

**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 and ) Case No. 11-4393-EL-RDR  
for Approval of Additional Programs for )  
Inclusion in its Existing Portfolio. )

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**DUKE ENERGY OHIO, INC.'S RESPONSE TO THE COMMISSION'S ORDER  
AND  
MOTION FOR WAIVER**

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**I. Introduction**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) submitted its Application in this proceeding on July 20, 2011. The Application sought approval a new rider to recover costs related to the Company's provision of energy efficiency services within its service territory. Additionally, after fully vetting three new additional programs with the Duke Energy Community Partnership (Energy Efficiency Collaborative), and upon reaching a stipulation and recommendation with the all but one of the parties in this proceeding, the Company requested approval of these programs in its Application, together with the new rider request. Although the Ohio Energy Group (OEG), which represents the interests of industrial customers in Duke Energy Ohio's service territory, opposed the stipulation submitted herein, OEG did not specifically oppose the three additional residential programs put forth for approval, but rather opposes the rate design as set forth in the Stipulation.

The Public Utilities Commission of Ohio's (Commission) rules specifically describe the process to be used in seeking to have programs approved in a portfolio. However, the rules do not address how to seek approval for additional programs during the term of an approved portfolio plan. Because the proposed three programs were intended only to supplement the Company's existing portfolio, which portfolio will be revised and reviewed in 2013, the Application was not intended to address the details that would be included in a request for approval of a portfolio.

## **II. Duke Energy Ohio's Energy Efficiency and Portfolio History**

Duke Energy Ohio has successfully provided energy efficiency programs to its customers for many years. Subsequent to the enactment of Substitute Senate Bill 221, Duke Energy Ohio proposed a portfolio of programs and a cost recovery mechanism for approval as part of its Electric Security Plan (ESP).<sup>1</sup> That proceeding resulted in a stipulation and recommendation (ESP Stipulation) that was approved by the Commission, with said approval extending to the Company's energy efficiency programs and cost recovery mechanism. The ESP Stipulation further provided that the Company would conform to the Commission's rules implemented under S.B. 221, which were yet to be enacted when the Stipulation was executed.

Subsequently, the Commission promulgated rules to facilitate the electric distribution utilities' mandates for energy efficiency, as provided for in R.C. 4928.66. The rules set forth in O.A.C. Chapter 4901:1-39 require the filing of a portfolio, annual reporting and reviews of the reporting, an opportunity to seek cost recovery, and a mercantile customer opt-out mechanism. Accordingly, after the Commission's rules related to energy efficiency became final, the Company submitted its existing portfolio of programs, which was already in effect, pursuant to

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Security Offer in the Form of an Electric Security Plan*, Case No. 11-3549-EL-SS0, et al.

the ESP Stipulation, for re-approval by the Commission in Case No. 09-1999-EL-POR. The Company's application in that proceeding consisted of 372 pages of supporting material, consistent with the new requirements of the Commission's rules as set forth in O.A.C. 4901:1-39, *et seq.* On December 15, 2010, the Commission approved the Company's portfolio, including nine of the ten programs proposed therein.<sup>2</sup>

In the December 15, 2010 order approving the portfolio of programs, the Commission directed Duke Energy Ohio to file an updated program portfolio plan by April 15, 2013, and to file portfolio status reports addressing the status of the performance of all approved programs in the portfolio plan by March 15 of each intervening year. The Company submitted its required status reports for each of the past two years, in Case Nos. 10-317-EL-EEC and 11-1311-EL-EEC, and fully anticipates filing an updated program portfolio plan by no later than May 15, 2013.

### **III. Application in this Proceeding and Waiver Request**

Because the energy efficiency cost recovery mechanism was originally instituted in 2008 with the Company's first ESP, it was anticipated that a new cost recovery mechanism would be required with the beginning of the Company's second ESP. That second ESP was approved in Case No. 11-3549-EL-SSO, *et al.*, and took effect on January 1, 2012. The Company submitted its request to replace the save-a-watt mechanism with a new mechanism in the instant proceeding.

As described above, at the same time when the Company was to appear before the Commission for approval of the new cost recovery mechanism, in the spirit of administrative economy, it was deemed reasonable to seek approval of the additional programs that had been

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<sup>2</sup> *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak Demand Reduction Programs and Portfolio Planning*, Case No. 09-1999-EL-POR, Opinion and Order, (December 15, 2010).

reviewed by the Duke Energy Ohio Energy Efficiency Collaborative. Such a modification is not addressed by the rules in O.A.C. 4901:1-39. Thus, the Company did not deem it necessary or appropriate to include all of the detail that would be required for the triennial program approval. Neither did the Company believe that a motion to waive those rules should be filed, as the rules were not applicable to the modification. Therefore, Duke Energy Ohio respectfully requests that the Commission find that the application filed in this case was not out of compliance with the rules promulgated as O.A.C. Chapter 4901:1-39.

In the event the Commission cannot conclude that O.A.C. Chapter 4901:1-39 was inapplicable to the Application in this proceeding, the Company hereby requests that the rules be waived for purposes of this application only. Specifically, Duke Energy Ohio requests that the Commission grant a waiver for good cause shown from the requirements set forth in O.A.C. Rule 4901:1-39-04 and 4901:1-39-05. The Company respectfully submits that such a waiver would not prejudice any of the Parties in this proceeding since there is no dispute with the supplemental programs proposed or the cost recovery mechanism set forth in the Stipulation. Moreover, to the extent O.A.C. Rules 4901:1-39-04 and 4901:1-39-05 were enacted to allow stakeholders to participate and provide input to the proposed cost recovery mechanism, in this instance, the Parties have had such an opportunity in both the Collaborative and through their intervention in this proceeding.

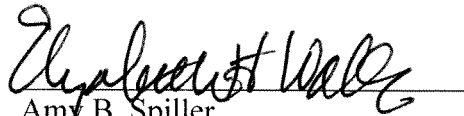
The three proposed programs were introduced to the Company's Energy Efficiency Collaborative and approved by all the participants. Thereafter, they were proposed for interim approval herein and will be re-submitted to the Commission within one year. The Collaborative members and the Commission will have gained one year of experience and will be in a better

position to evaluate whether or not the programs should be approved next year as a result of approving them in this interim application.

**IV. Conclusion**

Duke Energy Ohio respectfully requests that the Commission find that the application filed in this proceeding complied with all applicable administrative rules. In the alternative, the Company moves for a waiver of any and all such rules that the Commission finds were applicable and were not addressed by such application.


Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 4th day of April, 2012, to the following:

  
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