

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 Program Portfolio Plan.)	

**REPLY OF DUKE ENERGY OHIO, INC., TO
MEMORANDUM CONTRA MOTION FOR WAIVER**

The Public Utilities Commission of Ohio (Commission), adopted and approved, with modifications, a Stipulation and Recommendation (Stipulation) that was agreed to by most of the intervening parties in this proceeding. In so doing, the Commission allowed for the possibility that Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) might seek a waiver of the 2017 portfolio plan budget, thus recognizing and accommodating the fact that the Company had already provided energy efficiency and peak demand reduction programs for most of 2017, in good faith and without any approved cost recovery mechanism.

The Office of the Ohio Consumers' Counsel (OCC), having failed to prevail on most of its arguments before the Commission, now seeks to penalize the Company for having proceeded in good faith to comply with energy mandates in Ohio and for having delivered exceptional energy efficiency programs to benefit its customers. The OCC's arguments demonstrate a lack of overall understanding of state policy, the value of energy efficiency, or the way in which energy efficiency cost recovery mechanisms function. The OCC's arguments should be rejected.

I. BACKGROUND

The Commission approved the Stipulation in this proceeding, but modified it to add a cap on program spending. Many of the parties to this proceeding have filed applications for rehearing

of the Commission's Order and it is not necessary to address that topic in this Reply. However, the OCC's Memorandum Contra the Company's motion for a waiver misstates facts and must be corrected.

In OCC's discussion of the background of the case, OCC argues that the Company had proposed program spending of about \$38 million for 2017 and similar budgets for 2018 and 2019. OCC misunderstands the Company's application. The proposed budget in the application was intended to support the programs that had likewise been proposed along with the application for the new portfolio. However, because no new portfolio had been approved for 2017, the Company extended its then-existing portfolio. Thus, the proposed budget in the application was never intended to support ongoing programs, but rather was designed to support a new approved portfolio. OCC's discussion about what the existing budget and the proposed budget should be reflects only its misunderstanding.

The Commission did understand that the new cap it imposed was not otherwise anticipated and therefore the Commission provided some relief, allowing the Company to exceed the cap for program spending only. Likewise, the Commission directed the Company to scale back, but not suspend, its programs to avoid exceeding the portfolio budget. The Company complied by filing a request for a waiver to allow it to exceed its portfolio plan budget for calendar year 2017, at the same time, the Company scaled back its programs to limit program spending as much as possible, given that we are already into the fourth quarter of 2017.

II. ARGUMENT

A. The Company has scaled back its programs pursuant to the Commission's Order.

The OCC asserts, without any basis whatsoever, that the Company has not scaled back its programs as ordered by the Commission. In support of its motion, OCC intentionally misstates

the record by citing to references that obviously refer to the Company's programs prior to the time of the Order. The Company did indeed have a very successful year of providing energy efficiency and peak demand reduction for its customers' benefit and with significant participation by its customers. Likewise, the Company, prior to the Commission's Order, aimed to exceed its mandates. Indeed, prior stipulations and orders have been explicitly designed to encourage the Company to exceed the state's mandates and the Commission has encouraged the Company to do so. For example, in approving an earlier stipulation related to the design of the Company's portfolio, the Commission stated:

Specifically, the Commission finds that the incentive mechanism proposed by Duke is appropriately structured to incent Duke to deliver as many benefits as possible to customers. In addition, we believe it is important to recognize that Duke's shared savings mechanism still allows customers to retain at least 87 percent of the savings. When Duke delivers more energy in the most cost effective way, customers receive a direct benefit.¹

OCC's concerns about the Company previously seeking to exceed the mandates demonstrates a misunderstanding of energy efficiency benefits to customers and the Company's history of delivering outstanding energy efficiency programs for many years. Nonetheless, after the Commission issued its Order in this case, the Company has indeed reached out to trade allies to explain the need to scale back programming. Likewise, the Company will complete processes that were begun under its prior programs but will not be actively marketing programs approved in the new portfolio for this year. OCC could not have known what the Company's actions have been since the Order so it is curious that OCC seeks to critique such actions, absent any facts to support its allegations. OCC's argument is unfounded and should be entirely disregarded.

