**

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits to the Public Utilities Commission of Ohio ("Commission") these comments on the above-referenced application, which is the request of Duke Energy Ohio, Inc., ("Duke") to true-up the recovery of program costs, lost distribution revenues, and performance incentives related to Duke's Save-A-Watt programs. These comments are filed in accordance with the attorney examiner's entry issued October 9, 2012 in this case.

Duke's Save-A-Watt programs were initiated through the Stipulation and Recommendation in Duke's standard service offer application, Case No. 08-920-EL-SSO. The Commission approved the Stipulation and Recommendation on December 17, 2008. The Stipulation provided for the creation of the Distribution Reliability Save-A-Watt Rider ("Rider DR-SAW") as the successor to Duke's Rider DSM and as the cost recovery mechanism for Duke's energy efficiency programs for three years from January 1, 2009 through December 31, 2011. Stipulation and Recommendation, Case No. 08-920-EL-SSO (October 28, 2008) at 18. With the expiration of Rider DR-SAW on December 31, 2011, there was to be a true-up process and application to be filed by Duke in the second quarter of 2012 to consider the true-up. This application represents Duke's

recommendation for the true-up for the costs included for cost recovery in Rider DR-SAW.

II. Comments

A. Pre-1999 Banked Savings Should Not Be Included in the Calculation of Incentives for DR-SAW recovery.

The Stipulation in Case No. 08-920-EL-SSO provided for incentives for Duke to over-achieve its statutory mandate for energy efficiency programs under Ohio Revised Code Section 4929.66. Under the Stipulation, Duke would be entitled to a 15% return on investment cap if it achieved greater than 125% of its mandate over the three-year period from 2009 to 2011. Stipulation at 24. According to the testimony of Duke witness Timothy J. Duff, at 8, filed with this application, Duke over-achieved its mandate by 186%. Because this is more than 125%, Mr. Duff testifies that Duke is entitled to have the ability to collect an incentive of 15% of its total program costs. Duff Testimony at 9-10.

Mr. Duff's testimony and the testimony of Duke witness Ziolkowski both seem to assume that the savings above 125% of the target, i.e., the balance of the 186% achievement, can be banked and used for the purpose of recovering incentives going forward. This is incorrect to the extent that Duke seeks to count savings from a variety of pre-2009 programs for the purpose of determining compliance with the savings mandate of Ohio Revised Code Section 4929.66. The plain language of the statute only permits a utility to count savings from previous mercantile efficiency improvements which are subsequently committed to the utility. R.C. 4928.66(A)(2)(c). The counting of pre-2009 savings from pre-

2009 non-mercantile energy efficiency programs is not permitted. Thus, the 'preexisting banked savings' cannot be included for the purposes of compliance with Ohio Revised Code Section 4929.66. See Direct Testimony of Timothy J. Duff at 9.

While it is appropriate to bank savings for the purpose of complying with future energy efficiency mandates and for the purpose of calculating incentives in future years under the Stipulation and Recommendation in Duke's Case No. 11-4393-EL-RDR, it is not correct to count pre-2009 savings as Duke does here. *Application of Duke Energy Ohio, Inc., for an Energy Efficiency Cost Recovery Mechanism*, Case No. 11-4393-EL-RDR, Stipulation and Recommendation (November 18, 2011); Direct Testimony of Timothy J. Duff at 9; Case No. 10-317-EL-EEC, Appendix A at 4. Therefore, Duke has overstated the level of savings it is counting in this case.

Duke still qualifies for the 15% incentive cap given its savings achievements from non-mercantile energy efficiency programs from 2009 thru 2011. The 610,808 MWh of savings achieved during the 2009-2011 period exceeds the Ohio Revised Code Section 4929.66 MWh benchmark of 328,628 by 282,180 MWh. In order to qualify for the 15% incentive, Duke needed to achieve savings of 410,785 and has done so. Duke is eligible to bank 282,180 MWh for future compliance. This is significantly less than the 406,747 Duke claims it can carry forward for compliance purposes. Duke claims an excessive level of banked savings because it has unlawfully included pre-2009 savings.

Obviously, if the pre-2009 savings from non-mercantile energy efficiency programs are ineligible for 'banking' and cannot be carried forward, those same savings cannot be counted for the purpose of determining incentives. In order to ensure future incentives are calculated correctly, the Commission should only authorize the carryover of 282,180 MWh. Over-counting of savings and the use of pre-2009 savings for the calculation of incentives should not be permitted.

B. The Costs of the Low-Income Services Programs Should Not Be Recovered Under Rider DR-SAW.

Duke seeks to include costs associated with its Low Income Services programs through Rider DR-SAW. These costs should be excluded. The Stipulation in Case No. 08-920-EL-SSO provided that Duke was previously funding low-income programs at \$850,000 per year and added an additional \$150,000 for a total of \$1 million per year. Case No. 08-920-EL-SSO, Application at 22; Stipulation at 33. The original low-income program costs were not recovered under Rider DSM. See Case No. 06-91-EL-UNC, et al., First Amended Application at 17.

