

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of its) Case No. 13-431-EL-POR
Energy Efficiency and Peak Demand)
Reduction Portfolio of Programs.)

**OBJECTIONS TO DUKE ENERGY OHIO’S PORTFOLIO OF ENERGY
EFFICIENCY
AND PEAK-DEMAND REDUCTION PROGRAMS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION AND STATEMENT OF FACTS

Electric distribution utilities (“EDUs”), such as Duke Energy Ohio, Inc. (“Duke” or “the Utility”), are required to file a comprehensive energy efficiency and peak-demand (“EE/PDR”) reduction program portfolio in order to meet the benchmarks set forth in R.C. 4928.66.¹ EDUs are also permitted to institute a cost recovery mechanism for their energy efficiency compliance programs.² While Duke has consistently met its benchmarks (often exceeding them), the Utility has had a complicated history of filing of its EE/PDR portfolio and related riders.

In accordance with the requirements of Amended S.B. 221, Duke filed an EE/PDR portfolio in December 2009 for programs,³ which was approved to run through

¹ O.A.C. 4901:1-39-04.

² O.A.C. 4901:1-39-07.

³ *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, Application (Dec. 29, 2009).

the end of 2011.⁴ The Public Utilities Commission of Ohio (“PUCO”) also approved the Save-A-Watt rider, which served as a cost recovery mechanism for the Utility.⁵ With its Save-A-Watt program concluding at the end of 2011, Duke filed a separate case seeking to institute a new cost savings mechanism in the form of a “shared savings” incentive mechanism, and an extension of its EE/PDR portfolio (with three additional programs) through 2013.⁶ In a Stipulation and Recommendation in that case, Duke agreed that the shared savings mechanism would run through 2015. This PUCO, however, admonished Duke to “to make a filing to align the timing of its programs with its cost recovery mechanism.”⁷

Duke then filed its application for a new EE/PDR portfolio to run from January 1, 2014 through December 31, 2016. However, Duke failed to include all necessary and relevant EE/PDR programs in its portfolio. In addition, Duke seeks an extension through 2016 of the shared savings mechanism that it previously agreed would end in 2015. Given the excessive incentive payments Duke stands to enjoy in the one year that the current shared savings mechanism has been in existence, OCC recommends that the PUCO impose a cap on the shared savings incentive mechanism for 2016. OCC further asserts that it should not be precluded from conducting cross-examination or introduction of evidence or argument at hearing or on brief.

⁴ *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, Opinion and Order (Dec. 15, 2010).

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. For Approval of and Electric Security Plan*, Case No. 08-920-EL-SSO.

⁶ *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, Opinion and Order 8 (Aug. 15, 2012) (“11-4393 case”).

⁷ *Id.* at 18.

II. OBJECTIONS

A. **If The PUCO Chooses To Extend The Shared Savings Mechanism To 2016, Then The PUCO Should Impose An Annual Cap Of No More Than \$3 Million To Protect Consumers.**

OCC recommends that the PUCO impose a cap on the shared savings incentive mechanism if the shared savings incentive is approved for 2016. Pursuant to the PUCO Order in Case No. 11-4393-EL-RDR, Duke is permitted to collect an incentive when achieved energy efficiency program savings exceed the compliance requirements.⁸ The unlimited shared savings incentive, however, may allow Duke to collect an incentive that far exceeds the estimates represented by Duke in the 11-4393 case. Therefore, a cap should be placed on the shared savings mechanism for 2016, a year that is beyond the scope of the 11-4393 Stipulation.⁹

Based upon the actual incentive payment that Duke seeks to collect (as opposed to estimates/projections), it is apparent that an uncapped shared savings mechanism can lead to disproportionately large incentive payments on EE/PDR programs, which significantly impacts the rates of Duke's residential customers. Testifying in support of instituting the shared savings mechanism on Duke's 2011 Application in the 11-4393 case, Utility witness Timothy Duff estimated that Duke would receive \$4.5 million in shared savings but no more than \$8.2 million.¹⁰ However, in its 2013 filing, Duke requested \$12.5 million in shared savings incentives after spending \$23.5 million on EE/PDR programs in

⁸ Id at 8, 18.

⁹ *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, Stipulation at 5 (Nov. 18, 2011).

¹⁰ Second Supplemental Direct Testimony of Timothy J. Duff, in Case No. 11-4393-EL-RDR, at 8 (May 31, 2012); *See also*, Transcript of June 7, 2012, in Case No. 11-4393-EL-RDR at 37.

