

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of its Energy)	Case No. 16-576-EL-POR
Efficiency and Peak Demand Reduction)	
Program Portfolio Plan.)	

INITIAL POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke Energy Ohio, or Company) submitted its application in this proceeding on June 15, 2016. Various objections to the application were submitted by intervening parties on August 15, 2016. Notably, neither the Office of the Ohio Consumers Counsel (OCC), nor the Staff of the Commission (Staff) filed any comment or objections. Thereafter, on August 15, 2016, the Company submitted the Duke Energy Ohio DSM Market Potential Study (Market Potential Study). The application and supporting testimony were then amended and refiled to incorporate minor changes based upon recommendations in the Market Potential Study. Intervening parties met numerous times individually and collectively during several months. After lengthy discussion, most of the parties submitted a Stipulation and Recommendation for approval by the Public Utilities Commission of Ohio (Commission) on December 22, 2016. An amended Stipulation and Recommendation (Stipulation) was submitted on January 27, 2017 adding additional parties. This Stipulation includes all parties who intervened in the matter except the OCC, and the Staff, and resolves all of the issues in the case. Staff and OCC filed testimony as late as February 6, 2017, thereby officially giving notice of their respective positions on the record. Staff and OCC did not contest any of the provisions of the Stipulation, but rather recommended an

overall cap on spending based upon the calculation of 3.5% times a number to be found on the Company's 2015 Federal Energy Regulatory Commission (FERC) Form 1, page 300, line 10. OCC supported this provision. The Staff position represents a significant and abrupt departure from past positions and is fundamentally illogical in many respects.

The portfolio submitted by the Company, as amended by the Stipulation complies with all statutory and regulatory requirements, and no party disputes this fact. Indeed, the only issue in contention is whether or not it is appropriate to impose an overall cap on all categories of spending, including program costs, lost distribution revenue, and shared savings. None of the stipulating parties in this case supported such a cap and indeed the very concept is expressly contrary to the mandates expressed in Ohio law, R.C.4928.66, *et seq.*

After a number of procedural date changes, the matter was heard on February 27, 2017. Consistent with the testimony provided by Duke Energy Ohio witness Timothy J. Duff, the Commission should adopt and approve the Stipulation and Recommendation submitted by almost all of the parties in this case and reject the proposal advanced by Staff and OCC.

II. DISCUSSION

A. The Stipulation Should Be Adopted and Approved

The Stipulation submitted in this case provides a comprehensive resolution of all of the significant matters related to the Company's energy efficiency portfolio for the next three years, 2017 through 2019. Importantly, it provides, *inter alia*, for approval of the portfolio of programs submitted, and includes some additional programs that have the potential to enhance the portfolio and provide significant benefits to customers. The Company has agreed to bid energy efficiency and peak demand reduction resources into the PJM Interconnection LLC capacity auctions and return revenue back to customers through Rider EE-PDR. The Company explicitly agreed that it

would only be eligible for incentive in a year in which it did not need to use banked savings to meet its mandated savings level and to omit net benefits from calculation of shared savings for certain specific actions, e.g., water savings and wastewater reductions. Additionally, there are a number of proposals to work with Ohio Manufacturers' Association and Ohio Hospital Association and others for various new programs. Furthermore, the Company agreed to a cap on its eligibility to earn shared savings in the amount of \$8.0 million after-tax dollars. Thus, in addition to lost revenue and program costs, the maximum upside for the Company when it exceeds its mandate in a given year is \$8.0 million.

The Stipulation represents many hours of negotiations with many diverse interests and the Stipulation meets all of the requirements applied by the Commission for examining such stipulations. Duke Energy Ohio witness Timothy J. Duff, in his supplemental direct testimony explained how the Stipulation meets the Commission's criteria.¹ Mr. Duff explained that the Stipulation consists of thirteen terms which he describes in greater detail.² Mr. Duff then goes on to explain the Commission's criteria including that the resulting Stipulation was the result of serious bargaining among capable, knowledgeable parties, it did not violate any regulatory principle or practice, and, as a package, benefits ratepayers and the public interest.³ Staff filed testimony recommending changes to the Stipulation and Staff does not contest that the Stipulation meets the Commission's criteria for approval. Likewise, although OCC witness Colleen Shutrump claimed that the Stipulation did not meet two of the three prongs of the Commission's analysis, Ms. Shutrump admitted, upon cross examination, that she was simply incorrect in regard to her argument that the Stipulation was not the product of serious bargaining. Ms. Shutrump claimed that OCC was not invited to meetings that led to the drafting of the Settlement, and that Kroger had

¹ Supplemental Direct Testimony of Timothy J. Duff, Duke Energy Ohio Exh. 4 at pg.2.

