

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Authority to)
Establish an Energy Efficiency Pilot) Case No. 14-0075-EL-POR
Program.)

COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY

INTRODUCTION

Duke Energy Ohio, Inc., (“Duke”) seeks permission of the Public Utilities Commission of Ohio (“Commission”) to modify its previously approved demand-side management (“DSM”) portfolio to include a pilot program which would combine an existing DSM program, the Residential Smart\$aver Program, with a consumer financing program, GC-HELP, offered by the Greater Cincinnati Energy Alliance (“GCEA”). The Residential Smart\$aver Program “provides incentives to customers, builders, and heating, ventilation and air conditioning (HVAC) dealers....” Application at 2. The pilot would co-market the two programs in Warren and Clermont Counties. Application at 3. The Application was filed on February 12, 2014. In the Application, Duke requests authority to count savings resulting from the Residential Smart\$aver Program, regardless of whether or not the customer utilizes both the Duke and GCEA programs, and recover costs associated with co-marketing the programs.

Ohio Partners for Affordable Energy (“OPAE”) moved to intervene in this Application on February 25, 2014. In an Entry dated January 9, 2015, the Commission’s Attorney Examiner requested comments on the Application. In the time between when the Application was filed and the Attorney Examiner issued the Entry requesting comments, Senate Bill 310 (“SB 310”) was passed and signed into law. SB 310 forbids the Commission from taking any action on this Application because it would modify a

previously approved DSM plan. The provisions of SB 310 are clear. The Commission should dismiss this Application.

COMMENTS

A. The Application Should Be Dismissed Because Substitute Senate Bill 310 Prohibits the Modification of an Existing Energy Efficiency and Demand Reduction Portfolio Plan.

SB 310 became effective on September 12, 2014, seven months after this application was filed. SB 310 requires, in pertinent part:

SECTION 6. (A) If an electric distribution utility has a portfolio plan that is in effect on the effective date of this section, the utility shall do either of the following, at its sole discretion:

(1) Continue to implement the portfolio plan *with no amendments* to the plan, for the duration that the Public Utilities Commission originally approved, subject to divisions (D) and (E) of this section;

(2) Seek an amendment of the portfolio plan under division (B) of this section.

SECTION 7. (A) The Public Utilities Commission shall neither review nor approve an application for a portfolio plan if the application is pending on the effective date of this section.

(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 added.]

Under the plain language of SB 310, the Commission is prohibited by Section 7 from taking any action regarding an existing portfolio plan other than in response to an application from a utility to amend its plan under Sec. 6(B). This Application does not comply with Sec. 6(B) and must be dismissed. That this Application was filed prior to the effective date of SB 310 is irrelevant. The statute clearly states that the Commission

“shall neither review nor approve an application for a portfolio plan if the application is pending on the effective date of this section.” Section 7(A), Senate Bill 310. Moreover, “the Commission shall not take any action...regarding a portfolio plan, except those expressly authorized or required by Section 6 of this act.... Section 7(B), Senate Bill 310. Under Ohio law, the Commission lacks any authority to act on this Application.

B. This Application Fails to Request an Act or Action Necessary to Administer the Implementation of an Existing Portfolio Plan.

SB 310 eliminates any authority of the Commission to modify current DSM plans, but does authorize actions that relate to the administration of existing portfolio plans. SB 310, Section 7(B) (“except...actions necessary to administer the implementation of existing portfolio plans”). This provision provides a limited authorization to the Commission to continue oversight of the existing portfolio operation and to modify cost recovery riders as necessary to compensate a utility for eligible expenditures. Changing a substantive provision of a plan as contemplated by this Application is not an administrative matter.

CONCLUSION

OPAЕ is frankly confused as to why this Application is even necessary. The Residential Smart\$aver Program is already authorized and Duke is able to count 100% of the savings resulting from measures installed by program participants. Duke also has authority to market the Residential Smart\$aver Program. Co-marketing with GC-HELP does not appear to modify the existing portfolio in any way, so there is no reason to request a modification of the existing DSM portfolio for this joint marketing effort to move forward.

OPAE is simply opposing the Application because it seeks to undermine the determination of the General Assembly and the Governor that the Commission cannot act on applications to modify a portfolio. The Commission's authority to modify the existing portfolio as requested by this Application has been trumped by an intervening act, the passage of SB 310. If a utility wishes to continue to implement its existing energy efficiency and demand side management portfolio plan, it cannot modify it in any way except through an amendment process that complies with Section 6(B) of SB 310. The Commission now lacks the authority to act on this Application and it should be dismissed.

Respectfully submitted,

/s/ Colleen L. Mooney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the persons identified below in this case on this 27th day of January, 2015.

/s/Colleen L. Mooney
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Summary: Comments of Ohio Partners for Affordable Energy electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy