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

INITIAL POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) initiated this proceeding to carry out the terms of a Stipulation and Recommendation and seek the Commission's approval for the continuation of an energy efficiency and peak demand reduction program cost recovery mechanism. For the reasons set forth in Comments submitted by the Company earlier in this docket, the approval sought does not constitute an amendment to the existing portfolio of energy efficiency and peak demand reduction programs presently approved by the Public Utilities Commission of Ohio (Commission) for Duke Energy Ohio. Consistent with the uncodified portion of Senate Bill 310,[1] the Company seeks merely to continue its existing portfolio to the end of its previously approved time period and to receive recovery of costs for its work consistent with prior years. The Commission should review the success of the Company's energy efficiency achievements to date and approve the continuation of the cost recovery mechanism for 2016.

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[1] Revised Code 4928.6616, Section 6 (A)(1).

II. DISCUSSION

1. The Company met its burden of proof and established the effectiveness of its existing cost recovery mechanism, and that it should be continued through 2016.

a. The Company's history with respect to its energy efficiency and peak demand reduction filings with the Commission supports the continuation of the existing cost recovery mechanism.

Duke Energy Ohio has an exemplary record of achieving energy efficiency savings for its customers over many years. The programs in the Company's approved portfolio build upon similar programs that the Company has managed on behalf of its customers since the early 1990s. Because of this, Duke Energy Ohio's continuation of programs after the enactment of SB221 was designed to include banked impacts from previously provided programs. It was necessary to build the portfolio in this way because energy efficiency impacts and potential are finite in nature. As customers embrace certain measures, the ability to repeat savings from those measures is exhausted and it becomes necessary to offer new and different options. Energy efficiency potential becomes increasingly difficult and more costly to achieve as time goes on. The Commission explicitly recognized some of these dynamics in promulgating Rule 4901:1-39-03, O.A.C., that set forth a requirement that an electric utility conduct an assessment of energy savings and peak demand reduction. Such an assessment has a technical potential analysis, and an economic potential analysis. This is necessarily so because at some point, while it may be technically possible to pursue additional impacts, such efforts may not be economic and would therefore not be advisable.

As the Company was cognizant of these realities, it designed its portfolio and its requested cost recovery mechanism to include banked savings in order to calculate its achievement toward

the benchmarks, and to calculate the level of shared savings to which it was entitled each year. Despite the Company's prodigious efforts to be very clear and explicit in its various applications, it appears that it has been aiming at a moving target. After having spent three years providing the programs in a manner that is consistent with what was approved by the Commission, it now appears that some parties are seeking to retract previous support and deny the Company an opportunity to provide cost-effective energy efficiency benefits to its customers.

In the meantime, state law has been altered. The General Assembly enacted new law in 2014 that significantly changed energy efficiency, peak demand and renewable benchmarks. However, in doing so, the General Assembly specifically recognized the cumulative nature of energy efficiency in establishing a "freeze" of the SB221 mandates but permitted electric utilities to maintain their existing portfolios until such time as existing Commission approval expired, or until the end of 2016.[2] This statutory recognition of ongoing programs allows changes to be made less abruptly and allows utilities to realize the benefits of its existing planning horizon.

The Company's history with respect to relevant cases filed and approved by the Commission were discussed at length in comments previously filed in this docket. In the interest of brevity, the Company will not repeat its discussion here.[3] However, it is important to note that the Company has relied upon the Commission's prior approval of its portfolio and its cost recovery mechanisms through 2015, and now seeks the Commission's approval to continue to manage its portfolio, as previously approved, through 2016. For the reasons set forth below, the Commission should approve the Company's existing cost recovery mechanism through the end of 2016.

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[2] R.C.4928.6616

[3] The Company incorporates the history set forth in its Reply Comments in this proceeding, by reference herein.

b. As explained by Duke Energy Ohio witness Timothy J. Duff, the Company's existing cost recovery mechanism works effectively and should be approved.