² Id.

³ Id. pg.9.

not been invited to a particular settlement conference. However, after reviewing a sign-in sheet for the settlement meeting, Ms. Shutrump admitted she may have been incorrect with respect to whether or not Kroger was represented.⁴ Indeed, since Kroger is a signatory to the Stipulation, there can be no doubt that Kroger was included in settlement discussions.

Likewise, OCC attended the meeting for which there was a sign-in sheet, and was engaged through out.⁵ As is always the case, the Company engaged in one-on-one discussions with many of the parties and in these discussions, OCC was naturally not included. Thus, Ms. Shutrump's claim that there was not serious bargaining is not supported by the facts.

OCC's second argument merely consists in seeking to support, albeit weakly, Staff's position with respect to the need for an overall cap on spending. OCC lends no additional weight to Staff's position as will be discussed in greater detail below. Thus there is no actual challenge to the legitimacy and comprehensiveness of the Stipulation. It has been established without any cognizable challenge, that the Stipulation meets the Commission's criteria for approval of such agreements and it should be adopted and approved by the Commission. The only issue that merits any real attention is Staff's somewhat perplexing recommendation for an overall cap on spending.

B. The Staff's Recommendation for an Overall Cap is Inexplicable

At the last possible minute, and after numerous requests for continuances, Staff submitted direct testimony in this case by Patrick Donlon to support its position that the Commission should impose an overall cap on spending for energy efficiency, regardless of all other considerations. Staff proposed that the Commission refer to the Company's 2015 Operating Revenues as reported in its FERC Form 1, page 300, line 10, and multiply that number by 3.5% to determine a cost cap for all energy efficiency spending. The FERC Form 1 number represents revenues from total sales

⁴ Transcript Vol. I at pg.93-94.

⁵ Duke Energy Ohio Ex.11 and 12.

to ultimate consumers, and Staff claims that it recommends this number for four reasons: 1) it is public and readily available; 2) it is expressed in total dollars; 3) it allegedly provides the Company with greater flexibility; 4) it allows for transparency amongst all the utilities in the state. This rationale is unsupportable and inexplicable when understood in context and Staff was singularly unable to explain any particular support for this approach.

Duke Energy Ohio witness Timothy J. Duff explained why this awkwardly proposed cap is illogical and arbitrary. First, and importantly, as explained by Mr. Duff, the concept of an overall cap on spending for energy efficiency, without any regard for program quality and customer demand is misaligned with state policy and most certainly not in the best interest of Ohio customers.⁶ The imposition of an overall cap puts the Company in the position of having to discontinue programs when they hit a specific dollar cap so as not to exceed the limit regardless of the success of the program. In some cases, this would be at the expense of the Company's ability to earn any shared savings.

Mr. Duff explains that cost effective energy efficiency provides more utility system benefit than its cost, so it is counter-intuitive to think that the Commission should seek a cap on customers' participation. The concept of shared savings is designed to provide greater benefit to customers than to the Company. The calculation of the avoided cost-benefit associated with the shared savings incentive was presented by Duke Energy Ohio witness Trisha A. Haemmerle in her Direct Testimony that was submitted with the application.⁷ The fundamental design of the shared savings mechanism is geared toward providing the vast majority of the net system benefits from the energy efficiency programs to customers while also providing a small percentage of the net benefit as a meaningful incentive to the Company to achieve as much energy efficiency in as cost effective

⁶ Rebuttal Testimony of Timothy J. Duff, Duke Energy Ohio Exh. 4 at pg.2.

