BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Amy B. Spiller and Elizabeth H. Watts, 2500 Atrium II, 139 East Fourth Street, Cincinnati, Ohio 45201, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Devin D. Parram and Ryan O'Rouke, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Terry L. Etter, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

OPINION:

I. Background

Duke Energy Ohio, Inc. (Duke) is an electric light company, as defined in R.C. 4905.03(A) and a public utility under R.C. 4905.02. R.C. 4928.66(A)(1)(a) and (b) provides, in pertinent part, that, beginning in 2009, an electric distribution utility (EDU) shall implement energy efficiency programs that achieve energy savings based on a certain percentage of the EDU's total, annual average, and normalized kilowatt-hour (kWh) sales, as specified in the statute. Further, in accordance with R.C. 4928.66, the Commission adopted the rules contained in Ohio Adm.Code Chapter 4901:1-39, Energy Efficiency and Demand Reduction Benchmarks, which became effective December 10, 2009.

By Opinion and Order issued December 17, 2008, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al. (*SSO Case*) the Commission approved a stipulation that, inter alia, provided for a cost recovery mechanism, through Duke's distribution save-a-watt rider (Rider SAW), for Duke's compliance with the energy efficiency and peak demand reduction requirements mandated by R.C. 4928.66. Subsequently, by Opinion and Order issued August 15, 2012, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 11-4393-EL-RDR (*EE-PDR Case*), the Commission approved a stipulation that, inter alia, authorized Duke to supplant Rider SAW, which was to expire on December 31, 2011, with Duke's energy efficiency/peak-demand reduction rider (Rider EE-PDR) beginning January 1, 2012. In addition, the Order in the *EE-PDR Case* provided that Duke was to submit an updated portfolio filing to align the cost recovery mechanism with the portfolio of programs on or before April 15, 2013.

On March 28, 2013, Duke filed the instant application and supporting testimony, requesting approval to adjust Rider EE/PDR.

By Entry issued June 13, 2013, the attorney examiner established a procedural schedule in this case. Specifically, August 12, 2013, was set as the deadline for the filing of motions to intervene, and comments and reply comments were due on July 1, 2013, and July 16, 2013, respectively. Comments were filed by the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE). Duke filed reply comments.

By Entry issued August 19, 2013, the motions to intervene filed by OCC and OPAE were granted and this matter was set for hearing to commence on September 19, 2013. At the request of the parties, the hearing was rescheduled to October 3, 2013. The hearing commenced, as rescheduled, on October 3, 2013. Briefs and reply briefs were filed on October 7, 2013, and October 14, 2013, respectively.

II. Summary of the Evidence

Duke's Rider EE-PDR calculation in this case is comprised of three components: program costs; evaluation, measurement, and verification (EM&V) costs; and shared savings costs. The only contested issue in this proceeding is whether the stipulation, and the Commission's approval thereof, in the *EE-PDR Case* provided that the EM&V costs should be included in the shared savings calculation for Rider EE-PDR. As set forth in more detail below, Duke excluded the EM&V costs from the shared savings calculation. However, Staff, OCC, and OPAE maintain that such costs should be included in the shared savings calculation; therefore, they assert Duke should be directed to reduce the actual 2012 Rider EE-PDRR costs by $238,027.

A. General Description of Rider EE-PDR and 2012 Calculation

Duke witness Ziolkowski explains that Rider EE-PDR is the mechanism through which the revenue requirement is recovered for the energy efficiency and demand response programs from residential and nonresidential customers, while Rider EE-PDRR contains the results of the calculations, *i.e.*, the retail recovery rates. Rider EE-PDR is trued-up annually. The analysis in this case addresses calendar year 2012. In addition, Mr. Ziolkowski explains that the proposed Rider EE-PDRR rates also include expected 2013 costs, which will be trued-up in Duke's 2013 filing. (Duke Ex. 2 at 4.)

According to Duke witness Ziolkowski, the total revenue recovery during 2012 was $25,712,173 (Duke Ex. 2 at 9). Through this true-up, Duke proposes to increase the Rider EE-PDRR charge from $0.002317 per kWh to $0.003475 per kWh (Duke Ex. 2 at Att. JEZ-2). According to OCC, this would add $1.16 to the monthly bill of a residential customer using 1,000 kWh per month (OCC Ex. 3 at 8).