The Company provided the testimony of Timothy J. Duff, who explained the history of the cases leading up to the filing of this application. Mr. Duff further discussed the history of the cost recovery mechanism specifically, what was included in its calculation, and why it works so effectively to align the Company's interests with customers' interests. Mr. Duff made clear that the Company was not seeking any changes to its portfolio of programs, but was merely seeking to meet the terms of the Stipulation approved by the Commission and continue the existing cost recovery mechanism through 2016.

As explained by Mr. Duff, the existing cost recovery was designed to include three distinct components: 1. Recovery of actual program costs, 2. Recovery of lost distribution revenue, and 3. The ability to earn shared savings incentive.[4] Although this explanation is necessary in the context of this case, it is not new. The Company, and Mr. Duff's testimony explaining the mechanism has been consistent and clear since it was first introduced in support of the Company's cost recovery mechanism when it was first approved.[5] However, in this case, Mr. Duff provided further explanation about the reasons the portfolio was designed in this way and why it must be continued.[6]

The Company's history with respect to its prior Save-a-Watt mechanism and the status of its achievements leading into the beginning of Rider EE-PDR is relevant here since the Company

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[4] Testimony of Timothy J. Duff, Duke Energy Ohio Exh.3, p.4.
[5] *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, (July 20, 2011) at p.7-8.
[6] Testimony of Timothy J. Duff, Duke Energy Ohio Exh.3, p.4.

had already exceeded the benchmarks by 31% in 2012.[7] The impacts associated with this over-compliance were added to the compliance bank. However, since the Company had already recognized the net benefits associated with these impacts, they were not added to the incentive bank. Also, during 2013 and 2014, the Company used banked savings to meet both compliance benchmarks and incentive achievement. However, the amount used for incentive achievement was 15% greater and therefore led to a larger reduction in the incentive bank, than in the compliance bank.[8]

Mr. Duff further explains that if the Commission determines in this case, or in any other case, that the Company may not continue to calculate its incentive in the manner that was previously approved by the Commission, the Company will not be able to earn any incentive at all.[9] Eliminating a shared savings incentive for the Company will create a perverse incentive that would effectively create a highly uneconomic outcome.[10]

Mr. Duff explained that the use of banked savings to calculate the incentive is appropriate and necessary and in fact, aligned with R.C.4928.662, because it measures achievement on a cumulative basis. R.C.4928.662 specifically allows for banking because energy efficiency impacts are finite and have a shelf-life.[11]

Moreover, the Company's approved portfolio projected impacts that were less than the annual efficiency benchmarks for every year of the portfolio other than 2012. These projections

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[7] Id. at p.9.
[8] Id. p.9.
[9] Id.
[10] Id, Trans. p.37
[11] Id. at 7.

were filed in various cases and have been available for review by all parties.[12] As explained by Mr. Duff, the projected energy savings in 2016 that were approved by the Commission, were less than 62% of the projected annual SB221 mandate at the time of approval.[13] Thus, the Company sought to be as transparent as possible so that all interested parties would understand that it would be necessary to use banked impacts to determine achievement level for its shared savings mechanism.

This dynamic remains true for 2016. Indeed, the enactment of SB310 makes it impossible for the Company to add new programs that were not already anticipated by the parties or agreed to in previous cases. Therefore, the Company cannot now make changes sufficient to allow it to meet the benchmarks absent counting of banked impacts.[14]

The Company did not propose a cap on shared savings. If the Commission ultimately decides that the Company may not earn an incentive that includes counting banked impacts, then a cap is unnecessary as the Company will not be in a position to earn shared savings at all. However, it should be noted that during the hearing OCC Witness Gonzalez indicated that notwithstanding the cap on AEP Ohio's shared savings mechanism, AEP has collected

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[12] *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, Testimony of James E. Ziolkowski, (March 28, 2013), Attachment JEZ-1; *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, Testimony of James E. Ziolkowski, (March 28, 2014), Attachment JEZ-1; *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. 15-534-EL-RDR, Testimony of James E. Ziolkowski, (March 30, 2015), Attachment JEZ-1.

