

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**POST-HEARING REPLY BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") files its Reply Brief in this proceeding that will determine how much customers will pay Duke Energy Ohio, Inc. for exceeding the energy efficiency mandates under R.C. 4928.66 ("shared savings incentive").<sup>1</sup> The core issue in this proceeding is whether measurement and verification ("M&V") costs should be included in calculating the shared savings incentive of Duke's energy efficiency and peak demand response ("EE/PDR") program. The Public Utilities Commission of Ohio ("PUCO") should find that M&V costs are to be included as program costs in calculating the shared savings incentive for two reasons.

First, the evidence shows that including M&V costs in calculating the shared savings incentive was the bargain agreed to by the signatory parties to the Stipulation that the PUCO approved in Case No. 11-4393-EL-RDR.<sup>2</sup> Second, Duke's EE/PDR tariff

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<sup>1</sup> The absence of discussion regarding an issue raised by other parties in this proceeding should not be construed as OCC's acquiescence to the party's position. The Transcript of this proceeding will be cited as "Tr. at \_\_\_\_."

<sup>2</sup> See OCC Brief at 2-6; Brief of Ohio Partners for Affordable Energy ("OPAE") at 4; PUCO Staff Brief at 6-8.

defines program costs the same for collection through the tariff as it does for shared savings incentive purposes.<sup>3</sup>

In its initial brief, Duke asserts that it has correctly excluded M&V costs from its calculations of the shared savings incentive. Duke's position, however, is contrary to the positions of the other signatory parties, against the weight of the evidence and illogical.

Duke asserts that Mr. Ziolkowski's shared savings methodology (which excludes M&V costs from program costs) is correct. For support, Duke claims that Mr. Ziolkowski's methodology "was not discussed in any respect" in Case No. 11-4393-EL-RDR.<sup>4</sup> But there is a logical reason for the lack of attention to Mr. Ziolkowski's calculation in that proceeding – it was not the calculation that the signatory parties to the Stipulation had agreed upon.

Mr. Ziolkowski's proposed shared savings incentive methodology was not mentioned in the Stipulation.<sup>5</sup> Rather, the Stipulation specifically and exclusively referred to the shared savings incentive as proposed in the comments of Ohio Consumer and Environmental Advocates ("OCEA"). And as OCC witness Wilson Gonzalez testified, the program costs mentioned in OCEA's comments (that were referenced in the Stipulation) include M&V costs.<sup>6</sup> Thus, Mr. Ziolkowski's methodology was largely ignored because it was not relevant to the terms of the settlement.

Duke also contends that although Mr. Ziolkowski was "briefly" cross-examined, at the hearing in Case No. 11-4393-EL-RDR, by Ohio Energy Group ("OEG") on the

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<sup>3</sup> OCC Brief at 4-5; PUCO Staff Brief at 2-8; OPAE Brief at 2-7.

<sup>4</sup> Duke Brief at 3.

<sup>5</sup> See OCC Ex. 4; Tr. at 15-16.

<sup>6</sup> OCC Ex. 3 at 8-9; Tr. at 66.

“methodology” that excluded the M&V costs, “no party raised any concern regarding the shared savings calculation methodology at the hearing or in their respective briefs filed on June 22, 2012.”<sup>7</sup> The reason for this is simple: the cross-examination by OEG, which was not a signatory party to the Stipulation,<sup>8</sup> specifically addressed the shared savings mechanism proposed by Duke in its original filing in that case on July 20, 2011 – not the shared savings incentive that was agreed to in the Stipulation.<sup>9</sup> Thus, there was no need for the parties to cross-examine Mr. Ziolkowski on the issue or to address the issue on brief in that proceeding.

In addition, Duke claims that “witnesses for OCC, OPAE and Staff all admit that they didn’t actually review the submitted tariffs subsequent to the approval of the Company’s portfolio in order to dispute the calculation in that proceeding.”<sup>10</sup> This is not true.

Both OCC witness Gonzalez and PUCO Staff witness Scheck testified that they reviewed the tariff and determined that the plain language of the tariff included M&V costs in the shared savings calculations. At the hearing in this case, Mr. Gonzalez stated that upon reviewing the tariff, he determined that the tariff language included M&V costs – as part of program costs – in the shared savings incentive:

Q. And, Mr. Gonzalez, at the conclusion of 4393 when the company filed its compliance tariffs at the direction of the Commission, did you review those compliance tariffs?

A. I believe I reviewed the language of the compliance tariffs, and we had a concern, the same concern I think expressed

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<sup>7</sup> Duke Brief at 3.

<sup>8</sup> See OCC Ex. 4 at 8-10.

<sup>9</sup> Case No. 11-4393-EL-RDR, Transcript of the November 29, 2011 hearing (December 1, 2011) at 77-85.

<sup>10</sup> Duke Brief at 4.

by staff, and – and I guess the company refiled. It was on the lost revenue issue.

Q. Right. And when the company refiled, they addressed that concern, correct?

A. Yes.

Q. But there was no mention of any concern with respect to the calculation of measurement and verification costs.

A. We read the tariff, and the tariff says measurement – administrative costs is part of program costs so why would we challenge it?<sup>11</sup>

On redirect, Mr. Scheck explained that his initial review of the tariff also found that M&V costs would be included as program costs in calculating the shared savings incentive:

Q. And Attachment GCS-1 is a version of the tariffs that you reviewed in 11-4393 which was the issue – at issue in the letter on Duke Exhibit 10, and Attachment GCS-1 in this tariff you – you have reviewed this tariff before, correct, Attachment GCS-1?

A. Yes, yes, I have.

Q. Okay. And in this tariff does it specifically state that for calculating the program incentive that program costs exclude EM&V?

A. No, it doesn't explicitly say that.

Q. Okay. And is there anything in Attachment GCS-1 that indicates the program costs would include evaluating and monitoring the programs?

A. Yes. As I testified earlier, there are four sections in the tariff. This basically is the "Charges" section or part 2. There is a definition of program costs recovery or PC that is in the – I guess the second paragraph under "Charges" after the mathematical calculation. And then it says basically "Such program costs shall include the cost of

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<sup>11</sup> Tr. at 68.

planning, developing, implementing, and” then the key words to me “monitoring and evaluating the EE-PDR programs.”

And then subsequent to that you go on the next page, I don’t know what page they are in the particular tariffs, but the next page on the tariff under “Charges” continued second paragraph, the definition of the cost of the program, I took that to mean the same as program costs recovery, PC, on the first page, to mean the same as the cost of the program under the sentence “Net resource savings are defined as program benefits less the costs of the program, where program benefits will be calculated on the basis of the present value of the Company’s avoided costs over the expected life of the program, and will include both capacity and energy savings.”

So the term or the phrase the cost of the program I attribute to mean the same thing on the first page program costs recovery defined as those five elements including monitoring, evaluating the EE-PDR programs.<sup>12</sup>

Thus, the tariff makes no distinction between program costs for recovery purposes (which specifically includes M&V costs) and program costs that are used in calculating the shared savings incentive. Under the plain language of the tariff, the same program costs that are included in calculating program cost recovery should be included in the shared savings calculation. This is logical, equitable and consistent with the use of the term “program costs” by OCEA, as Mr. Gonzalez explained.<sup>13</sup>

Duke now maintains that the signatory parties to the Stipulation bargained for Duke to benefit twice from the same M&V costs: once by including M&V costs in the collection of program costs from customers; and a second time by excluding M&V costs

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<sup>12</sup> Id. at 89-91. OPAE has a small staff and usually does not review tariffs. See id. at 79.

<sup>13</sup> It is also consistent with PUCO pronouncements in its Finding and Order concerning energy efficiency protocols in Case No. 09-512-GE-UNC and referenced in OCC Ex. 3 at 10-11.

from the shared savings incentive.<sup>14</sup> But no other electric distribution utility in Ohio has such a benefit,<sup>15</sup> and thus the benefit would not be expected to occur in a settlement that is the product of serious bargaining among capable, knowledgeable parties.<sup>16</sup> Duke's shared savings calculation has no basis in OCEA's comments or in the Stipulation.

The PUCO should reject Duke's assertions, and enforce the terms of the Stipulation to achieve the benefits the signatory parties bargained for. To protect consumers who pay the rider charge, the PUCO should order Duke to recalculate the shared savings incentive with the M&V costs included in program costs.

Respectfully submitted,

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<sup>14</sup> See Tr. at 55-56.

<sup>15</sup> See OCC Ex. 3 at 14; OPAE Ex. 1 at 6-7; PUCO Staff Ex. 2 at 4.

<sup>16</sup> See OCC Ex. 4 at 1.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of OCC's Post-Hearing Reply Brief was served on the persons stated below via electronic transmission this 14<sup>th</sup> day of November 2013.

/s/ Terry L. Etter

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