

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

ENTRY

The Commission finds:

- (1) On July 20, 2011, Duke Energy Ohio, Inc. (Duke) filed an application, and supporting testimony, proposing the creation of an energy efficiency/peak demand reduction rider (Rider EE/PDR) to supplant its save-a-watt rider (Rider SAW) at its expiration on December 31, 2011. As proposed, Rider EE/PDR will recover the cost of Duke's energy efficiency compliance programs and portfolio of energy efficiency and peak demand reduction programs. According to Duke, Rider EE/PDR will recover program costs associated with each program.
- (2) Duke also proposes the following three additional programs to be added to its portfolio of programs approved in *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 (09-1999): Appliance Recycling Program, Low Income Neighborhood Program, and Home Energy Solutions. Duke does not propose any modifications to any existing programs.
- (3) A hearing was held in this matter on November 29, 2011. In reviewing the structure of Duke's filing, as well as the evidence presented thus far in this case, the Commission believes that additional information is necessary before we can make our decision. Specifically, the Commission has identified two topics that it believes warrant additional clarification:
 - (a) Whether the filing of the application complies with the procedures established in Chapter 4901:1-39, Ohio Administrative Code (O.A.C.), and, if not, how should the case proceed?

- (b) What criteria should the Commission utilize for evaluating the appropriateness of the incentive mechanism for performance of energy efficiency programs proposed in Duke's application? For example: what is the range of revenue that could be earned via Duke's proposed incentive mechanism in this case; should Duke's incentives be limited to performance that exceeds statutory benchmarks; should an incentive be equal or greater to the return on investment that Duke could earn by investing the same sums in utility infrastructure; and how should the Commission view Duke's proposed incentive mechanism in light of Duke's significantly excessive earning threshold?

Accordingly, we find that, pursuant to Rule 4901-1-34, O.A.C., the record in this case should be reopened for the limited purpose of receiving additional information on these two topics.

- (4) In considering our first topic regarding compliance of the filing with the procedures established in our rules, we believe it is necessary to review the requirements of Chapter 4901:1-39, O.A.C. The Commission adopted Chapter 4901:1-39, O.A.C., after consideration of extensive public comments and reply comments and found that Chapter 4901:1-39, O.A.C., represents a "flexible framework that meets the statutory obligations imposed upon the electric utilities and this Commission, while also encouraging the development of new technologies or process to maximize public benefits." See *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221, Case No. 08-888-EL-ORD*, Opinion and Order (April 15, 2009) (08-888).
- (5) Rule 4901:1-39-04(A), O.A.C., establishes for utility-sponsored energy efficiency and demand response program portfolios a continuous improvement loop on a three-year planning cycle. Prior to proposing its comprehensive energy efficiency and peak demand reduction portfolio, a utility must first analyze the potential for energy savings and peak-demand reduction within its territory. This analysis centers around considering what is technologically achievable, cost effective, and what has the most

achievable potential. From programs that have technical, economic, and market potential, the utility is to design a portfolio of programs considering the criteria listed in Rule 4901:1-39-03(B), O.A.C. Pursuant to Rule 4901:1-39-07(A), O.A.C., the utility has an opportunity, as part of its portfolio proposal, to propose a rate adjustment mechanism for recovery of costs, appropriate lost distribution revenues, and shared savings, to be subject to annual reconciliation after the Commission verifies the results of the utility's portfolio. After the filing of a portfolio plan, a significant process for the review of that plan is set forth in Rule 4901:1-39-04, O.A.C. Chapter 4901:1-39, O.A.C., provides that the portfolio planning process begins all over again every three years to ensure that the portfolios continue to be built upon the best information available about technologically, economically, and market achievable measures.

- (6) Duke's application in this case asks the Commission to consider adoption of a rate adjustment mechanism pursuant to Rule 4901:1-39-07, O.A.C. It also seeks approval for the adoption of three new programs. However, the Commission observes that this application has not been made in conjunction with the portfolio planning requirements put forth in Rule 4901:1-39-04, O.A.C., or the annual update mechanism pursuant to Rule 4901:1-39-05, O.A.C., and Duke has not sought a waiver of those rules to allow it to update its portfolio outside of the context of the portfolio filing requirements delineated in Chapter 4901:1-39, O.A.C. Moreover, we note that, although Duke requests approval of new programs, the record does not contain all of the content prescribed in Rule 4901:1-39-04(C), O.A.C., which is intended to allow the Commission to properly review Duke's proposed programs. At this time, the Commission finds that, before proceeding further with this matter, Duke must first review Chapter 4901:1-39, O.A.C., and file a request for waiver of the applicable rules for the Commission's consideration. The memorandum supporting the request for waiver must explain, in detail, why the application, as filed, despite the proposed stipulation, warrants a waiver. Simultaneous with the waiver request, in the event Duke wishes to argue that it does not need to file for a waiver, Duke must also file alternative arguments explaining why it does not believe a waiver of certain rules contained in Chapter 4901:1-39, O.A.C., is necessary. The requisite motion for waiver and alternative arguments must be filed by April 4, 2012. Memoranda contra the

motion for waiver and alternative arguments must be filed by April 11, 2012. Replies will not be accepted.

- (7) With regard to our questions pertaining to what criteria we should utilize for evaluating the appropriateness of the incentive mechanism for performance of energy efficiency programs proposed in Duke's application, how we proceed to address these questions will depend on our disposition of Duke's forthcoming motion for waiver.

It is, therefore,

ORDERED, That the record in case be reopened for the limited purpose of receiving additional information on the two topics set forth in finding (3). It is, further,

ORDERED, That, in accordance with Finding (6), Duke file the requisite motion for waiver and alternative arguments by April 4, 2012, with memoranda contra filed by April 11, 2012. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

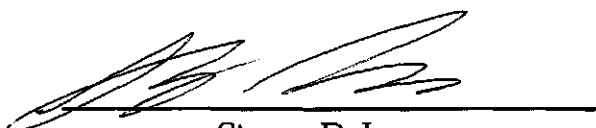


Todd A. Snitchler, Chairman

Paul A. Centolella



Andre T. Porter



Steven D. Lesser

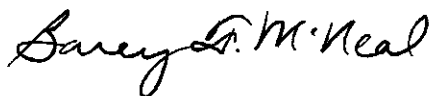


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Secretary