[13] *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, Transcript of Hearing, (September 25, 2013) at p.41.

[14] Testimony of Timothy J. Duff, at 8.

approximately $30 million of shared savings on an annual basis.[15] If Duke Energy Ohio would have operated under a cap, proportional in size (based on the size of its annual SB221 mandate) to the cap that AEP Ohio has and will continue to operate under, its earned shared savings incentive would have not fallen short of the capped amount.

Finally, as previously stated the imposition of a cap on shared savings, is counter intuitive to customers interests, as shared savings motivates the Company to maximize the net benefit achieved through its programs, not just maximizing them to a certain level associated with a cap. Thus, it has never been logical to impose a cap. Such a cap neglects to recognize the very meaning of shared savings.

c. Duke Energy Ohio's programs have been very successful.

Mr. Duff provided metrics in his testimony, and on cross-examination, that explain how successful the Company's programs have been at achieving the benchmarks. Over the three-year period of 2012 to 2014, the Company achieved an incremental annual energy savings that exceeded what it had projected in its annual energy efficiency rider filings by over 16%.[16] As further set forth in Mr. Duff's testimony, the numbers demonstrate that this pattern of exceeding projected achievements demonstrates that the shared savings mechanism appropriately motivates the Company to offer and market programs to deliver as much incremental energy savings as possible at as low a cost as possible.[17]

2. No other party provided information that supports elimination of the existing cost recovery mechanism.

[15] Trans. at p.128.
[16] Id. at p.12, Trans. p.21.
[17] Id. at p.13

a. The OEG's witness, Stephen Baron failed to support the OMA's position.

It is clear from some of the testimony submitted by intervenors in this case that the intervenors simply don't agree with existing state policy. The Ohio Energy Group (OEG) witness Stephen Baron admitted on cross-examination that the OEG's preference would be to not pay for any incentive, although Mr. Baron freely admitted that the law allows for an incentive.[18] However, Mr. Baron's testimony lacked credibility because his awareness of energy policy in Ohio is significantly uninformed. Mr. Baron admitted, for example, that he was not familiar with current law as set for in SB310.[19] He further admitted that he had not looked into the established mechanisms for other utilities in arriving at his recommendation.[20] Nor was Mr. Baron familiar with any of the work papers associated with avoided cost calculations or the savings that could materialize for customers as result of such calculations.[21] However, he readily admitted that "there is no evidence that the Company will refuse to engage in cost-effective EE-PDR."[22] Indeed, there were many flaws in Mr. Baron's analysis and testimony. As a result of his cursory review, his views on behalf of OEG should not be credited with any level of authority. OEG simply wishes to avoid paying its fair share for the Company's compliance with state law.

b. The Office of the Ohio Consumers' Counsel's position was unclear and unsupportable.

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[18] Trans.p.98.
[19] Trans.p.100.
[20] Trans.p.102.
[21] Trans.p.104-105.
[22] Trans.p.107

The Office of the Ohio Consumers' Counsel, (OCC) likewise provided testimony that was inaccurate in many respects and misguided in many other respects. First of all, the testimony of Wilson Gonzalez is at odds with OCC's recommendations as set forth in the comments it filed in this proceeding. For example, OCC recommended that the Commission approve an incentive level calculated at 13% of actual prudent program spending.[23] However, OCC's own witness, Mr. Gonzalez recommended a cap on shared savings of 5% of actual prudent program spending.[24] When asked about this disparity at hearing, Mr. Gonzalez was unable to articulate which was the OCC's recommendation. Nor was Mr. Gonzalez able to specifically state that he was testifying in this regard on behalf of the OCC.[25] Indeed, Mr. Gonzalez did not know of the OCC's position, and he was not sure whether or not he had reviewed OCC's comments in the proceeding until the day before the hearing.[26]

