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

SECOND POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Duke Energy Ohio, Inc.
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45212
614-222-1330
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

Attorneys for
Duke Energy Ohio, Inc.

June 22, 2012

I. Introduction

Subsequent to the initial hearing in this matter, the Public Utilities Commission of Ohio (Commission) issued an Entry ordering that the proceeding be reopened for the limited purpose of receiving additional information on two topics set forth in the Commission's Entry. Duke Energy Ohio, Inc. (Duke Energy Oho) was directed to respond to two topics. Duke Energy Ohio provided a response on April 2, 2012. Thereafter, the Commission ordered the Parties to file additional testimony on five specific issues set forth in the Commission's Entry of May 9, 2012. Testimony was filed and a hearing was held on June 7, 2012. Duke Energy Ohio will address the Commission's questions as posed in the May 9, 2012 Entry and as addressed in the June 7, 2012 hearing.

II. Discussion

Question 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.

As set forth in Duke Energy Ohio's Response to the Commission's Order and Motion for Waiver, Duke Energy Ohio's history with respect to compliance with the directives set forth in Amended Substitute Senate Bill 221 (SB 221) and the Commission's rules enacted subsequent to SB 221 with respect to energy efficiency and peak demand reduction was initiated with the Company's first Electric Security Plan, Case No. 08-920-EL-SSO, *et al.* Because the Company's compliance began prior to the Commission's enactment of its rules for compliance, the schedule for filings seems now to have created the appearance that the Company's filings were at odds with the Commission's timing expectations. The Commission's newly enacted rules anticipated a particular compliance schedule that didn't fit with the already approved Stipulation. The Company sought to remedy that problem with the refiling of its portfolio of energy efficiency and peak demand reduction programs in 2009. However the timing of the current proceeding, wherein the Company is requesting a cost recovery mechanism and approval of three new programs, seems to have raised the issue anew. To respond to the timing anomaly, and in an effort to meet the Commission's expectations, the Company has submitted all of the information needed by the Commission to approve its second portfolio of programs in its entirety, with the exception of a market assessment. The assessment will be filed before April 15, 2013, consistent with the Commission's directives in 4901:1-39-04(A). It is anticipated that this supplemental information is responsive to the Commission's requirements. It was not the Company's intention to run afoul of any of the Commission's expectations or plans for monitoring compliance with energy efficiency and peak demand response mandates and we sincerely regret any misunderstanding. The Company will continue to comply with any directives of the Commission and will seek to conform all of its filings to the stated regulatory compliance policy as set forth in the Commission's rules.

Question b.

What is the range of revenue that could be earned via Duke's proposed incentive mechanism in this case?

The Stipulation and Recommendation agreed to by most of the Parties in this case and submitted to the Commission for its approval on November 18, 2011, sets forth a proposed incentive mechanism that successfully aligns the interests of the Parties and the Company. The specific terms of this mechanism were discussed at length in settlement discussions and comprise the main terms of the settlement. The overall terms provide that the Company will be reimbursed for program costs related to energy efficiency and peak demand reduction. The Company is also eligible to earn an incentive that is based upon sharing of the savings associated with the avoided costs achieved through the Company's portfolio of programs. The Company is not eligible to receive the shared savings unless the Company exceeds the annual mandate set forth in Revised Code 4928.66. The amount of avoided cost that the Company is eligible to collect is tiered based on its level of over-achievement versus the annual mandate. Thus the Company is incentivized to achieve as much energy efficiency as it can, in the most cost-effective manner possible. Under the stipulation, the Company may earn as much as thirteen percent of the verified net benefits achieved through its programs. If it does not meet the mandate, it is possible that the Company would not receive an incentive. As testified to by Duke Energy Ohio Witness Timothy J. Duff, it is difficult to predict with any accuracy what maximum amount could be earned by the Company. This maximum amount is subject to the variability of program costs and avoided costs. Tr. at p. 36. It is important to remember that the amount of energy efficiency achievements will need to increase over time due to the ramping up of the mandates, which makes estimating a maximum incentive difficult. Additionally, many of the more easily obtained energy efficiency that is cost effective will be exhausted earlier on so it becomes increasingly difficult to find effective programs for savings as the mandates ramp up. Tr. at 36. However, as Mr. Duff noted, following a linear assumption that the net benefit stays constant for all impacts above compliance, if the Company achieves compliance at 115% of the mandate, the Company might earn $8.2 million in 2012. Tr. at 37. However, Mr. Duff further testified that based on current market experience, the incentive range is more likely between four and five million dollars and is expected to go down over time. Tr. at 38.

