

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**On behalf of the Staff of
The Public Utilities Commission of Ohio**

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TABLE OF CONTENTS

Page

INTRODUCTION	1
DISCUSSION	2
A. The Commission should allow the Company to use accrued banked savings to satisfy its state energy efficiency mandate, but not to earn shared savings incentive revenues in a future year.	2
1. Commission precedent has prohibited Ohio EDU’s from using banked savings to achieve a shared savings incentive in a future year.....	2
2. State law permits Ohio EDU’s to use banked savings to satisfy state energy efficiency mandates, not to earn shared savings incentive revenues in future years.	3
3. Prohibiting Duke from using banked savings to achieve a shared savings incentive in future years promotes energy efficiency in a fair and effective manner.	4
B. The Commission should place a \$6.5 million cap on the amount of shared savings revenues the Company can earn annually.	6
C. The Commission has the authority to approve the Company’s cost recovery mechanism for 2016 with Staff’s recommendations in order to implement the Company’s Energy Efficiency (EE) Portfolio Plan.....	7
CONCLUSION	9
PROOF OF SERVICE.....	11

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INTRODUCTION

This case involves Duke Energy Ohio's ("Duke" or "the Company") application to continue its cost recovery mechanism for its energy efficiency programs through 2016. Staff believes that it is appropriate for the Company to continue to recover costs for its energy efficiency programs through 2016. However, consistent with the stipulations authorizing parties to reevaluate and seek modification of the Company's cost-recovery mechanism, Staff recommends a \$6.5 million cap after tax on the Company's recovery of annual shared savings revenues. In addition, consistent with Commission precedent, Staff believes that the Company should not be able to use accrued banked savings to earn shared savings revenues in future years.

DISCUSSION

- A. The Commission should allow the Company to use accrued banked savings to satisfy its state energy efficiency mandate, but not to earn shared savings incentive revenues in a future year.**
- 1. Commission precedent has prohibited Ohio EDU's from using banked savings to achieve a shared savings incentive in a future year.**

The Commission has previously addressed this issue, a number of times. In each case, the Commission decided that an Ohio EDU cannot use banked savings to achieve a shared savings incentive in a future year. In 2013, during the Commission's review of FirstEnergy's energy efficiency portfolio, the Commission found that FirstEnergy could only count banked savings towards shared savings in the year it is banked, not in future years.¹ Then, recently, in Case No. 14-457-EL-POR, the Commission found that Duke could "only use the banked savings to reach its mandated benchmark" and that "Duke's use of banked savings to claim an incentive is improper."²

¹ *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015*, Case No. 12-2190-EL-POR (Opinion and Order at 16) (Mar. 20, 2013).

² *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Program*, Case No. 14-457-EL-RDR (Finding and Order at 5) (May 20, 2015).

The Commission has never allowed a Company to use banked savings to receive a shared savings incentive in a future year. The Commission should decline the Company's invitation to do so now.

2. State law permits Ohio EDU's to use banked savings to satisfy state energy efficiency mandates, not to earn shared savings incentive revenues in future years.

As stated in R.C. 4928.662, Duke may use banked savings to satisfy its state energy efficiency mandate, but not to earn a shared savings incentive in future years.

R.C. 4928.662(G) provides:

any energy efficiency savings or peak demand reduction amount achieved in excess of the requirements may, at the discretion of the electric distribution utility, be banked and applied towards achieving *the energy efficiency or peak demand reduction requirements* in future years.

(Emphasis added).

Ohio law allows Ohio EDU's to use banked savings to meet the state's energy efficiency requirements. Ohio law does not authorize a Company to use banked savings to achieve a shared savings incentive in a year that it has under-complied with state mandates. The Commission should decline the Company's invitation to begin a practice that has no support in the law or the governing stipulations to Duke's five year portfolio plan.

3. Prohibiting Duke from using banked savings to achieve a shared savings incentive in future years promotes energy efficiency in a fair and effective manner.

The state energy efficiency requirements and the shared savings mechanism are public policy tools that encourage energy efficiency efforts in different ways. The state energy efficiency mandates require a Company to achieve a certain amount of energy efficiency savings in a given year or face a penalty.³ A Company may use banked energy efficiency savings from prior years to meet these energy efficiency requirements.⁴ This allows the Company to use the energy savings it has already achieved to satisfy the state requirements so the Company does not face a penalty if it cannot meet its benchmarks due to unforeseen circumstances. It also allows the Company to engage in cost-effective energy efficiency efforts upfront and to be able to apply those savings in future years as the state's energy efficiency requirements continue to ramp up.⁵

On the other hand, the shared savings incentive structure is designed to motivate and reward the utility for exceeding energy efficiency standards on an annual basis.⁶ It

³ See R.C. 4928.66(C). Companies also must reach a cumulative benchmark of 22% by the end of 2027. R.C. 4928.66(A)(1)(a).

⁴ R.C. 4928.662(G).

⁵ Cross-Examination of Staff Witness Gregory Scheck, Tr. at 197 (Jul. 20, 2015).