⁷ Direct Testimony of Trisha A. Haemmerle, Duke Energy Ohio Exh. 5 at pg.8-10.

manner as possible. As set forth in the Stipulation, the mechanism proposed by the Company incentivizes the Company at tiered shared savings percentage ranging from 6% to 12%, while allowing customers to receive 88% to 94% of the system benefits realized through the Company's portfolio.⁸ Even more inexplicable, is that under the Stipulation in this case, once the Company hits the agreed cap on shared savings, the customer would then retain 100% of the system benefits. Forgoing this value to customers for the sake of an overall cap, is simply arbitrary, illogical and most certainly not in the customers' best interest.

Mr. Duff pointed out that the cost cap as proposed by Staff witness Donlon will likely result in increasing the ultimate cost of utility compliance and create a poor experience for customers. If the Company hits a cost cap, it is likely to suspend a program and stop customer participation abruptly. Thereafter, the utility must expend additional program funds to "re-acquire" that same customer into reestablished programs. This is entirely inefficient and wasteful of customer resources.⁹ It also potentially leaves the customer somewhat disillusioned. Thus while the parties to the Stipulation ultimately agreed upon a cap that applies to the Company's incentive, it does not arbitrarily cap the Company's ongoing programs. In this way, the customers can benefit by continuing to participate, while at the same time retaining 100% of the net system benefits.

Likewise, in so limiting the Company's annual energy efficiency achievement, the Commission is now taking a position contrary to earlier precedent. In the past, Staff has agreed to, and the Commission has approved tiered incentive mechanisms for the explicit purpose of incentivizing and rewarding utilities when they exceed the annual energy efficiency benchmark for a given year. In approving an earlier stipulation, the Commission explicitly denied the Company the ability to count banked energy savings toward its shared savings incentive calculation. In doing

⁸ Amended Stipulation and Recommendation at p.5.

⁹ Rebuttal Testimony of Timothy J. Duff, Duke Energy Ohio Exh.13 at pg. 3.

so, the Commission noted that “As the mandated benchmark rises every year, Duke must continue to find ways to encourage energy efficiency.”¹⁰ The Company has been providing energy efficiency and obtaining cost recovery for lost distribution revenue, program costs and incentives for many years without a cap. Additionally, Staff has not explained any compelling rationale for its newly articulated change in policy.

Additionally, the cost cap proposed by Staff and OCC will provide significantly less funds than the amount projected by the Company to meet its energy efficiency mandates. Compounding this problem is the fact that the target number selected by Staff was seemingly random. First, the number selected as the basis for the calculation will vary over time due to shopping customers as it includes generation-related revenues collected by the utility and thus only includes revenue to the Company from non-shopping customers.¹¹ This causes inequities amongst Ohio electric utilities since each Company has different percentages of shopping customers. When questioned, Staff Witness Donlon provided no transparency on the rationale behind a methodology to determining the percentage of Operating Revenues that was proposed for each utility and had no explanation for the inequality in funding. Mr. Duff demonstrated the outcome of using this proposed cap methodology in an attachment to his testimony, (Attachment TJD-2). For example, the Ohio Power Company will receive 154% of the amount that Duke Energy Ohio will have to spend on a per MWH basis. This is inequitable and unsound policy and manifestly unfair to Duke Energy Ohio’s customers.¹²

Also, Staff witness Donlon stated in his testimony that “costs have been escalating to the point that the rider in which energy efficiency costs are collected has become one of the highest

¹⁰ *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.14-457-EL-RDR, Finding and Order, (May 20, 2015) at pg.5.

¹¹ Rebuttal Testimony of Timothy J. Duff, Duke Energy Ohio Exh.13 at pg.2.

¹² Rebuttal Testimony of Timothy J. Duff, Duke Energy Ohio Ex. 13 at pg.7.

riders on residential customers' bills."¹³ In making the comparison, Mr. Donlon testified that he was comparing the riders included on Duke Energy Ohio's bills instead of comparing Duke Energy Ohio's Rider EE-PDR to other utilities' EE riders. However, comparing an individual rider in this way is not helpful. It should be noted that Duke Energy Ohio's electric rates are among the lowest in the state.¹⁴

