

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INITIAL COMMENTS OF
INDUSTRIAL ENERGY USERS-OHIO**

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ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

On January 13, 2014, Duke Energy Ohio, Inc. (“Duke”) filed an application requesting authority that would allow Duke and the Greater Cincinnati Energy Alliance (“GCEA”) to coordinate efforts related to home energy improvements that deliver energy efficiency in Duke’s service territory.¹ Duke represents that the program is a pilot designed to test the value of co-marketing financing in addition to Duke’s SmartSaver Residential Program, and it further requests that it be permitted to include 100% of the energy efficiency benefits achieved during the pilot for inclusion as benefits attained in its currently approved residential program.² While Industrial Energy Users-Ohio (“IEU-Ohio”) takes no position on the potential benefits of such a program, the following comments address the filing in light of the adoption of Substitute Senate Bill 310 (“SB 310”). Under the new provisions of Ohio law governing existing portfolio plans, the Public Utilities Commission of Ohio (“Commission”) must either dismiss the Application

¹ Application of Duke Energy Ohio, Inc., for Authority to Establish an Energy Efficiency Pilot Program (Jan. 13, 2014) (“Application”).

² *Id.* at 2-3.

or find that it is an amendment to the existing portfolio plan and permit qualified electric intensive customers to opt out of the portfolio plan.

II. DISCUSSION

Duke's current portfolio plan, which is the result of an approved Stipulation and Recommendation, contains a provision that required Duke to work with the GCEA on a pilot program.³ The Stipulation and Recommendation, however, does not contain a specific plan or cost recovery mechanism. The Application in this matter sets out a proposed addition to the current portfolio plan and includes a request for cost recovery for the new addition. As noted above, Duke filed the Application on January 13, 2014, and the Commission had not taken any action on the Application when it issued its Entry on January 9, 2014 requesting comments and reply comments.

Because Duke is seeking authority to expand the programs and cost recovery of its current portfolio plan, this Application is governed by the requirements of SB 310. Under Section 7(B) of SB 310, the Commission, prior to January 1, 2017, is prohibited from taking any action with regard to any portfolio plan or application regarding a portfolio plan with two exceptions.

Under the first exception contained in Section 7(B), the Commission may approve, or modify and approve, an application to amend a portfolio plan if the application is to amend an existing portfolio plan under Section 6(B) ("plan exception").⁴ Under the second exception, the Commission may take those actions necessary to

³ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio Programs*, Case No. 13-431-EL-POR, Amended Stipulation and Recommendation at 12-13 (Sept. 9, 2013), approved, Opinion and Order (Dec. 4, 2013).

⁴ *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, *et al.*, Finding and Order (Nov. 20, 2014) (approving modification to current portfolio plan).

administer the implementation of the existing portfolio plan (“implementation exception”).

The implementation exception does not provide the Commission authority to act on Duke’s Application. Through this Application, Duke is seeking to add a new program and recovery of the related cost. Because Duke is seeking to add a program 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.⁵

Because Duke’s Application would result in an amendment to the current plan,⁶ however, the plan exception may require the Commission to approve, or modify and approve, the Application.⁷ The amended plan or amended plan as modified then will be effective until December 31, 2016.⁸

If the Commission deems the Application in this proceeding as one seeking an amendment to the current portfolio plan, a customer of Duke that takes service above primary voltage levels or a commercial or industrial customer that has made a written request for registration as a self-assessing purchaser pursuant to R.C. 5727.81 (*i.e.*, the customer may self-assess the kilowatt-hour tax) may elect to opt out of the portfolio plan

⁵ Duke’s recent attempt to extend its shared savings provision raised a similar problem. See *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, Ohio Partners for Affordable Energy’s Motion to Intervene and Memorandum in Support and Motion to Dismiss and Memorandum in Support (Sept. 30, 2014).

⁶ Duke has created a potential procedural problem because the provisions allowing for an amendment of the current portfolio plan were not effective until September 12, 2014 and Duke did not refile the Application after the effective date of SB 310. As a matter of efficiency, the Commission should address the Application as if Duke had properly sought an amendment to the current portfolio plan. As a factual matter, the Application was filed before October 12, 2014, thus meeting the filing deadline established by SB 310. The alternative is a dismissal as required by Section 7 of SB 310.

⁷ SB 310, Section 6(B)

⁸ *Id.*

(rather than wait to make the election on or after January 1, 2017).⁹ If the Commission determines that the plan exception applies, the Commission should make an affirmative finding that the Commission is approving an amended portfolio plan and that eligible customers may opt out as provided by Section 8 of SB 310.

III. CONCLUSION

The Application seeks to amend its current portfolio plan to add a new program. Under the requirements of SB 310, the Commission may not approve the Application unless it may be approved under the plan exception of SB 310. If the Commission finds that it may approve or modify and approve the Application under the plan exception, the Commission should also expressly find that energy intensive customers may use the opt out procedures provided by Section 8 of SB 310.

Respectfully submitted,

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⁹ Section 8 of SB 310 provides, "Beginning January 1, 2015, a customer of an electric distribution utility may 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." All customers meeting certain voltage or usage levels will have the right to opt out beginning January 1, 2017. R.C. 4928.6611.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 27th day of January 2015, *via* electronic transmission.

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Summary: Comments Initial Comments of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio