

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Update the Energy)	Case No. 18-0874-EL-RDR
Efficiency and Peak Demand Reduction)	
Rider.)	

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

A million consumers are being asked to pay AEP an incredible \$31 million in profit for energy efficiency measures that consumers could buy in a store or online without any charge for AEP's profits. At a minimum, the Public Utilities Commission of Ohio ("PUCO") should spare consumers from paying at least \$5.6 million for profits due to a tax change and should reduce charges to customers for AEP Ohio's energy efficiency programs by \$279,525 (plus carrying charges) for inappropriate charges that AEP packed into its costs.¹

The PUCO should reduce charges to customers further to account for the fact that the Staff may not have reviewed every invoice. It should also reduce charges to customers to encourage AEP to improve its accounting practices so that the improper charges found in the Staff's review are not included in future cases. And the PUCO should reduce AEP's charges to customers for its profits ("shared savings") by \$5.6 million because AEP overcharged customers based on a 35% federal income tax rate when it should have used the current 21% federal income tax rate.

In its audit, the PUCO Staff found that AEP included charges that are unrelated to energy efficiency. This includes (i) \$136,558 for incentive payments to employees, (ii) \$25,987 for

¹ Staff Review and Recommendation at 4 (July 20, 2020).

stock-based compensation, (iii) \$4,474 for restricted stock units, (iv) \$38,249 for meals, food, entertainment, and drinks, (v) \$15,000 for promotional sponsorships, and (vi) \$59,257 for gifts, costumes, membership dues, association fees, conferences, zoo tickets, and other miscellaneous items.² The PUCO has consistently ruled that these are not appropriate charges to consumers in an energy efficiency rider.³ It should do the same here. Charges to customers should be reduced by \$279,525 to eliminate these types of expenses.

To adequately protect customers, however, the PUCO must do more than just a dollar-for-dollar disallowance. If the utility receives only a dollar-for-dollar disallowance, then it has no incentive to improve its accounting. In fact, it has an incentive to keep including these types of improper charges in the hope that the PUCO Staff doesn't catch them in its audit. Without an additional penalty—beyond a dollar-for-dollar disallowance—for including these charges, AEP (and other utilities) will keep including improper charges in riders. To adequately incent AEP to improve its accounting, an appropriate penalty would be triple the actual amount of overcharges resulting from poor accounting.

Further, it is not clear whether the PUCO Staff reviewed every invoice as part of its audit. If it did not, then the recommended disallowances would represent only a portion of the amount that should be disallowed. For example, if the PUCO Staff reviewed 50% of invoices, then the PUCO Staff's recommended disallowance should be doubled to extrapolate the sample to the entire population of invoices. If the PUCO Staff reviewed 10% of invoices, then it should be increased by a factor of ten. And so on. Otherwise, the utility would effectively be allowed to charge customers for any improper charges found in the invoices that were not reviewed. OCC

² *Id.* at 2-4.

³ See, e.g., *In re Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, & Performance Incentives Related to its Energy Efficiency & Demand Response Programs*, Case Nos. 16-664-EL-RDR, 17-781-EL-RDR, Finding & Order (May 15, 2019).

recommends that the PUCO Staff be required to supplement its report to identify the methodology it used, including an assessment of what percentage of invoices it reviewed.

Further, the Staff's recommendation does not adequately protect consumers because it fails to address the tax implications of AEP's charges to consumers for utility profits. If AEP meets certain benchmarks, it can charge customers for "shared savings," which is another way of saying utility profits. Customers also pay for AEP's taxes on those profits.

As Industrial Energy Users-Ohio ("IEU") explained in its objections in this case, AEP is seeking to charge customers for profits on its 2017 energy efficiency programs using a 35% federal income tax rate.⁴ But effective January 1, 2018, the federal income tax rate was lowered to 21%. Thus, IEU argued, these profits should be taxed at the 21% rate, not the 35% rate.⁵ IEU is correct.

Charges for "shared savings" are allowed only if AEP exceeds the annual statutory energy savings benchmarks. The amount of shared savings that AEP is allowed to charge customers is based on two primary factors: (1) the extent to which AEP exceeds the statutory energy savings benchmark, and (2) the net benefits to consumers that result from the programs.

In this case, the Staff audited AEP's charges to customers for programs that were offered in 2017. Shared savings for 2017 cannot be calculated until 2017 is over. That's because only after the year is complete is it possible to know the extent to which AEP has exceeded the statutory energy savings benchmarks. And only after the year is over is it possible to know the net benefits that result from the programs. Thus, any charges for shared savings could not be determined until 2018, at the earliest. And in 2018, the federal income tax rate was 21%, not

⁴ Objections of Industrial Energy Users-Ohio (June 14, 2018).

⁵ *Id.*

35%. Thus, AEP's shared savings for 2017 should be calculated based on a 21% federal income tax rate.

Using a 21% federal income tax rate, AEP can charge customers a maximum of \$25,640,072 for profits (shared savings).⁶ Using a 35% federal income tax rate, AEP seeks to charge customers \$31,197,257 instead.⁷ Charges to customers should be reduced by the difference: \$5,557,185.

Respectfully submitted,

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⁶ See Application, Schedule 3 (calculating tax gross up of \$20 million in shared savings based on a 21% federal income tax rate).

⁷ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 25th day of September 2020.

/s/ Christopher Healey
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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.