

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BRIEF OF THE
OHIO MANUFACTURERS' ASSOCIATION**

I. INTRODUCTION

On August 21, 2015, Duke Energy Ohio, Inc. (Duke) filed its Initial Post Hearing Brief in support of its Application seeking approval from the Public Utilities Commission of Ohio (“Commission”) to continue, through 2016, its current cost recovery mechanism for its energy efficiency programs, including the recovery of lost distribution revenues and the incentive mechanism. The Ohio Manufacturers’ Association (“OMA”), the Office of the Ohio Consumers’ Counsel (“OCC”), The Kroger Co. (“Kroger”), Ohio Partners for Affordable Energy (“OPAE”), Industrial Energy Users-Ohio (“IEU-Ohio”), and Ohio Energy Group (“OEG”) also filed Post Hearing Briefs on August 21, 2015, all requesting that the Commission reject Duke’s Application. Contrary to Duke’s assertions in its Brief, continuing Duke’s cost recovery mechanism into 2016 does constitute an amendment to its existing portfolio plan, Duke has failed to demonstrate that its ability to achieve energy efficiency savings is becoming “more costly to achieve,” and OMA witness Seryak’s testimony regarding the inefficiency of Duke’s energy efficiency programs is not “flawed.”

All of Duke's claims are without merit and should be rejected. First, Duke placed no evidence in the hearing record to demonstrate that it is becoming more difficult for it to meet its energy efficiency benchmarks. Second, Duke cannot credibly claim extending its cost-recovery mechanism into 2016 – an extension expressly not permissible under the very Stipulation that Duke falsely contends it seeks to “carry out the terms of” – is not an amendment to the recovery mechanism. Conversely, the recovery mechanism expressly expires automatically at the end of 2015. Finally, Duke's blunderbuss attack on OMA witness Seryak's testimony is, tellingly, not supported by any evidence in the hearing record contradicting Mr. Seryak's opinions or conclusions. OMA will briefly address Duke's baseless arguments point-by-point below.

II. ARGUMENT

A. Duke's Request to Extend the Cost Recovery Mechanism In To 2016 Constitutes An Unlawful Amendment To Duke's Portfolio Plan.

Duke disingenuously claims that by “continuing” the cost recovery mechanism into 2016, it merely seeks “to carry out the terms” of the Stipulation reached in Case No. 13-431-EL-POR (which created, authorized, and set the terms of Duke's cost recovery mechanism, including its shared savings mechanism). However, the indisputable fact is that, by the stated **terms** of the Stipulation, the shared savings provision ends in calendar year 2015 and does not extend to 2016.¹ As such, Duke is not “continuing” the cost recovery mechanism in the Stipulation, but rather amending the cost recovery mechanism to do something it otherwise does not due: exist in calendar year 2016.²

¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs* (“2013 POR Case”), Amended Stipulation and Recommendation at 5, para. 2 (September 9, 2013); OMA Ex. 2 at 2-3; OMA Ex. 3 at 1-2.

² *Id.*

Duke cannot do this as a matter of law. Continuing the cost-recovery mechanism without the consent of all signatory parties violates the unambiguous terms of the Stipulation.³ Nor can Duke now amend the cost-recovery mechanism to have it exist in calendar year 2016, as Duke, by its own admission, failed to file such an amendment by the mandatory October 12, 2014 deadline set forth in Senate Bill 310 (“SB 310”).⁴ To this end, OMA joins in the arguments raised by Kroger, OP&E and I&E-Ohio in their Post Hearing Briefs.⁵

Simply put, the Commission cannot legally approve Duke amending its portfolio plan to extend the cost recovery mechanism, including the recovery of shared savings, into 2016. Thus, the Commission must reject Duke’s Application, including its request to extend the shared savings mechanism in its portfolio plan beyond 2015.

B. Alternatively, if Duke is Permitted to Amend its Portfolio Plan for 2016, the Commission should Expressly Limit the Amount Recoverable by Duke from Customers.

Should the Commission permit Duke to amend its cost recovery mechanism by extending it into 2016, the evidence before the Commission makes clear that such amendment should be conditioned on express limits to the amounts recoverable by Duke. This is because Duke is simply not running a cost-effective energy efficiency program, despite its protest to the contrary.

Indeed, Duke concedes it did not even meet its energy efficiency benchmarks in 2013 and 2014 without the use of banked savings.⁶ In its Brief, Duke contends its failure to meet its benchmarks is due to energy efficiency becoming “increasingly difficult and more costly to achieve as time goes on.”⁷ However, Duke cites to no actual evidence in the record to support

³Tr. at 30.

⁴Tr. at 28.

⁵ Post Hearing Brief of Ohio Partners for Affordable Energy at pp. 7-10.

⁶Tr. at 15, 20.

⁷ Duke Post Hearing Brief at p. 2.

this bald assertion.⁸ Indeed, OMA witness Seryak expressly refuted any notion that costs of energy efficiency increase over time, testifying that “economies of scale” and “lower unit costs” of energy efficiency help to reduce the costs of energy efficiency over time.⁹

Unable to point to any evidence actually supporting its self-serving claim that energy efficiency is becoming more difficult and expensive to achieve, Duke is left to resort to attacking the testimony of OMA witness Seryak’s credibility and methodology to no avail. None of Duke’s contentions remotely hit the mark. Indeed, Duke’s biggest contention appears to be that Mr. Seryak did not do any costs per KWh comparison between Duke and any utilities “other than those in Ohio.”¹⁰ While this is true, Duke provides no explanation as to how such an analysis could have had any impact on Mr. Seryak’s conclusions about whether Duke’s energy efficiency programs were cost effective as compared to its Ohio peers. Moreover, Duke itself presented no evidence regarding the cost-effectiveness of non-Ohio energy efficiency programs, let alone that those costs align with Duke’s costs (which indisputably are significantly higher than the other Ohio electric distribution utilities (“EDUs”), FirstEnergy, Dayton Power & Light (DP&L) and AEP Ohio).¹¹ In addition, Duke does not challenge the validity or accuracy of the energy efficiency costs of its Ohio peers presented in Mr. Seryak’s testimony.

