

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. By entry issued March 21, 2012, the Commission recognized that Duke's application had not been made in conjunction with Chapter 4901:1-39, Ohio Administrative Code (O.A.C.), including the portfolio planning requirements put forth in Rule 4901:1-39-04, O.A.C., the annual update mechanism pursuant to Rule 4901:1-39-05, O.A.C., and the criteria set forth in Rule 4901:1-39-03(B), and Duke had 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. Accordingly, the Commission directed Duke to first review Chapter 4901:1-39, O.A.C., and file a request for waiver of the applicable rules for the Commission's consideration and directed that, 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.

- (4) On April 4, 2012, Duke filed a response to the Commission's March 21, 2012, entry, and a motion for waiver. In its response, Duke states that it believed requesting the approval of new programs in its current filing was in the spirit of administrative economy given that the programs had already been reviewed by the Duke Energy Efficiency Collaborative (DEEC). Moreover, Duke explained that it did not deem it necessary or appropriate to include all of the detail that would be required for the triennial portfolio approval. In addition, Duke opines that requesting the addition of new programs, once a company already has an approved portfolio, is not addressed in Chapter 4901:1-39, O.A.C., and Duke did not believe it needed to file a new portfolio application. Accordingly, Duke did not believe that the application was filed out of compliance with Chapter 4901:1-39, O.A.C., and requests that the Commission find that the application was not filed out of compliance with the rules contained in Chapter 4901:1-39, O.A.C.
- (5) In the alternative, should the Commission conclude that Chapter 4901:1-39, O.A.C., is applicable to this proceeding, Duke requests that the Commission grant a waiver of the rules contained therein for the purpose of this application only. Specifically, Duke requests the Commission waive the requirements of Rules 4901:1-39-04 and 4901:1-39-05, O.A.C., and asserts that such a waiver would not prejudice any of the parties in this proceeding, since there is no dispute regarding the supplemental programs and stakeholders have had the opportunity to participate through the DEEC, and also through intervention in this proceeding.
- (6) In considering Duke's initial argument that its instant application falls outside the rules contained Chapter 4901:1-39, O.A.C., we find Duke's argument unpersuasive. In particular, the Commission notes that the stated purpose of Chapter 4901:1-39, O.A.C., as set forth in Rule 4901:1-39-02, O.A.C., is to establish rules for the implementation of programs that will encourage innovation and market access for cost-effective energy efficiency and peak-demand reduction, achieve the statutory benchmark for peak-demand reduction, and meet or exceed the statutory benchmark for energy efficiency. The Commission does not believe that Duke can

implement its portfolio of programs, and seek recovery pursuant to the mechanism contained in Rule 4901:1-39-07, O.A.C., without its application falling under the requirements of Chapter 4901:1-39, O.A.C.

- (7) Turning now to Duke's waiver request, the Commission is mindful of its initial directive to Duke. Specifically, we directed Duke to file a memorandum supporting any waiver request that explained, in detail, why the application, as filed, despite the proposed stipulation, warrants a waiver. Instead, Duke spent a significant amount of time attempting to justify its noncompliance with the rules contained in Chapter 4901:1-39, O.A.C., and then generically asked for a waiver of Rules 4901:1-39-04 and 4901:1-39-05, O.A.C. Duke's continued refusal to comply with the dictates of the rules is inexplicable. Duke's noncompliance contravenes the purpose of the statute, especially in light of the fact that the rules specifically mandate certain review criteria, such as that found in Rule 4901:1-39-03(B), O.A.C., which requires that, from programs that have technical, economic, and market potential, the utility is to design a portfolio of programs considering the criteria listed therein. Regardless of Duke's continued disdain for the established rules and processes, in the interest of moving forward with our consideration of this case, the Commission finds that Duke's request for a waiver should be granted, conditioned upon Duke providing the necessary detailed information at the hearing to be held in this case, which is scheduled in finding (10) below. The Commission will no longer tolerate Duke's unwillingness to follow our directives in this matter. Should Duke fail to provide either the information required by Chapter 4901:1-39, O.A.C., or a detailed explanation as to why a waiver of the rules is necessary and appropriate, the Commission may have no other recourse than to begin anew in this matter.
- (8) Furthermore, as stated in our March 21, 2012, entry, the Commission reopened the record in this case to consider what criteria we should utilize for evaluating the appropriateness of the incentive mechanism for performance of energy efficiency programs proposed in Duke's application. In considering the appropriateness of an incentive, we are mindful that we have previously indicated that "incentive mechanisms, including shared savings, are an effective means of aligning the utilities' and consumers' interests in implementing energy efficiency programs." See *In the Matter of the Application of The Cleveland Electric*

*Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism*, Case No. 09-1947-EL-POR, et al. Opinion and Order (March 23, 2011). However, we find that, to date, the record before us in the present case does not contain adequate information to analyze whether the proposed incentive mechanism would align Duke's and consumers' interests in implementing energy efficiency programs.

- (9) Therefore, in light of our determinations above, the Commission will take additional testimony on the following issues:
  - (a) Explain, in detail, why or why not Duke should be granted a waiver of the requirements established in Chapter 4901:1-39, O.A.C., including, but not limited to, Rules 4901:1-39-03(B), 4901:1-39-04, and 4901:1-39-05, O.A.C.
  - (b) What is the range of revenue that could be earned via Duke's proposed incentive mechanism in this case?
  - (c) Should Duke's incentives be limited to performance that exceeds statutory benchmarks?
  - (d) Should an incentive be equal or greater to the return on investment that Duke could earn by investing the same sums in utility infrastructure?
  - (e) How should the Commission view Duke's proposed incentive mechanism in light of Duke's significantly excessive earning threshold?
- (10) Accordingly, the following procedural schedule should be adhered to:
  - (a) May 30, 2012 - Deadline for the filing of expert testimony addressing the issues set forth in finding (9) above by Duke, Staff, and intervenors.
  - (b) June 7, 2012 - The hearing shall commence for the limited purpose of receiving testimony on the issues set forth in finding (9) above, at 10:00 a.m., at the

offices of the Commission, 180 East Broad Street, 11th  
Floor, Hearing Room C, Columbus, Ohio 43215.


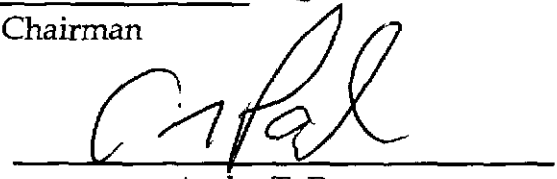
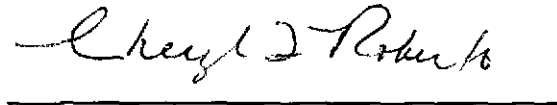
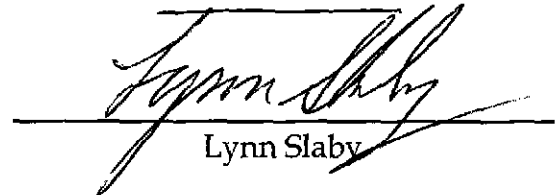
It is, therefore,

ORDERED, That Duke's request for a waiver is granted, contingent upon Duke's compliance with the directives set forth in finding (7). It is, further,

ORDERED, That the parties adhere to the requirements and procedural schedule established in findings (7) and (10). It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

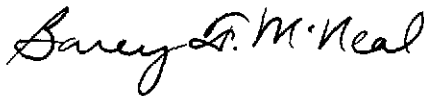
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman  
Steven D. Lesser  
Andre T. Porter  
Cheryl L. Roberto  
Lynn Slaby

KLS/CMTP/dah

Entered in the Journal

**MAY 09 2012**



Barcy F. McNeal  
Secretary