

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**POST-HEARING BRIEF  
OF  
THE NATURAL RESOURCES DEFENSE COUNCIL,  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
THE OHIO ENVIRONMENTAL COUNCIL,  
AND THE SIERRA CLUB**

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**I. INTRODUCTION**

On July 20, 2011, Duke Energy Ohio, Inc. (“Duke” or “Company”) filed an Application for approval of certain energy efficiency programs and for approval of tariffs in connection with Duke’s energy efficiency programs with the Public Utilities Commission of Ohio (“PUCO” or “Commission”). The Application deals with Duke’s proposed portfolio of energy efficiency measures in connection with the Company’s compliance with energy efficiency objectives stated in R.C. Chapter 4928.<sup>1</sup> Duke proposes that associated rates be implemented to replace those that expire on December 31, 2011.<sup>2</sup>

Duke, the PUCO Staff (“Staff”),<sup>3</sup> the Office of the Ohio Consumers’ Counsel (“OCC”), Ohio Partners for Affordable Energy (“OPAE”), Vectren Retail, LLC

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<sup>1</sup> Duke Ex. 1 (Application) at 1-2 (July 20, 2011).

<sup>2</sup> Id. at 3 (July 20, 2011).

<sup>3</sup> The PUCO Staff is considered a party for the purpose of entering into the Stipulation. Ohio Adm. Code 4901-1-10(C) and 4901-1-30.

(“Vectren Retail”), People Working Cooperatively (“PWC”), the Ohio Environmental Council (“OEC”), the Environmental Law and Policy Center (“ELPC”), the Natural Resources Defense Council (“NRDC”), and the Sierra Club filed a Stipulation and Recommendation (“Stipulation”) on November 18, 2011 to resolve all issues in this case. The only party that is not a signatory to the Stipulation is the Ohio Energy Group (“OEG”).<sup>4</sup>

An Entry dated October 7, 2011 established a procedural schedule, which was subsequently modified (but maintained the same hearing date). The hearing took place on November 29, 2011.

## **II. ARGUMENT**

### **A. Applicable Law and Standards**

Duke filed its Application in connection with the requirements for electric distribution utilities to engage in energy efficiency activities pursuant to R.C. 4928.66, et seq. The Application was filed in response to requirements set out in Ohio Adm. Code 4901:1-39-07 regarding a manner of charging customers in connection with energy efficiency portfolio programs.<sup>5</sup> The Company also proposed the addition of certain new energy efficiency programs for approval by the Commission.<sup>6</sup>

Ohio Adm. Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of a

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<sup>4</sup> Joint Ex. 1 (Stipulation) at 1.

<sup>5</sup> Application at 1.

<sup>6</sup> Id. at 2, citing Ohio Adm. Code 4901:1-39-04. Three new programs are the subject of the Company’s initial proposal. See, e.g., Application at 4 (“Appliance Recycling Program,” “Low Income Neighborhood Program,” and “Home Energy Solutions”).

stipulation “are properly accorded substantial weight.”<sup>7</sup> In determining whether a stipulation is reasonable and should be adopted, the Commission uses the following criteria:<sup>8</sup>

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principal or practice?

The Stipulation submitted in this case should be evaluated according to these criteria.

**B. The Stipulation Satisfies All Criteria for the Approval of Settlements.**

**1. The settlement is a product of serious bargaining among capable knowledgeable parties.**

The Stipulation passes the Commission’s first criterion for the evaluation of settlements. The entities who participated in settlement discussions have significant experience in regulatory matters.<sup>9</sup> Representatives of customer classes, a marketer, low-income advocates, and environmental groups as well as the PUCO Staff participated in settlement discussions, reflecting a diverse set of interests.<sup>10</sup> Through multiple discussions, the parties worked to achieve a settlement that resolved issues of significant importance to Duke’s customers.<sup>11</sup> The Stipulation meets the first criterion the

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<sup>7</sup> *Consumers’ Counsel v. Public Util. Comm.* (1992), 64 Ohio St. 3d 123, 125, 1992 Ohio Lexis 1382, citing *Akron v. Public Util. Comm.* (1978), 55 Ohio St. 2d 155, 157.

<sup>8</sup> *Consumers’ Counsel v. Public Util. Comm.* (1992), 64 Ohio St. 3d 123, 126.

<sup>9</sup> Duke Ex. 7, at 4, line 20 (Duff).

<sup>10</sup> *Id.* at 2, line 5.

<sup>11</sup> Duke Ex. 7 at 5, lines 6-8 (Duff) (“ . . . the Stipulation is a compromise resulting from those negotiations and, therefore, represents a product of the efforts of capable, knowledgeable parties.”).

Commission uses to determine whether a settlement is reasonable, and should be approved.