Although non-Company witnesses were questioned and provided responses about how much incentive the Company might earn, it is undisputable that given the multiple variables that can impact the amount of incentive earned that there is little certainty regarding the range of potential incentive that the Company can earn. Staff Witness Greg Scheck testified that he thought "maybe 13 million, something in that range, 13 to 15 million probably, upward end." But Mr. Scheck also stated "That's not likely to happen, but that would be a phenomenal performance." Tr. p. 133.

In response to a similar question, Natural Resources Defense Council (NRDC) Witness Dylan Sullivan stated that he thought he had reviewed what the average or potential maximum incentive might be and said "way back, signing on to this agreement; so it has been a while, but I think around – I think when we ran the numbers, we were thinking about $12.5 million a year was going to be the maximum, and I can't give you an average." Tr. at p. 160. Again, given that the Witness was responding to a question he had not addressed in his testimony, it is unknown whether he had any reasonable or rational support for this number.

If the questions posed with respect to the maximum amount the Company might earn in incentive were designed to assist in selecting an appropriate cap on the incentive, such *ad hoc* and unsupported responses are of little assistance. In addition, the Commission has already instituted protection for customers by enacting the Significantly Excessive Earnings Test (SEET). Since the revenue and cost associated with the Company's portfolio of energy efficiency and demand response programs is included in the SEET, creating an additional cap on incentive associated with energy efficiency and demand responds would be duplicative, unnecessary, and runs counter to the Company's understanding of the objectives set forth in SB 221. Customers benefit from every kWh and kW of cost effective energy efficiency and demand response achieved, so creating a cap on the incentive, beyond the existing protraction in the SEET, does little but establish a cap on the amount of achievement and cost effectiveness that the Company is motivated to deliver. Thus, the imposition of a cap on incentive misaligns the overall goals of energy efficiency in general and the State of Ohio in particular. None of the witnesses, except for Ohio Energy Group Witness Lane Kollen, recommended a cap in this proceeding. More about Mr. Kollen follows below.

Question c.

Should Duke's incentives be limited to performance that exceeds statutory benchmarks?

The incentive mechanism proposed in the Stipulation and Recommendation in this proceeding is not limited to performance that exceeds the statutory benchmark. The reasons for this recommendation are explained by Duke Energy Ohio Witness Timothy J. Duff in his Second Supplemental Testimony, p. 9. Succinctly put, an incentive of $350,000 on a portfolio that includes program costs of $25 million is simply not meaningful and would not work to incentivize any additional energy efficiency or peak demand reduction. Likewise, it would minimize the importance of optimizing the cost effectiveness of the programs until the Company reaches its mandated target. The stipulating Parties agreed and therefore recommended an incentive that is not so limited. The incentive mechanism proposed in the Stipulation and Recommendation is consistent with incentive mechanisms the Company has operated under in previous cases and is consistent with incentive mechanisms applicable to other Ohio utilities. Duff Second Supplemental at 11.

NRDC Witness Dylan Sullivan provided a very well stated response to this question as well. His response recognized that it is reasonable to set a "trigger" at a point at which the Company exceeds minimal requirements and that customers still save money. Sullivan at p.5.

Question d.

Should an incentive be equal to or greater to the return on investment that Duke could earn by investing the same sums in utility infrastructure?

In keeping with the Attorney Examiner's directive to provide succinct briefs, Duke Energy Ohio will respond to this question by pointing to the response given in the Second Supplemental Testimony of Timothy J. Duff at p. 10. As noted there, focusing on the allowed return on investment associated with energy efficiency spending does not align the interests of a utility with its customers. Thus, the incentive mechanism proposed in this Stipulation and Recommendation is not linked to return on investment, but on the Company's ability to meet and exceed performance thresholds in an economically efficient manner.

Question e.

How should the Commission view Duke's proposed incentive mechanism in light of Duke's significantly excessive earning threshold?

Again in the interest of brevity, Duke Energy Ohio simply reiterates that earnings related to energy efficiency and peak demand reduction are included in electric revenues for purposes of filing the Company's Federal Energy Regulatory Commission (FERC) Form 1. Thus the earnings are included for purposes of measuring whether the Company has significantly excessive earnings.

Response to Testimony Provide by Ohio Energy Group Witness Lane Kollen.

In response to the Commission's reopening of this proceeding for the limited purpose of receiving answers to the five questions posed, the Ohio Energy Group (OEG) opted to take another shot at making its case for avoiding the Commission's compliance requirements associated with the mercantile customer opt out program. The OEG submitted testimony by Lane Kollen for this purpose. Mr. Kollen undoubtedly has a great deal of experience and knowledge with respect to many aspects of ratemaking and regulatory issues across a number of states. However, it is clear that Mr. Kollen was "pinch hitting" for a more qualified witness in this proceeding and has no knowledge or experience with respect to energy efficiency in Ohio or elsewhere. Tr. at 48-49. His contribution to the discussion consisted of merely stating that the OEG did not agree that an incentive was appropriate or necessary. Kollen at p.2. His testimony is directed specifically toward the cost of energy efficiency to customers and not to the substance of the Company's performance or its benchmark. Tr. at 50. Mr. Kollen declined to take any positions with respect to OEG's earlier stated opposition to the rate allocation proposed. Tr. at p. 49.

Mr. Kollen stated in his Direct Testimony that when a utility no longer owns generation plants, it no longer makes sense for customers to pay for energy efficiency efforts. Kollen at p. 3. However, at hearing, Mr. Kollen agreed that the energy efficiency requirements for an electric utility are independent of whether or not a utility has divested its generation. Tr. at p. 56. Likewise, Mr. Kollen could point to no authority that would permit an electric utility to change its energy efficiency requirements based upon divestiture of generation assets. Tr. at p.57. In fact, Mr. Kollen admits that the law says otherwise and his testimony is simply that a utility should not receive an incentive. Tr. at 57 and 58. Indeed, Mr. Kollen has no legal support for his position.

Mr. Kollen's knowledge of Duke Energy Ohio's current save-a-watt Rider, Rider DR-SAW is significantly deficient as well. Mr. Kollen seems to look at this case in a total vacuum. He has not reviewed any of the Company's status reports and has no knowledge of the Company's success or lack thereof with respect to managing its compliance with the State of Ohio energy efficiency and peak demand reduction mandates. Tr. at p. 60. Mr. Kollen testified that the only Commission rule that he deemed of any relevance to this case was 4901:1-39-07, O.A.C. Tr. at 50-51. However, having read this rule, Mr. Kollen readily admitted that the rule permits utilities to receive an incentive for energy efficiency and peak demand reduction. Tr. at p. 59.

Despite the lack of any study or analysis, Mr. Kollen arbitrarily recommended to the Commission that it adopt an incentive equal to the lesser of three percent of total annual energy efficiency expenditures or one million dollars annually. Tr. at p. 60-61. Having picked this number out of the air, Mr. Kollen agreed that his only objective in recommending such an incentive was to minimize costs to his clients or customers generally. Tr. at p. 61.

Finally, in demonstrating a total lack of knowledge with respect to Duke Energy Ohio, its energy efficiency programs, or energy efficiency in general, Mr. Kollen stated in his direct testimony that Duke Energy Ohio had overachieved its benchmark requirements in 2009 and 2010 without incentives. Kollen at p.4 and Tr. at p. 62-63. It is apparent that Mr. Kollen was ill-prepared for this assignment and misinformed about existing energy efficiency incentives in the Rider DR-SAW. If he read the testimony submitted in this proceeding, he would have learned that the Company's existing cost recovery mechanism does indeed provide an incentive. Duff at p. 5.

Given his lack of knowledge about energy efficiency policy or practice in Ohio, his lack of knowledge of the rules, and his lack of knowledge about Duke Energy Ohio and its existing energy efficiency programs, the Commission should disregard Mr. Kollen's testimony and recommendations.

III. Conclusion

For the reasons set forth above and in the Direct, Supplemental and Second Supplemental Pre-filed Testimony in this proceeding, Duke Energy Ohio respectfully requests that the Commission adopt and approve the Stipulation submitted by the signatory Parties.

Respectfully submitted,

Elizabeth H Watts

Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts
Associate General Counsel
Duke Energy Ohio, Inc.
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45212
614-222-1330
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com
Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or hand delivery on this 22nd day of June, 2012.

Elizabeth H. Watts

Elizabeth H. Watts

Devin D. Parram
Assistant Attorney General
180 E. Broad Street
Columbus, Ohio 43215

Melissa R. Yost
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839

David F. Boehm
Michael L. Kurtz
Jody Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Cathryn Loucas
Trent A. Dougherty
Nolan Moser
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

Mary Christensen
Christensen & Christensen, LLP
8760 Orion Place, Suite 300
Columbus, OH 43240

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Ave., Suite 201
Columbus, Ohio 43212

Joseph M. Clark
Vectren Retail, LLC d/b/a Vectren Source
6641 North High Street, Suite 200
Worthington, OH 43085

Christopher Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212

Henry W. Eckhart
1200 Chambers Road, Suite 106
Columbus, Ohio 43212-1703