

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Recovery of)	Case No. 15-534-EL-RDR
Program Costs, Lost Distribution)	
Revenue, and Performance Incentives)	
Related to its Energy Efficiency and)	
Demand Response Programs.)	

**COMMENTS OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

Ohio Partners for Affordable Energy (“OPAE”) herein submits these comments to the Public Utilities Commission of Ohio (“Commission”) on the application of Duke Energy Ohio, Inc. (“Duke”) for recovery of program costs, lost distribution revenue, and performance incentives related to Duke’s Energy Efficiency and Demand Response programs. These comments are filed in accordance with the Attorney Examiner’s Entry dated April 29, 2015.

OPAE was an intervenor in Duke’s Case No. 11-4393-EL-RDR, in which the Commission approved a Stipulation and Recommendation, signed by OPAE and other parties, to establish cost recovery methods for Duke’s Rider EE/PDR. OPAE was also an intervenor in Duke’s Case No. 13-753-EL-RDR, which addressed calendar year program costs for 2012 and expected costs for 2013. OPAE was also an intervenor in Duke’s Case No. 14-457-EL-RDR, which addressed calendar year program costs for 2013 and expected costs for 2014. This case will address calendar year 2014 costs and expected 2015 costs.

Some issues addressed in the former cases remain unresolved. In the 2014 case, OPAE addressed the matter of the Stipulation and Recommendation

in Case No. 11-4393-EL-RDR, which stated that the shared savings incentive mechanism shall expire at the end of 2015 and shall be reevaluated by all interested parties no sooner than the third quarter of 2014 to allow interested parties to assess the reasonableness and effectiveness of the incentive mechanism and to consider whether or not they support its further use for the remaining year of the five-year portfolio, calendar year 2016. Case No. 11-4393-EL-RDR, Opinion and Order (August 15, 2012) at 8.

Likewise, in Duke's Case No. 13-431-EL-POR, under Paragraph 3 of the Stipulation and Recommendation, in the third quarter of 2014, all interested parties were allowed to evaluate the reasonableness and effectiveness of Duke's shared savings incentive mechanism to determine whether it should be continued through 2016, the end of the plan period. The parties could agree to maintain the incentive mechanism or to modify it. If the parties did not agree on the incentive mechanism, they could seek a Commission's determination whether an incentive mechanism should be implemented for 2016. Case No. 13-431-EL-POR, Opinion and Order (December 4, 2013) at 6.

In short, under the stipulations, the shared savings incentive for Duke does not continue in the final year of the plan period, 2016, unless the parties affirmatively agree to maintain it. The parties to the stipulations have not affirmatively agreed to maintain the incentive mechanism.

Another matter related to the incentive mechanism is new legislation, Senate Bill 310, which affects all Ohio electric distribution utilities' portfolio filings. The new legislation does not permit any modifications to existing portfolios.

Thus, the question has been raised whether any modifications to Duke's currently existing portfolio are now permitted under the new legislation. OPAE has argued that no modifications are permitted under the new statute. If the current stipulations are enforced, as they should be, Duke will have no incentive mechanism for calendar year 2016. The passage of SB 310 is an intervening act that takes away the authority of the Commission to modify an existing portfolio.

Without an agreement of the parties in place to continue the incentive mechanism pursuant to the stipulations, on September 9, 2014, Duke filed a new application in Case No. 14-1580-EL-RDR in which Duke asked for approval to continue the cost recovery mechanism for energy efficiency programs through 2016. On September 30, 2014, OPAE filed a motion to dismiss this Duke application. OPAE argued that the application should be dismissed because an intervening act, the passage of Senate Bill 310, prohibits the modification of an existing energy efficiency and demand reduction portfolio plan. The Commission's authority to modify the existing portfolio and shared savings mechanism has been trumped by the passage of SB 310 and if Duke wishes to continue to implement its existing portfolio plan, it cannot modify it in any way. In addition, the Commission cannot act on a request to modify the current shared savings provision that expires at the end of 2015. OPAE Comments, Case No. 14-1580-EL- RDR at 10. The issue remains unresolved. A hearing on the Case No. 14-1580-EL-RDR application is now scheduled for July 7, 2015.

Duke has also filed another application in Case No. 14-75-EL-POR to establish a new pilot program with the Greater Cincinnati Energy Alliance. OPAE filed comments on this application on January 27, 2015 arguing that this application is unlawful under the new legislation SB 310 because the Commission has no authority to modify the existing portfolio.

Another issue that may yet arise in this instant case is the use of banked savings to achieve the shared savings incentive. In this Case No. 15-534-EL-RDR rider case, as in Case No. 14-457-EL-RDR, Duke calculated an annual savings achievement that allows it to earn the shared savings incentive by using banked savings from a previous year to achieve its annual benchmark. While Duke may be permitted to use banked savings to meet compliance levels for benchmark purposes, Duke should not be permitted to use banked savings to earn the shared savings incentive. If Duke is permitted to earn shared savings incentives in years in which it failed to meet its energy efficiency benchmark, it would earn incentives for its inability to meet the legislatively created target in those years.

On May 20, 2015, the Commission resolved the banked savings issue in its Finding and Order in Case No. 14-457-EL-RDR. The Commission found that Duke may use the banked savings only to reach the mandated annual benchmark. Finding and Order at 5. The Commission found that the use of banked savings to claim an incentive was improper. The tiered incentive is designed to motivate and reward the utility for exceeding energy efficiency standards on an annual basis. If a large bank of savings is relied on, the

motivation to push energy efficiency programs in following years is diminished. In order to structure the incentive to exceed benchmarks, the Commission found that banked savings could not be used to determine the annual shared savings achievement level. Id.

OPAЕ agrees with the Commission's May 20, 2015 Finding and Order with respect to banked savings not being used to earn the savings incentive. However, the use of banked savings to achieve the incentive is important because Duke's claims to the incentive have been excessive and, unlike other electric utilities in Ohio, there is no dollar cap on the amount of incentive that Duke may claim. OPAЕ had asked for a cap in Case No. 14-457-EL-RDR in light of the excessive incentives claimed by Duke and the use of banked savings to trigger the incentives. However, the Commission chose not to modify the stipulation in Case No. 11-4393-EL-RDR, which did not contain a cap on incentives. The Commission did not specifically tie Duke's use of banked savings to earn the incentive with the excessive level of incentives claimed by Duke and the lack of a cap. OPAЕ notes that applications for rehearing from the Finding and Order in Case No. 14-457-EL-RDR are not due until June 19, 2015 so that a final decision has not been rendered in that docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served by electronic mail upon the persons identified below on this 17th day of June 2015.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/17/2015 11:33:10 AM

in

Case No(s). 15-0534-EL-RDR

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