As a result, the low-income program costs must either be shareholder funded or recovered through base rates. The history of the cost recovery for the funding is murky, and OPAE can locate no references to confirm recovery or expenditure of the funds. There is no mention in the Stipulation in Case No. 08-920-EL-SSO of the recovery of any of these costs through Rider DR-SAW, nor is there any determination by the Commission that these costs are eligible for

recovery through Rider DR-SAW. Therefore, the \$582,137 in Low Income Services funding included in the sums to be recovered through Rider DR-SAW should be excluded from the Rider DR-SAW revenue requirement. Attachment JEZ-2, 5 of 6.

An additional concern is what is to be done with the balance of the \$3 million committed by Duke to Low Income Services for the three years 2009 through 2011 in Case No. 08-920-EL-SSO. The current application indicates that only \$582,137 of the funds allocated for Low Income Services have been spent. The unspent balance of these funds -- \$2,417,863 -- should be reprogrammed into future low-income services, either weatherization activities or a fuel fund. Duke committed to a single year of funding for both these purposes in its current Standard Service Offer ("SSO") case, Case No.11-3549-EL-SSO. Stipulation and Recommendation, Case No. 11-3549-EL-SSO (November 24, 2011) at 19-20. The programs established through that 2011 SSO Stipulation would be an appropriate vehicle to deliver services to Duke's low-income customers. In the alternative, the funds not spent should be credited against the revenue requirement of Rider DR-SAW. Either way, the unspent funds committed by Duke for low-income services should be used for the benefit of customers.

C. A Staff Report is Necessary to Verify the Costs, Incentives, and Calculations Contained in the Application.

Based on the total program costs and the 15% earned incentive cap, the maximum amount that Duke is eligible to collect for its claimed energy efficiency

impacts, according to Mr. Duff, was just shy of \$75 million. Duff at 10. Duke witness Ziolkowski used the nearly \$75 million of earned revenue in his calculations for the Rider DR-SAW true-up.

Mr. Ziolkowski testified about the impact of new Commission rules on Rider DR-SAW. With the adoption of new Ohio Administrative Code Rules 4901:1-39 et al., for the implementation of Senate Bill 221, the Commission required Duke to re-file its portfolio of energy efficiency and peak demand reduction programs. Duke made this filing in Case No. 09-1999-EL-POR. In that case, the Commission ordered Duke to comply with Ohio Administrative Code Rule 4901:1-39-07 and cease to include recovery of lost generation revenue in its calculation of Rider DR-SAW. Opinion and Order, December 15, 2010.

Duke eventually filed a revised Rider DR-SAW tariff sheet that, according to Duke, reflected the removal of lost generation revenues beginning on December 10, 2009. The Commission has not issued an order on the revised rates so that the revised rates have not been implemented. Ziolkowski at 6. In this filing, according to Duke, the exclusion of lost generation margins beginning December 10, 2009 is reflected so that beginning with December 10, 2009, the calculated lost margins only include distribution margins.

OPAE is unable to verify the numbers and calculations included in Mr. Ziolkowski's attachments JEZ-1 showing the calculation of Rider DR-SAWR true-up rates and JEZ-2 showing the calculation of the Rider DR-SAWR true-up revenue requirement. In addition, OPAE is unable to verify the exclusion of lost generation margins. In a rider true-up case such as this, it would be more

efficient for the Staff of the Commission to issue a Staff Report verifying the program costs, lost margins, incentive calculations, and in this case, the exclusion of lost generation margins provided by Duke before an intervenor is asked to comment on the application.

The Stipulation and Recommendation Duke's Case No. 11-4393-EL-RDR stipulated to a cost recovery and incentive mechanism that is different from the mechanism used in Rider DR-SAW. This different methodology is necessary because Rider DR-SAW was approved by the Commission before the Commission's new administrative rules for energy efficiency and peak demand programs were adopted. New cost recovery and incentive mechanisms that are aligned with the Commission's rules are now in effect. Therefore, Rider DR-SAW should terminate as of December 31, 2011. The true-up mechanism should be determined after the issuance of the Staff Report's recommendations on the true-up calculations.

III. Conclusion

OPAE recommends that the Staff of the Commission issue a Staff Report verifying the program costs, lost margins, incentive calculations, and the exclusion of lost generation margins. After the issuance of a Staff Report, another comment opportunity should be provided. The Staff Report should also make recommendations for the true-up mechanism. OPAE further recommends that the Commission recognize the necessary adjustment to banked energy efficiency savings by eliminating pre-2009 savings from

compliance calculations. Finally, the costs associated with Low Income Services should be excluded from recovery under Rider DR-SAW and unspent low income funds committed in the 2008 SSO Stipulation should be programmed either through the programs created in the 2011 SSO Stipulation or credited against the costs to be recovered under Rider DR-SAW.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the following parties identified below in this case on this 11th day of October 2012.

/s/Colleen Mooney
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Summary: Comments electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy