

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**POST-HEARING BRIEF OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. Introduction

Ohio Partners for Affordable Energy (“OPAE”) herein submits to the Public Utilities Commission of Ohio (“Commission”) this post-hearing brief in this proceeding to consider the application of Duke Energy Ohio, Inc., (“Duke”) for approval of its energy efficiency and peak demand portfolio plan (“Plan”). OPAE is a signatory party to the Amended Stipulation and Recommendation (“Amended Stipulation”) filed January 27, 2017 in this docket. Joint Exhibit 2. As a signatory party to the Amended Stipulation, OPAE recommends that the Commission approve the Amended Stipulation with the clarification discussed herein.

The Amended Stipulation includes provisions at Pages 5 and 6, which were not included in the first stipulation filed December 22, 2016, which OPAE did not sign. The provisions in the Amended Stipulation that are of particular importance to OPAE are at Paragraph 5, in which the Signatory Parties agree that Duke shall be eligible to earn shared savings consistent with the listed tiered incentive structure if Duke exceeds the annual statutory benchmark for savings; at Paragraph 6, in which Duke agrees to an annual cap of \$8 million after tax on

shared savings; and at Paragraph 7, in which it is agreed that during the term of the Stipulation, net benefits from the following will not count toward shared savings: (a) natural gas savings, (b) water savings and wastewater reduction improvements, (c) heat rate improvements or other energy intensity improvements, (d) other non-electric savings, (e) non-energy benefits, (f) energy savings and demand reductions achieved by customers outside of Duke's energy efficiency programs, and (g) any energy savings previously used by Duke in the calculation of a shared savings incentive during a prior year. Amended Stipulation, Joint Exhibit 2, at 5-6. These provisions of the Amended Stipulation were necessary for OPAE to sign the Amended Stipulation and are necessary for OPAE to be able to recommend that the Commission approve the Amended Stipulation. In addition, as will be discussed herein, the Staff of the Commission ("Staff") has pointed out the need for clarification of the Amended Stipulation at Paragraph 7(g) in order that the Amended Stipulation clearly does not violate another stipulation that Duke signed and the Commission approved.

II. The Staff's Proposed Cost Cap Unnecessarily Limits Duke's Energy Efficiency Portfolio Plan.

The Staff presented the testimony of Patrick Donlon who proposed modifications to the Amended Stipulation to include an overall cost cap on program costs and shared savings incurred through Duke's energy efficiency portfolio Plan. Staff Ex. 1 at 4. The Staff's cost cap would be set by taking Duke's annual operating revenues as reported on Line 10, Page 300 of Duke's 2015 Federal Energy Regulatory Commission ("FERC") Form 1, and multiplying

that number by 3.5%. The Staff recommends the resulting number for its cost cap because it is public, transparent, and readily available. Id. at 5.

Mr. Donlon testified that while Staff believes that energy efficiency is beneficial, particularly to participating ratepayers, the costs have been escalating to the point that the rider in which Duke's energy efficiency costs, Duke's Rider EE-POR, are collected has become one of the highest riders on residential customers' bills. Staff believes the cost cap will provide some price assurance to customers and mitigate the risk of increasing costs, while still supporting energy efficiency and allowing Duke to meet or exceed its statutory mandate level. Id. at 6-7. Staff believes the cost cap will encourage Duke to craft a portfolio of programs that will strike a balance that ensures cost-effectiveness for ratepayers while achieving optimal energy savings. Id. at 8. Staff proposes that when Duke makes its annual cost recovery filing for Rider EE-POR any costs exceeding the cap will not be recovered and any amount already collected over the cap will be refunded as a credit to customers. Id. at 9.

OPAE agrees with the testimony of Duke's rebuttal witness Timothy J. Duff that the Staff's cost cap is being proposed without any regard for energy efficiency program quality and customer demand. Therefore, the Staff's cost cap is misaligned with Ohio public policy and is not in the interest of Ohio customers. Duke Ex. 13 at 2. By definition, cost-effective energy efficiency provides more utility system benefits (avoided costs associated with the energy and capacity savings) than the associated program costs, so that it is counter-intuitive for the Commission to establish a cap that would limit customers' participation.

A cost cap would also limit Duke's annual energy efficiency achievement, which is counter to the tiered incentive structure designed to incentivize and reward Duke when Duke exceeds its annual energy efficiency benchmarks in any given year. Given the annual \$8 million cap on total shared savings in the Amended Stipulation, after Duke hits the stipulated annual shared savings cap, customers retain all of the net benefits associated with the programs.

Finally, a cost cap might force Duke to suspend a program or halt customer participation, would could increase the cost of compliance and create a poor experience for customers. *Id.* at 3-4. The Staff's cost cap could jeopardize the benefits of energy efficiency while possibly increasing the costs.

The Staff is focused only on costs. Energy efficiency and peak demand reduction programs cause costs, and the Staff's goal is to cap the costs and practically nothing else. The Staff's goal will be easy to accomplish. Nothing could be easier than looking once at Duke's revenues shown on Line 10 Page 300 of its FERC Form 1 for 2015, multiplying by 3.5%, and establishing the cost cap once for all three years of the Plan. The Staff's pre-set, three-year, hard cap will limit costs. But the Staff's cost cap puts regulation on auto-pilot. The Staff did not show why a 3.5% cost cap based on Duke's revenues shown on Line 10 Page 300 of its FERC Form 1 for 2015 should be used as a cap on energy efficiency spending. The Staff's selection of the 3.5% cost cap is not related to any analysis of the benefits to consumers of spending below the cap or any analysis of spending above the cap that would produce higher costs than benefits. The Staff did not conduct an analysis of how incremental benefits and

costs change at different potential budget levels. The Staff did not provide an analysis to support a conclusion that 3.5% of the revenues on Line 10 of Page 300 of Duke's FERC Form 1 for 2015 should be used as a cost cap on Duke's energy efficiency spending.

The Staff did not claim that Duke's Plan was cost-ineffective. The Staff did not assess the reasonableness of Duke's proposed program costs or the value of the benefits the Plan would provide. There is no analysis by Staff to suggest that Duke's proposed programs are too expensive in relation to their benefits or do not bring enough value to support their costs. None of this analysis, which should be required to support the imposition of a spending cap on energy efficiency, was conducted because the Staff was only concerned about the costs flowing through Duke's EE-POR Rider. It makes no sense that the Staff does not dispute the cost-effectiveness of Duke's Plan or that the Plan's benefits outweigh the costs, while the Staff insists on controlling the costs without regard to the benefits.

Moreover, a limitation on spending is already embodied in the Commission's approval of a portfolio plan. The Commission's approval of a plan should be based on a careful review of the programs proposed, their costs, and the mix of benefits they provide and the purposes they serve. When the Commission approves a portfolio plan, the Commission addresses potential concerns about costs. There is no evidence that the Commission's process for the approval of portfolio plans will be improved by an arbitrary cost cap expressed as a fixed percentage of revenues reported on FERC Form 1. The

Staff's cost cap has not been justified in terms of its benefit or value to customers.

III. The Amended Stipulation Should Be Clarified so that It Does Not Violate the Commission's Order in Case No. 14-457-EL-RDR.

Staff witness Donlon proposed to clarify the Amended Stipulation at Section 7(g) to assure that it complies with the stipulation signed by Duke and approved by the Commission in Case No. 14-457-EL-RDR. Staff Ex. 1 at 10-11. The Amended Stipulation states at Section 7(g) that Duke will not count toward shared savings the net benefits of "any energy savings previously used in the calculation of shared savings incentive during a prior year." Staff correctly proposed that Section 7(g) of the Amended Stipulation be clarified to reflect that Duke will not count toward shared savings any energy savings achieved during a prior year. Staff is concerned that the language in Section 7(g) of the Amended Stipulation does not comply with the Commission's order in Case No. 14-457-EL-RDR because Section 7(g) could allow banked savings to be used toward receipt of shared savings as long as the banked savings were not previously used to calculate shared savings. Id. Staff is correct that such an interpretation would violate the Commission's order in Case No. 14-457-EL-RDR.

The Commission found in Case No. 14-457-EL-RDR that Duke may not receive the shared savings incentive in any given year that Duke used banked savings to comply with that year's statutory mandate. Case No. 14-457-EL-RDR,

Second Entry on Rehearing (October 26, 2016) at 6-7. Specifically, the Commission's order states, at 7, that Duke agreed:

Beginning in 2017, Duke will not file for recovery of the shared savings mechanism in any portfolio plan after 2014 in which banked savings have been used to meet the annual benchmark.

