

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for an Energy)	
Efficiency Cost Recovery Mechanism)	Case No. 11-4393-EL-RDR
and for Approval of Additional Programs)	
for Inclusion in its Existing Portfolio.)	

POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Duke Energy Ohio, Inc.
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45212
614-222-1330
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

Attorneys for
Duke Energy Ohio, Inc.

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I. Introduction

Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) initiated this proceeding with the filing of an application (Application) for approval of an energy efficiency cost recovery mechanism, and for approval of additional new energy efficiency programs for inclusion in the Company's energy efficiency portfolio. Subsequent to the filing of the Application, the Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Vectren Retail, LLC d/b/a Vectren Source (Vectren Retail), People Working Cooperatively (PWC), the Ohio Environmental Council (OEC), the Environmental Law and Policy Center (ELPC), the Natural Resources Defense Council (NRDC), the Sierra Club and the Ohio Energy Group (OEG) all moved to intervene in this proceeding and all were granted intervention. The Staff of the Public Utilities Commission of Ohio (Staff)¹ also participated in this proceeding.

Thereafter, the interested Parties, including all the above, filed comments and engaged in settlement discussions. All Parties were included in the settlement discussions and all Parties ultimately agreed to a resolution of the issues, except the OEG. The OEG objects to the Company's proposed cost recovery mechanism and to the Stipulation that was submitted to the Commission on the basis of the cost allocation methodology and the proposed incentive mechanism. The OEG, pursuant to terms negotiated in Duke Energy Ohio's first ESP case, obtained favorable terms such that it was not subject to the Company's energy efficiency and peak demand reduction rider. In the Company's most recent ESP, the same provision was not included in the Stipulation. As a result, the OEG is now faced with paying its pro rata share of costs for energy efficiency and peak demand reduction. The OEG does not like this prospect.

¹ The PUCO Staff is considered a party for the purpose of entering into the Stipulation pursuant to Sections 4901-1-10(C) and 4901-1-30, O.A.C.

However, the rate mechanism it proposes for cost allocation would effectively allow OEG members to avoid paying for energy efficiency again. Further, such a rate mechanism would allow the OEG to effectively opt-out of the Company's energy efficiency rider while at the same time permitting OEG to evade the Commission's opt-out rules. The OEG members' load in Duke Energy Ohio's service territory constitutes nine per cent of the Company's overall load. Duke Energy Ohio must achieve energy efficiency levels sufficient to satisfy the state of Ohio's mandates as contained in R.C. 4928.66, in amounts equivalent to a specific percentage of its overall load. If OEG declines to pay its proportionate share of that statutory percentage, and also refuses to demonstrate that its members have otherwise engaged in energy efficiency in order to opt-out of the Company's rider, then the remaining customers will bear the burden of meeting the legal mandates. Such a result disproportionately and unfairly increases the responsibility and costs for energy efficiency on these rate classes. The consequence of OEG's argument is unfair, contrary to Ohio energy policy, and unsupported by any reasonable concept. For the reasons set forth below, the Commission should approve and adopt the Stipulation as submitted by the Parties and reject the OEG's arguments.

II. Duke Energy Ohio's Energy Efficiency and Peak Demand Reduction Programs Comply with Ohio Law and the Commission's Rules.

The law setting forth the state of Ohio's requirements for energy efficiency and peak demand reduction is set forth in R.C. 4928.66. The Commission's rules regarding energy efficiency are contained in O.A.C. Chapter 4901:1-39. Duke Energy Ohio received approval of its portfolio of energy efficiency and peak demand reduction programs and a cost recovery mechanism initially in Case No. 08-920-EL-SSO, *et seq.*, and then again in Case No. 09-1999-EL-POR. Subsequent to these approvals, the Company complied with the state's requirements and submitted proof of its energy efficiency achievements in Case Nos. 10-317-EL-EEC and 11-

1311-EL-EEC. As its cost recovery mechanism approved in Case No. 08-920-EL-SSO, *et seq.*, was designed to be effective until December 31, 2011, the Company submitted the Application in this proceeding for approval of a new cost recovery mechanism and for approval of three additional programs for its portfolio.

