

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY

I. INTRODUCTION

Duke Energy Ohio (“Duke”) filed this application on September 9, 2014, requesting permission of the Public Utilities Commission of Ohio (“Commission”) to modify its previously approved demand side management (“DSM”) portfolio. The proposed amendment to the plan would permit Duke to recover incentives in 2016. Sec. 6 of Substitute Senate Bill 310 (“SB 310”) gives Duke two options: 1) it can continue to operate its previously approved DSM plan without amendment; or, 2) it can file an amended proposal. Sec. 7 prohibits the Commission from considering modifications to existing DSM portfolios if the application was pending on the effective date of the legislation. This application was filed three days prior to the effective date, and thus should be dismissed. Duke is free to file to amend its plan, but if it does so the plan becomes subject to the terms of SB 310.

II. REPLY COMMENTS

A. Initial Comments of the Natural Resources Defense Council, Environmental Law and Policy Center, and Ohio Environmental Council (“Environmental Groups”).

The Environmental Groups support extension of the current incentive mechanism despite the prohibitions of Substitute Senate Bill 310 (“SB 310”) which prevent the modification of an existing DSM Plan. The Groups attempt to detach the incentive mechanism from the portfolio. However, a review of the history of this portfolio makes clear that the incentive mechanism was a key component in the development and agreement of the parties to the DSM plan approved in Case No. 11-4393-EL-PDR. No incentive mechanism has ever been approved except as a part of a portfolio plan. See *In the Matter of the Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Programs Plans for 2013 through 2015*. Case No. 12-2190-EL-POR, et.al.; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case Nos. 11-5568-EL-POR and 11-5569-EL-POR; and, *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Energy Efficiency Portfolio Plan*, Case No. 13-833-EL-POR, et.al.

Incentive mechanisms have no life separate from a portfolio plan, and in this case the incentive provisions existence terminates at the end of 2015 per the terms of the approved DSM Plan.

That the incentive mechanism Duke and the Environmental Groups seek to extend would be the same as that currently in place is not determinative and is, in fact, the reason why the incentive mechanism is to expire at the end of 2015. As noted in the Comments filed by the Office of the Ohio Consumers' Counsel ("OCC"), the Ohio Manufacturers' Association Energy Group ("OMAEG"), Industrial Energy Users – Ohio ("IEU"), Kroger, and the Ohio Energy Group ("OEG"), there is significant disagreement over whether an incentive mechanism should exist; whether it should be capped; whether savings accrued in a prior year ("banked savings") can be used to justify and determine the amount of shared savings; and, whether the use of net present value of the lifetime energy and capacity savings from these measures to determine the incentive is appropriate.¹ Several of these issues were raised in Case No. 13-431-EL-POR, wherein the Commission confirmed to original agreement that the incentive mechanism component of Duke's DSM Portfolio would expire. The majority of the parties, particularly those representing people and businesses that actually pay utility bills, clearly do not support the existing mechanism. To extend the shared savings provisions would violate the stipulations in Case Nos. 11-4393-EL-RDR and 13-431-EL-POR.

The Environmental Groups also err when they argue that the incentive mechanism is inextricably intertwined with the cost recovery mechanism. It is not. The stipulation in Case No. 11-4393-EL-RDR makes clear that it is *only* the

¹ The issue of the use of banked savings to trigger shared savings is being litigated in Case No. 14-457-EL-RDR. OPAE views the inclusion of banked savings when calculating shared savings to be a violation of the stipulations in Case Nos. 11-4393-EL-RDR and 13-341-EL-POR, and counter to Commission precedent. See *Opinion and Order*, Case No. 12-2190-EL-POR, at 15-17 (March 20, 2013).

incentive mechanism that expires. *Stipulation* at 5 (November 18, 2011).

Recovery of program costs through the life of the portfolio is provided for in the same stipulation. *Id.* at 4. The Stipulation in Case No. 13-431-EL-POR also makes this clear:

If the interested parties reach an agreement for implementing an incentive mechanism for the year 2016, the interested parties will jointly file their recommendation, *related only to the incentive recovery mechanism*, to seek the Commission's approval in 2015 for use in 2016. *Stipulation* at 5. [Emphasis added.]

Only the incentive mechanism, and not the recovery mechanism, is at issue in this case.

The Environmental Groups also put in a plug for using banked savings to trigger shared savings. As noted in OPAE's initial comments, savings can only be used to qualify for an incentive in the year the savings accrue and are banked. The Commission has affirmed this policy. See *Opinion and Order*, Case No. 12-2190-EL-POR at 15-17 (March 20, 2013). It is illegal to provide incentives when savings during a program year when Duke's savings does not exceed the benchmarks.

Finally, the Environmental Groups argue that the incentive mechanism is simply a continuation of the current portfolio and, as such, does not run afoul of the provisions of SB 310 (after arguing it is not part of the DSM plan). Again, the Environmental Groups mischaracterize the prior stipulations approved by the Commission, which make clear that the Commission would determine "whether an incentive mechanism should be implemented...(for the year 2016)." *Stipulation*,

Case No. 13-431-EL-POR at 5 (September 16, 2013); Opinion and Order at 6 (December 4, 2013).

B. Comments of the Ohio Energy Group

OEG, in its arguments against shared savings, contends that one of the benefits traditionally associated with DSM portfolios – avoiding the cost of recovering the cost of a new powerplant – is no longer relevant because Duke has exited the generation business in Ohio. Comments at 2. However, OEG misunderstands the purpose of the energy efficiency and demand response (“EE/PDR”) requirements of Amended Substitute Senate Bill 221 (SB 221). The EE/PDR benchmarks are designated as a distribution function, a component of the services provided by regulated monopoly electric distribution utilities (“EDUs”). The General Assembly required the provision of these services as sound public policy because efficiency and demand response would ameliorate the impact of retiring generation by reducing the need for capacity and energy; providing a hedge against future price increases; and, diversify the resource base available to Ohio utility customers. These policies are embodied in R.C. 4928.02. OEG may prefer traditional regulation where the distribution utility owns regulated and sells it to customers at cost plus profit (and for residential customers includes the delta revenue resulting from special contracts given to many OEG clients). This regulatory regime no longer exists in Ohio, though many of the largest industrials still receive rate subsidies that shift costs onto residential customers. Requiring EDUs to provide EE/PDR options to customers

to protect them against unregulated generation markets is the regulatory paradigm in Ohio.

III. Conclusion

It is clear that parties to Case Nos. 11-4393-EL-RDR and 13-431-EL-POR did not intend for the shared savings mechanism to continue beyond 2015. It is clear the parties were to discuss what, if any, incentive mechanism would apply to the approved portfolio in 2016, and whether or not a savings mechanism would apply in 2016 would be decided in a contested proceeding before the Commission. The passage of SB 310 prohibits the Commission from ruling on an amendment to the current DSM plan to create an incentive mechanism when none is approved for 2016. If Duke chooses to amend the plan to adopt a new incentive mechanism for 2016, it must comply with the provisions of SB 310, a test which this application fails. The application must be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/9/2015 4:59:03 PM

in

Case No(s). 14-1580-EL-RDR

Summary: Comments Reply Comments of Ohio Partners for Affordable Energy electronically filed by Mr. David C Rinebolt on behalf of Ohio Partners for Affordable Energy