**2. The settlement, as a package, benefits ratepayers and the public interest.**

The Stipulation passes the Commission's second criterion for the evaluation of settlements. The settlement provides benefits for Duke's customers. Under the Stipulation, Duke is encouraged to engage in energy efficiency activities by means of a pilot incentive mechanism that "shall expire at the end of 2015, and [shall] be reevaluated by all parties . . . [regarding its] reasonableness and effectiveness."<sup>12</sup> The mechanism agreed to has been structured to encourage Duke's investment in energy efficiency initiatives that provide benefits to its customers, but without providing additional payments to Duke for situations that do not involve the utility (i.e. mercantile self-direct programs are not considered)<sup>13</sup> and activities whose regulatory treatment remains highly controversial when conducted by any utility (i.e. changes to transmission and distribution facilities).<sup>14</sup>

The Stipulation provides for the addition of energy efficiency programs to Duke's portfolio of programs. The Stipulating Parties agree regarding implementation of the

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<sup>12</sup> Joint Ex. 1 (Stipulation) at 5. The incentive mechanism was described in comments submitted "by members of the Ohio Consumers and Environmental Advocates (OCEA) in Comments submitted to the Commission in this proceeding on September 21, 2011." Id. at 4 (referring to OCEA Exs. 1 & 2).

<sup>13</sup> Id. at 6, ¶8.

<sup>14</sup> Id. at 7, ¶9. See generally *In re FirstEnergy T&D Energy Efficiency Proposal*, Case No. 09-951-EL-EEC, et al., (including a June 8, 2011 Order that attaches the Concurring and Dissenting Opinion of Paul A. Centolella and Cheryl L. Roberto). The Application does not include any proposal or mention of transmission and distribution facility improvements.

“Low-Income Neighborhood Program,”<sup>15</sup> the “Home energy Manager Program,”<sup>16</sup> and the “Appliance Recycling Program” proposed in Duke’s Application.<sup>17</sup> The energy efficiency collaborative will “continue to work . . . to develop a more comprehensive low income program.”<sup>18</sup> The Stipulation also adds the involvement of GreenStreet Solutions to the energy efficiency collaborative.<sup>19</sup>

The Stipulation also contains an agreement regarding positions taken by parties in the wake of an anticipated application by Duke for a decoupling mechanism.<sup>20</sup> The filing of a decoupling mechanism is one subject of a stipulation executed by a wide range of parties in Duke’s electric security plan case (i.e. Case No. 11-3549-EL-SSO).<sup>21</sup> “The Company will not seek to recover lost distribution revenues associated with energy efficiency impacts . . . if the Commission approves the decoupling mechanism.”<sup>22</sup> If a decoupling mechanism supported by the Stipulating Parties is not approved by the Commission, the “Signatory Parties reserve their rights to take any position regarding such a request” regarding lost distribution revenues and the agreement has no detrimental effect (i.e. it has no effect) on any party or the Commission itself.<sup>23</sup>

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<sup>15</sup> Joint Ex. 1 (Stipulation) at 6, ¶4.

<sup>16</sup> Id. at 6, ¶6.

<sup>17</sup> Id. at 6, ¶7.

<sup>18</sup> Id. at 6, ¶5.

<sup>19</sup> Id. at 7, ¶10.

<sup>20</sup> Id. at 5-6, ¶3.

<sup>21</sup> Id. at 5, ¶3. The stipulation in that case was approved by the Commission with modifications that are unrelated to the decoupling provision in the filed stipulation. *In re Duke’s Second ESP Plan*, Case No. 11-3549-EL-SSO, Order (November 22, 2011).

<sup>22</sup> Id.

<sup>23</sup> Id.



Benefits of the Stipulation would be provided under the Stipulation to “all customers groups and interested stakeholders . . . .”<sup>24</sup> The only opposition to the Stipulation comes from a party that supports “pay[ing] nothing for energy efficiency and peak demand reduction.”<sup>25</sup> The Stipulation passes the second criterion of the Commission test for reasonableness.

**3. Approval of the Stipulation would not violate any important regulatory principles and practices.**

The Stipulation passes the Commission’s third criterion for the evaluation of settlements. As Duke Witness Duff testified, the Stipulation does not violate any important regulatory principle or practice.<sup>26</sup> The Stipulation meets the Commission’s third criterion, and should be approved.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should approve the Stipulation.

Respectfully submitted,

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<sup>24</sup> Duke Ex. 7 at 6 (Duff).

<sup>25</sup> Duke Ex. 8 at 2, lines 7-8 (Ziolkowski), responding to testimony by OEG Witness Baron (OEG Ex. 6).

<sup>26</sup> Duke Ex. 7 at 5, lines 14-19 (Duff).

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I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Post-Hearing Brief has been served electronically to the following parties of record this 9<sup>th</sup> day of December, 2011.

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