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 Performance Incentives Related to its Energy Efficiency and Demand Response Programs.	))))))	Case No. 13-753-EL-RDR

POST-HEARING BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") herein submits to the Public Utilities Commission of Ohio ("Commission") this post-hearing brief in the application of Duke Energy Ohio, Inc. ("Duke") for recovery of program costs, lost distribution revenue and performance incentives related to Duke's energy efficiency and demand response programs.

The sole contested issue before the Commission is whether Duke should be allowed to recover from ratepayers additional shared savings that were created solely by Duke's failure to include the evaluation, measurement and verification ("EM&V") costs of its energy efficiency programs in its program costs for purposes of its shared savings calculation. By excluding EM&V costs from the shared savings calculation, Duke had lower program costs. Lower program costs meant more savings. More savings meant more shared savings for Duke.

The Commission should find that it is unreasonable for Duke to calculate shared savings excluding EM&V costs. The Commission should order refunds through Duke's Rider EE-PDR to Duke's customers to remedy the unreasonable creation of additional shared savings through the use of a flawed calculation.

II. EM&V costs are program costs that are recovered through Duke's Rider EE-PDR; therefore, EM&V costs are program costs that must be included in Duke's shared savings calculation.

OPAE witness David C. Rinebolt filed testimony in this case adopting the pre-filed testimony of OPAE witness Stacia Harper who was unavailable to testify the day of the hearing. Mr. Rinebolt, the executive director of OPAE, had reviewed Ms. Harper's testimony and was familiar with it. OPAE Exhibit 2 at 4.

OPAE's testimony recommends the proper treatment of EM&V costs of energy efficiency programs in the calculation of shared savings. OPAE Exhibit 1 at 4. EM&V costs are a component of the costs of energy efficiency programs. Id. Duke recovers its EM&V costs along with other program costs through its EE-PDR Rider. Id. at 5. Duke's witness agreed that through the EE-PDR rate, Duke includes in its revenue requirement the EM&V costs. Tr. at 44-45.

While EM&V costs are program costs recovered through the rider, Duke does not properly include the EM&V costs as program costs for the shared savings calculation. Tr. at 45. This is true even though EM&V costs are vital to the performance of energy efficiency programs, because the EM&V process assures the cost effectiveness of the programs.

Mr. Rinebolt testified that in calculating shared savings, Duke uses the Utility Cost Test ("UCT"), which treats EM&V costs as part of utility program costs. Id. at 6. Duke uses the UCT to determine the net avoided costs to which the shared savings incentive percentage is applied. However, in calculating shared savings, Duke did not properly net the EM&V costs of its programs against the programs' avoided costs. The total amount of shared savings used to calculate Duke's shared savings incentive should have been reduced by the EM&V costs.

Other Ohio distribution utilities calculate shared savings using the UCT test, and EM&V costs are included as part of program costs, thus reducing avoided costs and shared savings. OPAE Exhibit 1 at 6-7. There is no doubt that annual EM&V costs are program costs recognized in the UCT and that these costs should be included in the shared savings calculation as part of the total program costs subtracted from avoided cost benefits, thus reducing shared savings. OPAE Exhibit 1 at 8.

The Office of the Ohio Consumers' Counsel ("OCC") witness Wilson Gonzales also explained that Duke's exclusion of EM&V costs from program costs in the calculation of shared savings improperly allows Duke to collect more money from its customers. The calculation of Duke's shared savings incentive was agreed to in a stipulation approved by the Commission in Duke's Case No. 11-4393-EL-SSO. OCC Exhibit 3 at 8-9; OCC Exhibit 4 at 4. Although the stipulation was unfortunately not explicit, EM&V costs are program costs that should be subtracted from avoided costs for the purposes of the shared savings calculation. Id. In addition, because Duke collects its EM&V costs as program costs through the EE-PDR Rider, there was no reason for OCC to be concerned that the calculation of shared savings would exclude EM&V costs from program costs. Id. at 12.

The Commission's Staff witness Gregory C. Scheck also testified that EM&V costs should be included in program costs when calculating shared savings. Staff Exhibit 2 at 3. Shared savings are the result of the net avoided cost savings from administration of energy efficiency programs. To determine the amount of net avoided costs, Duke must include all costs to administer the programs, and this includes the costs to evaluate, measure, and verify savings. EM&V costs are a necessary cost component in determining the net avoided costs and consequently shared savings. Id. In addition, EM&V costs are program costs when setting the Rider EE-PDR. Id. at 5. Duke's EE-PDR tariff states that net resource savings (total avoided costs) are defined as program benefits less the costs of the program. The costs of the program include EM&V costs. Therefore, the tariff does not exclude EM&V costs from the program costs for purposes of calculating shared savings.

Mr. Scheck challenged Duke's contention that the stipulation in Case No. 11-4393-EL-RDR allowed for the exclusion of EM&V costs from program costs for the shared savings calculation. Mr. Scheck stated that the Staff never agreed that EM&V costs should be excluded from program costs in the shared savings calculation. Id. at 6. In addition, the stipulation did not state that EM&V costs would be excluded from program costs in the shared savings calculation. Even if the attachments to Duke witness Ziolkowski's testimony in Case No. 11-4393-EL-

RDR excluded EM&V costs from his shared savings calculation, the Staff never adopted or agreed to the validity of the attachments to Mr. Ziolkowski's testimony. Id. at 7.