Mr. Ziolkowski states that, for the first nine months of 2012, revenues were collected through Rider SAW, which was approved in the *SSO Case*; however, upon implementation of Rider EE-PDR, Rider SAW recovery ceased through the end of 2012 (Duke Ex. 2 at 9). Duke witness Duff explains that it was necessary for Duke to continue to charge customers under Rider SAW in 2012, until Rider EE-PDR was approved in the *EE-PDR Case* (Duke Ex. 3 at 12).

Duke witness Duff explains that the energy efficiency and demand response programs that were ultimately offered to customers under Rider EE-PDR include: Residential Energy Assessments; Smart Saver for Residential Customers; Low-Income Services; Energy Efficiency Education Program for Schools; Power Manager for Residential Customers; Home Energy Comparison Report; Nonresidential Energy Assessments; Smart Saver for Nonresidential Customers; Power Share for Nonresidential Customers; Low-Income Neighborhood Program; Appliance Recycling Program; and Home Energy Solutions. In addition, Duke offers an Ohio Mercantile Self-Direct Rebate Program (Mercantile Program), which was approved by the Commission in *In re Application of Duke Energy Ohio, Inc.*, Case No. 10-834-EL-POR, Finding and Order (July 17, 2013). Mr. Duff states that, in 2012, Duke successfully met and exceeded its annual targeted mandates for energy efficiency and peak demand reduction. Duke's annual energy efficiency mandate of 167,149 megawatt hours (MWh) was exceeded by over 95,000 MWh, and its annual peak reduction mandate of 32.5 MWh by almost 18 MWh. Therefore, Duke asserts that it overachieved its annual mandates by over 31 percent (Duke Ex. 3 at 6-7, 9).

Duke witness Duff states that, under Rider EE-PDR, Duke is entitled to: recover the costs incurred to deliver energy efficiency and peak demand reduction; and earn a shared savings incentive based on its ability to exceed its annual efficiency savings targets set forth in R.C. 4928.66 (Duke Ex. 3 at 3; Duke Ex. 2 at 4). In the *EE-PDR Case*, Duke was also given the ability to recover lost distribution margins from all customer classes not included in Duke's pilot distribution decoupling rider (Rider DDR) [*i.e.*, services at secondary distribution voltage (Rate DS), primary distribution voltage (Rate DP), and transmission voltage primary voltage (Rate TS)], which was approved by the Commission in *In re Application of Duke Energy Ohio*, Inc., Case No. 11-5905-EL-RDR, Finding and Order (May 30, 2012) (Duke Ex. 3 at 3-4). Duke witness Ziolkowski explains that lost margins equal lost revenues minus variable costs, and Duke requests recovery of distribution lost margins (*i.e.*, distribution margins associated with Rates DS, DP, and TS) associated with the Rider EE-PDR measures in this case (Duke Ex. 2 at 5).

According to Duke witness Duff, the shared savings incentive structure is designed to incentivize Duke for exceeding its annual energy efficiency targets in the most cost-effective manner possible. Therefore, the level of incentive (*i.e.*, avoided costs less the costs of delivering the efficiency) Duke may earn is tiered and can range from 5 percent to 13 percent, depending on the degree by which the actual efficiency savings exceed the annual target. (Duke Ex. 3 at 4.) With regard to the Mercantile Program, only the program costs are included for recovery in Rider EE-PDR ($1,682,044); however, in accordance with the stipulation in the *EE-PDR Case*, for purposes of determining its annual earned incentive level, the annual impacts and associated avoided costs from this program are excluded (Duke Ex. 3 at 9-10; Duke Ex. 2 at 6). In addition, pursuant to the *EE-PDR Case*, the base rate-funded low-income weatherization programs are excluded from the calculation determining the annual earned incentive level (Duke Ex. 3 at 9).

The calculation of Rider EE-PDR also includes recovery of lost distribution margins for customers billed under schedules Rates DS, DP, and TS. Mr. Duff explains that, unlike other customers being billed under Rider EE-PDR, the customers under these three rate schedules were excluded from the distribution revenue decoupling pilot being recovered through Rider DDR. Therefore, he states that, in order to eliminate the disincentive created by the under-recovery of fixed costs from customers who are not served under the decoupling pilot, the Commission, in the *EE-PDR Case*, authorized Duke to collect 36 months of lost distribution margins associated with the impacts of its energy efficiency programs for these customers. Any over- or under-recovery of lost margins is to be determined without any carrying charges, according to Duke witness Duff. (Duke Ex. 3 at 5.)