2012 alone.¹¹ The \$12.5 million incentive that Duke requested for 2012 is 178 percent above Utility witness Duff's estimated projection and 52 percent over his projected maximum.

Moreover, the concept of an annual cap to limit the shared savings incentive mechanism is not a novel concept. Since the decision in the 11-4393 case, the PUCO decided the first EE/PDR portfolio case that was not settled. The Cleveland Electric Illuminating Company, Ohio Edison Company and The Toledo Edison Company (referred to collectively as "FirstEnergy") filed an Application for their EE/PDR Portfolio, which included a shared savings incentive mechanism similar to Duke's.¹² Despite FirstEnergy's resistance, the PUCO instituted a \$10 million annual cap on the amount of shared savings that could be collected under the incentive mechanism.¹³

Therefore, OCC recommends as follows. If the PUCO extends the shared savings mechanism through 2016, it should impose an annual cap no more than \$3 million on the shared savings mechanism beginning in 2016. The cap will serve as a consumer protection against excessive utility incentive payments.

¹¹ Direct Testimony of James E. Ziolkowski, Case No. 13-753-EL-RDR, Attachment JEZ-1, page 3 of 10. Duke is also collecting an incentive of \$14 million from its Save a Watt cost recovery mechanism. See the Direct Testimony of James E. Ziolkowski, Attachment JEZ-2, page 2 of 6 in Case No. 12-1857-EL-RDR. ("13-753 filing").

¹² *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 Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, 12-2191-EL-POR, and 12-2192-EL-POR, Application at 12-13 (Jan. 31, 2012).

¹³ *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 Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, 12-2191-EL-POR, and 12-2192-EL-POR, Opinion and Order at 16 (Mar. 20, 2013).

B. The Baseline For Duke's CFL And LED Lighting Program Should Be Modified To Fully Account For The Standards Of The Federal Energy Independence And Security Act Of 2007 ("EISA").

The EISA is an energy policy intended to improve energy efficiency in the United States. Part of the law sets energy efficiency standards for light bulbs, with the first phase going into effect January 2012. The EISA standards require that light bulbs using between 40 and 100 watts use at least 27 percent less energy by 2014.¹⁴ In addition, the standards require that most light bulbs be 60 to 70 percent more efficient starting in January of 2020.¹⁵ This law has implications for utility energy efficiency lighting programs, such as Duke's.

Utilities have captured large energy efficiency gains from Compact Fluorescent Light ("CFL") programs.¹⁶ For instance, from July 31, 2010 through April 26, 2011, Duke claimed a total of 92,969,612 kWh (gross) in savings from its CFL program.¹⁷ In this regard, Duke has estimated a savings of 55 kWh/yr/bulb.¹⁸ But these savings appear high and must evolve in order to comply with the EISA standards.

Duke's savings estimate is not consistent with the experience of CFL programs. Duke's EM&V (Evaluation, Measurement & Verification) report on the CFL program for the period described above indicates that ex-post actual achieved gross savings were

¹⁴ US EPA Backgrounder, Spring 2011, Energy Independence and Security Act of 2007. The EISA standards are being phased in over three years, with the following requirements: 100 watts in January 2012; 75 watts in 2013; and 60 and 40 watts in January 2014.

¹⁵ US EPA Backgrounder, Spring 2011, Energy Independence and Security Act of 2007.

¹⁶ *Duke Energy Ohio: Duke Energy Ohio, Inc.'s Application for Energy Efficiency and Peak Demand Reduction Portfolio of Programs*, Case No. 13-0431-EL-POR, Application.

¹⁷ *Duke Energy Ohio: Annual Energy Efficiency Portfolio Status Report of Duke Energy Ohio, Inc.*, Case No. 13-1129-EL-EEC.

¹⁸ Duke Energy Ohio: Market Assessment and Action Plan for Electric DSM Programs, Forefront Economics Inc., H. Gil Peach & Associates LLC, at 103 (January 7, 2013).

about 34.4 kWh/yr/bulb. The same EM&V report explained that 63 watts was the mean wattage of the bulbs replaced pursuant to the program. The Ohio draft Technical Reference Manual (“TRM”) indicates that starting in 2014, the delta watts multiplier for estimating CFL savings should be 2.06. The CFLs distributed as part of Duke’s CFL program are 13 watt and 20 watt bulbs, making the gross energy savings 24 to 36 kWh/yr/bulb.¹⁹