III. The Commission should not allow Duke to collect extra, non-existent shared savings from ratepayers simply because Duke's tariff for the calculation of shared savings was not corrected.

Duke's response to the Staff, OCC, and OPAE witnesses is that Duke filed the testimony of its witness Ziolkowski in Case No. 11-4393-EL-RDR, and Mr. Ziolkowski put the EM&V costs in a separate column in his attachment to his testimony. Tr. at 28. Then, Duke filed tariffs excluding EM&V costs from the calculation of shared savings as set forth in the attachment to Mr. Ziolkowski's testimony. Duke argues that the Commission approved the tariff, which did not include EM&V costs in the shared savings calculation. Duke Exhibit 10.

Duke's position is essentially that the Staff, OCC, and OPAE failed to catch the mistake. Duke Exhibit 3A at 4. The Staff, OCC, and OPAE did not request that EM&V costs be included in Duke's shared savings calculation. Id. at 6. However, the evidence shows that the mistake was not caught because there was no reason to look for the mistake. There was no reason to be alert to Duke's failure to include EM&V costs in the shared savings calculation because this had not been an issue in the case. The matter had never even been discussed. Mr. Ziolkowski testified that it was not an issue that was addressed in the Case No. 11-4393-EL-RDR. Tr. at 39.

When OCC witness Wilson read the tariff's reference to program costs for shared savings, he "read the tariff to mean program costs include measurement and verification and it includes administrative costs." Tr. at 67. Thus, the tariff's reference to program costs as part of the shared savings calculation gave Mr. Wilson no reason to challenge the tariff. Tr. at 68. EM&V costs are program costs.

Mr. Scheck testified that EM&V costs are included in the total cost of energy efficiency programs and are not something separate. Tr. at 86. EM&V costs are a necessary condition to have energy efficiency programs, and these costs receive recovery through the rider. Therefore, EM&V costs should be included in the shared savings calculation. Tr. at 87. Mr. Scheck agreed that he "just overlooked" and did not "follow up" on the Ziolkowski attachment setting forth the calculation of the shared savings incentive because Mr. Scheck was more concerned with the contested issues in Case No. 11-4393-EL-RDR. Tr. at 87-88. Mr. Scheck did not correct the tariff. Like Mr. Wilson, for Mr. Scheck, the costs of the program for the shared savings calculation meant the same thing as the program costs for recovery through the rider, i.e., the program costs included EM&V costs. Tr. at 91.

In short, because the Staff, OCC, and OPAE did not correct the tariff that Duke filed excluding EM&V costs from the program costs in the shared savings calculation, Duke believes that ratepayers must now pay Duke extra, non-existent shared savings incentives. These extra shared savings are non-existent because if the EM&V costs had been properly included in program costs, the extra shared savings would not exist. The Commission should find Duke's reliance on its luck in slipping this flawed tariff past the Staff, OCC, and OPAE is misplaced. These shared savings calculated without including EM&V costs are simply non-existent savings. They cannot reasonably and lawfully be collected from ratepayers.

Duke has now explicitly agreed to include EM&V costs in the calculation of shared savings on a going-forward basis Tr. at 18. According to Duke witness Duff, the agreement to include EM&V costs in the shared savings calculations was made in Case No. 13-431-EL-POR. Id. at 7. The inclusion will be made for the 2014-2016 period. However, Duke believes that Case No. 11-4393-EL-RDR governs this rider application, and Duke contends that the shared savings calculation approved in that case did not include EM&V costs. Again, an inadvertent mistake was made in not correcting the tariffs. However, this does not mean that Duke may recover extra, non-existent shared savings from ratepayers.

IV. Conclusion

Duke's energy efficiency programs EM&V costs totaled $1,168,516 in 2012 and are projected to be $1,701,812 in 2013. This amount should be subtracted from the avoided cost benefits of the energy efficiency programs for each year to arrive at a new and lower net shared savings figure. The total amount of shared savings used to calculate Duke's shared savings pool of dollars should be reduced over 2012 and 2013 by the EM&V cost of the energy efficiency programs, i.e., $2,870,328. Duke's shared savings revenues for 2012 should be reduced by about 1.9% from $12,527,590 to approximately $12,289,563. For 2013, Duke's shared savings revenue should be reduced by about 3.4% from $5,903,534 million to approximately $5,703,571. The total savings to customers is $437,990 over both years. OCC Exhibit 2, Objections to Duke's Application at 3. Duke witness Duff agreed with these figures. Tr. at 31.

The Commission should find that it was unreasonable for Duke to calculate shared savings excluding EM&V costs. The Commission should order the above refunds through Duke's Rider EE-PDR to Duke's customers to remedy the unreasonable creation of additional shared savings through the use of a flawed calculation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post Hearing Brief of Ohio Partners for Affordable Energy was served on the parties stated below via electronic service this 7th day of November 2013.

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