Mr. Gonzalez' other recommendations are equally unsupported in the record, and Mr. Gonzalez admitted that they are not inconsistent with current cost recovery mechanisms employed by other Ohio utilities. For example, no other Ohio utility is required to measure cost effectiveness by applying the Total Resource Cost test.[27]

Additionally, although Mr. Gonzalez claimed that Duke Energy Ohio's existing incentive levels were exorbitant compared to other Ohio utilities, he admitted that AEP has earned as much as 90 million dollars over three years.[28] He further admitted that Duke Energy Ohio's incentive

[23] Comments by The Office of the Ohio Consumers' Counsel, December 5, 2014, at p.5
[24] Testimony of Wilson Gonzalez, OCC Exhibit 1, at p.10
[25] Trans.p.121.
[26] Trans.p.120-122.
[27] Trans.p.126.
[28] Trans.p.127.

was, in fact, not exorbitant relative to AEP and further that he believed AEP's incentive to be likewise exorbitant.[29]

Mr. Gonzalez recommended that the Commission require Duke Energy Ohio to calculate its incentive on a pre-tax basis. But he also readily agreed that no other Ohio utility currently calculates incentive on a pre-tax basis.[30]

Mr. Gonzalez further recommended that the Commission require Duke Energy Ohio to calculate its net benefits associated with net savings rather than gross savings. However, he was not aware that the Company in fact already does so.[31] And he admitted that if the Company did so, it would make a difference with respect to his recommendations.[32] Likewise, Mr. Gonzalez was not aware that the Company does not use the "safe-harbor" approach by relying on the Commission's Technical Reference Manual.[33]

Given the discrepancies pointed out in Mr. Gonzalez' testimony, coupled with his misunderstanding of what his client's actual policy recommendation should be, it is clear that this witness was not adequately prepared and his testimony was misinformed. For these reasons his credibility is demonstrably unreliable.

c. **The Ohio Manufacturers' Association did not provide any cognizable argument.**

Although the Ohio Manufacturers' Association witness John A. Seryak claims to have "participated extensively in utility energy efficiency collaboratives", he admits that he has never

[29] Trans.p.127-128.
[30] Trans.p.137.
[31] Trans.p.141.
[32] Trans.p.142.
[33] Id.

attended a Duke Energy Ohio collaborative. [34] And OMA did not do any discovery in this proceeding.[35] At hearing, Mr. Seryak demonstrated a significant lack of knowledge with respect to Duke Energy Ohio's energy efficiency programs and cost recovery. For example, Mr. Seryak argues that the existing cost recovery mechanism is not working and should not be continued.[36] However, it is clear that he has no foundation for this position. His analysis in this case was based solely on Duke Energy Ohio's Exhibit JEZ-1, attached to Mr. Ziolkowski's testimony.[37] Mr. Seryak did not do any cost per kWh comparison to utilities other than those in Ohio and he agreed that costs per kWh may vary on a program by program basis.[38] Thus, individual utility portfolios will vary on a cost per kWh basis depending on the make-up of the individual programs and measures in the portfolio. Nor has Mr. Seryak performed any analysis to understand what might cause the differences in the cost per kWh between either Ohio utilities, or any utilities.[39] Likewise, Mr. Seryak did no research and performed no analysis in order to understand how Duke Energy Ohio's actual costs per kWh compared to projections provided by the Company in its annual rider filings.[40] And despite his recommendation that the cost recovery mechanism not be approved, Mr. Seryak didn't even know whether the Company's actual costs were higher or lower than projected as compared to annual rider filings.[41] Finally, Mr. Seryak admitted that his Exhibit JAS-1 was flawed in that it improperly calculates total case with respect

[34] Trans.p.159
[35] Trans. p.171.
[36] Trans. p.162.
[37] Id.
[38] Id.
[39] Id, p. 167.
[40] Id, p,168.
[41] Id.

to inclusion of transmission and distribution (T&D) costs.[42] In fact, Mr. Seryak knows little to nothing about Duke Energy Ohio's existing portfolio, its efficiencies in managing the portfolio, its projections with respect to meeting the benchmarks, or any other relevant data. Mr. Seryak's testimony is unsupported by any real investigation or analysis and should not be given any weight.

d. Staff did no analysis to justify its flawed recommendations.

