

**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. 20-613-EL-RDR
and Performance Incentives Related to its	)	
Energy Efficiency and Demand Response	)	
Programs.	)	

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**APPLICATION OF DUKE ENERGY OHIO, INC.**

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1. Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is an Ohio corporation engaged in the business of supplying electric transmission, distribution, and generation service in Adams, Brown, Butler, Clinton, Clermont, Hamilton, Montgomery, and Warren Counties in Southwestern Ohio to approximately 730,000 electric customers and 440,000 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 Public Utilities Commission of Ohio 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.<sup>1</sup> The Commission granted rehearing on November 21, 2017, for further consideration.<sup>2</sup> To date, the Commission has not substantively addressed the Application for Rehearing filed by the Company.<sup>3</sup>
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*),<sup>4</sup> in which the Court reversed an Opinion and Order by the Commission related to the energy efficiency and peak demand portfolio and cost recovery mechanism for Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy) that is identical to that of the Company. In *Ohio Edison*, the Commission had approved FirstEnergy's application for an energy efficiency

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<sup>1</sup>*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).

<sup>2</sup>*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).

<sup>3</sup> On January 10, 2018, the Commission issued its Second Entry on Rehearing in response to an Application for Rehearing filed by the OCC on December 21, 2017. In that Second Entry for Rehearing, the Commission denied OCC's December 21, 2017 Application for Rehearing challenging the Commission's approval of the Company's waiver request. Second Entry on Rehearing did not address any of the rehearing issues granted by the Commission in its November 21, 2017 Entry.

<sup>4</sup>*In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-4196.

portfolio and related cost recovery mechanism, but altered the stipulation by imposing a “cost cap” on costs incurred in implementing energy efficiency, peak demand reduction, and shared savings programs not to exceed 4 percent of its reported 2015 total revenues.<sup>5</sup> In *Ohio Edison* the Court held: “...we find no express or implied authorization in the language of R.C. 4928.66 that would allow the commission to preemptively impose a limitation on FirstEnergy’s recovery of costs incurred in order to meet its statutory benchmarks.”<sup>6</sup>

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 4901:1-39-07, 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 is consistent with the Court’s *Ohio Edison* decision.
12. Similarly, in this case, the Company files its application for recovery of program costs, lost distribution revenues, and a performance incentive for costs incurred in 2019, in accordance with the Supreme Court’s holding in *Ohio Edison*. Accordingly, the

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<sup>5</sup>*Id.*

<sup>6</sup>*Id.*, ¶16

Company's calculations in this application are premised on the absence of the four percent cost recovery cap previously imposed in the September 27, 2017 order in Case No. 16-576-EL-POR.

13. Duke Energy Ohio has submitted status reports annually as required by 4901:1-39-05(C), 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, and 20-612-EL-EEC<sup>7</sup>.
14. 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 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.
15. Duke Energy Ohio witness Trisha Haemmerle will provide a historical overview of the energy efficiency and demand response programs and Duke Energy Ohio's success with these programs, as well as, the methodology used for Evaluation, Measurement and Verification (EM&V) and the processes by which the Company evaluated its programs.
16. 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 2019 through December 2019 and the procedure utilized for calculating recovery rate. The calculation also includes the expected costs for 2020. Mr. Ziolkowski will sponsor Attachments JEZ-1, JEZ-2 and JEZ-3.

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<sup>7</sup> To be filed no later than May 15, 2020.

## 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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