

OCC EXHIBIT NO. _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of its) Case No. 16-576-EL-POR
Energy Efficiency and Peak Demand)
Reduction Portfolio of Programs.)

**DIRECT TESTIMONY
OF
COLLEEN SHUTRUMP**

**On Behalf of the
The Office of the Ohio Consumers' Counsel**
*10 West Broad Street, Suite 1800
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February 6, 2017

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1 **I. BACKGROUND**

2

3 ***Q1. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.***

4 ***A1.*** My name is Colleen Shutrump. I am employed as the Energy Resource Planning
5 Advisor for the Office of the Ohio Consumers' Counsel ("OCC"). My business
6 address is 10 West Broad Street, Suite 1800, Columbus, Ohio 43215.

7

8 ***Q2. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATION AND***
9 ***PROFESSIONAL EXPERIENCE.***

10 ***A2.*** I have a Bachelor of Science in Business Administration from the Youngstown
11 State University with a major in Management and a Master of Business
12 Administration from Baldwin Wallace College with emphasis in International
13 Business. I have over seven years working in electric utility regulation with
14 emphasis in customer-funded energy efficiency programs. I started as a Utility
15 Analyst at the Indiana Utility Regulatory Commission in 2009. I was promoted to
16 Senior Utility Analyst in 2015. While there, I attended the Institute of Public
17 Utilities Michigan State University Advanced Regulatory Studies Program and
18 Camp NARUC. I began work as an Energy Resource Planning Advisor with OCC
19 in August 2015. In spring 2016, I completed a graduate-level course on Utility
20 Regulation and Deregulation at the Ohio State University, John Glenn College of
21 Public Affairs.

1 **Q3. WHAT WAS YOUR ROLE AT THE INDIANA COMMISSION?**

2 **A3.** I served as a technical and policy advisor on matters before the Indiana
3 Commission. There, I developed intra-agency (and deliberative) staff reports that
4 outlined case issues and party positions while incorporating applicable statutes
5 and rules to provide assigned Commissioners with recommendations that support
6 findings for Indiana Commission Orders. I served as both an expert in utility
7 energy efficiency programs and an expert in regulatory matters specific to my
8 assigned electric utility. I was assigned to all filed cases by each of the five
9 jurisdictional electric utilities requesting approval of energy efficiency programs,
10 requests to approve energy efficiency riders, and requests to adjust rider rates. I
11 was also assigned to all matters related to the implementation of Indiana's state-
12 wide energy efficiency program.

13
14 **Q4. WHAT ARE YOUR DUTIES AT OCC?**

15 **A4.** I provide analytical support on energy resource planning issues impacting Ohio
16 consumers' interests. I serve as the Analytical Department's lead analyst and
17 policy advisor for the OCC on cases and issues relating to customer-funded
18 energy efficiency and demand side management programs. This includes, among
19 other things, (i) advocating options for consumers to reduce their energy usage
20 and save money on their utility bill and (ii) developing policy that addresses
21 consumer protection issues. I am involved in each of the four electric energy
22 efficiency portfolio cases before the Public Utilities Commission of Ohio
23 ("PUCO") and participate at energy efficiency collaborative meetings. I submitted

1 testimony in the recent PUCO case involving energy efficiency for DP&L
2 consumers, Case No. 16-649-EL-POR.

3

4 ***Q5. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARATION OF***
5 ***YOUR TESTIMONY?***

6 ***A5.*** I reviewed Duke's application in this matter, the supporting testimony of Duke's
7 witnesses (including supplemental testimony), and Duke's responses to discovery
8 requests. I also reviewed the December 22, 2016 Stipulation and
9 Recommendation (the "Settlement") and the supplemental direct testimony of Mr.
10 Timothy Duff in support of the Settlement. I reviewed the testimony of PUCO
11 Staff witness Patrick Donlon in FirstEnergy's energy efficiency portfolio case,
12 Case No. 16-743-EL-POR.

13

14 ***II. PURPOSE OF TESTIMONY AND SUMMARY OF***
15 ***RECOMMENDATIONS***

16

17 ***Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

18 ***A6.*** The purpose of my testimony is to make recommendations to the PUCO regarding
19 its three-prong test for evaluating settlements.

1 ***Q7. WHAT DOES THE PUCO CONSIDER WHEN EVALUATING***
2 ***SETTLEMENTS?***

3 ***A7.*** The PUCO uses the following three-prong test for evaluating the reasonableness
4 of a proposed settlement:¹

5 1. Is the settlement a product of serious bargaining among capable,
6 knowledgeable parties? In this regard, the PUCO sometimes
7 considers whether the signatory parties to the settlement have
8 diverse interests.²

9 2. Does the settlement, as a package, benefit customers and the public
10 interest?