Staff offers two recommendations to the Commission. One, that the shared savings mechanism not include banked energy impacts in the calculation of the incentive, and that a cap be imposed on the shared savings allowed.

Staff witness Gregory C. Scheck admitted that the Company has used banked energy impacts for purposes of achieving compliance in the past two years.[43] However, Mr. Scheck readily admitted that based on current projections, the Company is unlikely to earn an incentive in 2015 or 2016, if the calculation of banked savings toward the incentive is changed.[44] Thus, altering the calculation, as recommended by Staff, leaves the Company in a position such that there is no opportunity to earn an incentive, either for the past two years or for the duration of this portfolio.

Staff's recommendation for a cap was based upon the understanding that the other electric distribution utilities have caps, and the recommended level was set by taking the weighted average of the three utilities' shared savings caps based on the adjusted baseline sales

[42] Trans. p.172-174.
[43] Trans.p.186.
[44] Trans. p.187.

for each.[45] However, Staff's methodology is flawed in that it fails to take into account the differences inherent in each of the electric distribution utilities' portfolios and histories. Nor was Mr. Scheck able to adequately detail differences in the various incentive mechanisms. When asked he was "not sure whether the other utilities were permitted to use historical bank for future shared savings.[46] Mr. Scheck further agreed that the utilities may use different methodologies for evaluation, measurement and verification (EM&V).[47] Mr. Scheck also explained that the histories of the utilities were different in that Duke Energy Ohio was the only Ohio utility that had continuously offered energy efficiency programs for residential customers since the early 90s.[48] Given the admitted differences between the Ohio electric distribution utilities, it is not logical to apply identical caps based on a weighted analysis or otherwise. Moreover, despite Mr. Scheck's recommendations for a cap, it is worth noting that Mr. Gonzalez testified that the Company's current shared savings request is not "exorbitant" as compared to AEP, for example. Further the Staff's analysis wherein it created an analysis that includes, among other things, a comparison to the FirstEnergy companies is likewise illogical since the FirstEnergy companies have curtailed energy efficiency programs subsequent to the enactment of SB310.[49] Thus Staff's cursory analysis is flawed. The Commission should not penalize Duke Energy Ohio and remove any potential to earned shared savings on such an analysis, with such insubstantial support. Staff's recommendations should not be adopted.

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[45] Staff Exh.2, p.3.
[46] Trans. p. 188.
[47] Trans. p.189-190.
[48] Trans.p.190.
[49] Trans.p.192.

III. CONCLUSION

The Company has an exemplary track record in achieving energy efficiency and delivering impacts in the most cost-effective way. It has demonstrated its commitment and its administrative efficiency in the statistics provided in its annual status reports and in its cost recovery applications. The Company is proud of its ability to provide programs to its customers that allow the customer to save money and reduce energy usage effectively. Since all of the other Ohio electric utilities will be operating under similar shared savings mechanisms in 2016 that allow them opportunity to earn an incentive, it is manifestly unfair to deny Duke Energy Ohio the same opportunity to continue to operate its existing portfolio under its existing cost recovery and incentive mechanism. The Commission should approve the existing cost recovery mechanism so that Duke Energy Ohio may continue to provide options to its customers and meet its statutory mandates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or hand delivery on this 21st day of August, 2015.

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Summary: Brief Initial Post-Hearing Brief of Duke Energy Ohio, Inc. electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.