

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Duke Energy Ohio, Inc., for)	
Recovery of Program Costs, Lost)	Case No. 13-753-EL-RDR
Distribution Revenue and)	
Performance Incentives Related to)	
its Energy Efficiency and Demand)	
Response Programs.)	

**REPLY BRIEF
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. Introduction

Ohio Partners for Affordable Energy (“OPAE”) herein submits to the Public Utilities Commission of Ohio (“Commission”) this reply brief in the application of Duke Energy Ohio, Inc. (“Duke”) for recovery of program costs, lost distribution revenue and performance incentives related to Duke’s energy efficiency and demand response programs. The sole contested issue before the Commission is whether Duke should be allowed to recover from ratepayers additional shared savings that were created solely by Duke’s failure to include the evaluation, measurement and verification (“EM&V”) costs of its energy efficiency programs in its program costs for purposes of its shared savings calculation. By excluding EM&V costs from program costs in the shared savings calculation, Duke had lower program costs. Lower program costs meant more savings. More savings meant more shared savings for Duke. However, because EM&V costs **are** program costs, there are no additional savings that Duke should be allowed to recover.

II. The Commission should reject Duke's arguments to receive additional shared savings from ratepayers.

Duke argues that its shared savings calculation is consistent with the Commission's order in Case No. 11-4393-EL-RDR and the tariffs that were approved in that case. Duke Brief at 3. Duke points to the shared savings calculation attached to the testimony of its witness Ziolkowski in Case No. 11-4393-EL-RDR and the "mathematical formula" that put the EM&V costs in a "separate line item" that is subtracted from the program costs to yield the revenue requirement" in the attachment. Id.

The Commission's Staff witness Scheck rejected Duke's contention that Case No. 11-4393-EL-RDR allowed for the exclusion of EM&V costs from program costs for the shared savings calculation. Mr. Scheck stated that the Staff never agreed that EM&V costs should be excluded from program costs in the shared savings calculation. Staff Exhibit 2 at 6. In addition, the stipulation in Case No. 11-4393-EL-RDR did not state that EM&V costs would be excluded from program costs in the shared savings calculation. Even if the attachment to Duke witness Ziolkowski's testimony in Case No. 11-4393-EL-RDR excluded EM&V costs from his shared savings calculation, the Staff never adopted or agreed to the validity of the attachments to Mr. Ziolkowski's testimony. Id. at 7.

Duke also relies on the fact that no party in Case No. 11-4393-EL-RDR raised a concern about the Ziolkowski shared savings calculation at the hearing or on brief. Duke Brief at 3. Duke argues that the parties "neglected to undertake a review of what was submitted and approved by the Commission." Id. at 3-4. Duke states that it is "improper" for the parties "to now seek to

penalize the Company by reducing the approved revenue requirement”. Id. at 4-5.

There is no doubt that the Staff, OCC, and OPAE failed to catch the mistake and did not request in Case No. 11-4393-EL-RDR that EM&V costs be included as program costs in Duke’s shared savings calculation. Id. at 6. However, the evidence shows that the mistake was not caught because there was no reason to look for the mistake. There was no reason to be alert to Mr. Ziolkowski’s failure to include EM&V costs in his shared savings calculation because EM&V costs **are** program costs. Any reference to program costs in the tariff would necessarily include EM&V costs.

When OCC’s witness Gonzales read the tariff’s reference to program costs for shared savings, he “read the tariff to mean program costs include measurement and verification and it includes administrative costs.” Tr. at 67. Thus, the tariff’s reference to program costs as part of the shared savings calculation gave Mr. Gonzales no reason to challenge the tariff. Tr. at 68.

Commission Staff witness Scheck testified that EM&V costs are included in the total cost of energy efficiency programs and are not something separate. Tr. at 86. Therefore, EM&V costs should be included as program costs in the shared savings calculation. Tr. at 87. Mr. Scheck agreed that he “just overlooked” and did not “follow up” on the Ziolkowski attachment setting forth the calculation of the shared savings incentive because the calculation was not a contested issue in Case No. 11-4393-EL-RDR. Tr. at 87-88. For Mr. Gonzales and Mr. Scheck, the program costs for the shared savings calculation meant the

same thing as the program costs for recovery through the rider, i.e., the program costs include EM&V costs. Tr. at 91.

Duke is not being penalized here; it will recover all its program costs, including EM&V costs through the rider, and it will recover its actual shared savings. However, Duke should not be allowed to collect from ratepayers non-existent shared savings. If the EM&V costs had been properly included in program costs for the shared savings calculation, the extra shared savings would not exist.

III. Conclusion

The Commission should find Duke's reliance on its luck in slipping its flawed tariff past the Staff, OCC, and OPAE is misplaced. Shared savings calculated without including EM&V program costs are unreasonably inflated by the failure to include all the costs of the programs in the shared savings calculation. Such unreasonably inflated shared savings cannot reasonably and lawfully be collected from ratepayers.

The Commission should find that it was unreasonable for Duke to calculate shared savings excluding EM&V costs from program costs. The Commission should order refunds through Duke's Rider EE-PDR to Duke's customers and adjust any future recoveries through the rider to remedy the unreasonable creation of additional shared savings through the use of a flawed calculation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief of Ohio Partners for Affordable Energy was served on the parties stated below via electronic service this 14th day of November 2013.

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