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Via E-FILE

August 21, 2015

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 14-1580-EL-RDR

Dear Sir/Madam:

Please find attached the BRIEF OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

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Cc: Certificate of Service

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of Duke Energy Ohio, Inc. For Approval To Continue Its Cost Recovery Mechanism For Energy Efficiency Programs Through 2016.	: : :	Case No. 14-1580-EL-RDR

BRIEF OF THE OHIO ENERGY GROUP

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BRIEF OF THE OHIO ENERGY GROUP

I. INTRODUCTION

The Ohio Energy Group ("OEG") hereby submits this Brief in support of its recommendations in this proceeding. OEG is a non-profit entity organized to represent the interests of large industrial customers in electric and gas regulatory proceedings before the Public Utilities Commission of Ohio ("Commission" or "PUCO"). OEG's members who take service from Duke Energy Ohio, Inc. ("Duke" or "Company") and who are participating in this proceeding are: AK Steel Corporation, Air Products and Chemicals, Inc., E.I. du Pont de Nemours and Company, Ford Motor Company, GE Aviation, General Motors LLC and Worthington Industries. For the reasons discussed below, the Commission should reject Duke's request to continue receiving incentive payments for energy efficiency/peak demand reduction ("EE/PDR") beyond December 31, 2015. If the Commission decides to continue Duke's incentive mechanism beyond December 31, 2015, then the Commission should make several modifications to that mechanism going forward.

II. ARGUMENT

A. The Commission Should Reject Duke's Request to Continue Receiving Incentive Payments for Energy Efficiency/Peak Demand Reduction Beyond December 31, 2015.

On September 9, 2014, Duke filed an Application requesting that the Commission allow the Company's current energy EE/PDR incentive mechanism to continue through December 31, 2016. That mechanism is currently set to expire December 31, 2015.[1] Duke's request to continue receiving EE/PDR incentive payments

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[1] Opinion and Order, Case No. 13-431-EL-POR (December 4, 2013).

beyond December 31, 2015 should be rejected. As OEG has already argued in multiple proceedings,[2] it is unreasonable for Duke to recover any incentive payments for its EE/PDR efforts.

As an initial matter, Duke is mandated by law to achieve the EE/PDR benchmarks set forth in R.C. 4928.66. And Duke is permitted to recover 100% of the costs of EE/PDR programs designed to satisfy those benchmarks as well as lost distribution revenues.[3] Duke's legal obligation and the guaranteed cost recovery associated with that obligation provide sufficient incentive for Duke to engage in substantial EE/PDR efforts. Moreover, the EE/PDR benchmarks that Duke is statutorily required to meet are designed to increase over time, which will likewise increase the scope of Duke's EE/PDR efforts regardless of whether the Company continues to receive incentive payments beyond 2015. It is therefore unnecessary to encourage Duke to engage in even more EE/PDR efforts by providing its shareholders with hefty incentive payments at customers' expense.

One of the most substantial financial benefits to customers that can result from the EE/PDR efforts of utilities is that such efforts may help to avoid the construction of costly new generation assets in their service territories. But Duke has already exited the electric generation business in Ohio, selling its generation assets to Dynegy.[4] Because Duke no longer invests in supply-side generation resources, there is no lost rate of return to "disincentivize" the Company from engaging in cost-effective EE/PDR in excess of the statutory benchmark.[5] Duke's standard service offer rates are now set through retail auctions in which Duke does not participate.[6] Given that the market now dictates whether new electric generation assets are constructed in Duke's service territory, one major reason to encourage Duke to achieve EE/PDR savings over and above the benchmarks set forth in R.C. 4928.66 no longer exists.

While it is true that additional customer participation in Duke's EE/PDR programs may reduce PJM wholesale market prices and provide environmental and reliability benefits to customers, these are generic benefits spread throughout the wider PJM region. Such benefits are not targeted specifically to Duke's customers. Customers in Duke's service territory can achieve such additional benefits by implementing their own EE/PDR

[2] *See* OEG Post-Hearing Briefs, Case No. 11-4393-EL-RDR (December 9, 2011 and June 22, 2012) and OEG Objections, Case No. 13-431-EL-POR (July 1, 2013).
[3] OEG Ex. 1 at 4:14-16.
[4] OEG notes that Duke is not selling its interest in the Ohio Valley Electric Corporation generation assets to Dynegy.
[5] OEG Ex. 1 at 5:4-9.
[6] Opinion and Order, Case No. 14-841-EL-SSO *et al.* (April 2, 2015) at 51.

efforts without Duke's assistance and without funding additional incentive payments to Duke's shareholders. Indeed, large industrial customers already carefully manage their energy consumption and implement their own self-funded EE/PDR measures.

Allowing Duke to receive incentive payments in addition to recovering the costs to fund its EE/PDR efforts leads to excessive reimbursement, which places an unnecessary financial burden on residents and businesses in Southwest Ohio. The costs of utility EE/PDR programs are significant and are substantially increased by allowing utilities to recover large incentive payments from customers. For example, Duke is seeking to recover approximately $35 million in EE/PDR charges from customers for 2013.[7] Of that approximately $35 million, $11,635,152 (or approximately *one-third* of the total EE/PDR charges that Duke seeks to recover from customers) represents requested incentive payments for that year.[8] There is no justification for providing Duke such substantial returns on EE/PDR efforts, particularly given that the Company has no capital invested or at risk on its EE/PDR expenditures.

Duke's incentive mechanism forces customers to pay unreasonable sums relative to the energy reductions actually achieved by the Company. For example, in 2012, Duke received a total of $12,527,590 in incentive payments for 211,126 in claimed MWh savings.[9] Customers therefore paid Duke $59.34 per MWh of energy efficiency savings achieved that year. For 2013, Duke is seeking to recover $11,635,152 in incentive payments for the 210,388 in claimed MWh savings.[10] This equates to $55.30 per MWh of energy efficiency savings achieved in 2013. For 2014, Duke is seeking to recover $12,975,188 in incentive payments for 222,852 in claimed MWh savings.[11] This equates to $58.22 per MWh of energy efficiency achieved in 2014 and represents a 43% adder on the $30.315 million in costs incurred to implement Duke's EE/PDR programs.[12] Duke recovers these incentive payments through its EE/PDR rider *in addition* to its program costs and lost revenues. For purposes of comparison,

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[7] Direct Testimony of James E. Ziolkowski, Case No. 14-457-EL-RDR (March 28, 2014) ("2014 Ziolkowski Testimony") Attachment JEZ-1 at 2.
[8] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 3.
[9] Revised Tariff Pages, Case No. 13-753-EL-RDR (April 9, 2014) at 1 and 3.
[10] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 1 and 3.
[11] OEG Ex. 1 at 7:9-14; Direct Testimony of James E. Ziolkowski, Case No. 15-534-EL-RDR (March 30, 2015) ("2015 Ziolkowski Testimony"), Attachment JEZ-1.
[12] OEG Ex. 1 at 7:9-14 and 8:5-9.

daily on-peak power prices at the AEP-Dayton hub in PJM on August 18, 2015 were \$33.82 per MWh.[13] Thus, even before taking into account the amounts they pay for EE/PDR program costs and lost revenues, Duke's customers are paying significantly more in incentive payments for each MWh of energy efficiency savings achieved through Duke's EE/PDR programs than they would simply to purchase another MWh of power.

Duke's requested incentive payments for 2013 and 2014 are especially egregious because the Company's claim for over \$24 million in incentives for those two years relies *entirely* upon "banked" energy efficiency savings to trigger those payments.[14] In the absence of those "banked" energy efficiency savings, Duke would not receive *any* incentive payments for that year. Duke's 2013 compliance mandate for purposes of receiving incentives is 181,368 in MWh savings. But Duke only achieved 125,266 in MWh savings that year. Consequently, Duke is attempting to use 85,122 MWh of its "banked" savings to trigger its incentive mechanism, padding its achievement to 116% above its mandate.[15] Duke attempts to similarly pad its achievement in 2014. While Duke only achieved 144,060 MWh in savings that year, well below its mandate of 192,113 MWh, the Company seeks to use "banked" savings to maximize its incentive payments.[16] Duke is thus seeking to charge customers over \$24 million as a reward for savings that did not occur in 2013 or 2014. This is an unreasonable practice which the Commission should not abide.

B. If the Commission Allows Duke's Incentive Mechanism to Continue Beyond December 31, 2015, then the Commission Should Modify That Mechanism and Clarify How It Will Operate Going Forward.

If the Commission deems it appropriate to continue allowing Duke to receive incentive payments for its EE/PDR efforts beyond December 31, 2015, then the Commission should make several modifications to the Company's incentive mechanism to limit the adverse rate impacts to customers and should clarify how it will operate going forward.

[13] SNL Financial.

[14] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 1; 2015 Ziolkowski Testimony, Attachment JEZ-1 at 1.

[15] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 1.

[16] 2015 Ziolkowski Testimony, Attachment JEZ-1 at 1.

First, given the excessively high level of Duke's incentive payments, the Commission should institute a reasonable cap on those payments.[17] Duke notes that its current incentive mechanism "does not feature an explicit dollar cap on the incentive the Company may earn since it is incongruent with the theory behind a shared savings incentive."[18] But the Commission has already approved incentive dollar caps for AEP Ohio ($20 million),[19] the FirstEnergy operating companies ($10 million),[20] and The Dayton Power & Light Company ($4.5 million).[21] The Commission therefore has found that dollar caps are congruent with the theory behind a shared savings incentive.

For purposes of Duke's incentive mechanism, OEG recommends that the Commission institute both an absolute dollar cap and a percentage cap. A dollar cap provides an absolute limit on the impact that incentive payments can have on customer bills. A percentage cap protects against unreasonable "adders" to each dollar of projected program expense.[22] By applying both caps, the Commission can provide a reasonable balance between the potential incentive payments given to shareholders and the ultimate costs paid by customers. For purposes of this proceeding, OEG recommends that the Commission adopt an absolute dollar cap of $1 million and a percentage cap of 3% of total annual EE/PDR expenditures after-tax.[23]

Second, the calculation of Duke's incentives should be based *only* upon the achieved energy efficiency savings exceeding those required by the statutory benchmarks set forth under R.C. 4928.66. Duke's current incentive payments appear to be determined based upon the *total* EE-PDR savings that Duke achieves, including savings that Duke was already statutorily mandated to achieve. There is no valid rationale to reward shareholders for performance that is mandated by law, the costs of which Duke is already fully compensated for by its customers. Any incentive payments that Duke receives going forward should be limited to rewarding performance that would not have occurred "but for" the incentives.

Third, the Commission should prohibit Duke from using "banked" energy efficiency savings to trigger incentive payments. As discussed above, the energy savings resulting from the Company's EE/PDR efforts in 2013

[17] OEG Ex. 1 at 5:18-19.
[18] Application at 3.
[19] Opinion & Order, Case No. 11-5568-EL-POR (March 21, 2012) at 8.
[20] Opinion & Order, Case No. 12-2190-EL-POR (March 20, 2013) at 16.
[21] Opinion & Order, Case No. 13-833-EL-POR (December 4, 2013) at 8.
[22] OEG Ex. 1 at 8:11-9:2.
[23] This recommendation is very similar in effect to OCC's recommended cap of 5% of total annual EE/PDR expenditures pre-tax.

and 2014 were well below those required by R.C. 4928.66. Nevertheless, Duke seeks to be handsomely rewarded for its EE/PDR efforts in 2013 and 2014. Indeed, the Company requests the *maximum* shareholder incentive payment possible for each year - $11,364,692 for 2013 and $12,975,188 for 2014 – using *"banked"* energy savings occurring prior to 2013 to pad its lackluster 2013 and 2014 savings numbers. This proposed approach should be rejected. While it is reasonable for Duke to use *"banked"* energy savings for purposes of meeting its statutory benchmarks, it is not reasonable to require customers to pay approximately $24 million in bonuses to the Company's shareholders in 2013 and 2014 for energy savings that did not occur in those years. Incentive payments are intended to induce a utility to exceed the benchmark savings amount each year. But prior overachievement of a previous benchmark does not need to be "induced." It has already been achieved and no further payment to shareholders is necessary or appropriate.[24]

Duke's attempted use of *"banked"* energy savings to trigger shareholder incentive payments runs counter to guidance provided by Staff as early as 2012. During the hearing in Case No. 11-4393-EL-RDR (the case where Duke's incentive mechanism was initially established), Staff witness Gregory C. Scheck testified that the Company should not use *"banked"* energy savings for purposes of triggering its shareholder incentive mechanism:

> Q: Mr. Boehm also asked you a couple of questions about the amount that Duke is allowed to bank and using that in relation to meeting its threshold one year as opposed to actually getting an incentive mechanism off of bank amounts. Could you explain your – what is your understanding of what can Duke do to meet the threshold and then what exactly – what incentives will Duke get off of that banked portion from year to year?
>
> Mr. Scheck: Well, if they bank something and they move to the future year, subsequent year, then if they already used it in the prior year towards reaching their benchmark and going above that amount, then they wouldn't get to earn twice on that. They only get to earn once. So essentially they can count it towards meeting their benchmark in the subsequent year, but it wouldn't be used for the incentive payment.[25]

Staff reiterates that position in this case.[26] Moreover, the Commission itself recently clarified that Duke could not use *"banked"* energy savings to trigger shareholder incentive payments. In its May 20, 2015 Finding and Order considering the Company's request to recover 2013 EE/PDR costs, the Commission held:

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[24] OEG Ex. 1 at 9:9-15.
[25] Tr., Case No. 11-4393-EL-RDR (June 7, 2012) at 126:6-22.
[26] Staff Ex 1 at 6; Staff Ex. 2 at 2:1-9.

> … Duke's use of banked savings to claim an incentive is improper. We note the tiered incentive structure is designed to motivate and reward the utility for exceeding energy efficiency standards on an annual basis. As the mandated benchmark rises every year, Duke must continue to find ways to encourage energy efficiency. If it has a large bank of accrued savings to rely on, the motivation to push energy efficiency programs in following years diminishes. Thus, in order for the structure to continue to serve as a true incentive for Duke to exceed the benchmarks, the Commission finds the banked saving cannot be used to determine the annual shared savings achievement level. Duke's use of the banked savings to reach the mandated benchmark, however, is permissible. Accordingly, with this modification, the Commission concludes that Duke's application should be approved as modified by the Commission in this Finding and Order.[27]

Accordingly, on a going forward basis, the Commission should not allow Duke to rely upon "banked" savings to trigger EE/PDR incentive payments.

III. CONCLUSION

WHEREFORE, OEG respectfully requests that the Commission discontinue Duke's recovery of incentive payments for its EE/PDR efforts beyond December 31, 2015. Alternatively, the Commission should make several modifications to Duke's incentive mechanism, including: 1) capping the amount of incentive payments that Duke can recover; 2) requiring Duke to calculate its incentive payments based solely on the amount of energy efficiency savings achieved above its benchmark requirements set forth in R.C. 4928.66; and 3) prohibiting Duke from using "banked" energy efficiency savings to trigger incentive payments.

Respectfully submitted,

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August 21, 2015

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[27] Opinion & Order Case No. 14-457-EL-RDR (May 20, 2015) at 5.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 21st day of August, 2015 to the following:

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