

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

In this proceeding, the Public Utilities Commission of Ohio (“PUCO”) will determine how much customers will pay to Duke Energy Ohio (“Duke” or “the Utility”) for energy efficiency in 2016. The Office of the Consumers’ Counsel (“OCC”) filed initial comments in this docket on December 5, 2014, on behalf of Duke’s 618,000 residential customers.

In those Comments, OCC recommended that the PUCO protect customers from paying inappropriate profits (shared savings) to Duke for 2016. At the least, the PUCO should limit payments by customers for shared savings (i.e., Duke’s profit on energy efficiency) to no more than 13% of Duke’s program spending that is found to be prudent for 2016. OCC also urged the PUCO to protect customers from paying for shared savings where Duke is merely complying with the statutory benchmark (because utilities should not be rewarded for merely complying with the law). At most, the Utility should only be allowed to charge customers for shared savings for energy efficiency it achieves by exceeding the statutory benchmark. Finally, OCC recommended that Duke should not be

allowed to use banked savings (savings earned in past years) to charge customers for shared savings for 2016. OCC's recommendations should be adopted by the PUCO to protect customers from paying excessive shared savings to Duke.¹

These reply comments address comments filed by the Environmental Advocates.² In their comments, they cited to a filing several years ago by the Ohio Consumer and Environmental Advocates³ in Duke's 2011 Portfolio case, Case No. 11-4393-EL-RDR (hereinafter, "11-4393 Comments"). The Environmental Advocates use the 11-4393 Comments to support their position that Duke's shared savings incentive mechanism should be extended through 2016. The 11-4393 Comments generally responded to certain elements of Duke's then proposed energy efficiency portfolio that included charges to customers for shared savings. As a signatory to the 11-4393 Comments, OCC notes that the joint filing did not specifically address 2016 or take a position on the treatment of banked savings.⁴ As explained below, the 11-4393 Comments are inapplicable and certainly not controlling for purposes of deciding the issues in this case.

¹ Case No. 14-1580-EL-RDR, OCC Initial Comments (December 5, 2014).

² The Environmental Advocates are the Environmental Law and Policy Center, Natural Resources Defense Council, and Ohio Environmental Council.

³ The 11-4393 Comments were filed by OCC, the Natural Resources Defense Council, Ohio Environmental Council and the Sierra Club on September 21, 2011.

⁴ Case No. 14-1580-EL-RDR, Environmental Advocates Comments at 4 (December 5, 2014).

II. DISCUSSION

A. The 11-4393 Comments referenced by the Environmental Advocates are not applicable and not of any precedential value for the PUCO's purposes of deciding whether Duke should be allowed to continue charging customers for a shared savings incentive mechanism in 2016.

The Environmental Advocates contend that the 11-4393 Comments “indicated support for Duke’s proposed program cost-recovery and for certain elements of the shared savings incentive.”⁵ But the 11-4393 Comments are not probative of anything for this case. Not long after the 11-4393 Comments were filed, each of the Environmental Advocates (and other parties) signed a settlement with OCC and Duke. In that settlement, the signatory parties agreed that Duke’s shared savings incentive mechanism would be in place from 2012 through 2015 and that it would expire at the end of 2015. Specifically, in the 11-4393 case, the signatory parties agreed that:

1. Duke’s shared savings incentive mechanism would expire at the end of 2015,⁶
2. The signatory parties reserved the right to assess the reasonableness and effectiveness of Duke’s shared savings incentive mechanism for 2016;⁷ and
3. The signatory parties reserved the right to consider whether or not they support the further use (of the shared savings incentive mechanism) for 2016.⁸

It is the settlement not the 11-4393 Comments that should be considered for purposes of the PUCO’s determinations in this case regarding what consumers will pay in 2016. The settlement’s provisions convey that the shared savings mechanism for 2016 was not

⁵ Id.

⁶ Case No. 11-4393-EL-RDR, Stipulation at 5 (November 18, 2011).

⁷ Id.

⁸ Id.

settled by the parties, but was left open. The settlement contained no limitations on how that incentive mechanism could be modified for 2016.

The reservation of 2016 for future evaluation is further evidenced in the stipulation and recommendation that was filed in Case No. 13-431-EL-POR. In that portfolio case, Duke filed an application to align its energy efficiency portfolio with its cost recovery mechanism for 2013 through 2016. In the settlement resolving the 13-431 case, the signatory parties reiterated their agreement to reevaluate the incentive mechanism and to consider whether they supported its further use for 2016.⁹ The PUCO acknowledged the parties' agreement in its Opinion and Order for 13-431-EL-POR, stating:

The mechanism for recovering costs from Duke's customers, including recovery of prudent program costs incurred, lost distribution revenues and an incentive mechanism, shall expire at the end of 2015, as controlled by the stipulation in the 2011 Portfolio Case.¹⁰

The PUCO's ruling that approved two stipulations whereby Duke's charges to customers would "expire at the end of 2015" leaves zero room for considering, in this case, the 11-4393 Comments that predated both of the settlements that led to this case.

Furthermore, the 11-4393 Comments are not, in reality, supportive of the result that Duke seeks for charging customers more money. The 11-4393 Comments urged the PUCO to *limit* the amount of time that Duke's shared savings incentive mechanism would be in place in order to protect consumers from increased charges. In this regard, the 11-4393 Comments state that:

⁹ Case No. 13-431-EL-POR, Stipulation at 5 (September 6, 2013).

¹⁰ Case No. 13-431-EL-POR, Opinion and Order at 6 (December 4, 2013).

A shared savings incentive program without a cap would be new to Ohio. **The incentive mechanism should be limited in time** to protect customers from unforeseen events that could lead to significant increases in the incentive amount. Consistent with Ohio Adm. Code 4901:1-39-04(A), the Commission should review the incentive mechanism results for Duke's energy efficiency programs after a three-year period, and make any modifications (if needed) at that time. (Emphasis added).

As permitted by the stipulations in Case No. 11-4393-EL-RDR and Case No. 13-431-EL-POR, the shared savings incentive mechanism for 2016 should be modified as recommended by OCC in its Comments filed in this proceeding on December 5, 2014.

B. The 11-4393 Comments are not relevant to the consumer issues in this proceeding because the Comments do not address the appropriateness of the use of banked savings for higher charges to consumers.

The Environmental Advocates asserted that the 11-4393 Comments “indicated support for Duke’s proposed program cost recovery and for certain elements of the shared savings incentive (including the use of banked savings).”¹¹ But the 11-4393 Comments do not opine on the appropriateness of using banked savings for Duke to charge consumers for a shared savings incentive in 2016. Instead, the 11-4393 Comments merely acknowledge that Duke proposed to use banked savings to determine the percentage of the net benefit that it retains. Specifically, the 11-4393 Comments remarked:

The Company states that its banked savings would be used for compliance and for determining the percentage of net benefit it retains.¹²

¹¹ 14-1580 Environmental Advocates’ Comments at 4 (December 5, 2014).

¹² 11-4393 OCEA Comments at 8 (Sept. 21, 2011).

Thus, the 11-4393 Comments do not present a position on the use of banked savings towards an incentive mechanism. Rather the 11-4393 Comments simply *acknowledge* the Utility's proposal for using banked savings. In any event, as stated under above Section II.A., the 11-4393 Comments have no bearing on this proceeding – which deals only with 2016.

III. CONCLUSION

The PUCO should adopt the recommendations that OCC provided in its Initial Comments. The Stipulations in Case Nos. 11-4393-EL-RDR and 13-431-EL-POR, as well as the PUCO's Orders adopting those settlements, allow parties, including OCC and others, to reconsider the structuring of a shared savings incentive mechanism for 2016, and whether or not it should be continued.

If the PUCO does approve a shared savings incentive mechanism for charging customers in 2016, the PUCO should institute certain consumer protections. There should be a hard cap on what consumers could be made to pay. And the PUCO should prohibit the Utility from using banked savings.

Finally, the 11-4393 Comments—filed in 2011 and predating two settlements and two Orders that are controlling—are not applicable or precedential in this matter. The 11-4393 Comments predate the aforementioned two settlements and two Orders that allow for the restructuring and reconsideration of a shared savings incentive mechanism for 2016.

Respectfully submitted,

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** Will accept pleadings via electronic
transmission*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Comments was served on the persons stated below via electronic transmission, this 9th day of January 2015.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/9/2015 3:38:43 PM

in

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

Summary: Comments Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.