The Company's application in this proceeding proposed a cost recovery mechanism that included program cost recovery, and an incentive mechanism in the form of a percentage of the avoided cost benefits realized. Rule 4901:1-39-07 provides for potential recovery of these elements.

In compliance with Commission directives set forth in its Opinion and Order in Case No. 10-834-EL-EEC, the Company and mercantile customers have submitted applications for mercantile opt-out from its save-a-watt rider, Rider DR-SAWR. Indeed, so many mercantile customers have opted out of various utility riders across the state that the Commission found it necessary to create a pilot program to streamline the application process for mercantile opt out requests. The popularity of the opt-out option belies OEG's arguments in this proceeding that such opt-out opportunities are of no value to mercantile customers.

III. The Stipulation Meets the Commission's Criteria for Approval.

Duke Energy Ohio witness Timothy J. Duff² demonstrated in his Supplemental Direct Prefiled Testimony in this proceeding that the Parties (except OEG) reached a stipulated settlement in this proceeding and that the Stipulation meets the Commission's requirements for such agreements. The Stipulation that is pending before the Commission is the product of serious bargaining among capable and knowledgeable parties. It is in the best interests of Duke Energy Ohio's customers and the public interest, and it does not violate any important regulatory principle or practice.

² Duke Energy Ohio Exhibit 7 at p.4-6.

The terms of the Stipulation are different from the Application that was originally proposed in this proceeding. The Parties have agreed to changes in language and changes to the incentive structure from what the Company originally proposed. The duration of the incentive structure has been provided for in the Stipulation, including a re-evaluation no sooner than third quarter of 2014. The stipulating Parties agreed that the Company would not seek to recover lost distribution revenues associated with the energy efficiency impacts in the rate classes included in the distribution pilot revenue decoupling mechanism to be filed pursuant to Section IX.H of the stipulation in Case No. 11-3549-EL-SSO, *et seq.*, if the Commission approves the decoupling mechanism. These and other provisions demonstrate that the Stipulation is the product of serious bargaining among capable knowledgeable Parties. Duke Energy Ohio would also note that the stipulating Parties and their counsel are experienced in Commission proceedings and well-versed in the issues at hand. There can be no doubt that they are capable and knowledgeable.

The Stipulation is in the best interests of Ohio's customers in that it provides benefits for all customer groups and interested stakeholders and at the same time, advances state policy.³ As noted by Duke Energy Ohio witness James E. Ziolkowski, the Stipulation, contrary to OEG's assertions, even benefits commercial and industrial customers in that it allows them to control their bills and lower their bills through using less energy, and it provides greater system benefits, across the system, through other customers participating in energy efficiency.⁴ Additionally, the Stipulation saves time and state resources and resolves a matter that might otherwise involve lengthy litigation and resolution. And finally, the Stipulation does not violate any important

³ Id at 6.

⁴ Tr. at p.96.

regulatory principles.⁵ For all of these reasons, the Commission should adopt and approve the Stipulation submitted by all but one of the Parties in this proceeding.

IV. The OEG's Position is Inconsistent with State Policy, Unfair to other Rate Class Customers, Would Disincentivize Energy Efficiency for a Significant Portion of Duke Energy Ohio's Customer Load and is Unsupported by Any Reasonable Argument.

In support of its position in this case, the OEG provided the testimony of Stephen J. Baron. Mr. Baron has previously testified before the Commission on matters related to electric security plan and market rate offer cases. However, Mr. Baron has not previously testified regarding energy efficiency or policy related to energy efficiency on behalf of the OEG in Ohio since the new energy efficiency laws were enacted.⁶ As a result, Mr. Baron's testimony is wholly out of touch with Ohio energy policy and the Commission's rules. Likewise, Mr. Baron did not examine any facts specific to the OEG members to support his claims.⁷

Mr. Baron opines on behalf of OEG that non-residential customers in Duke Energy Ohio's service territory should pay proposed Rider EE-PDR based upon an allocation that is derived from distribution revenue allocations rather than on a center per kWh. Mr. Baron alleges that this is consistent with Commission precedent but Mr. Baron only relies upon cases that were resolved by stipulation.⁸ As the Commission is aware, parties agree to stipulations not on the basis of individual provisions but, rather, on the basis of the complete package of agreements. It is therefore not possible to pull one provision out of a stipulation and use it to support a similar outcome in a different proceeding. Moreover, those stipulations specifically noted that the parties to those cases, including the OEG, were not to rely upon them in the future for precedents.⁹

⁵ Id at 5.

⁶ Tr. at page 183.

⁷ Tr. at page 181-182.

⁸ Tr. at 197.

⁹ Tr. at 197-199.

OEG's witness further states in his Direct Testimony that large industrial customers are generally more sophisticated energy users who have already taken self-funded measures to maximize their energy efficiency and minimize costs.¹⁰ However, during cross examination, Mr. Baron readily admitted that he had no specific information as to whether any of the OEG members had in fact taken any such measures. Mr. Baron's testimony is not factually supported.¹¹

Mr. Baron states further that allocating energy efficiency costs on the basis of kWh energy usage would potentially hinder economic development in Ohio.¹² However, again, Mr. Baron has no specific knowledge related to either economic development or whether or not energy efficiency rates in Ohio have affected economic development. Indeed, when asked whether he was aware of any industrial or commercial customer has refused to locate in Duke Energy Ohio's service territory because of the prospect of having to pay Duke Energy Ohio's proposed Rider EE-PDR, Mr. Baron readily admitted "Well, the answer is, I don't know one way or the other."¹³ And in response to a question as to whether he had any knowledge whatsoever that existing commercial or industrial customers in Duke Energy Ohio's service territory have refused to expand their business operations because of Duke Energy Ohio's energy efficiency or peak demand reduction rider, Mr. Baron admitted:

"I haven't done any surveys one way or the other. I certainly can't tell you who didn't show up in Ohio because of a prospective rate that the company has filed with the Commission."

Mr. Baron suggests that the process for allowing a customer to opt-out of a utility's energy efficiency rider is uncertain and that large industrial customers have sufficient business

¹⁰ Direct Testimony of Stephen J. Baron at p. 5.

¹¹ Tr. at 183.

¹² Id at p.6

¹³ Tr. at p. 192.

incentive to engage in energy efficiency. However, again, Mr. Baron did not study or analyze to support this assertion.¹⁴ Thus, Mr. Baron's speculative statements are insufficient to support OEG's claims that the Commission's opt-out procedures are unduly burdensome in any respect.

Further in an effort to bolster his unsupported case, Mr. Baron points out opt-out programs in other states.¹⁵ However, with respect to Virginia and Arkansas, Mr. Baron, in fact, has no idea how those states allocate rates.¹⁶ Thus, the opt-out provisions in those states represent only one small portion of an overall energy efficiency policy about which Mr. Baron has no knowledge. This argument too fails for lack of any support in the record.

Next, Mr. Baron recommends that an incentive mechanism should not be allowed for Duke Energy Ohio based upon his understanding that Duke Energy Ohio will transfer title to its generation assets as soon as practicable, on or before December 2014.¹⁷ However, again, Mr. Baron demonstrates a fundamental lack of understanding of Ohio energy policy. Mr. Baron claims that he understands both Revised Code sections speaking to Market Rate Offers and Electric Security Plans. And in fact, Mr. Baron readily admits that neither statute allows an electric utility to alter its energy efficiency or peak demand reduction requirements simply because it procures supply through a competitive bidding process.¹⁸ Thus, despite his assertion, that he understands Ohio law, Mr. Baron can point to no statute or regulation in support of his belief that the transfer of generation assets has an impact on whether an incentive mechanism should be approved. And indeed, there is no support for his recommendation. Duke Energy Ohio witness Timothy J. Duff correctly recognized that the Duke Energy Ohio customers pay

¹⁴ Tr. at p.183.

¹⁵ Tr. at p.194.

¹⁶ *Id.*

¹⁷ Direct Testimony of Stephen J. Baron at p.13.

¹⁸ Tr. at p.184.

generation related costs regardless of where the generation comes from. Thus, avoided cost recovery is appropriate for even customers that shop.¹⁹

Finally, Mr. Baron objects to the incentive mechanism that was agreed to by the Parties to the Stipulation on the basis of a faulty argument that the Company can easily meet its thresholds without such a mechanism.²⁰ Again however, Mr. Baron indicates a fundamental lack of understanding of the Company's data. Mr. Baron notes that the Company has exceeded its benchmark requirements.²¹ However, Mr. Baron also agreed that the Company's benchmark increases yearly. Additionally, Mr. Baron admits in numerous portions of his testimony at hearing that he has not done any studies or analyses to support any of his claims. Thus his testimony, in most respects is entirely conjectural and based entirely on his claimed experience.

V. Conclusion

The OEG, on behalf of its TS customers, negotiated a favorable rate under its earlier Stipulation in Duke Energy Ohio's first ESP case in 2008. This Stipulation was reached prior to the Commission's rulemaking with respect to implementation of Amended Substitute Senate Bill 221's energy efficiency mandates. Much has occurred in the intervening years with respect to development of energy policy and the OEG has not been required to comply with these requirements due to its Rider SAWR rate from the ESP. In the latest stipulation adopted and approved by the Commission in Case No. 11-3549-EL-SSO, *et seq.*, the parties did not address energy efficiency or peak demand reduction, in part because this was case pending. Upon a review of the Company's Application in this proceeding, OEG became aware of the new proposed rate allocation and discovered that its members would now need to pay their fair share

¹⁹ Tr. at p.152.

²⁰ Tr. at p.15

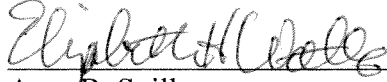
²¹ Tr. at p.16.

toward energy efficiency. Such a revelation has apparently not been well received. However, the rate allocation methodology proposed by the OEG would shift costs onto other rate classes served by Duke Energy Ohio disproportionately. This fact, along with the fact that such rate classes are not represented in this proceeding,²² does not dissuade OEG from its self-serving position. The OEG wishes to completely disregard the Commission's rules for opting out of a utilities' energy efficiency rider and simply be left alone. However, such a result, leaves the load represented by such customers in the utilities' baseline for measuring energy efficiency impacts. If the Company is required to achieve impacts matching such a baseline, customers paying for energy efficiency bear the burden of doing so. Each customer should pay its fair share. In this instance, the Company recommends that the fair share be determined as set forth in the Stipulation agreed to almost all of the Parties and presented to the Commission for adoption and approval.

²² Some of the OEG members are served on rates other than TS. However, no other commercial rate class representative intervened.

For the reasons set forth above and in the Direct and Supplemental Pre-filed Testimony in this proceeding, Duke Energy Ohio respectfully requests that the Commission adopt and approve the Stipulation submitted by the signatory Parties.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Elizabeth H. Watts", written over a horizontal line.

Amy B. Spiller

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Duke Energy Ohio, Inc.

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45212

614-222-1330

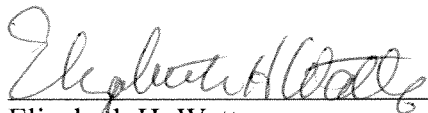
amy.spiller@duke-energy.com

elizabeth.watts@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

Certificate of Service

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or by hand delivery this 9th day of December, 2011


Elizabeth H. Watts

Devin D. Parram
Office of the Ohio Attorney General
Assistant Attorney General
180 E. Broad Street
Columbus, Ohio 43215

Jeffrey L. Small
Melissa R. Yost
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

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

David F. Boehm
Michael L. Kurtz
Jody Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Trent A. Dougherty
Nolan Moser
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

Mary Christensen
Christensen & Christensen, LLP
8760 Orion Place, Suite 300
Columbus, OH 43240

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Ave., Suite 201
Columbus, Ohio 43212

Joseph M. Clark
Vectren Retail, LLC d/b/a Vectren Source
6641 North High Street, Suite 200
Worthington, OH 43085

Christopher Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212

Henry W. Eckhart
1200 Chambers Road, Suite 106
Columbus, Ohio 43212-1703