Duke’s savings estimate is also inconsistent with CFL programs that Duke runs in other states. Duke runs a similar CFL program in Indiana. The Indiana Demand Side Management Coordination Committee has adopted and updated the draft Ohio TRM for use in Indiana.²⁰ Thus, Indiana’s TRM mirrors the delta watts multipliers in Ohio. Yet, in its compliance filing in Indiana, Duke estimates that in 2012 gross savings from Duke Energy Indiana’s CFL program were 44 kWh/yr/bulb.²¹

Duke’s saving estimate is also higher than another Ohio utility’s recent estimate. The Dayton Power and Light Company (“DP&L”) submitted its portfolio filing for programs running from 2013 through 2015. In its portfolio, DP&L utilizes the draft Ohio TRM and updates its programs based on its EM&V reports. As a result, DP&L is estimating gross savings of 43 kWh/yr/bulb in 2013 and 30 kWh/yr/bulb in 2014 and

¹⁹ Direct Testimony of Ashlie J. Ossege, AJO Exhibit F at 63 (April 15, 2013); *Duke Energy Ohio: Annual Energy Efficiency Portfolio Status Report of Duke Energy Ohio, Inc.*, Case No. 13-1129-EL-EEC, Appendix E: Smart Saver Residential CFL at 68.

²⁰ Submitted on January 17, 2013 to the Indiana Utility Regulatory Commission for approval in Cause No. 42693 S-1.

²¹ Duke Energy Indiana: Submission of Stipulated Exhibit, Cause No. 43079 DSM 6 S1, February 13, 2013.

2015.²² Thus, Duke's projected CFL savings are inflated for purposes of this portfolio filing.

Moreover, it is difficult to pinpoint how much of the total savings Duke is expecting to make from its CFL programs. This result obtains because Duke includes its CFL program as part of its Smart Saver Residential program. That program includes air conditioning and heating, attic insulation and air sealing, duct sealing and insulation, and HVAC tune-ups. The Ohio independent evaluation found that savings from lighting made up 80% of Duke's claimed savings for 2011.²³ The independent evaluator, however, recommended that Duke include a discussion of how CFL savings are calculated.

Duke's lighting programs must evolve in order to comply with the EISA standards. In continuing CFL and Light-Emitting Diode ("LED") programs, the baseline reduction calculation should to be changed to account for the current 27 percent efficiency gain that is fully in effect beginning January 1, 2014.²⁴ Program incentive levels should also be adjusted to the new benchmark to ensure that they continue to be cost-effective and a good use of customers' funds.

C. The PUCO Should Refrain From Approving Duke's EE/PDR Portfolio Until All Necessary And Relevant Programs Have Been Incorporated Into An Amended Filing.

Notwithstanding OCC's objections discussed above, before considering approval, the PUCO should require Duke to incorporate and/or consolidate all relevant EE/PDR

²² *Dayton Power and Light Company: Application of the Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Reduction Program Portfolio Plan*, Case No. 13-833-EL-POR.

²³ Evergreen Economics: Report of the Ohio Independent Evaluator, 2011 Ohio Efficiency Programs Volume I: Main Report, April 21, 2013.

²⁴ US EPA Backgrounder, Spring 2011, Energy Independence and Security Act of 2007.

programs into this portfolio. This PUCO has recognized that the “rules require the portfolio filings to be a total package of programs and a cost recovery mechanism.”²⁵ Moreover, Duke’s EE/PDR portfolio has resulted in great confusion and excessive filings due to overlapping programs and a failure to appropriately align its programs. For instance, this PUCO even noted, “Duke has had difficulty aligning its cost recovery mechanism duration with the duration of approval of its [EE/PDR] programs.”²⁶ To avoid exacerbating these issues, OCC recommends that the PUCO refrain from approving Duke’s portfolio until it is amended to reflect the PJM bidding program set forth in the Utility’s testimony.²⁷

Bidding energy efficiency savings and peak-demand reduction into the PJM Base Residual Auction can reduce customers’ bills in two ways. First, PJM pays EDUs for energy efficiency that is offered and clears the auction. Those payments then reduce the costs that customers pay for energy efficiency programs. For example, FirstEnergy cleared 36 MW of energy efficiency in the 2015/2016 auction and will receive a payment of \$4.7 million from PJM for this resource.²⁸ Similarly, AEP Ohio bid 202 megawatts into the same auction and will receive \$10 million from PJM in return.²⁹ The two utilities

²⁵ *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, Opinion and Order 18 (Aug. 15, 2012).

²⁶ *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, Opinion and Order 7 (Aug. 15, 2012).

²⁷ Direct Testimony of Timothy J. Duff at 15-16 (Apr. 15, 2013).