After making the adjustments to the annual impacts, Duke recognized an annual impact achievement of 211,126 MWh to determine its shared savings percentage incentive. In addition, Duke adjusted the annual mandated target by reducing its three-year average annual sales baseline for the load of customers participating in the Mercantile Program, which equates to 6,064 MWh to establish an annual mandate for determining the incentive of 161,085. (Duke Ex. 3 at 9.) Therefore, after making the appropriate adjustments to both the annual impacts and annual mandate target, Duke calculated an annual achievement of 131 percent, which equates to allowing Duke to earn a 13 percent after-tax shared savings incentive (Duke Ex. 3 at 9; Duke Ex. 2 at 5). Duke witness Ziolkowski asserts that the total 2012 revenue requirement, using the pre-tax shared savings rate of 20.37 percent, is $39,477,575 (Duke Ex. 2 at 8).

B. Evaluation, Measurement, and Verification Costs and Shared Savings Calculation

As stated previously, two of the three components for the calculation of Rider EE-PDR are the EM&V costs and the shared savings costs. While Duke includes the EM&V costs in the calculation, Duke does not include the EM&V costs in its shared savings calculation for the rider.

Duke witness Stevie[1] explains that the following programs received EM&V reports that apply to the true-up in this case: Low-Income Services, Refrigerators; Residential Energy Assessments, Personalized Energy Report; Residential Energy Assessments, Mass Market Energy Assessments Online; Energy Efficiency Education Program for Schools; 2010 Smart Saver Residential, HVAC; 2011 Power Manager; 2009-2011 Nonresidential Smart Saver, Custom; 2011 Smart Saver Residential, CFLs; 2011 PowerShare; and 2012 Power Manager. He states that the EM&V process utilized in developing estimates or true-ups for the EE-PDR Rider produces results on two main concepts: actual customer participation; and prospective load impact estimations. These concepts are important because the original evaluation of program cost-effectiveness utilized projected numbers for participants in the programs and estimates of the load impacts. The participant and initial load impact information is used to develop estimates of the achievement level that is subsequently used to determine the incentive amounts included in the rider. Duke has measured actual participation as an input in the EM&V process and uses this information as the basis for annual true-ups of estimated incentives for the rider by multiplying this participation by the initial estimates or updated EM&V results. For those programs on which EM&V has been conducted and finalized, the estimates of energy efficiency impacts and free ridership levels, which are the output of the EM&V process, have been applied prospectively to adjust subsequent impact assumptions. Once the EM&V load impact estimates have been received, they are applied to the rider in the following month. (Duke Ex. 4 at 3-5.)

Duke witness Ziolkowski explains that the DSMore model calculates the kilowatt (kW) and kWh reductions associated with each program measure. Based upon the units of participation and load reductions per program measure, Duke then applies lost margin rates to these reductions to calculate the lost margin dollars to be recovered. Mr.

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[1] Duke witness Stevie (Duke Ex. 6) adopted the testimony of Duke witness Ossege (Duke Ex. 4). Therefore, citations throughout this Order will refer to Mr. Stevie's testimony as Duke Ex. 4.

Ziolkowski states that lost margins equal lost revenues minus variable costs, and Duke requests recovery of distribution lost margins (*i.e.*, distribution margins associated with Rates DS, DP, and TS) associated with Rider EE-PDR measures in this case. (Duke Ex. 2 at 5). Mr. Stevie explains that the revenue requirement was calculated using both data inputs and outputs from the DSMore model, including initial estimates or estimated energy savings from EM&V, program costs, and avoided costs. In addition, measurement and verification costs, which are part of the DSMore model, are included in the revenue requirements calculation. (Duke Ex. 4 at 5-6.)

Duke witness Duff supports Duke's exclusion of the EM&V costs from the shared savings calculation, noting that, in the *EE-PDR Case*, Duke submitted an application, supporting testimony by Mr. Ziolkowski, and tariffs that did not include the EM&V costs in the shared savings calculation. Mr. Duff emphasizes that none of the parties in the *EE-PDR Case* raised the issue related to inclusion of the EM&V costs in the calculation of the shared savings. (Duke Ex. 3a at 2-3.)

Staff witness Scheck explains that the EM&V costs are costs Duke incurs to evaluate, measure, and verify whether the programs are cost-effective. EM&V costs are an unavoidable part of administering portfolio programs, because it is necessary to determine whether each program is cost-effective and whether they need any programmatic changes to improve performance. Mr. Scheck asserts that it is important to include EM&V costs in program costs when calculating shared savings, because shared savings payments are a result of the net avoided cost savings from the administration of energy efficiency programs. In order to determine the amount of net avoided costs that results from Duke's programs, Duke must include all costs necessary to administer the programs, which include costs to evaluate, measure, and verify savings. Mr. Scheck points out that, in the absence of an energy efficiency portfolio, it would not be necessary to spend money for EM&V; therefore, EM&V costs are a necessary component to be considered in determining the net avoided costs and, consequently, the shared savings payment. (Staff Ex. 2 at 2-3.)

Staff witness Scheck asserts that excluding EM&V costs from the program costs and the shared savings calculation increases the amount of shared savings payments to Duke by failing to account for all the known and avoidable administrative costs of implementing the programs. He explains that such exclusion decreases the program costs portion of the shared savings calculation. Because the program costs are netted against the total avoided costs, excluding the EM&V costs increases the net avoided costs, which results in an inaccurate representation of the cost-effectiveness of Duke's portfolio performance. (Staff Ex. 2 at 3.)

Staff witness Scheck notes, and OCC witness Gonzalez agrees, that Duke's tariff, which was approved in the *EE-PDR Case*, provides that the EM&V costs are considered program costs, referring to the language all programs costs "shall include all expected costs * * * such program costs shall include the cost of planning, developing, implementing, *monitoring*, and *evaluating* the EE-PDR programs" [emphasis added.] (Staff Ex. 2 at 4-5; OCC Ex. 3 at 12). Mr. Scheck notes that Duke's tariff does not state that the EM&V costs are excluded from the program costs when calculating the shared savings payment. Moreover, he emphasizes that, in the *EE-PDR Case*, Staff did not agree to either the exclusion of EM&V costs from the program costs in the shared savings calculation or to Mr. Ziolkowski's testimony, and the stipulation approved in the *EE-PDR Case* does not provide for such exclusion. (Staff Ex. 2 at 4-7.) Accordingly, Staff recommends a reduction of $238,027 in the actual 2012 Rider EE-PDRR costs and a reduction of $200,013 in Duke's 2013 estimated 2013 Rider EE-PDRR costs (Staff Ex. 3 at 2).

OCC witness Gonzalez agrees with Staff that Duke's exclusion of the EM&V costs from the total costs of administering the energy efficiency programs allows Duke to collect more money from its customers. Mr. Gonzalez asserts that such exclusion is contrary to the stipulation approved in the *EE-PDR Case*, noting that the stipulation provides that Duke's rates "* * * shall also be subject to an incentive mechanism that includes shared savings as proposed by members of the Ohio Consumer and Environmental Advocates (OCEA) in Comments submitted to the Commission in this proceeding on September 21, 2011." Contrary to Duke's assertion, Mr. Gonzalez maintains that Mr. Ziolkowski's testimony in the *EE-PDR Case* is not binding in setting forth the calculation of the shared savings incentive, as the OCEA's comments concerning the shared savings mechanism were specifically referenced in the stipulation and those comments were filed after Mr. Ziolkowski's testimony in the *EE-PDR Case* relied on by Duke. Therefore, he contends that the stipulation, with the calculation in OCEA's comments, modified the shared savings mechanism in Duke's application and Mr. Ziolkowski's testimony in the *EE-PDR Case*. OCC witness Gonzalez submits that Mr. Ziolkowski's testimony in the *EE-PDR Case* was for the purpose of allocating program costs among customer classes, not for calculating shared savings. Accordingly, Mr. Gonzalez maintains that Duke should be required to recalculate its shared savings incentive and include the EM&V costs in the recalculation. Such recalculation would reduce the shared savings incentive that customers would have to pay to Duke by $238,027 for 2012 and by $199,963 for 2013. (OCC Ex. 3 at 5-9.) OPAE agrees with Staff and OCC that Duke should include the EM&V costs as part of the costs included in the net benefit analysis calculation and the calculation should be reduced by $238,027 for 2012 (OPAE Ex. 2 at 7).

