

**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, )  
and Performance Incentives Related to Its )  
Energy Efficiency and Demand Response )  
Programs. )

Case No. 19-622-EL-RDR

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**REQUEST FOR PROCEDURAL SCHEDULE  
AND COMMENTS OF DUKE ENERGY OHIO, INC.**

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**I. INTRODUCTION**

Pursuant to the rules of the Public Utilities Commission of Ohio (Commission), Duke Energy Ohio, Inc., (Duke Energy Ohio) submitted an application for recovery of costs related to its energy efficiency and peak demand reduction programs for 2018. Along with an application, the Company also submitted financial schedules and other requirements as set forth in Chapter 4901:1-39, O.A.C. On May 2, 2019, the Commission established a procedural schedule providing for motions to intervene, comments and reply comments. The Office of the Ohio Consumers' Counsel (OCC), the Environmental Law & Policy Center (ELPC) and Ohio Partners for Affordable Energy (OPAE) all intervened in the proceeding and OPAE also filed comments pursuant to the procedural schedule.

On December 12, 2019, the Staff of the Public Utilities Commission of Ohio (Staff) filed a Staff Review and Recommendation (Staff Report). The Staff Report was filed after the times established by the Commission for comment. Accordingly, Duke Energy Ohio respectfully requests that the Commission again establish a procedural schedule to allow for comments and for hearing as necessary to provide for due process.

## II. COMMENTS

The Staff Report recommends operation and maintenance expense (O&M) totaling \$337,893 be deducted from the proposed energy efficiency and peak demand reduction rider, (Rider EE-PDR) cost recovery amount. Staff separated out its discussion into the categories that include consideration of: incentives, “meals, snacks, entertainment and drinks”, employee expenses, miscellaneous expense charges, and out-of-period expenses. Staff’s description of its audit and its reasons for disallowing items in each of these categories is abbreviated and undocumented. As set forth in the Staff Report, it is impossible for the Company to know specifically which expenses were disallowed and for what reasons, other than the broad and brief explanations provided. Accordingly, Duke Energy Ohio respectfully requests that the Commission establish further proceedings to allow the Company to better understand the Staff’s reasoning and policy with respect to the specific categories and associated expenses.

Additionally, the Staff Report does not consider the impact of the Ohio Supreme Court’s recent holding in *In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-4196 (*Ohio Edison*) that the Commission lacked statutory authority to impose caps on cost recovery for energy efficiency programs.<sup>1</sup> Like the facts in *Ohio Edison*, in Duke Energy Ohio’s own energy efficiency portfolio proceeding, Case No. 16-576-EL-POR, the Commission established a cap on the Company’s cost recovery for energy efficiency programs for the years 2017 through 2019. The Company timely sought rehearing of the Commission’s decision and implementation of the cost cap, which the Commission subsequently granted for further consideration.<sup>2</sup> To date, the Commission has not offered any decision addressing the Company’s rehearing request. Indeed, with the Court’s decision in *Ohio Edison*, the matter has been resolved in the Company’s favor.

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<sup>1</sup>*In re Application of Ohio Edison Co.*, Slip Opinion No. 2019-Ohio-4196.

<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).

And the Staff Report should have factored the Court's decision on the Company's pending application. Accordingly, Duke Energy Ohio is submitting an amended application for recovery of costs in response to *Ohio Edison*,<sup>3</sup> that was issued after the Company's original application in this proceeding had been submitted, but prior to the issuance of the Staff Report. Since the amended application will provide for recovery of costs not included in the original filing, that were excluded due to the now improper cap, the parties may wish to comment again on the application.

### III. CONCLUSION

For the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission establish a procedural schedule to permit filing comments on the recently filed Staff Report and on the Company's Amended Application.

Respectfully submitted,

*/s/ Elizabeth H. Watts*

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 20th day of December 2019, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.

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