¹*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, Opinion and Order, at pg. 15 (Aug. 15, 2012).

B. Costs paid by customers for energy efficiency are beneficial.

As explained above, the Stipulation and the Commission's Order in this proceeding are relevant to the Company's application for a new portfolio. The Company has been executing programs consistent with its previously approved portfolio during the pendency of this case. The Company has not yet initiated its new portfolio. Thus, as was explained above, the portfolio plan budget would not be relevant to 2017 spending. The Commission understood this by allowing for a waiver under these timing circumstances. However, OCC seems to have missed this point.

Moreover, as also explained above, the more energy efficiency the Company is able to provide to its customers, the better for the customers. Energy efficiency provides a net gain to customers in avoided cost. This basic economic reality is established in the Commission's own regulations in Rule 4901:1-39-02, O.A.C., which states that each electric utility is required to implement energy efficiency programs that *at a minimum* shall achieve statutory benchmarks. The Rule further states that portfolios should be designed *to meet or exceed* the statutory benchmark. Likewise, Rule 4901:1-39-03, O.A.C., establishes detailed requirements for gauging economic efficiency. This Rule recognizes that properly designed and managed energy efficiency ultimately provides economic benefits to customers that underlie the policy encouraging energy efficiency portfolios. OCC's argument is not relevant to 2017 and not relevant in terms of fitting within energy efficiency policy generally.

C. All program costs remain subject to prudence review.

OCC expresses a concern with respect to whether or not the Company proposes that its cost recovery is subject to a prudence review. Again this argument demonstrates a misunderstanding regarding the manner in which energy efficiency and peak demand reduction programs fit within the Commission's rules. The Company submitted its application in this proceeding, seeking approval of a portfolio of programs and a cost recovery mechanism. The

Company currently has two separate proceedings wherein it is seeking cost recovery for its programs. There is no pending request for cost recovery in this proceeding.

D. The Application for a Waiver is not a request to modify the Order.

Consistent with the Commission's Order, the Company submitted a request for a Waiver. In its request, the Company explained the details of its spending for programs consistent with the 2016 portfolio. Again, OCC argues that the Company's 2017 spending is subject to the Stipulation and the Commission's Order. But in fact, 2017 spending was related to the Company's desire to continue customer participation in programs to avoid the need to reacquire such customers at a later time at additional customer expense. The Company merely continued offering programs from the previously approved portfolio and the Company provided such programs in good faith. Thus, although OCC incorrectly argues that the Company should have submitted an application for rehearing in order to "modify" the Order, the Company was actually complying with the Order wherein the Commission correctly recognized the mismatch in the current programming and the approved budget. For this reason, OCC again misses the mark.

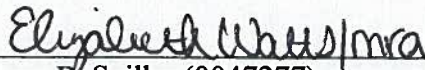
III. CONCLUSION

In this proceeding, the OCC had an opportunity to represent residential customers by supporting ongoing efforts to provide the energy efficiency and demand response programs that customers have come to expect. Likewise, the OCC could have had a voice in the manner in which customer dollars are spent with respect to energy efficiency and demand response. Instead of having a positive influence on such matters, the OCC chose not to participate but instead to look for reasons to scuttle these valuable efforts. In so proceeding, the OCC has not prevailed. In its Memorandum Contra, OCC misunderstands the history of the Company's previous filings, the facts related to this proceeding, and the underlying state policy. For all of these reasons, OCC's arguments miss the mark and should be disregarded.

As contemplated in the Commission's Order, the Company respectfully requests that the Commission grant its request for a waiver in order to permit it to reasonably close out programming for 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 30th day of November, 2017, to the following parties.


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Summary: Reply Reply of Duke Energy Ohio, Inc. to Memorandum Contra Motion for Waiver electronically filed by Ms. E Minna Rolfes on behalf of Amy B. Spiller and Elizabeth H. Watts and Duke Energy Ohio, Inc.