11 3. Does the settlement package violate any important regulatory
12 principle or practice?

13

14 ***Q8. DOES THE SETTLEMENT SATISFY THE PUCO'S THREE-PRONG TEST***
15 ***FOR SETTLEMENTS?***

16 ***A8.*** No. The Settlement was not the product of serious bargaining, and it does not
17 benefit Duke's customers or the public interest.

¹ *Consumers' Counsel v. PUCO*, 64 Ohio St. 3d 123, 125 (1992).

² *See, e.g., In re Application of Columbus S. Power Co. & Ohio Power Co.*, Case No. 11-351-EL-AIR, Opinion & Order at 9 (Dec. 14, 2011); *In re Application of the Dayton Power & Light Co.*, Case No. 14-563-EL-RDR (Sept. 9, 2015); *In re Application of the Columbus S. Power Co. & Ohio Power Co.*, Case No. 05-376-EL-UNC (Feb. 11, 2015).

1 ***Q9. CAN YOU SUMMARIZE YOUR CONCLUSIONS AND***
2 ***RECOMMENDATIONS REGARDING THE THREE-PRONG TEST AS***
3 ***APPLIED TO THE SETTLEMENT?***

4 ***A9.*** The Settlement fails the first prong because it was not the product of serious
5 bargaining. With the exception of a single preliminary discussion, OCC was not
6 invited to any of the meetings that led to the drafting of the Settlement.

7
8 The Settlement fails the second prong because it does not benefit customers or the
9 public interest. Customers are not adequately protected from overpaying for
10 Duke's energy efficiency programs. There should be an overall cap (limit) on the
11 costs Duke can charge consumers for energy efficiency, consistent with the
12 PUCO's order (at page 8) issued January 18, 2017, in the energy efficiency case
13 involving AEP's customers (Case No. 16-574-EL-POR). There should also be a
14 separate cap on the amount of profit (shared savings) that Duke could charge to
15 customers. The Settlement in this case includes an annual after-tax cap of \$8.0
16 million (about \$12.5 million before tax) in shared savings (profits). In my
17 opinion, a cap of \$12.5 million before tax cap is too high for consumers to pay.
18 Instead, I recommend that customers be protected by a cap of \$7.8 million
19 annually before taxes (about \$5.0 million after taxes) on Duke's shared savings.

1 **III. THE SETTLEMENT WAS NOT THE RESULT OF SERIOUS**

2 **BARGAINING**

3

4 ***Q10. WAS OCC GIVEN AN OPPORTUNITY TO MEANINGFULLY***

5 ***PARTICIPATE IN NEGOTIATIONS REGARDING THE SETTLEMENT IN***

6 ***THIS CASE?***

7 ***A10.*** No.

8

9 ***Q11. DID DUKE HAVE ANY SETTLEMENT MEETINGS INVOLVING ALL***

10 ***PARTIES TO THIS CASE?***

11 ***A11.*** No. Duke invited the following parties to a November 3, 2016 settlement meeting:

12 OCC, Ohio Manufacturers' Association Energy Group, Ohio Partners for

13 Affordable Energy, Industrial Energy Users – Ohio, Ohio Environmental Council,

14 Ohio Hospital Association, IGS Energy, Environmental Law & Policy Center,

15 National Resources Defense Council, Environmental Defense Fund, and PUCO

16 Staff. It appears that the Kroger Company, an intervenor in this case, was not

17 invited to the November 3, 2016 meeting.

18

19 ***Q12. OTHER THAN THE NOVEMBER 3, 2016 MEETING, DID DUKE INVITE***

20 ***OCC TO ANY SETTLEMENT MEETINGS BETWEEN IT AND THE OTHER***

21 ***PARTIES TO THE CASE?***

22 ***A12.*** No. Duke and OCC had several one-on-one conversations in mid-December.

23 OCC was not invited to any other settlement meetings/discussions between

1 November 3, 2016 (the date of the meeting mentioned above) and the filing of the
2 Settlement on December 22, 2016. As a result, there were not sufficient
3 opportunities for all intervenors to seriously bargain amongst each other for a
4 settlement.

5
6 **IV. THE SETTLEMENT DOES NOT BENEFIT CUSTOMERS OR THE**
7 **PUBLIC INTEREST.**

8
9 ***Q13. DOES THE SETTLEMENT INCLUDE AN OVERALL CAP ON THE***
10 ***AMOUNT THAT DUKE'S CUSTOMERS WILL PAY FOR PROGRAM***
11 ***COSTS AND UTILITY PROFITS (SHARED SAVINGS)?***

12 ***A13.*** No.

13
14 ***Q14. DO YOU BELIEVE THAT THE SETTLEMENT BENEFITS CUSTOMERS***
15 ***AND THE PUBLIC INTEREST WITHOUT A COST CAP?***

16 ***A14.*** No. The Settlement does not benefit customers or the public interest because it
17 does not adequately protect customers from paying too much for Duke's energy
18 efficiency programs and utility profits (shared savings). There should be a cap on
19 the total costs (program costs plus shared savings) that Duke could collect from
20 customers.

**Q15. WHY DO YOU RECOMMEND A CAP ON THE COSTS CUSTOMERS
COULD BE CHARGED?**

A15. Customers should have the protection of a cap on the costs they can be charged for utility energy efficiency programs. All customers—those who participate in the programs and those who do not—pay for the programs. Program participants can benefit from reduced bills through using energy efficiency measures in the program. Non-participating customers (being customers who do not participate in the utility's energy efficiency programs) may receive some of the system-wide benefits from electric energy efficiency programs (e.g., reduced costs as a result of deferred building of power plants). But non-participating customers do not receive any direct benefits of reduced bills through using energy efficiency measures in the program. Non-participating customers in Duke's service territory, therefore, are experiencing higher rates (and not necessarily lower bills) to pay for these programs.

The PUCO has also recognized the need to limit the costs that customers pay for energy efficiency programs. In AEP Ohio's recent energy efficiency case, the PUCO noted that the "addition of an annual cost cap is a reasonable response to concerns which have been raised regarding potential increases in the costs of" energy efficiency programs.³ The PUCO concluded: "in light of the importance of the annual cost cap, the Commission notes that we will be reluctant to approve

³ Opinion and Order at 8 (Jan. 8, 2017); In re Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2020, Case No. 16-574-EL-POR.

1 stipulations in other EE/PDR program portfolio cases which do not include a
2 similar cap on EE/PDR program costs.”⁴

3
4 ***Q16. HAVE OTHER STATES WITH ENERGY EFFICIENCY MANDATES***
5 ***IMPLEMENTED A CAP ON THE COSTS THAT CUSTOMERS PAY FOR***
6 ***ENERGY EFFICIENCY?***

7 ***A16.*** Yes. The first Energy Efficiency Portfolio Standard was adopted in 1999 by the
8 State of Texas. Since then many states have implemented an energy savings
9 mandate.

10
11 ***Q17. WHICH STATES HAVE COST CAPS OR HAVE IMPLEMENTED SOME***
12 ***COST CONTROL FOR ENERGY EFFICIENCY EXPENDITURES FUNDED***
13 ***BY CUSTOMERS?***

14 ***A17.*** I am aware of at least four states that have implemented cost caps similar to the
15 cap proposed by the PUCO Staff. Those states are Illinois, Texas, Pennsylvania,
16 and Maine.

- 17 1. **Illinois.** Illinois has a cost cap in place that limits program costs to
18 a maximum of 2% of customer rates. Under the current statutory
19 spending screens (Section 8-103(d), the utility is obligated to limit
20 their energy efficiency plan’s effects on rates: (5)...(beginning in
21 2012) the amount of energy efficiency and demand-response
22 measures implemented for any single year shall be reduced by an

⁴ *Id.*

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1 amount necessary to limit the estimated average net increase due
2 to the cost of these measures included in the amounts paid by
3 eligible retail customers in connection with electric service to no
4 more than the greater of 2.015% of the amount paid per kilowatt-
5 hour by those customers during the year ending May 31, 2007 or
6 the incremental amount per kilowatt-hour paid for these measures
7 in 2011.⁵

8
9 Illinois S.B. 2814, which will take effect June 1, 2017, includes the
10 2% rate cap but raises the cap to 4%, by 2030. And the overall
11 target of the EERS has not changed. It is still 25% by 2025.

12 2. **Texas.** Texas S.B. 1125 requires that cost-effective energy
13 efficiency be subject to a maximum spending amount as
14 established by the Texas commission.⁶

15 3. **Pennsylvania.** Pennsylvania Act 129 limits the costs for energy
16 efficiency to an amount not to exceed 2% of the utility's total
17 annual revenue as of December 31, 2006, excluding low-income
18 programs.⁷

⁵ <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=022000050K8-103>.

⁶ <https://legiscan.com/TX/text/SB1125/2011>.

⁷ http://www.puc.pa.gov/electric/pdf/Act129/HB2200-Act129_Bill.pdf.

1 4. **Maine.** Maine Revised Statute 35-A, Part 8, Chapter 97, § 10110
2 includes an energy efficiency cost cap of 4% of total retail
3 electricity and transmission and distribution sales.⁸
4

5 ***Q18. WHAT IS YOUR RECOMMENDATION REGARDING A CAP ON THE***
6 ***COSTS CONSUMERS COULD BE CHARGED FOR DUKE'S ENERGY***
7 ***EFFICIENCY PROGRAMS?***

8 ***A18.*** Any energy efficiency portfolio that the PUCO authorizes for Duke should
9 include a cap (limit) on the total amount that consumers could be charged for
10 Duke's energy efficiency programs. The total amount to be capped includes the
11 costs of Duke's energy efficiency programs and Duke's profits (shared savings)
12 on the programs.
13

14 ***Q19. DO YOU BELIEVE THAT CUSTOMERS SHOULD ALSO BE PROTECTED***
15 ***BY A SEPARATE CAP ON UTILITY PROFITS (SHARED SAVINGS)?***

16 ***A19.*** Yes. In addition to a cap on total costs, there should be a separate cap on the
17 amount of profits (shared savings) that customers pay to Duke as part of the costs
18 of energy efficiency programs.

⁸ <http://www.mainelegislature.org/legis/statutes/35-A/title35-Asec10110.html>.

1 ***Q20. HAVE CAPS ON WHAT CONSUMERS PAY UTILITIES FOR SHARED***
2 ***SAVINGS (PROFITS) BEEN IMPLEMENTED IN OHIO?***

3 ***A20.*** Yes. The PUCO has found that a shared savings cap is appropriate for energy
4 efficiency programs for each of AEP Ohio, Ohio Edison, Toledo Edison, the
5 Cleveland Electric Illuminating Company, and Dayton Power & Light's energy.⁹

6
7 ***Q21. WHAT DO YOU RECOMMEND AS A CAP ON SHARED SAVINGS THAT***
8 ***CONSUMERS WOULD PAY FOR DUKE'S ENERGY EFFICIENCY***
9 ***PROGRAMS?***

10 ***A21.*** The Settlement includes a shared savings cap of \$8.0 million after tax (currently
11 about \$12.5 million pre-tax). I believe that this cap would allow Duke to charge
12 too much for shared savings (profits) to consumers. A \$7.8 million (pre-tax) cap
13 (currently about \$5.0 million after-tax) should be imposed. Charges to consumers
14 for energy efficiency should be more for programs and less for utility profits.

15
16 ***Q22. HAVE OTHER STATES LIMITED THE AMOUNT OF PROFITS***
17 ***CUSTOMERS PAY TO UTILITIES FOR ENERGY EFFICIENCY***
18 ***PROGRAMS?***

19 ***A22.*** Yes. I have identified at least 19 other states that have limited the amount of
20 profits that customers pay to their utility for energy efficiency programs. These

⁹ See Opinion & Order, Case No. 16-574-EL-POR (Jan. 18, 2017) (approving both a cost cap and a shared savings cap in AEP Ohio's 2017-2020 portfolio plan); Fifth Entry on Rehearing, Case No. 14-1297-EL-SSO (Oct. 12, 2016) (ordering a \$10 million after tax cap for the three FirstEnergy companies combined for 2017-2019); Opinion & Order, Case No. 13-833-EL-POR (Dec. 3, 2013) (approving a \$4.5 million after tax shared savings cap for DP&L).

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1 states include Arizona, Arkansas, California, Colorado, Connecticut, Hawaii,
2 Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New
3 York, Oklahoma, Rhode Island, Texas, Vermont, Washington DC, and
4 Wisconsin.¹⁰

5
6 ***Q23. DOES THIS CONCLUDE YOUR TESTIMONY?***

7 ***A23.*** Yes. However, I reserve the right to supplement my testimony in the event that
8 additional testimony is filed, or if new information or data in connection with this
9 proceeding becomes available.

¹⁰ See Beyond Carrots for Utilities: A National Review of Performance Incentives for Energy Efficiency. Seth Nowak, Brendon Baatz, Annie Gilleo, Martin Kushler, Maggie Molina, and Dan York, May 2015 Report U1504.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Direct Testimony of Colleen Shutrump, on Behalf of the Office of the Ohio Consumers' Counsel* was served via electronic transmission upon the parties below this 6th day of February 2017.

/s/ Christopher Healey

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