Thus, for the calculation of the shared savings incentive in any given year, only energy savings from that year are used in that calculation. Staff Ex. 1 at 10-11. The shared savings calculation is done on an annual basis and reflects only energy savings achieved in the year for which the calculation is done. If Duke used banked savings from prior years to meet the annual benchmark, Duke will not receive a shared savings incentive.

OPAЕ agrees with Mr. Donlon that this proceeding must end any confusion on the prohibition of shared savings in any year in which Duke used banked savings to meet the statutory benchmark. OPAЕ agrees with the Staff that the Commission has already found that when Duke uses banked savings to achieve the statutory mandate in any year, Duke may not earn shared savings in that year. The calculation of shared savings is done on an annual basis and only energy savings for that year are used to calculate shared savings for the year.

The language in Section 7(g) of the Amended Stipulation should not lead to confusion and should not allow Duke to renege on another stipulation that Duke signed and that the Commission approved. OPAЕ agrees with the Staff that the Commission should clarify that Duke will not earn shared savings in any year in which Duke used banked savings to achieve the statutory mandate.

III. OCC Was Not Excluded from Settlement Negotiations.

The Office of the Ohio Consumers' Counsel ("OCC") filed the testimony of Colleen Shutrump claiming that OCC was not given an opportunity to participate meaningfully in negotiations regarding the settlement in this case. OCC Ex. 13 at 6. She testified that OCC was invited to a settlement meeting on November 3, 2016, but that OCC was not invited to any other settlement meetings/discussions between November 3, 2016 and the filing of the first settlement on December 22, 2016, although Duke and OCC had several one-on-one conversations in mid-December. She claims that as a result, there were not sufficient opportunities for all intervenors to bargain seriously amongst each other for a settlement. *Id.* at 7.

OPAE also attended the settlement meeting on November 3, 2016. Duke Ex. 10. OPAE attended no other settlement meetings. OPAE received a draft stipulation by email from Duke on December 16, 2016. Duke Ex. 12. OPAE declined to sign the stipulation filed December 22, 2016. OPAE had one-on-one conversations with Duke in mid-January that led to OPAE's signature on the Amended Stipulation filed January 27, 2017. Other parties also agreed to sign the Amended Stipulation. Joint Ex. 2.

One of the Commission's criteria for the reasonableness of stipulations is that no party be excluded from settlement negotiations. OCC was not excluded from the settlement negotiations. OCC's participation in the settlement negotiations appears to be roughly equal to OPAE's participation and the participation of other parties. OPAE attended one formal settlement meeting; otherwise the negotiations were conducted by email or through one-on-one

conversations. There is no prohibition on one-on-one settlement negotiations, as OCC itself participated in such discussions. Even after the December 22, 2016 settlement was filed, OPAE continued to negotiate one-on-one with Duke, as did other parties, which led to the Amended Stipulation. The Commission should not find that the settlement process was tainted by the exclusion of any party to the negotiations.

IV. Conclusion

In conclusion, OPAE recommends that the Commission approve the Amended Stipulation, Joint Exhibit 2, with the clarification, as discussed herein, of Section 7(g) that, in any given year, if banked savings are used for compliance with the statutory mandate, shared savings cannot be awarded.

Respectfully submitted,

Colleen Mooney
Colleen L. Mooney
Reg. No. 0015668
Ohio Partners for Affordable Energy
PO Box 12451
Columbus, OH 43212-2451
Telephone: (614) 488-5739

e-mail: cmooney@ohiopartners.org
(electronically subscribed)

CERTIFICATE OF SERVICE

A copy of the foregoing Post-Hearing Brief will be served electronically by the Commission's Docketing Division on the parties listed below who are electronically subscribed on this 31st day of March 2017.

Colleen Mooney
Colleen L. Mooney
cmooney@ohiopartners.org
(electronically subscribed)

Amy.Spiller@duke-energy.com
Elizabeth.Watts@duke-energy.com
fdarr@mwncmh.cm
mpritchard@mwncmh.com
bojko@carpenterlipps.com
perko@carpenterlipps.com
mfleisher@elpc.org
tdougherty@theOEC.org
mleppla@theoec.org
jfinnigan@edf.org
rdove@attorneydove.com
joliker@igsenergy.com
Christopher.healey@occ.ohio.gov
dparram@bricker.com
dborchers@bricker.com
mwarnock@bricker.com
rick.sites@ohiohospitals.org
John.Jones@ohioattorneygeneral.gov
Natalia.messenger@ohioattorneygeneral.gov

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Summary: Brief electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy