BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	)))	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

MOTION TO STRIKE AEP'S REQUEST TO
PROFIT ON ENERGY EFFICIENCY AT CONSUMER EXPENSE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Electric consumers of Duke Energy Ohio will benefit from the PUCO's recent striking of Duke's request to charge them so-called "shared savings"—a code name for utility profits—on its energy efficiency programs.[1] Despite the General Assembly's prohibition of mandates for utility-run energy efficiency programs (in H.B. 6), two electric utilities (Duke and AEP Ohio) have now proposed to operate *non-mandated* programs—at consumer expense.

AEP, like Duke, wants to continue charging consumers for profits on energy efficiency programs that it now proposes to operate despite the lack of mandates.[2] AEP, like Duke, formerly charged consumers for so-called "shared savings," meaning AEP's profits. Now AEP wants to load up its consumers electric bills with a so-called "administration fee" for efficiency programs, which is akin to the former so-called shared savings charge, all of which is code for AEP profits.

---

[1] Case No. 20-1013-EL-POR, Entry (June 17, 2020) (the "Duke Order").

[2] Direct Testimony of Jon F. Williams on Behalf of Ohio Power Co. at 6 (June 15, 2020) (the "Williams Testimony").

All of the PUCO's justifications for striking Duke's request for profits apply equally to AEP and to protection of AEP consumers.

Thus, OCC moves for the PUCO to strike AEP's request for charging consumers an administration fee (profits). AEP's filings to be struck should include:

1. The following parts of the Testimony of Jon Williams:

    a. Page 6, line 3 to 4, the entire sentence beginning with "Finally";

    b. Page 6, line 11 to 12, beginning with "including" and ending with "and";

    c. Page 6, line 21 to 23, beginning with "with a performance" and ending with "testimony";

    d. Page 15, line 16 through page 16 line 3;

    e. Page 17, line 3 to 4, beginning with "including" and ending with "fee";

    f. Exhibit JFW-1, page 4, second paragraph, second sentence, which begins "In addition";

    g. Exhibit JFW-1, page 6, first full paragraph, fourth sentence, the phrase "and a $3.66 million administration fee";

    h. Exhibit JFW-1, page 6, footnote to Figure 1, the words "and program administration fee"; and

    i. Exhibit JFW-1, page 25, first paragraph, third sentence, the words "and the administrative fee."

2. Any other references in the Application or supporting testimony to the administrative fee and any schedules to the extent that they incorporate making the charge to consumers for the administrative fee.[3]

AEP should be prohibited from charging its 1.3 million residential consumers for profits on energy efficiency programs that are no longer mandated. What remains for the PUCO to decide would be whether Duke and AEP will be allowed to charge consumers for non-mandated energy efficiency programs.

[3] Various schedules, including but not limited to amounts set forth in Schedules C-3 and C-3.22, would also need to be updated to incorporate the removal of the administrative fee from the Application.

OCC's motion is more fully described in the attached memorandum.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
Angela D. O'Brien (0097579)
Counsel of Record
Christopher Healey (0086027)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [O'Brien] (614) 466-9531
Telephone: [Healey] (614) 466-9571
angela.obrien@occ.ohio.gov
christopher.healey@occ.ohio.gov
(willing to accept service by e-mail)

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.	)))	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.	))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.	)))	Case No. 20-587-EL-AAM

MEMORANDUM IN SUPPORT

For years, utilities have been charging their consumers for profits on the energy efficiency programs they operate. No utility has profited at the expense of consumers more than AEP, which in recent years has charged customers anywhere from $25 to $31 million per year in profits. (FirstEnergy's profits have been in the range of $12 to $15 million, while Duke and DP&L's profits have been around $10 million or less.) These profits have generally been referred to as "shared savings," an opaque term that suggests that customers benefit from "sharing" energy efficiency savings with their utility. But, for purposes of the electric utility service that consumers receive under law, there is not a service need for consumers to pay their utilities for profits on energy efficiency.

The General Assembly's recent legislation (House Bill 6[4]) ended energy efficiency mandates, so as to remove the programs' charges from Ohioans' electric bills. But AEP wants to continue operating customer-funded energy efficiency programs., without mandates. AEP's proposal is to charge consumers $36.6 million in costs to run the programs, which includes

[4] https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-6

administrative costs, marketing, and rebates paid to consumers.[5] On top of the actual costs of running the programs, AEP is asking to charge consumers an "annual program administration fee" equal to 10% of the program costs, which it would collect from consumers if its programs are cost-effective.[6]

I. ARGUMENT

A. "What's in a name? That which we call a rose, By any other name would smell as sweet."[7] AEP's "program administration fee," which is another name for AEP profits, is no rose for consumers and should be weeded out to protect consumers from paying AEP even more unjustified profits for energy efficiency programs.

As stated, utilities have for years been charging customers for utility profits but calling those charges "shared savings," which obscures the true nature of the charges. AEP's new proposal is for up to $3.66 million per year for an "annual program administration fee." New name, same bad deal for consumers.

There is nothing "administrative" about this fee. All of AEP's actual administrative costs of running the programs are already included in the $36.6 million charge to run the programs. For example, as AEP witness Williams explains, AEP is already including $5.1 million of internal labor costs in its proposed base rates for AEP to administer the programs.[8]

In short, while AEP has changed the name of its profits charge from "shared savings" to "annual program administration fee," it remains a charge to customers for utility profits on its energy efficiency programs. Thus, the PUCO should consider this charge substantially identical to Duke's proposal for shared savings, which the PUCO recently struck from Duke's application.

---

[5] Direct Testimony of Jon F. Williams on Behalf of Ohio Power Co. at 6 (June 15, 2020) (the "Williams Testimony").

[6] Williams Testimony at 6.

[7] William Shakespeare, *Romeo and Juliet*, Act II, Scene II, 1597.

[8] Williams Testimony at 17.

B. All of the PUCO's justifications for striking Duke's profit proposal apply equally to AEP's profit proposal and should be relied upon to protect AEP's consumers.

In the Duke Order, the PUCO identified several reasons that Duke should not be allowed to charge customers for profits on energy efficiency.

First, the PUCO cited House Bill 6, which requires Ohio utilities to wind down their current energy efficiency programs.[9] As the PUCO explained, it has a duty to "effectuate[] the General Assembly's intent to reduce the costs to consumers in order to facilitate the state's effectiveness in the global economy."[10] Thus, approving charges to consumers for utility profits "would be against the objectives of this state which favors outcomes that provide customers with *effective choices* over the selection of supplies and suppliers and would discourage market access for cost effective supply- and demand-side retail services."[11] The same is true for AEP's proposal, which would allow AEP to continue charging customers for profits despite the General Assembly's intent to reduce costs to consumers.

Second, the PUCO found that Duke failed to establish that its proposal for utility profits is "needed to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."[12] To the contrary, PJM "maintains a substantial surplus of generation capacity to assure continued reliability of electric service."[13] Thus, the PUCO reasoned, "there is no need to provide an incentive to Duke to offer these EE programs in order to ensure the reliability of retail electric service in this state."[14] This

---

[9] Duke Order ¶ 6.

[10] Duke Order ¶ 6.

[11] Duke Order ¶ 6.

[12] Duke Order ¶ 7.

[13] Duke Order ¶ 7.

[14] Duke Order ¶ 7.

applies to AEP as well. There is no threat to reliability for AEP consumers if AEP is denied its request to charge customers profits for energy efficiency. Thus, there is no need to provide an incentive to AEP to offer these energy efficiency programs in order to ensure the reliability of retail electric service for consumers in this state.

Third, the PUCO noted that there is no statutory basis for shared savings.[15] Nor is there any statutory basis for AEP's proposed charge, given that it, like shared savings, is a form of utility profits that consumers are made to pay.

Fourth, the PUCO noted that previously-approved charges for utility profits (shared savings) "were intended to provide utilities with an incentive to exceed the statutory benchmarks in any given year, in order to establish a bank of energy savings which could be called upon to mitigate the expected costs of meeting the energy efficiency mandates when the statutory requirements significantly increased in the future."[16] Thus, with statutory mandates eliminated by House Bill 6, "there is no legal rationale for a shared savings provision, and thus, the shared savings provision should be stricken."[17] Again, this applies equally to AEP's proposal, which is simply utility profits by another name.