Duke also claims that Mr. Seryak did no analysis of Duke’s cost projections and that his testimony is flawed because it “improperly calculates total case with respect to inclusion of transmission and distribution (T&D) costs.”¹² However, Duke does not explain how an analysis of its stale data regarding cost projections impacts an analysis of how Duke’s actual costs compare to those of its peers, which was the focus of Mr. Seryak’s analysis. Moreover, Duke’s

⁸ Id.

⁹ Tr. at 175-176.

¹⁰ Duke Post-Hearing Brief at p. 11.

¹¹ Direct Testimony of John Seryak at pp. 2-3.

¹² Duke Post Hearing Brief at pp. 11-12.

argument that T&D was included in DP&L's energy efficiency costs was quickly disposed of by Mr. Seryak at hearing :

A: No, no. I think that's a red herring. I think it's a way to misconstrue the data I presented. DP&L did claim distribution savings in 2013...However, DP&L in 2014 where they are still much lower than Duke, did they count T&D savings on energy efficiency in 2014? They didn't which is why I think Duff cherry-picked 2013. You know, so the conclusion that DP&L is delivering really cost effective programs, I think, you know, it warrants a dive into why Duke's costs are so high. I think taking a very surface level dip into T&D and cherry-picking the information out, you know, just doesn't – doesn't warrant that there – to dissuade this exhibit that Duke's costs are much higher.¹³

In sum, Duke's effort to impugn Mr. Seryak's work should be seen for exactly what it is: attempted misdirection from the simple fact that Duke, compared to its Ohio peers, is not operating cost-effective energy efficiency programs. This begs the question: why are Duke's energy efficiency costs so high compared to other Ohio utilities? The answer is simple. Unlike the other Ohio utilities: (1) Duke is operating as if it is permitted to use banked savings toward its shared savings incentive, even when it fails to reach its energy efficiency benchmark without also using banked savings; and (2) Duke's shared savings incentives are not capped.

Thus, to date, Duke has been incentivized to not meet its benchmarks because, not only are there no repercussions for Duke for failing to meet them, but Duke has also been attempting to collect shared savings incentives despite not meeting them. Therefore, if the Commission extends Duke's cost recovery mechanism into 2016 – again it should not – it must do so in a manner that caps Duke's shared savings and eliminates Duke's ability to use banked savings to both achieve its benchmark and collect shared savings simultaneously.

This is exactly what OMA and other interveners propose here. Currently, Duke is the only EDU in Ohio that does not have a hard-dollar cap on the amount of shared savings it may

¹³ Tr. at 172-173.

collect from its customers.¹⁴ As such, should the Commission extend Duke's portfolio plan into 2016, it should do so only if a hard-dollar cap is included.¹⁵ Not only would this ensure Duke is not singled-out from other EDUs for preferential treatment, it would incentivize Duke to operate its portfolio plan with much needed greater efficiency.

In addition, Duke should be prohibited from using banked savings to achieve any level of shared savings incentive in 2016 unless Duke actually meets and exceeds its benchmark for 2016 without using banked savings.¹⁶ Otherwise, Duke would be receiving an incentive for meeting and exceeding its benchmark in 2016 through the use of banked savings without actually meeting its benchmark through annual program savings. Such a condition will prevent Duke from being incentivized for exceeding its benchmark when, in reality, it did not even meet that benchmark. Such a result is entirely consistent with the Commission's May 20, 2015 Finding and Order in Case No. 14-457, where the Commission expressly held that Duke could not use banked savings to exceed its annual benchmark for calendar year 2015 and receive shared savings.¹⁷

Therefore, the Commission should be consistent with Commission precedent and deny Duke's attempts to achieve shared savings by utilizing banked savings.

III. CONCLUSION

For the foregoing reasons, and those set forth in OMA's Initial Post Hearing Brief, the Commission should reject Duke's Application to amend its cost recovery mechanism to extend into 2016 because Duke did not timely file for such an amendment by the firm deadline of October 12, 2014 set forth in SB 310. Alternatively, if the Commission does allow Duke to

¹⁴ Staff Ex. 2 at 2; OMA Ex. 2 at 6; OCC Ex. 1 at 14.

¹⁵ Staff Ex. 2 at 2; OMA Ex. 1 at 3; OCC Ex. 1 at 12.

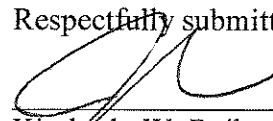
¹⁶ Staff Ex. 2 at 2.

¹⁷ *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*, Finding and Order at 5, para. 12 (May 20, 2015).

¹⁷ *Id.*, Stipulation at 5, para. 2.

make such an amendment, the Commission should do so only with a cap in place on the amount of shared savings incentive Duke can recover, and with a specific prohibition in place on Duke receiving any shared savings incentive unless it exceeds its 2016 energy efficiency benchmark without using banked savings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on September 8, 2015.


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Summary: Reply Brief Of The Ohio Manufacturers' Association electronically filed by Debra A Gaunder on behalf of The Ohio Manufacturers' Association