BOEHM, KURTZ & LOWRY
ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255

TELECOPIER (513) 421-2764

Via E-FILE

December 5, 2014

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 14-1580-EL-RDR

Dear Sir/Madam:

Please find attached the COMMENTS OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Encl.
Cc: Certificate of Service

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of Duke Energy Ohio, Inc. For Approval To Continue Its Cost Recovery Mechanism For Energy Efficiency Programs Through 2016.	: : ::	Case No. 14-1580-EL-RDR

COMMENTS OF THE OHIO ENERGY GROUP

I. INTRODUCTION

The Ohio Energy Group ("OEG") hereby submits these Comments in response to the Application for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs Through 2016 filed by Duke Energy Ohio, Inc. ("Duke" or "Company") at the Public Utilities Commission of Ohio ("Commission" or "PUCO") on September 9, 2014. OEG is a non-profit entity organized to represent the interests of large industrial customers in electric and gas regulatory proceedings before the Commission. OEG's members who take service from Duke Energy Ohio, Inc. ("Duke" or "Company") and who are participating in this intervention are: AK Steel Corporation, Air Products and Chemicals, Inc., E.I. DuPont de Nemours & Co., Ford Motor Company, GE Aviation, General Motors LLC and Worthington Industries. OEG's recommendations are set forth below.

II. COMMENTS

A. The Commission Should Reject Duke's Request to Continue Receiving Incentive Payments for Energy Efficiency/Peak Demand Reduction Efforts Beyond December 31, 2015.

In its Application, Duke requests that the Commission allow the Company's current energy efficiency/peak demand reduction ("EE/PDR") cost recovery and incentive mechanism to continue through 2016. That mechanism was established pursuant to a Commission-approved Stipulation and Recommendation in Case No. 11-4393-EL-RDR (which OEG contested) and is currently set to expire December 31, 2015. OEG opposes Duke's request to continue receiving EE/PDR incentive payments beyond December 31, 2015. As OEG has already argued in multiple proceedings,[1] it is unreasonable for Duke to recover incentive payments for its EE/PDR efforts.

As an initial matter, Duke is mandated by law to achieve the EE/PDR benchmarks set forth in R.C. §4928.66. This legal obligation provides sufficient incentive for Duke to engage in substantial EE/PDR efforts. Moreover, the EE/PDR savings benchmarks set forth under R.C. §4928.66 are set to increase over time, which will likewise increase the scope of Duke's EE/PDR efforts regardless of whether the Company continues to receive incentive payments beyond 2015. It is therefore unnecessary to provide significant incentive payments to the Company's shareholders in order to encourage Duke to engage in even more EE/PDR efforts.

Additionally, one of the most substantial financial benefits to customers that can result from the EE/PDR efforts of utilities is that such efforts may help to avoid the construction of costly new generation assets in their service territories. But Duke has exited the generation business in Ohio. Duke's generation assets are no longer used to serve customers in its service territory since the Company's standard service offer rates are now set through retail auctions in which Duke committed not to participate.[2] And Duke is selling its Ohio generation assets to Dynegy.[3] Given these developments, one major reason to incentivize Duke to achieve EE/PDR savings over and above the benchmarks set forth in R.C. §4928.66 no longer exists since the market will now dictate whether new generation assets are constructed in Duke's service territory.

While it is true that additional customer participation in Duke's EE/PDR programs may reduce PJM wholesale market prices and provide environmental and reliability benefits to customers, these are generic benefits spread throughout the wider PJM region. Such benefits are not targeted specifically to Duke's customers. Further, customers in Duke's service territory can achieve such additional benefits by implementing their own EE/PDR efforts without Duke's assistance and without funding additional incentive payments to Duke's shareholders. Indeed, large industrial customers already carefully manage their energy consumption and implement their own self-funded EE/PDR measures.

---

[1] *See* OEG Post-Hearing Briefs, Case No. 11-4393-EL-RDR (December 9, 2011 and June 22, 2012) and OEG Objections, Case No. 13-431-EL-POR (July 1, 2013).

[2] Stipulation and Recommendation, Case No. 11-3549-EL-SSO (October 24, 2011) at 7, paragraph II(B); Id. at 9-10, paragraph II(F); Id. at 25, paragraph VIII(A).

[3] OEG notes that Duke is not selling its interest in the Ohio Valley Electric Corporation generation assets to Dynegy.

Allowing Duke to receive incentive payments in addition to recovering the costs to fund its EE/PDR efforts also leads to excessive reimbursement, which places an unnecessary financial burden on residents and businesses in Southwest Ohio. The costs of utility EE/PDR programs are significant and are substantially increased by allowing utilities to recover large incentive payments from customers. For example, Duke is seeking to recover approximately $35 million in EE/PDR charges from customers for 2013.[4] Of that approximately $35 million, $11,635,152 (or approximately *one-third* of the total EE/PDR charges that Duke seeks to recover from customers) represents requested incentive payments for that year.[5] There is no justification for providing Duke such substantial returns on EE/PDR efforts, particularly given that the Company has no capital invested or at risk on its EE/PDR expenditures.

Duke's incentive mechanism forces customers to pay unreasonable sums relative to the energy reductions actually achieved by the Company. For example, in 2012, Duke received a total of $12,527,590 in incentive payments for 211,126 in claimed MWh savings.[6] Customers therefore paid Duke $59.34 per MWh of energy efficiency savings achieved that year. For 2013, Duke is seeking to recover $11,635,152 in incentive payments for the 210,388 MWh in savings it claims to have achieved.[7] This equates to $55.30 per MWh of energy efficiency achieved in 2013. Duke recovers these incentive payments through its EE/PDR rider *in addition* to its program costs and lost revenues. Daily on-peak power prices at the AEP-Dayton hub in PJM on the date of this filing were $38.82 per MWh.[8] Thus, even before taking into account the amounts they pay for EE/PDR program costs and lost revenues, Duke's customers are paying significantly more in incentive payments for each MWh of energy efficiency savings achieved through Duke's EE/PDR programs than they would simply to purchase another MWh of power.

---

[4] Direct Testimony of James E. Ziolkowski, Case No. 14-457-EL-RDR (March 28, 2014) ("2014 Ziolkowski Testimony") Attachment JEZ-1 at 2.

[5] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 3.

[6] Revised Tariff Pages, Case No. 13-753-EL-RDR (April 9, 2014) at 1 and 3.

[7] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 1 and 3.

[8] SNL Financial.

Duke's requested incentive payments for 2013 are especially egregious because the Company's claim for approximately $11 million in incentives relies *entirely* upon "banked" energy efficiency savings to trigger those payments.[9] In the absence of those "banked" energy efficiency savings, Duke would not receive *any* incentive payments for that year. Duke's 2013 compliance mandate for purposes of receiving incentives is 181,368 in MWh savings. But Duke only achieved 125,266 in MWh savings that year. Consequently, Duke is attempting to use 85,122 MWh of its "banked" savings to trigger its incentive mechanism, padding its achievement to 116% above its mandate.[10] Duke is thus seeking to charge customers approximately $11 million as a reward for savings that did not occur in 2013. This is an unreasonable practice which, if permitted by the Commission until December 31, 2015, should not continue beyond that time.

B. If the Commission Allows Duke's Incentive Mechanism to Continue Beyond December 31, 2015, then the Commission Should Modify That Mechanism and Clarify How It Will Operate Going Forward.

If the Commission deems it appropriate to continue allowing Duke to receive incentive payments for its EE/PDR efforts beyond December 31, 2015, then the Commission should make several modifications to the Company's incentive mechanism to limit the adverse rate impacts to customers and should clarify how it will operate going forward.

First, given the excessively high level of Duke's incentive payments, the Commission should institute a reasonable cap on those payments. Duke notes that its current incentive mechanism "does not feature an explicit dollar cap on the incentive the Company may earn since it is incongruent with the theory behind a shared savings incentive."[11] But the Commission has already approved incentive dollar caps for AEP Ohio ($20 million),[12] the FirstEnergy operating companies ($10 million),[13] and The Dayton Power & Light Company ($4.5 million).[14] The Commission therefore has found that dollar caps are congruent with the theory behind a shared savings incentive. For purposes of Duke's incentive mechanism, OEG recommends that the Commission institute both an absolute dollar cap and a percentage cap. An incentive dollar cap is designed to provide an absolute limit on the impact on customer bills from

[9] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 1.
[10] Id.
[11] Application at 3.
[12] Opinion & Order, Case No. 11-5568-EL-POR (March 21, 2012) at 8.
[13] Opinion & Order, Case No. 12-2190-EL-POR (March 20, 2013) at 16.
[14] Opinion & Order, Case No. 13-833-EL-POR (December 4, 2013) at 8.

the incentive. A percentage factor tied to the overall cost of energy efficiency expenditures scales the incentive to the expenditures incurred, but does not provide an absolute dollar limit. The application of both limits to cap the incentive provides a reasonable balance between the potential reward to shareholders and the ultimate cost paid by customers. As an initial incentive cap, OEG recommends the lesser of 3% of total annual energy efficiency expenditures or $1 million annually.

Second, the calculation of Duke's incentives should be based *only* upon the achieved energy efficiency savings exceeding those required by the statutory benchmarks set forth under R.C. §4928.66. Duke's current incentive payments appear to be determined based upon the *total* EE-PDR savings that Duke achieves, including savings that Duke was already statutorily mandated to achieve. There is no valid rationale to reward shareholders for performance that is mandated by law, the costs of which Duke is already fully compensated for by its customers. Any incentive payments that Duke receives going forward should be limited to rewarding performance that would not have occurred "but for" the incentives.

Third, the Commission should explicitly state that Duke is prohibited from using "banked" energy efficiency savings to trigger incentive payments. During the hearing in Case No. 11-4393-EL-RDR (the case in which Duke's incentive mechanism was established), Staff witness Gregory C. Scheck testified that the Company should not be able to use "banked" energy efficiency savings for purposes of its incentive mechanism:

> Q: Mr. Boehm also asked you a couple of questions about the amount that Duke is allowed to bank and using that in relation to meeting its threshold one year as opposed to actually getting an incentive mechanism off of bank amounts. Could you explain your -- what is your understanding of what can Duke do to meet the threshold and then what exactly – what incentives will Duke get off of that banked portion from year to year?
>
> Mr. Scheck: Well, if they bank something and they move to the future year, subsequent year, then if they already used it in the prior year towards reaching their benchmark and going above that amount, then they wouldn't get to earn twice on that. They only get to earn once. So essentially they can count it towards meeting their benchmark in the subsequent year, but it wouldn't be used for the incentive payment.[15]

[15] Tr., Case No. 11-4393-EL-RDR (June 7, 2012) at 126:6-22.

Despite this clarification from Staff, Duke is attempting to rely solely on "banked" savings to trigger incentive payments in Case No. 14-457-EL-RDR. Without using those "banked" savings, Duke would not receive any of the approximately $11 million in incentive payments that it is seeking in that case.[16] Hence, the appropriateness of using "banked" savings in that case is an $11 million issue for customers. The outcome of Case No. 14-457-EL-RDR is still uncertain. But if Duke is permitted to use "banked" savings in such a manner through December 31, 2015, then the Commission should explicitly state that such a practice should not continue beyond that date.

III. CONCLUSION

WHEREFORE, OEG respectfully requests that the Commission discontinue Duke's recovery of incentive payments for its EE/PDR efforts beyond December 31, 2015. In the alternative, the Commission should make several findings related to Duke's incentive mechanism, including: 1) setting a reasonable cap on the amount of incentive payments that Duke can recover; 2) requiring Duke to calculate its incentive payments based solely on the amount of energy efficiency savings achieved above its benchmark requirements set forth in R.C. §4928.66; and 3) explicitly stating that Duke is prohibited from using "banked" energy efficiency savings to trigger incentive payments.

Respectfully submitted,

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: (513) 421-2255 Fax: (513) 421-2764
E-Mail: dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com

December 5, 2014

COUNSEL FOR THE OHIO ENERGY GROUP

[16] 2014 Ziolkowski Testimony, Attachment JEZ-1 at 1 and 3.

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 5th day of December, 2014 to the following:

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody Kyler Cohn, Esq.

DUKE ENERGY OHIO
ELIZABETH H. WATTS
155 EAST BROAD STREET
COLUMBUS OH 43215

*BINGHAM, DEB J. MS.
OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 W. BROAD ST., 18TH FL.
COLUMBUS OH 43215

*SONDERMAN, ANDREW J MR.
KEGLER BROWN HILL & RITTER
65 EAST STATE STREET SUITE 1800
COLUMBUS OH 43215

*SMITH, CHERYL A MS.
CARPENTER LIPPS & LELAND
280 N. HIGH STREET SUITE 1300
COLUMBUS OH 43081

*RINEBOLT, DAVID C MR.
OHIO PARTNERS FOR AFFORDABLE ENERGY
231 W LIMA ST PO BOX 1793
FINDLAY OH 45840-1793

*HIGHT, DEBRA
PUBLIC UTILITIES COMMISSION OF OHIO
180 E. BROAD STREET
COLUMBUS OH 43231

*WILLIAMS, SAMANTHA
NATURAL RESOURCES DEFENSE COUNCIL
20 N. WACKER DRIVE STE 1600
CHICAGO IL 60606

*DOUGHERTY, TRENT A MR.
OHIO ENVIRONMENTAL COUNCIL
1207 GRANDVIEW AVE. SUITE 201
COLUMBUS OH 43212

*PRITCHARD, MATTHEW R. MR.
MCNEES WALLACE & NURICK
21 EAST STATE STREET #1700
COLUMBUS OH 43215

*BOJKO, KIMBERLY W. MRS.
CARPENTER LIPPS & LELAND LLP
280 NORTH HIGH STREET 280 PLAZA SUITE 1300
COLUMBUS OH 43215

*COCHERN, CARYS
DUKE ENERGY
155 EAST BROAD ST 21ST FLOOR
COLUMBUS OH 43215

*VICKERS, JUSTIN M MR.
ENVIRONMENTAL LAW & POLICY CENTER
35 EAST WACKER DRIVE SUITE 1600
CHICAGO IL 60601

OHIO MANUFACTURERS ASSN
33 N. HIGH ST
COLUMBUS OH 43215

OHIO PARTNERS FOR AFFORDABLE ENERGY
RINEBOLT DAVID C
231 WEST LIMA ST. PO BOX 1793
FINDLAY OH 45839-1793

PEOPLE WORKING COOPERATIVELY INC
4612 PADDOCK RD
CINCINNATI OH 45229

THE KROGER COMPANY
1014 VINE STREET
CINCINNATI OH 45202-1100