

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy     )  
Ohio, Inc., for Approval to Continue Cost     ) Case No. 14-1580-EL-RDR  
Recovery Mechanism for Energy Efficiency     )  
Programs through 2016.     )

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REPLY COMMENTS SUBMITTED BY  
PEOPLE WORKING COOPERATIVELY, INC.

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People Working Cooperatively, Inc. (“PWC”) hereby respectfully submits brief Reply Comments in this case pursuant to the Procedural Entry on October 22, 2014.

PWC responds to certain comments submitted by the Environmental Advocates<sup>1</sup>, Industrial Energy Users (“IEU”) and Ohio Partners for Affordable Energy (“OPAE”).

**I. PWC ENDORSES THE ENVIRONMENTAL ADVOCATES’ ARGUMENT THAT DUKE ENERGY’S APPLICATION IS APPROPRIATELY CONSIDERED UNDER S.B. 310 SECTION 7(B).**

While IEU and OPAE contend that Duke’s application must be dealt with under Section 6(A) or (B), or, dismissed altogether as OPAE has moved, PWC submits that the Environmental Advocates Brief Point III(B) supplies the correct analysis. Because S.B. 310 Section 7(B) applies, the Commission need not consider itself constrained by the provisions of S.B. 310 Section 6 in considering and ruling on Duke’s Application.

Other parties have discussed the Stipulations adopted by the Commission in earlier cases with respect to Duke’s implementation of its energy efficiency and peak demand reduction portfolio plans. Most recently, the issue of cost recovery was dealt with in the Amended Stipulation submitted on September 9, 2013 and adopted by the Commission in its Opinion and

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<sup>1</sup> National Resources Defense Council, Environmental Law and Policy Center, and Ohio Environmental Council.

Order in Case No. 13-431-EL-POR<sup>2</sup>. The cost recovery provision of the Amended Stipulation adopted by the Commission and paraphrased at P. 6 subparagraph 2 of its Opinion and Order that the stipulation provided as follows:

2. *The mechanism for recovering costs from the Company's customers, including recovery of prudent program costs incurred, lost distribution revenues and an incentive mechanism, shall expire at the end of 2015, as controlled by the Stipulation and Recommendation agreed to in Case No. 11-4393-EL-RDR, and adopted and approved by the Commission on August 15, 2012. (Amended Stipulation and Recommendation, p. 5; emphasis supplied.)*

It is beyond dispute that it is “necessary” for the proper administration of Duke’s portfolio plan during 2016, the last year of the currently approved program, that a cost recovery mechanism be maintained. It is also clear that such a mechanism “shall expire” on December 31, 2015 as expressly provided in this Stipulation.

Hence S.B. 310, uncodified Section 7(B) expressly applies:

(B) Prior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan or application regarding a portfolio plan, *except* those actions expressly authorized or required by Section 6 of this act *and actions necessary to administer the implementation of existing portfolio plans*. (Emphasis supplied).

PWC submits that this provision must be read as disjunctive in application. Specifically, the prohibition against Commission action prior to January 1, 2017 is not applicable in either of two situations. The first exception is where Section 6 of S.B. 310 allows or requires the Commission to act. The second exception is when this Commission must act in order to administer the ongoing operation of an existing portfolio plan. The second exception applies here. As things now stand, no cost recovery mechanism will be in place for Duke’s portfolio programs after

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<sup>2</sup>. *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio Programs*, (Opinion and Order entered on December 4, 2013). Signatories to the Stipulation in that proceeding filed on September 6, 2013 included OP&E, OCC, Kroger, Duke, Staff and the Environmental Law and Policy Center.

December 31, 2015. The Commission must approve such a mechanism if the approved portfolio plan is to be administered by Duke in 2016.

**II. IEU CONTENDS ERRONEOUSLY THAT S.B. 310 SECTION 7(B) DOES NOT APPLY.**

In its Comments at p 4, IEU dismisses the applicability of S.B. 310 Section 7(B) in one sentence: “Because Duke is seeking to add a provision rather than implement an existing one, the implementation exception to the prohibition in Section 7(B) does not apply and Section 7 requires that the Application be dismissed.” IEU ignores the plain meaning of Section 7(B). Even though IEU admits that “Duke’s authorization for a recovery mechanism ends on December 31, 2015” (IEU Comments, p. 4), it apparently presumes that a cost recovery mechanism is not an absolute essential to the ongoing administration of Duke’s EE and PDR portfolio plan after December 31, 2015. This position is untenable.

IEU’s reasons for discounting the Commission’s authority to act under Section 7(B) is abundantly clear in Section III of its Comments, by its quotation of S.B. 310 Section 8, which permits a customer above primary voltage levels or a self-assessing commercial or industrial customer of an electric utility to “...opt out of the opportunity and ability to obtain direct benefits from the utility’s portfolio plan *that is amended under division (B) of Section 6.*)” (Emphasis supplied). If the Commission acts pursuant to its authority under S.B.310 Section 7(B), it is not amending the plan; it is simply taking steps necessary to the administration of an existing portfolio plan.

