

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke) Case No. 14-1580-EL-RDR
Energy Ohio, Inc., for Approval to Continue)
Cost Recovery Mechanism for Energy)
Efficiency Programs Through 2016.)

**INITIAL COMMENTS OF
THE NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENTAL LAW AND
POLICY CENTER, AND OHIO ENVIRONMENTAL COUNCIL**

I. INTRODUCTION

On September 9, 2014, Duke Energy Ohio, Inc. ("Duke" or the "Company") filed an application to continue the cost-recovery mechanism for its current portfolio of energy efficiency programs through the 2016 program year ("Application"). On October 22, 2014, the Public Utilities Commission of Ohio ("Commission") issued an Entry in the above-captioned docket setting forth a schedule for intervention and comments on Duke's Application. In accordance with that Entry, Natural Resources Defense Council ("NRDC"), Environmental Law and Policy Center ("ELPC"), and the Ohio Environmental Council ("OEC") (collectively, the "Environmental Advocates") respectfully submit these Initial Comments on Duke's Application.

Environmental Advocates support utility recovery of the prudently incurred costs of implementing energy efficiency programs, as well as performance-based incentives to ensure that investing in efficiency is at least as attractive as generation and grid resources. Thus, Environmental Advocates contributed to the development of Duke's cost-recovery and shared savings incentive package in the 11-4393-EL-RDR and 13-431-EL-POR dockets, and are now supporting extension through 2016.

With the passage of Senate Bill (S.B.) 310, which freezes the state's energy efficiency and renewable portfolio standards for two years, questions have arisen with respect to the fate of Duke's portfolio. But the clear language of SB 310 allows utilities to take their portfolio plans down one of two paths: extension or amendment. In these comments Environmental Advocates anticipate arguments that SB 310 renders Duke's Application invalid. However, such arguments will likely be based on two faulty premises: 1) that Duke's Application somehow "amends" its current energy efficiency program portfolio; and 2) that the Commission lacks the authority to approve the Application. The facts of this case demonstrate just the opposite.

Duke's existing portfolio runs through 2016, and despite the SB 310 freeze it has chosen to continue to run its programs for the two-year period. Duke's Application, therefore, addresses a single, narrow issue that *does not alter the portfolio* or the way in which it is implemented. The Company is seeking to extend the *identical* cost-recovery and shared savings mechanisms that were originally negotiated and stipulated to by many of the parties to the 2011 and 2013 dockets, and which was approved by the Commission in both cases. It is true that these mechanisms are scheduled to expire at the end of 2015. However, the parties built into the 11-4393-EL-RDR and 13-431-EL-POR stipulations language that contemplated a process by which to evaluate an extension, and in the event the parties could not agree to the terms, the stipulations made clear that the Commission should determine the fate of the cost-recovery package. Thus, the issues raised in Duke's Application were explicitly anticipated in the existing portfolio plan, and do not trigger portfolio amendment under SB 310. Further, because resolution of the cost-recovery mechanisms at issue in the Application is necessary to successfully implement the existing programs through 2016, the Commission has the authority to review and approve the Company's request.

Duke's request to extend the current cost-recovery and shared savings incentive mechanisms into 2016 does not run afoul of SB 310, and should be approved.

II. STATEMENT OF FACTS

Duke has a long-standing history of running successful energy efficiency programs for its customers and recovery of the applicable costs and incentives. Cost-recovery for these programs was first addressed in 2008 when Duke submitted an energy efficiency portfolio as part of its 08-90-EL-SSO "Standard Service Offer" docket.¹ The parties to that case signed a Stipulation that included a novel cost-recovery mechanism known as "Rider Save-a-Watt," which was to run from 2009 to 2011 and allowed Duke an escalating rate of return on investment for exceeding its annual benchmark savings requirements.² The Commission also approved lost distribution revenues in that docket.

In December of 2009, Duke resubmitted its portfolio for approval (this time for a full five-year period), in response to the Commission's promulgation of rules to facilitate compliance with SB 221. Two years later, Duke filed another application in the 11-4393-EL-RDR docket to address the fact that Save-a-Watt was set to expire at the end of the year and to add two new programs to the portfolio. It was in that 2011 docket that the parties established—and the Commission approved—the parameters of the cost-recovery and incentive mechanism that are in place through 2015 for Duke's existing portfolio, and which Duke now seeks to extend into 2016.

Duke's testimony in 11-4393-EL-RDR established the initial parameters of the cost-recovery and incentive mechanism that replaced Rider Save-a-Watt, some elements of which were later modified during negotiations. Specifically, Timothy Duff testified that Duke was seeking to replace Save-a-Watt in order to streamline the cost-recovery process and move toward

¹ *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-90-EL-SSO, Application (July 31, 2008).

² *Id.*, Stipulation at 22-24 (October 27, 2008).

a more “traditional” shared savings incentive mechanism.³ Mr. Duff proposed cost-recovery for programs and a shared savings incentive for exceeding the yearly SB 221 benchmarks. The incentive would be calculated based upon a percentage of the net system benefits (avoided costs less the costs of delivering the efficiency) delivered by the approved portfolio of programs.⁴ Duke proposed a few specific design elements of the shared savings mechanism, including tiered incentives levels based on differing degrees of overachievement,⁵ as well as the use of banked savings from prior program years to trigger the incentive and to establish a level of achievement for the purpose of determining Duke’s earnings in a given year.⁶ However, once the savings “tier” is determined, banked savings will not be included in calculating the net benefits upon which the shared savings percentage is applied, and the cost-recovery rider will not include any incremental costs associated with the achievement of the banked savings.⁷

The parties filed comments in 11-4393-EL-RDR responding to certain elements of Duke’s proposal and in some cases recommending different approaches. NRDC, OEC, Sierra Club, and the Office of Consumers’ Counsel (“OCC”) filed jointly as the “Ohio Consumer and Environmental Advocates” (“OCEA”) and indicated support for Duke’s proposed program cost-recovery and for certain elements of the shared savings incentive (including the use of banked savings).⁸ The OCEA groups also recommended a series of modifications to the incentive.⁹

³ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Direct Testimony of Timothy J. Duff at 5 (July 20, 2011).

⁴ *Id.* at 5-7.

⁵ *Id.*

⁶ *Id.* at 7-8.

⁷ *Id.*

⁸ Case No. 11-4393-EL-RDR, OCEA Initial Comments at 8-12 (September 21, 2011).

⁹ *Id.*

Other intervenors also filed comments indicating varying levels of support and opposition to Duke's proposal.¹⁰

Duke ultimately accepted OCEA's modified shared savings proposal, and filed a Stipulation in 11-4393-EL-RDR that defined the agreed-to recovery of projected program costs (subject to true up), shared savings, and a pilot decoupling mechanism.¹¹ The OCEA groups, OPAE, Vectren, and PWC were all signatories to the Stipulation, with OEG abstaining. The Stipulation further specified that the shared savings mechanism would:

... expire at the end of 2015 and be reevaluated by all interested parties no sooner than third quarter of 2014 to allow interested parties to assess the reasonableness and effectiveness of the incentive mechanism and to consider whether or not they support its further use (as structured or as modified) for the remaining year of the five year portfolio that has been proposed in the Application in this proceeding.¹²

On August 15, 2012, the Commission approved the Stipulation, finding with regard to cost-recovery and shared savings that the parameters set out by Duke and the stipulating parties would "benefit ratepayers and the public interest." The Commission also determined that:

... [the] shared savings incentive mechanism proposed by Duke is *appropriately structured to incent Duke to deliver as many benefits as possible to customers*. In addition, we believe it is important to recognize that Duke's shared savings mechanism still allows customers to retain at least 87 percent of the savings. *When Duke delivers more energy in the most cost effective way, customers receive a direct benefit.*¹³

These approved mechanisms were again approved by the Commission when Duke re-filed its programs in the 13-431-EL-POR as a three-year portfolio plan to comply with Rule 4901:1-39-04 O.A.C. Duke's 13-431-EL-POR filing continued the portfolio through 2016, included two new programs, and requested that the shared savings incentive be continued

¹⁰ See, e.g., Case No. 11-4393-EL-RDR, OPAE Initial Comments at 6-8 (September 21, 2011); PWC Initial Comments (September 21, 2011); OEG Reply Comments (September 21, 2011).

¹¹ Case No. 11-4393-EL-RDR, Stipulation at 5 (Nov 18, 2011).

¹² *Id.*

¹³ Case No. 11-4393-EL-RDR, Order at 15 (August 15, 2012) (emphasis added).

through the last year of the portfolio in 2016.¹⁴ In his testimony Mr. Duff restated how the shared savings mechanism would work.¹⁵ With respect to the including the use of banked savings in the shared savings incentive, Mr. Duff characterized it as the same methodology that was vetted and approved in Case No. 11-4393-EL-RDR.¹⁶ While a handful of intervenors objected to extending the mechanism and some recommended that a cap be put in place, no parties referenced the banking issue.¹⁷

On September 9, 2013, the parties filed an Amended Stipulation agreeing to a series of additional, negotiated programs, and agreeing that the cost-recovery and shared savings mechanisms originally approved in 11-4393-EL-RDR would be left intact.¹⁸ NRDC, OEC, ELPC, OCC,¹⁹ Greater Cincinnati Energy Alliance, OPAE, Kroger, EMC Development Company, Ohio Advanced Energy Economy, and the Sierra Club were signatories to the stipulation, with OEG again abstaining. The Stipulation reiterated that the mechanism for recovering costs for Duke's program portfolio, including program costs, lost distribution revenues and an incentive mechanism, would expire at the end of 2015 and be reviewed for possible extension into 2016.²⁰ On December 4, 2013, the Commission approved the Stipulation, stating that:

... as controlled by paragraph 2 of the Stipulation and Recommendation in Case No. 11-4393-EL-RDR, all interested parties (no sooner than the third quarter of 2014), are permitted to assess the reasonableness and effectiveness of the incentive mechanism to consider whether or not they support its further use (as structured or as modified) for the remaining year (2016) of the five year portfolio. If the interested parties reach an

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs*, Case No. 13-431-EL-POR, Application (April 15, 2013).

¹⁵ Case No. 13-431-EL-POR, Direct Testimony of Timothy J. Duff at 8-11 (April 15, 2013).

¹⁶ *Id.* at 11.

¹⁷ *See, e.g.*, Case No. 13-431-EL-POR, Objections of OPAE, OEG and Kroger (objecting to shared savings mechanism), Objections of OCC, OPAE, OEG and Kroger (recommending cap).

¹⁸ Case No. 13-431-EL-POR, Amended Stipulation (September 9, 2013).

¹⁹ Unlike in the 2011 docket, in 2013 the OCEA groups filed separately.

²⁰ Case No. 13-431-EL-POR, Amended Stipulation at 5.

agreement for implementing an incentive mechanism for the year 2016, the interested parties will jointly file their recommendation, related only to the incentive recovery mechanism, to seek the Commission's approval in 2015 for use in 2016. In the event no such agreement is reached, interested parties may seek the Commission's determination of whether an incentive mechanism should be implemented for the remainder of the portfolio plan period, for the year 2016.²¹

To date, the parties have not reached agreement on whether to extend the cost-recovery and shared savings mechanism for the final year of the program portfolio.

III. ARGUMENT

The Commission has the authority to act on Duke's request to extend the current cost-recovery and shared savings incentive mechanisms. Environmental Intervenors request that the Commission grant the Application.

A. DUKE'S APPLICATION DOES NOT CONSTITUTE AN "AMENDMENT" OF ITS EXISTING PORTFOLIO PLAN, AND THUS IS CONSISTENT WITH THE REQUIREMENTS OF SB 310

SB 310 freezes Ohio's energy efficiency and renewable energy standards at 2014 levels for two years while a committee studies their costs. SB 310 lays out two parallel tracks for addressing existing utility energy efficiency portfolios during the freeze period. It states, in pertinent part:

SECTION 6. (A) If an electric distribution utility has a portfolio plan that is in effect on the effective date of this section, the utility shall do either of the following, at its sole discretion:

(1) Continue to implement the portfolio plan with no amendments to the plan, for the duration that the Public Utilities Commission originally approved, subject to divisions (D) and (E) of this section;

(2) Seek an amendment of the portfolio plan under division (B) of this section.

(B)(1) An electric distribution utility that seeks to amend its portfolio plan under division (A)(2) of this section shall file an application with the Commission to amend the plan not later than thirty days after the effective date of this section.

A review of the 11-4393-EL-RDR and 13-431-EL-POR dockets reveals that the program portfolio, cost-recovery, and shared savings originally approved in those cases is identical to the

²¹ Case No. 13-431-EL-POR, Opinion and Order at 6 (December 4, 2013).

mechanisms Duke seeks to extend into 2016. The Company's Application makes no request to modify any elements of its current program suite, and makes no request to modify the cost-recovery mechanism approved in the 2011 and 2013 dockets. Moreover, the design elements of the current shared savings mechanism were specifically outlined in Duke's testimony in both dockets,²² explicitly acknowledged (and in the case of OCEA, supported)²³ by several of the intervening parties, and stipulated to by those parties that signed the Stipulation.²⁴ Duke now requests in its Application that the Commission continue the "existing cost recovery and incentive mechanism . . . through the end of 2016, *in alignment with the approved term of the portfolio approval.*"²⁵ This cannot be considered an amendment within the meaning of SB 310.

Further, the language of both Stipulations clearly contemplated that the parties would review the mechanism for 2016 and determine whether or not to support its further use.²⁶ Indeed, the process that the parties are now undergoing—Duke's filing of the current Application, party intervention, a comment period, and (in the event these issues are not resolved) the Commission's determination of the appropriate mechanism—was anticipated in the current portfolio and contemplated as part of the determination of cost recovery for 2016.

These are not new or novel concepts with which the parties or the Commission are unfamiliar. Nor is Duke seeking to eliminate or append any of its programs or the way in which they are administered or evaluated. If Duke's Application is approved, it will run its programs and recovery costs and shared savings *exactly* as it has since these mechanisms were first put in place in 2011. The determination of cost-recovery for the 2016 program year was explicitly

²² Case No. 11-4393-EL-RDR, Duff Direct at 5; Case No. 13-431-EL-POR, Duff Direct at 8-11.

²³ Case No. 11-4393-EL-RDR, OCEA Initial Comments at 8-12.

²⁴ Case No. 11-4393-EL-RDR, Stipulation; Case No. 13-431-EL-POR, Amended Stipulation.

²⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs through 2016*, Case No. 14-1580-EL-RDR, Application at 4 (September 9, 2014) (emphasis added).

²⁶ Case No. 11-4393-EL-RDR, Stipulation at 5; Case No. 13-431-EL-POR, Amended Stipulation at 5.

anticipated in the Commission's orders in 11-4393-EL-RDR and 13-431-EL-POR and is as much a part of the existing portfolio as the programs themselves. Duke's Application to clarify its cost-recovery package for 2016 simply does not constitute an amendment.

B. A COMMISSION DETERMINATION ON DUKE'S APPLICATION IS NECESSARY TO SUCCESSFULLY IMPLEMENT THE EXISTING PORTFOLIO PLAN, AND IS THUS PERMITTED UNDER SB 310

Notwithstanding the fact that Duke's Application does not constitute an amendment and thus is consistent with SB 310's requirements, SB 310 provides another avenue by which the Commission has authority to grant Duke's Application. It states, in pertinent part:

SECTION 7. (A) The Public Utilities Commission shall neither review nor approve an application for a portfolio plan if the application is pending on the effective date of this section.

(B) Prior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan or application regarding a portfolio plan, except those actions expressly authorized or required by Section 6 of this act and actions necessary to administer the implementation of existing portfolio plans.

Duke's Application falls squarely within subpart B above. Authorizing Duke to recover the costs of implementing its energy efficiency program portfolio and driving deeper savings through the shared savings incentive are necessary to continue the administration of these programs through 2016. This fact was confirmed by several parties—and the Commission—in the prior dockets. For example, the OCEA groups commented in 11-4393-EL-RDR that “[c]ollecting program costs is allowed by rule, and is one of the *necessary attributes of a successful implementation of utility energy efficiency*.”²⁷ In further articulating the essential nature of cost-recovery to the success of energy efficiency programs, OCEA noted that “reasonable opportunity for program cost recovery is a necessary condition for utility program spending, as failure to recover these costs produces a direct dollar-for-dollar reduction in utility

²⁷ Case No. 11-4393-EL-RDR, OCEA Initial Comments at 3 (September 21, 2011) (emphasis added).

earnings, all else being equal, and *sends a discouraging message regarding further investment.*”²⁸

With respect to shared savings, NRDC and OEC articulated in the 2011 docket that approving the shared savings mechanism would provide two overarching benefits: 1) “help further Ohio policy to ensure efficient and reasonably-priced electric service,” and 2) “encourage innovation and market access for cost-effective supply- and demand-side retail electric service, [by ensuring] that investing in energy efficiency, the lowest-cost, least risky, and cleanest way to meet energy needs, is a profitable option for Duke.”²⁹ *The Commission concurred*, ruling that the “shared savings incentive mechanism proposed by Duke is appropriately structured to incent Duke to deliver as many benefits as possible to customers.”³⁰ The Commission went on to point out that “Duke's shared savings mechanism still allows customers to retain at least 87 percent of the savings. *When Duke delivers more energy in the most cost effective way, customers receive a direct benefit.*”³¹

Indeed, the combination of program cost-recovery and an incentive trigger to reward Duke for exemplary performance in delivering energy efficiency and peak demand reduction programs to its customers has resulted in significant energy savings. Duke’s cost-recovery package enabled it to exceed the savings benchmarks in 2012 by 31% with the net present value of the system avoided costs associated with the energy and capacity achievements over 3.5 times the cost incurred to achieve the impacts (~\$55.7 million in benefits to customers).³² While Duke

²⁸ *Id.* (citing National Action Plan for Energy Efficiency, *Aligning Utility Incentives with Investment in Energy Efficiency*, November 2007, Page ES-2) (emphasis added).

²⁹ Case No. 11-4393-EL-RDR, NRDC and OEC Post-Hearing Brief at 3-4 (June 22, 2012).

³⁰ Case No. 11-4393-EL-RDR, Order at 15 (emphasis added).

³¹ *Id.*

³² Application at 2-3; *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*

only achieved its statutory benchmarks in 2013 by the use of banked savings, it delivered programs at 83% of projected costs with a net present value of the system avoided costs associated with the energy and capacity achievements over 3.8 times the cost incurred to achieve the impacts (~\$60.3 million in benefits to customers).³³

This performance demonstrates the essential nature of cost-recovery and an incentive trigger to deliver robust and cost-effective energy efficiency programs to customers. Because extension of the cost-recovery mechanisms into 2016 is necessary to continue this performance and—at a minimum—to successfully implement the existing portfolio plans for that program year, Duke's Application is valid and should be approved.

III. CONCLUSION

The Environmental Advocates appreciate the opportunity to provide comment on Duke's Application, and urge the Commission to approve it.

Dated: December 5, 2014

Respectfully submitted,

/s/ Samantha Williams

Samantha Williams
Staff Attorney
Natural Resources Defense Council
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 651-7930
swilliams@nrdc.org

Madeline Fleisher
Staff Attorney

Energy Efficiency and Demand Response Programs, Case No. 13-753-EL-RDR, Direct Testimony of James E. Ziolkowski at Schedule JEZ-1 (March 28, 2013); Direct Testimony of Timothy Duff (March 28, 2013).

³³ Application at 2-3; *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. 14-457-EL-RDR, Direct Testimony of James E. Ziolkowski at Schedule JEZ-1 (March 28, 2014).

Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
P: 614-488-3301
F: 614-487-7510
mfleisher@elpc.org

Trent A. Dougherty
Managing Director of Legal Affairs
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
(614) 487-5823
trent@theoec.org

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Initial Comments*, submitted on behalf of NRDC, ELPC and OEC, was served by electronic mail, upon the following Parties of Record, this 5th day of December, 2014.

/s/ Samantha Williams

Samantha Williams

Duke Energy Ohio, Inc.

Amy B. Spiller
Elizabeth H. Watts
2500 Atrium II
139 East Fourth Street, P.O. Box 960
Cincinnati, Ohio 45201-0960
Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com

Ohio Partners for Affordable Energy

David C. Rinebolt
Colleen L. Mooney
Cathryn N. Loucas
231 West Lima Street
Findlay, OH 45839-1793
cmooney@ohiopartners.org
drinebolt@ohiopartners.org

People Working Cooperatively, Inc.

Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter LPA
65 East State Street
Columbus, Ohio 43215-4294
Asonderman@keglerbrown.com
mkimbrough@keglerbrown.com

Ohio Environmental Council

Trent A Dougherty
1207 Grandview Ave. Suite 201
Columbus OH 43212
Trent@theoec.org

Office of the Ohio Consumers' Counsel

Kyle Kern
Michael Schuler
Assistant Consumers' Counsel
10 W Broad Street, Ste 1800
Kyle.kern@occ.ohio.gov
Michael.schuler@occ.ohio.gov

Industrial Energy Users-Ohio

Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
mpritchard@mwncmh.com

Staff of the Public Utilities Commission of Ohio

William Wright
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
william.wright@puc.state.oh.us

Ohio Manufacturers' Association

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Bojko@carpenterlipps.com

The Kroger Company

Rebecca L. Hussey
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus OH 43215
hussey@carpenterlipps.com

Ohio Energy Group

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@BKLawfirm.com
dboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/5/2014 5:18:21 PM

in

Case No(s). 14-1580-EL-RDR

Summary: Comments of the NRDC, ELPC and OEC electronically filed by Samantha Williams on behalf of Natural Resources Defense Council