

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Recovery of)
Program Costs, Lost Distribution Revenue) Case No. 21-482-EL-RDR
and Performance Incentives Related to its)
Energy Efficiency and Demand Response)
Programs.)

APPLICATION OF DUKE ENERGY OHIO, INC.

1. Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is an Ohio corporation engaged in the business of supplying electric transmission and distribution service in Adams, Brown, Butler, Clinton, Clermont, Hamilton, Montgomery, and Warren Counties in Southwestern Ohio to approximately 735,341 electric customers and 445,253 gas customers.
2. Duke Energy Ohio is a “public utility” as defined by Sections 4905.02 and 4905.03, Revised Code, and an “electric distribution company,” “electric light company,” “electric supplier,” and “electric utility” as defined by Section 4928.01, Revised Code.
3. As an Ohio electric distribution utility, Duke Energy Ohio is subject to the mandates set forth in Amended Substitute Senate Bill 221, subsequently modified by Senate Bill 310, codified in Revised Code 4928.66, including, *inter alia*, the requirement to implement energy efficiency programs and peak demand reduction programs, and further modified by House Bill 6.
4. Subsequent to the enactment of the mandates contained in Revised Code 4928.66, the Public Utilities Commission of Ohio (Commission) promulgated rules to facilitate the

Commission's oversight of compliance with this new energy law. These rules are set forth in Ohio Administrative Code 4901:1-39-01, *et seq.*

5. Pursuant to the Commission's rules, Duke Energy Ohio applied for approval of an energy efficiency portfolio of programs in Case No. 13-0431-EL-POR. The stipulation that was adopted and approved by the Commission, provided for implementation of Rider EE-PDR (shown in the Duke Energy Ohio electric tariff as Rider EE-PDR and Rider EE-PDRR) to be effective on January 1, 2014. In Case No. 11-5905-EL-RDR, the Commission approved a distribution decoupling rider, (Rider DDR).
6. A new portfolio was filed in 2016 for years 2017 – 2019 in Case No.16-576-EL-POR. An amended stipulation with the majority of intervening parties was submitted on January 27, 2017 (Stipulation). On September 27, 2017 the Stipulation was approved by the Commission with modifications. On February 26, 2020, in Case No. 16-576-EL-POR, the Commission approved the extension of this portfolio through December 31, 2020, subject to a wind-down period. With respect to cost recovery, the Stipulation provided the following:
 - Rider EE-PDR true-up shall occur by May 15 of the following year.
 - Duke Energy Ohio is eligible for an incentive for achieving energy efficiency above the statutory mandate. The incentive thresholds are set forth in the Stipulation approved on September 27, 2017.
 - Duke Energy Ohio shall perform measurement and verification as set forth in the Direct Testimony of Trisha Haemmerle. Duke Energy Ohio has hired independent evaluators for measurement and verification. Costs for the

independent measurement and verification shall be capped at five percent of program portfolio costs.

7. In its September 27, 2017, order in Case No. 16-576-EL-POR, approving the Stipulation, the Commission added a cost cap, dictating that the Company's annual recovery of program costs and shared savings for calendar years 2018 and 2019 could not exceed four percent of the Company's 2015 operating revenues.
8. Duke Energy Ohio timely sought rehearing of the Commission's Opinion and Order in this case and specifically argued that the Commission had no basis – legal or factual – upon which to impose a cap on cost recovery.¹ The Commission granted rehearing on November 21, 2017, for further consideration.²
9. On October 15, 2019, the Ohio Supreme Court decided *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-4196 (*Ohio Edison*),³ in which the Court held that there was “no express or implied authorization in the language of R.C. 4928.66 that would allow the commission to preemptively impose a limitation on . . . recovery of costs incurred to meet [an EDU's] statutory benchmarks.”⁴
10. At the time that the Commission approved the Company's current portfolio through 2019 and at the time that the Commission approved its extension through the end of 2020, Rule 4901:1-39-07, O.A.C., provided for the recovery of costs and specified what could be included in a cost recovery mechanism. At that time, Rule 4901:1-39-

¹*In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR Duke Energy Ohio, Inc.'s Application for Rehearing, (October 27, 2017).

²*In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR, Entry on Rehearing (November 21, 2017).

³*In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-4196.

⁴ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR, Third Entry on Rehearing, p. 21 (November 18, 2020) (Commission's paraphrase of Ohio Supreme Court holding) (citing *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-4196, ¶ 16).

07, O.A.C., stated that cost recovery may include “costs due to electric utility peak-demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and shared savings.”

11. After *Ohio Edison*, and in accordance with the Supreme Court’s holding, the Company filed an amended application for recovery of program costs, lost distribution revenues, and a performance incentive for costs incurred in 2018, in Case No. 19-622-EL-RDR. The amended application contained a revised and corrected calculation, excluding and eliminating the improper cost recovery cap, and in a manner that was consistent with the Court’s *Ohio Edison* decision.
12. Similarly, in Case No. 20-613-EL-RDR and in this case, the Company’s applications seek recovery of program costs, lost distribution revenues, and a performance incentive for costs incurred in 2019 and 2020 respectively, in accordance with the Supreme Court’s holding in *Ohio Edison*. The Commission recognized that the cost recovery cap imposed on Duke was “identical to the cost cap at issue in” *Ohio Edison* and ordered it removed in its Third Entry on Rehearing, issued November 18, 2020, order in Case No. 16-576-EL-POR. Accordingly, the Company’s calculations in this application do not include any such cost recovery cap.
13. In the same Third Entry on Rehearing, issued November 18, 2020, the Commission also ordered that the Stipulation approved by the Commission on September 27, 2017 (which had authorized shared savings up to \$8 million after-tax), be modified to limit shared savings to no more than an annual amount of \$7.8 million pre-tax. Additionally, the Commission held in the Third Entry that the “pla[i]n language” of R.C. 4928.66(G)(3) precluded the Company from “recover[ing] lost distribution revenue after December 31, 2020, even if the lost distribution revenue is attributed

to energy savings achieved in 2018, 2019 or 2020.”⁵ On December 18, 2020, Duke Energy Ohio filed for rehearing challenging the inappropriate imposition of the pre-tax \$7.8 million shared saving cap, the inability to appropriately collect lost revenues incurred, and several other aspects of the Third Entry on Rehearing and an accompanying Finding and Order issued the same day, November 18, 2020.⁶ This application for rehearing was granted by the Commission for purposes of further consideration on January 13, 2021, and remains pending. Duke Energy Ohio has submitted status reports annually as required by 4901:1-39-05, in Case Nos. 10-317-EL-EEC, 11-1311-EL-EEC, 12-1477-EL-EEC, 13-1129-EL-EEC, 14-457-EL-EEC, 15-454-EL-EEC, 16-0513-EL-EEC, 17-689-EL-EEC and 18-396-EL-EEC, 19-621-EL-EEC, 20-612-EL-EEC and 21-481-EL-EEC⁷.

14. In the absence of an order on its pending rehearing application in Case No. 16-576-EL-POR and in order to preserve its rights to recovery pending rehearing and/or appeal, the Company is claiming in this Application the full stipulated amount of the \$8 million after-tax shared savings value contained in the Amended Stipulation dated January 27, 2017 in Case No. 16-576-EL-POR and also lost distribution revenues through 2023, as further detailed in the testimony of Duke Energy Ohio witness James E. Ziolkowski. This Application represents the Company’s final reconciliation of its Rider EE-PDR.
15. In support of its request for approval to adjust Rider EE-PDR to recover costs related to compliance with energy efficiency mandates in this Application, Duke Energy Ohio

⁵ Third Entry on Rehearing, ¶57.

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No. 16-576-EL-POR, Duke Energy Ohio Inc.’s Application for Rehearing, pp. 1-2 (December 18, 2020).

⁷ To be filed no later than May 15, 2021.

is submitting testimony to provide greater detail about the supporting documentation that will allow the Commission to evaluate the delivery of efficient and measurable energy efficiency and peak demand reduction.

16. Duke Energy Ohio witness Trisha Haemmerle will provide a historical overview of the energy efficiency and demand response programs, Duke Energy Ohio's success with these programs, the methodology used for Evaluation, Measurement and Verification (EM&V), the processes by which the Company evaluated its programs, and will also provide an overview of the procedural history of the existing portfolio.
17. Duke Energy Ohio witness James E. Ziolkowski will provide information related to the financial and accounting support for Rider EE-PDR. Mr. Ziolkowski will describe the calculation of the Rider EE-PDRR revenue requirement for the period January 2020 through December 2020 and the procedure utilized for calculating recovery rate. He will also clarify the assumptions underlying the calculation. The calculation also includes the total costs that are still outstanding from previous true-up proceedings. Mr. Ziolkowski will sponsor Attachments JEZ-1, JEZ-2 and JEZ-3.

Conclusion

As supported by the testimony of the Duke Energy Ohio witnesses filed herewith, the Company respectfully requests that the Commission approve its Application, subject to the terms outlined herein.

Respectfully submitted,

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