Finally, the PUCO highlighted the importance of markets over monopolies when it comes to energy efficiency. As the PUCO explained:

> [T]he future for EE programs in this state will be best served by reliance upon market-based approaches such as those available through PJM and competitive retail electric service providers. ... The competitive market can provide cost-effective energy efficiency programs to the customers who choose to participate in such programs. In a competitive market, customers and suppliers are free to

[15] Duke Order ¶ 8.

[16] Duke Order ¶ 8.

[17] Duke Order ¶ 8.

> work out mutually beneficial cost and benefit sharing arrangements without subjecting other customers to extra risk or cost burdens.[18]

Charges to customers for a utility to profit on energy efficiency are not a market-based charged. There is no justification for AEP's proposal for customers to continue to pay profits on energy efficiency.

C. The PUCO should protect consumers by following the Ohio Supreme Court's directive to respect its own precedent and achieve predictability by ruling in this case in the same way it ruled in Duke's case.

The Ohio Supreme Court has "instructed the [PUCO] to 'respect its own precedents in its decisions to assure the predictability which is essential in all areas of law, including administrative law.'"[19] The Court's instruction should apply here. Just last week, the PUCO struck a provision from Duke Energy's application seeking to profit (at consumer expense) from energy efficiency. It should respect that precedent and make the same ruling here for AEP.

II. CONCLUSION

In its Duke Order, the PUCO ruled that the utility should no longer be allowed to charge customers for profits on energy efficiency. Such profits violate the intent of House Bill 6, they do nothing to promote reliability for consumers, there is no statutory basis for them, and they violate state policy favoring markets over monopolies. The PUCO should strike AEP's request for an "annual program administration fee." That proposed charge is nothing more than AEP's new way of collecting utility profits from consumers for the energy efficiency programs it wants to operate. AEP's filings to be struck should include:

1. The following parts of the Testimony of Jon Williams:

    a. Page 6, line 3 to 4, the entire sentence beginning with "Finally";

---

[18] Duke Order ¶ 9.

[19] *In re Ohio Power Co.*, 144 Ohio St. 3d 1, 5 (2015) (quoting *Cleveland Elec. Illuminating Co. v. PUCO*, 42 Ohio St. 2d 403 (1975)).

b. Page 6, line 11 to 12, beginning with "including" and ending with "and";

c. Page 6, line 21 to 23, beginning with "with a performance" and ending with "testimony";

d. Page 15, line 16 through page 16 line 3;

e. Page 17, line 3 to 4, beginning with "including" and ending with "fee";

f. Exhibit JFW-1, page 4, second paragraph, second sentence, which begins "In addition";

g. Exhibit JFW-1, page 6, first full paragraph, fourth sentence, the phrase "and a $3.66 million administration fee";

h. Exhibit JFW-1, page 6, footnote to Figure 1, the words "and program administration fee"; and

i. Exhibit JFW-1, page 25, first paragraph, third sentence, the words "and the administrative fee."

2. Any other references in the Application or supporting testimony to the administrative fee and any other schedules to the extent that they incorporate making the charge to consumers for the administrative fee.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
Angela D. O'Brien (0097579)
Counsel of Record
Christopher Healey (0086027)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [O'Brien] (614) 466-9531
Telephone: [Healey] (614) 466-9571
Angela.obrien@occ.ohio.gov
Christopher.healey@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Strike was served on the persons stated below via electronic transmission, this 23rd day of June 2020.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

Werner.margard@ohioattorneygeneral.gov
Steven.darnell@ohioattorneygeneral.gov
Andrew.shaffer@ohioattorneygeneral.gov
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
bethany.allen@igs.com
joe.oliker@igs.com
michael.nugent@igs.com
Bojko@carpenterlipps.com

stnourse@aep.com
cmblend@aep.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
ccox@elpc.org
rdove@keglerbrown.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
paul@carpenterlipps.com

Attorney Examiners:
Sarah.parrot@puco.ohio.gov
Greta.see@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/23/2020 4:32:27 PM

in

Case No(s). 20-0585-EL-AIR, 20-0586-EL-ATA, 20-0587-EL-AAM

Summary: Motion Motion to Strike AEP's Request to Profit on Energy Efficiency at Consumer Expense by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.