

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**DUKE ENERGY OHIO, INC.’S MEMORANDUM CONTRA
THE APPLICATION FOR REHEARING
OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Public Utilities Commission of Ohio, (Commission) issued an Opinion and Order, (Order) in this proceeding that approved a stipulation with modification. The modification provided for a cap on program spending based upon a recommendation by the Staff, but then further modified by the Commission with reference to other electric distribution utility, (EDU) cases. For the reasons set forth by Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) in its Application for Rehearing, the Commission should reconsider its Order and modify or remove the cap to allow the Company to continue to offer energy efficiency and peak demand reduction services to its customers.

In response to the Commission’s Order, the Office of the Ohio Consumers’ Counsel, (OCC) argues alternatively and incorrectly that the Commission erred otherwise. OCC fails to understand the value proposition resulting from energy efficiency that is beneficial to customers, and fails to understand even the fundamental facts of this case. For these reasons, OCC’s Application for Rehearing should be denied.

II. DISCUSSION

A. The OCC misunderstands the case and the value of energy efficiency for Duke Energy Ohio's customers.

OCC prefers to characterize shared savings as “profit” in order to sensationalize its otherwise uninspired argument. Notwithstanding, the proposed spending for energy efficiency and demand reduction includes three categories: program costs, shared savings and lost distribution revenues. The reason shared savings is characterized as such is because for each dollar included in that category, the customer benefit is approximately 90 percent and the Company benefit is up to approximately 10 percent. The fundamentals of this calculation were acknowledged by OCC's own witness in a previous proceeding. OCC witness Wilson Gonzalez cited an article explicitly recognizing that:

“Shared net benefits incentives provide utilities the opportunity to earn an amount equivalent to some portion of the benefits of a successful energy efficiency program. The amount is usually a percentage of the positive difference between program spending and the dollar valuation of energy savings achieved.”¹

The article concludes that performance incentives are working in combination with other supportive regulatory policies to encourage effective energy efficiency program performance.² In the case of the programs offered by Duke Energy Ohio, the Company incentive is calculated as a percentage of the net system benefits (avoided costs less the program costs) generated by the Company's portfolio of energy efficiency and demand response.³

¹*In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to Its Energy Efficiency and Demand Response Programs, et al.*, Case No. 14-457-EL-RDR, Direct Testimony of Wilson Gonzalez at p.16, citing Nowak, Baatz, Gilleo, Kushler, Molina and York, “Beyond Carrots for Utilities: A National Review of Performance Incentives for Energy Efficiency”, American Council for an Energy Efficient Economy, May 2015, Appendix C (Exhibit WG-7) (available at <https://aceee.org/sites/default/files/publications/researchreports/u1504.pdf>)

² Nowak, Baatz, Gilleo, Kushler, Molina and York at p.vi.

³ Direct Testimony of Trisha H. Haemmerle at p.9.

In addition to misunderstanding the nature and application of performance incentives generally, OCC likewise seems to misunderstand the manner in which such incentives are calculated and the reality of the Company's portfolio history generally. First, OCC argues that the potential for the utility to earn up to \$8 million after-tax of a shared savings incentive somehow results in obsessive profits for Duke Energy Ohio. This argument is flawed because OCC overlooks the fact that the Company is only eligible to earn a shared savings incentive if it meets its statutory energy efficiency benchmark. OCC provides no analysis to show that Duke Energy Ohio could meet, let alone exceed, the statutory energy efficiency benchmark while spending only \$26.1 million on program costs. Not only is the capped amount of \$26.1 Million of program costs over \$12 million less than the program budget associated with its approved portfolio plan budget, but as can be seen in the table below, based on actual spending and actual EE achievement from 2013-2015, Duke Energy Ohio would not be able to hit its projected 2018 benchmark. In fact, at the average actual cost of 18.2 cents per KWH of achievement, the OCC projected \$26.1 million of program costs would only produce slightly over 143 million KWH of energy efficiency savings which is approximately 30% less than the projected 2018 energy efficiency mandate.

Projected EE Achievement Under OCC Program Spending to Earn Maximum Shared Savings Incentive(\$8 Million After-Tax)						
Calendar Year	Actual KWH Savings	Actual Program Costs	Actual Cost per KWH Saved	Ohio Consumer Counsel Projected Program Costs	Project KWH Achievement at OCC Program Costs	Projected 2018 Energy Efficiency Benchmark (KWH)
2013	144,101,736	\$ 22,130,677	\$ 0.154	\$ 26,100,000	169,947,594	203,213,000
2014	152,268,735	\$ 30,608,344	\$ 0.201	\$ 26,100,000	129,840,869	203,213,000
2015	164,010,308	\$ 31,531,908	\$ 0.192	\$ 26,100,000	135,756,740	203,213,000
2013-2015 Average	153,460,260	\$ 28,090,310	\$ 0.182	\$ 26,100,000	143,184,292	203,213,000

Additionally, OCC also fails to grasp that even meeting the statutory benchmark does not guarantee that the Company will earn the maximum shared savings incentive possible because the shared savings incentive is based on a percentage of the net benefit realized by customers.

So if one assumes that Duke Energy Ohio's programs delivered energy savings that allowed it to exceed the mandate by 12%, which would entitle it to earn a 12% shared savings incentive, its portfolio of programs would have to generate net benefits of over \$130 million in order to earn its maximum \$8.0 million after-tax shared savings incentive. If Duke Energy Ohio were able to deliver nearly \$120 million of net benefit to customers, this is a very positive outcome for customers, even if it collected its maximum shared savings incentive. This is the true meaning of shared savings.

Finally, OCC claims that Duke Energy Ohio's maximum shared savings of \$8 million after-tax savings is exorbitant. However, AEP Ohio continues to operate under a \$20 million after-tax shared savings incentive cap that has been in effect since 2013.⁴ Based on each company's 2017 Annual Energy Efficiency Status reports, Duke Energy Ohio's annual EE benchmark for 2016 was 50.2% of AEP Ohio's Annual Benchmark.⁵ Since Duke Energy Ohio's \$8 million after-tax shared saving incentive cap is only 40% of AEP Ohio's approved shared savings cap, it is curious that OCC would believe that the Commission is providing Duke Energy Ohio with the opportunity to earn an unduly high incentive.

B. The Order recognized that most of 2017 has already concluded.

OCC repeatedly and incorrectly argues that the Commission should not have permitted Duke Energy Ohio to exceed the cap that the Commission set in this case by permitting the Company to exceed the cap for program costs only for 2017. OCC has already argued this issue in its Memo Contra Duke Energy Ohio's Motion for a Waiver. The factually and logically incorrect conclusions drawn by OCC will not be reargued here. However, it is worth noting that the

⁴ *In the Matter of the 2016 Portfolio Status Report of the Energy Efficiency and Peak Demand Response Programs*, Case No. 17-1229-EL-EEC (May 15, 2017).

⁵ *In the Matter of the Annual Energy Efficiency Status Report of Duke Energy Ohio, Inc.*, Case No. 17-689-EL-EEC (April 17, 2017).

Commission's decision in this case was issued on September 27, 2017. By the time the Commission ruled, the Company was 10/12ths done with its program spending for 2017. The Commission correctly recognized that it would be patently unfair to impose a cap on spending for a year when such spending has already occurred. Thus, the Commission correctly provided the opportunity for the Company to seek a waiver. OCC's argument bears no relationship to the facts of the case and should be disregarded.

C. The new programs approved by the Commission will benefit customers.

For inadequately explained reasons, OCC believes that two new programs approved for inclusion in the Company's portfolio should not have been approved. Again, OCC intentionally misstates the facts and details of the stipulation. For example, the terms of the stipulation provide that the Smart Thermostat Program is to be developed over time with Environmental Law & Policy Center, IGS Energy, Inc. and any other interested party (including OCC) to be delivered in the future. The Company will assess the cost-effectiveness and present the assessment to the Duke Energy Ohio Energy Efficiency Collaborative (that includes OCC). Once the program is proven to be cost-effective, it will then be offered. There is a great opportunity for the OCC to engage and become part of the development of this program if it so chooses. Opposing the Commission's approval prior to exploring the benefits seems unwise.

With respect to the Space Heating program, again the Stipulation provides that the Company will assess cost-effectiveness and will share those results with the Duke Energy Ohio Energy Efficiency Collaborative. If cost-effective, the Company will then move forward with the program. There are adequate safeguards and pledges to work with the interested parties for both of these programs and the Commission was correct to approve them.