When asked, Mr. Donlon admitted that he did not know if any customers were complaining about their energy efficiency charges. Rather, Mr. Donlon volunteered that the Commission "[has] received a lot [of complaints] from the General Assembly."¹⁵ Mr. Donlon thereby seems to suggest that Staff's position was based at least in part, on discussions with legislators. While Staff's desire to be responsive to legislators is expected and quite understandable, extrapolating legislative intent and state policy changes from individual comments or complaints exceeds Staff's responsibility to answer questions, and provide subject matter information. Since the imposition of the energy efficiency mandate in Senate Bill 221 in 2008, the Legislature has twice amended the energy efficiency and peak demand reduction sections in Title XLIX of the Revised Code, yet not once has a cap for energy efficiency spending been addressed. The appropriate inference from the Legislature's lack of action to impose a cap on total energy efficiency spending is a lack of intent to do so. Individual inquiries, comments, or complaints by a legislator on a particular subject do not equate to direction to take action that alters state policy and to the extent Staff's position encroaches into this area, it should be noted and appropriately discounted.

Finally, the Staff's and OCC's proposed methodology does not even serve the goals that Staff witness Donlon discussed as his rationale for selecting the proposed cap. First, the number selected is indeed a public number, but it is certainly not a number that is readily available to the

¹³ Direct Testimony of Patrick Donlon, Staff Exh.1 at pg.8.

¹⁴ <https://www.puco.ohio.gov/industry-information/statistical-reports/ohio-utility-rate-survey/>

¹⁵ Transcript Vol. I at pg.162.

general public. Perhaps these concepts have been conflated. It is doubtful that members of the public are reviewing FERC forms on a regular basis or otherwise. Even if one were to accept the FERC Form 1 is publically available and creates transparency, a far more relevant number with respect to the amount of energy efficiency required of an electric utility, MWH Sales is available on the very next page of the FERC Form 1. Second, the number is indeed expressed in total dollars, but so is a cost per MWH or any other proposed budget number expressed in total dollars. It is unclear what is intended by this particular requirement. Third, using this particular cost cap, according to Mr. Donlon allows the Company to have more flexibility in managing a budget than if the cost cap is based on a percentage of specific bill impacts.¹⁶ Certainly, the Company was never asked if this was true and indeed it is quite untrue. The budget proposed by Staff would make it impossible to manage around since it does not permit the Company to meet the state requirements for energy efficiency. Lastly, while using a number from the FERC form may allow for “transparency”, the transparency that it affords is merely that which demonstrates the inequity of the proposal. Since the number varies due to shopping, and the number proposed is multiplied by a different percentage rate for each utility, it is not a means by which to claim equal applications of theory or policy. Thus, it fails this test as well. Staff’s stated reasons for proposing this rationale simply do not hold water.

C. The Company Has Requested a Deferral of 2017 Program Costs

In his testimony, Mr. Donlon explains the need for a deferral of costs for energy efficiency for the current year and recommends that the cost recovery be structured to include over/under recovery true-up accounting. The Company has already submitted a request for such a deferral and does agree with Staff that true-up of the rider is appropriate. The Company seeks such a deferral in

¹⁶ Testimony of Patrick Donlon, Staff Exh.1 at p.5.

its application that was filed with the Commission on February 3, 2017.¹⁷

III. CONCLUSION

The Company submitted a portfolio of programs for energy efficiency and peak demand reduction in early 2016. No party contests any element of that proposed portfolio and no one disputes the testimony supporting the portfolio that establishes that it is compliant with Ohio law and the Commission's regulations. All but two of the intervening parties to this case have submitted a Stipulation that resolves any issues raised and provides significant benefits to customers. The Company submitted testimony establishing that the Stipulation meets the criteria for approval of stipulations that the Commission has typically applied. The only issue to be determined is whether the Commission should arbitrarily apply Staff's proposed cost cap that in addition to being utterly unsupported by any rational or logical reasoning or analysis, would create extreme inequity in the amount of funding Duke Energy Ohio would have to reach its mandate relative to what has been approved by the Commission other Ohio utilities. Accordingly, the Commission should approve the Stipulation that was submitted by signatory parties and reject Staff's and OCC's recommendation.

¹⁷ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Energy Efficiency and Peak Demand Reduction Program Costs and Lost Distribution Revenue*, Case No.17-349-EL-AAM, Application, (February 3, 2017).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 31st day of March, 2017, to the following parties.


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Respectfully submitted,

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