While it is understandable that IEU desires to accelerate its ability to opt out of the benefits of the portfolio plan from January 1, 2017 to January 1, 2015 in order to avoid the imposition of costs recovered under Rider EE-PDR, this cannot be permitted in disregard of the

plain language of S.B. 310, Section 7(B) granting authority to the Commission regarding implementation of an existing portfolio plan.

**III. OPAE IGNORES THE LANGUAGE OF THE STIPULATION IN CASE NO. 13-431-EL-POR THAT CLEARLY TERMINATES THE COST RECOVERY MECHANISM FOR DUKE'S PORTFOLIO PLAN ON DECEMBER 31, 2015.**

At Page 9 of its Comments, OPAE makes the following bald statement: “[t]he prior stipulations make clear that the incentive mechanism is the only element of Duke’s portfolio plan that expires at the end of 2015.” This position is simply wrong in light of the language of the Amended Stipulation in Case No. 13-431 quoted herein that the cost recovery mechanism, *including* the incentive mechanism, expires on December 31, 2015. The language regarding convening parties to consider the continuation of an incentive mechanism in subparagraph 3 of the of the Amended Stipulation, and the reservation of the right of any party to make a recommendation as to the propriety of an incentive mechanism or its features is in complete harmony with the necessity for the Commission to take action to continue a cost recovery mechanism in 2016. In fact, that is what several parties have suggested in their Comments.

**IV. CONCLUSION**

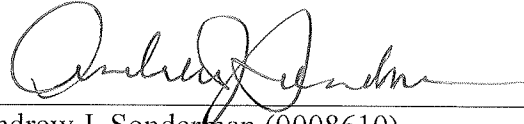
PWC submits that the Commission should exercise its authority under S.B. 310 Section 7(B) to continue to provide an essential cost recovery mechanism for Duke Energy Ohio in the final year of its approved portfolio plan. This matter should be set for hearing to permit Duke Energy and all intervenors the opportunity to weigh in on that cost recovery mechanism, including an incentive mechanism.

PWC’s interest is clear. PWC agrees with Environmental Advocates’ Comment at P. 9 that “[a]uthorizing Duke to recover the costs of implementing its energy efficiency program

portfolio and driving deeper savings through the shared savings incentive are necessary to continue the administration of these programs through 2016.”

Respectfully submitted on behalf of

PEOPLE WORKING COOPERATIVELY, INC.

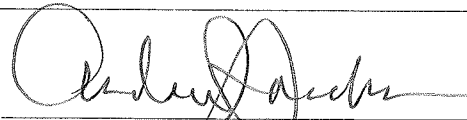


Andrew J. Sonderman (0008610)  
Margeaux Kimbrough (0085152)  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215-4294  
Telephone: (614) 462-5400  
Fax: (614) 464-2634  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of People Working Cooperatively, Inc. was delivered by electronic mail on this 9th day of January, 2015 to the following parties:

<a href="mailto:Katie.johnson@puc.state.oh.us">Katie.johnson@puc.state.oh.us</a>	<a href="mailto:Amy.Spiller@duke-energy.com">Amy.Spiller@duke-energy.com</a>
<a href="mailto:John.jones@puc.state.oh.us">John.jones@puc.state.oh.us</a>	<a href="mailto:Elizabeth.watts@duke-energy.com">Elizabeth.watts@duke-energy.com</a>
<a href="mailto:drinebolt@ohiopartners.org">drinebolt@ohiopartners.org</a>	<a href="mailto:mpritchard@mwncmh.com">mpritchard@mwncmh.com</a>
<a href="mailto:cmooney@ohiopartners.org">cmooney@ohiopartners.org</a>	<a href="mailto:Bojko@carpenterlipps.com">Bojko@carpenterlipps.com</a>
<a href="mailto:Kyle.kern@occ.ohio.gov">Kyle.kern@occ.ohio.gov</a>	<a href="mailto:dboehm@BKLlawfirm.com">dboehm@BKLlawfirm.com</a>
<a href="mailto:Michael.schuler@occ.ohio.gov">Michael.schuler@occ.ohio.gov</a>	<a href="mailto:Mkurtz@BKLlawfirm.com">Mkurtz@BKLlawfirm.com</a>
<a href="mailto:jvickers@elpc.org">jvickers@elpc.org</a>	<a href="mailto:TDougherty@theOEC.org">TDougherty@theOEC.org</a>
<a href="mailto:swilliams@nrdc.org">swilliams@nrdc.org</a>	<a href="mailto:Christine.pirik@puc.state.oh.us">Christine.pirik@puc.state.oh.us</a>
<a href="mailto:Nicholas.walstra@puc.state.oh.us">Nicholas.walstra@puc.state.oh.us</a>	



Andrew J. Sonderman

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Summary: Reply Comments to Procedural Entry on October 22, 2014 electronically filed by Mr. Andrew J Sonderman on behalf of People Working Cooperatively, Inc.