²⁸ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Tr. Transcript ESP III, Vol. I, at 301 (Neme) (June 4, 2012). 36 MW * \$357 MW/day * 365 days = \$4,690,890.

²⁹ Jon Williams, AEP-Ohio, Bidding EE Resources in the PJM Capacity Market, Presentation to the AEP-Ohio Energy Efficiency Collaborative, November 14, 2012, Slide 6.

will then credit this money to their respective energy efficiency and peak-demand reduction riders that customers pay for energy efficiency programs.

Second, the energy efficiency and peak-demand megawatts that are accepted in the auction represent an increased supply relative to demand that can lower the PJM auction capacity prices. Since capacity prices represent a material portion of electricity prices, customer bills are reduced accordingly. In fact, the PUCO has recognized such benefits and recently required FirstEnergy to bid 75% of its planned energy efficiency resources into the PJM Base Residual Auction.³⁰

Duke witness Timothy Duff acknowledges that Duke has had discussions with its EE/PDR Collaborative regarding the bidding of EE/PDR resources into the PJM Base Residual Auction.³¹ Utility witness Duff even indicates that the “. . . Company plans to file for Commission approval of a new pilot program that will create a mechanism to capture all the costs and benefits of PJM auction participation.”³² The implementation of the PJM program is essential as Duke only bid, and PJM accepted, 2.6 MW of energy efficiency and zero demand resources in the 2016/2017 PJM Base Residual Auction.³³ Given the benefits to consumers of Duke developing and implementing a bidding strategy, OCC recommends that Duke finalize its PJM program with the Duke EE/PDR

³⁰ Opinion and Order, Case No. 12-2190-EL-POR, at 20-21.

³¹ Direct Testimony of Timothy J. Duff at 16. (April 15, 2013).

³² Id.

³³ 6/11/2013 and 6/12/2013 email from Duke to OCC regarding Duke’s energy efficiency and demand response bid in the 2016/2017 PJM Base Residual Auction.

Collaborative and incorporate the PJM program into the current filing to avoid further complications of fragmented portfolio filings.³⁴

D. In Accordance With The Commission's Finding And Order, Duke Must Report The Incremental Energy Efficiency Obtained Through The Low-Income Energy Efficiency Program, Approved In Duke Case No. 13-662-EL-UNC In Future Portfolio Status Reports.

On March 15, 2013, Duke filed a low-income energy efficiency pilot program.³⁵ According to the Application filed in that action, the incremental energy efficiency that PWC produces using leveraged funds is only made possible because of the financial support provided by Duke.³⁶ Therefore, Duke proposed the aforementioned pilot program whereby the Utility is permitted to purchase, at rate of \$0.255 per first year kWh, the energy savings that are realized through leveraged funds acquired by PWC. With some modifications,³⁷ on May 15, 2013, the PUCO approved Duke's Application for a three-year lifespan.³⁸ To the extent the Commission approves all or part of Duke's EE/PDR Application in this case, going forward "Duke should report . . . through its

³⁴ See, *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, Opinion and Order 7 (Aug. 15, 2012).

³⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish an Energy Efficiency Pilot Program for Low Income Customers*, Case No. 13-662-EL-UNC, Application (Mar. 15, 2013).

³⁶ *Id.* at 4.

³⁷ Modifications included imposing a \$2 million cap over the three-year life of the program, requiring the independent program evaluator to review the program to ensure that the costs do not exceeds the total resource cost test, termination of the program after three years absent a ruling by this PUCO, and required reporting to the Collaborative. See, *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish an Energy Efficiency Pilot Program for Low Income Customers*, Case No. 13-662-EL-UNC, Finding and Order (May 15, 2013).

³⁸ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish an Energy Efficiency Pilot Program for Low Income Customers*, Case No. 13-662-EL-UNC, Finding and Order (May 15, 2013).

energy efficiency portfolio status report, on the incremental energy efficiency obtained through leveraged dollars and the results of the pilot project.”³⁹

III. CONCLUSION

The PUCO should refrain from granting Duke’s EE/PDR portfolio until Duke has included all of the necessary programs. To protect customers from paying Duke for excessive incentives, the PUCO should also impose an annual cap that is no more than \$3 million on the shared savings mechanism for 2016. Moreover, OCC reserves the right to file additional objections based on Duke’s responses to OCC discovery requests.

Respectfully submitted,

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³⁹ Id. at 4.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Objections* were served on the persons stated below via electronic transmission this 1st day of July 2013.

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