D. The Stipulation does not require customers to pay thermostat rebates for thermostats sold before the program begins.

As explained above, the Thermostat Rebate program that is included in the stipulation in this case provides that a retailer or competitive supplier may, *at their own risk*, provide a customer with an instant discount prior to the full implementation of the Smart Thermostat program. However, the stipulation first provides that the Company will analyze the program, the terms and the cost effectiveness of the program, and vet the program by presenting the details to the Duke Energy Ohio Energy Efficiency Collaborative prior to deployment. Once these actions have occurred, only then do the retailers or competitive suppliers have an opportunity to be reimbursed for the instant discount that has been extended to customers. As these terms are plainly set forth in the stipulation, it is unclear why OCC misstates these terms. The customers who relied upon the possibility of receiving such a rebate in making decisions to purchase a smart thermostat are ultimately made whole. This is something that the OCC should support. OCC's arguments to the contrary are not well founded and should be disregarded.

III. CONCLUSION

For the reasons set forth above, OCC's arguments demonstrate a misunderstanding of the facts and of energy efficiency policy generally. The Commission should disregard the OCC's Comments.

The Commission's Order in this proceeding improperly imposed a cap on program spending at a time when the Company's programs were experiencing significant success. Moreover, the cap that was proposed by Staff was calculated with reference to an illogical starting point. The FERC form number used by Staff differs for each EDU and therefore renders uneven results for each EDU. Thus, the Commission's use of Staff's number as a basis is likewise without a solid basis. For these reasons, the Commission should either remove the cap altogether and approve the

stipulation that was signed by most of the intervening parties, or change the level of the cap consistently and make it at least proportional to the cap that has been approved for two other EDUs at 5.4 percent.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Elizabeth H. Watts _____

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092) (Counsel of Record)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street

1303-Main

Cincinnati Ohio 45202

513-287-4359 (telephone)

513-287-4385 (facsimile)

amy.spiller@duke-energy.com

elizabeth.watts@duke-energy.com

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 6th day of November 2017, to the following parties.

/s/ Elizabeth H. Watts

Elizabeth H. Watts

John H. Jones
Assistant Attorney General
William B. Wright
Section Chief
Public Utilities Section
30 East Broad Street
16th Floor
Columbus, Ohio 43215-3414
John.jones@ohioattorneygeneral.gov
William.wright@ohioattorneygeneral.gov

**Counsel for The Public Utilities
Commission of Ohio**

Terry L. Etter
Assistant Consumers' Counsel
Christopher Healey (Counsel of Record)
Office of the Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215
Terry.etter@occ.ohio.gov
Christopher.healey@occ.ohio.gov

**Counsel for the Office of the Ohio
Consumer's Counsel**

Dane Stinson
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
dstinson@bricker.com

**Outside Counsel for the Office of the
Ohio Consumers' Counsel**

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839
cmooney@ohiopartners.org

**Counsel for the Ohio Partners for
Affordable Energy**

Joseph Olikier (Counsel of Record)
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com

Counsel for IGS Energy

Madeline Fleisher
Environmental Law & Policy Center
21 West Broad St., 8th Floor
Columbus, Ohio 43215
mfleisher@elpc.org

Counsel for Environmental Law and Policy Center

Robert Dove
The Law Office of Robert Dove
PO Box 13442
Columbus, Ohio 43213
rdove@attorneydove.com

Counsel for Natural Resources Defense Council

Miranda Leppla
Trent Dougherty
Ohio Environmental Council
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212
mleppla@theoec.org
tdougherty@theoec.org

Counsel for Ohio Environmental Council and Environmental Defense Fund

John Finnigan
Senior Attorney
Environmental Defense Fund
128 Winding Brook Lane
Terrace Park, Ohio 45174
jfinnigan@edf.org

Counsel for the Ohio Environmental Council and Environmental Defense Fund

Richard L. Sites
Regulatory Counsel
Ohio Hospital Association
155 East Broad Street, 3rd Floor
Columbus, Ohio 43215-3620
Rick.sites@ohiohospitals.org

Counsel for the Ohio Hospital Association

Matthew W. Warnock
Dylan F. Borchers
Devin D. Parram
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
mwarnock@bricker.com
dborchers@bricker.com
dparram@bricker.com

Counsel for Ohio Hospital Association

Kimberly Bojko
James D. Perko (Counsel of Record)
Carpenter Lipps & Leland
280 North High Street, Suite 1300
Columbus, Ohio 43215
Bojko@carpenterlipps.com
perko@carpenterlipps.com

Counsel for the Ohio Manufacturers' Association

Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
fdarr@mwncmh.com
mpritchard@mwncmh.com

Counsel for Industrial Energy Users-Ohio

Angela Paul Whitfield (Counsel of Record)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
paul@carpenterlipps.com

Counsel for The Kroger Co.