Duke witness Duff believes that Staff, OCC, and OPAE failed to establish in this case that the netting of EM&V costs was agreed to and approved in the *EE-PDR Case*. He asserts that Staff witness Scheck and OCC witness Gonzalez failed to show that there was ever any representation in the stipulation in the *EE-PDR Case*, Duke's supplemental testimony supporting the stipulation, or the tariffs that Duke had modified the proposed shared savings calculation methodology to include EM&V costs. Mr. Duff, notes that, while Duke did not oppose the inclusion of the EM&V costs in *In re the Application of Duke*

Energy Ohio, Inc., Case No. 13-431-EL-POR, Opinion and Order (Dec. 4, 2013), on a going forward basis covering 2014 through 2016, in the instant case, the Commission's decision in the *EE-PDR Case* should govern the outcome; therefore, the EM&V costs should not be included in the shared savings mechanism. (Duke Ex. 3a at 3-4, 6-7; Duke Br. at 3-4.)

CONCLUSION:

The only issue in contention by the parties is whether the EM&V costs should be included in the the shared savings calculation for Rider EE-PDR. In reaching our decision, it is necessary for the Commission to review the stipulation, and our approval thereof, in the *EE-PDR Case*. In the instant case, while Staff and the intervenors refer to provisions in the stipulation in the *EE-PDR Case*, as well as the tariff, to support their assertions that their intent, as signatory parties to the stipulation, was that EM&V costs be included in the shared savings calculation for Rider EE-PDR, Duke references testimony filed by Mr. Ziolkowski in support of the initial application filed in that case. However, we agree that the language in the stipulation and tariff approved in the *EE-PDR Case* indicates that the EM&V costs should be included in the shared savings calculation for Rider EE-PDR. Given the Commission's support for the inclusion of EM&V costs in shared savings calculations, it was our expectation in adopting the stipulation and approving the tariff in the *EE-PDR Case* that such costs would be included in calculations for Rider EE-PDR. This conclusion is clearly in keeping with our decisions, during the same time period we were considering the *EE-PDR Case*, wherein we consistently required EDUs to calculate shared savings through the Utility Cost Test (UCT), which includes EM&V costs as part of the program costs. *See In re Application of Cleveland Elec. Illum. Co., et al.*, Case No. 12-2192-EL-POR, Opinion and Order (Mar. 20, 2013) (*Cleveland Elec.*); *In re Application Columbus Southern Power Co., et al.*, Case No. 11-5568, Opinion and Order (Mar 21, 2012) (*Columbus Southern*). Our decision in the *EE-PDR Case* was issued subsequent to our Order in *Columbus Southern*, but prior to *Cleveland Elec.* As we clearly found in *Columbus Southern* and *Cleveland Elec.*, the use of the UCT will encourage EDUs to keep administrative costs low and minimize the costs of the programs, while achieving compliance with the statutory mandates. In the *EE-PDR Case*, there was no need for the Commission to further expound upon the favored UCT in the Order, as we understood that the language in the stipulation provided that the EM&V costs would be included in the shared savings calculation.

Therefore, the Commission concludes that Duke must recalculate the shared savings to include the relevant EM&V costs in the total costs of administering the energy efficiency and peak demand response programs and adjust Rider EE-PDR accordingly. To reflect this adjustment, we find that the record supports a reduction of $238,027 in the actual 2012 Rider EE-PDRR costs and a reduction of $200,013 in Duke's 2013 estimated 2013 Rider EE-PDRR costs. Accordingly, the Commission finds that Duke's application to adjust Rider EE-PDR should be approved, subject to our modifications set forth in this

Order; therefore, Duke is authorized to file revised tariffs consistent with the directives in this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Duke is an electric light company, as defined in R.C. 4905.03(A) and a public utility under R.C. 4905.02.

(2) On March 28, 2013, Duke filed its application in this case.

(3) On July 1, 2013, and July 16, 2013, comments and reply comments, respectively, were filed in this case.

(4) On August 19, 2013, OCC and OPAE were granted intervention.

(5) The hearing in this matter was held on October 3, 2013.

(6) Briefs and reply briefs were filed on October 7, 2013, and October 14, 2013, respectively.

(7) Duke's application should be approved, as modified herein and Duke should be authorized to file revised tariffs adjusting Rider EE-PDR consistent with this Order.

ORDER:

It is, therefore,

ORDERED, That Duke's application to adjust Rider EE-PDR is approved, subject to the reductions required herein to reflect the EM&V costs in shared savings. It is, further,

ORDERED, That, Duke may file revised tariffs consistent with the directives in this Opinion and Order. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further, ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

CMTP/vrm

Entered in the Journal

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Secretary