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Program*, Case No. 14-457-EL-RDR (Finding and Order at 5) (May 20, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Continue Cost Recovery Mechanism for Energy Efficiency Programs Through 2016*, Case No. 14-1580-EL-RDR (Staff Reply Comments at 6) (Jan. 9, 2015).

does this by allowing the Company to recover revenues based on a portion of the net system benefits that arise from the Company's energy efficiency efforts that exceed the annual state requirements. Within reason, the Company must stay within its energy efficiency budget set forth in its portfolio plan while it engages in its energy efficiency efforts. Therefore, to receive a shared savings incentive, the Company must spend near its budgeted amount even while achieving energy efficiency savings above the state requirements. Consequently, the shared savings mechanism incentivizes the Company to optimize the implementation of its portfolio plan in a cost-effective manner.

It would be inappropriate for the Company to use banked savings from a prior year to receive shared savings incentive revenues from customers, particularly when the Company has not satisfied the state mandates for the year. Such a policy would financially reward an EDU in years that it does not satisfy its state benchmarks just because the Company has done well in the past. Ohio ratepayers should not have to pay to reward the Company for under-compliance. Duke's argument to the contrary is inconsistent with the intent of the mechanism.

As the Commission has stated in the past, banked savings should count towards state benchmarks, but not towards shared savings. Such a position is sound public policy and the Commission should decline this opportunity to change course.

B. The Commission should place a \$6.5 million cap on the amount of shared savings revenues the Company can earn annually.

Duke is the only Ohio EDU that currently receives uncapped shared savings revenues. The Commission has placed a cap on the annual shared savings revenues for all three of the other Ohio EDUs. AEP Ohio has a \$20 million dollar cap, FirstEnergy has a \$10 million cap, and DP&L has a \$4.5 million cap.⁷

Staff recommends the Commission apply an annual shared savings revenue cap of \$6.5 million per year after tax to Duke.⁸ Staff calculated this recommended \$6.5 million annual cap by taking the weighted average of FirstEnergy, AEP Ohio, and DP&L's approved shared savings caps based on the adjusted baseline sales for FirstEnergy, AEP Ohio, and DP&L for 2013.⁹

Staff believes a cap on Duke's annual shared savings revenues would create consistency among the shared savings mechanisms for Ohio's four EDUs.¹⁰ Additionally, a cap would limit Duke's customers' potential exposure to unlimited shared savings recovery by the Company.¹¹

⁷ Direct Testimony of Gregory Scheck at Attachment 1 (Jun. 30, 2015).

⁸ *Id.* at 3.

⁹ *Id.* Duke earned approximately \$12 million in shared savings in 2013 and 2014. Cross-Examination of Company Witness Timothy Duff, Tr. at 47 (Jul. 20, 2015).

¹⁰ Direct Testimony of Gregory Scheck at 2 (Jun. 30, 2015).

¹¹ Staff Reply Comments at 7 (Jan. 9, 2015).

C. The Commission has the authority to approve the Company's cost recovery mechanism for 2016 with Staff's recommendations in order to implement the Company's Energy Efficiency (EE) Portfolio Plan.

In Case No. 11-4393-EL-RDR, Duke proposed a new recovery mechanism, Rider EE-PDR. Rider EE-PDR allowed Duke to recover program costs and an incentive payment for its EE Portfolio Plan. In a Stipulation in that case, signed by some of the parties and approved by the Commission, the cost recovery mechanism for the Company's five year EE Portfolio Plan was approved.¹² However, in the Stipulation, it was agreed that the incentive mechanism would expire at the end of 2015 and that all interested parties, no sooner than the third quarter of 2014, were permitted to assess the incentive mechanism and to consider whether they support its use, as structured or as modified, for 2016.¹³

The Company's EE Portfolio Plan and cost recovery mechanism were again addressed in Case No. 13-0431-EL-POR. Again, a stipulation was signed by some of the parties and approved by the Commission. The Stipulation affirmed that:

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,

¹² *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR (Opinion and Order at 18) (Aug. 15, 2012).

¹³ *Id.* (Stipulation and Recommendation at 5) (Nov. 18, 2011).

and adopted and approved by the Commission on August 15, 2012.¹⁴

The stipulation went on to state that “all interested parties (no sooner than the third quarter of 2014), are permitted to assess the reasonableness and effectiveness of the incentive mechanism to consider whether or not they support its further use (as structured or modified)” for 2016.¹⁵ Additionally, the stipulation provided that in the event no agreement was reached on the incentive mechanism, interested parties could seek Commission decision as to whether an incentive mechanism should be implemented for 2016.¹⁶

On June 13, 2014, Governor Kasich signed Senate Bill 310 into law. Senate Bill 310 provides that an electric distribution utility with an energy efficiency portfolio plan shall either (1) “continue to implement the portfolio plan with no amendments to the plan, for the duration that the Public Utilities Commission originally approved” or (2) “seek an amendment of the portfolio plan.”¹⁷ If a utility amends its portfolio plan then a customer of the electric distribution utility may opt out of participating in the utility’s

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs*, Case No. 13-0431-EL-POR (Amended Stipulation and Recommendation at 5) (Sep. 9, 2013).

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 6.

¹⁷ Senate Bill 310 § 6(A).

energy efficiency portfolio plan.¹⁸ However, the Commission may take “actions necessary to administer the implementation of existing portfolio plans” without triggering customer opt outs.¹⁹

In this case, the Company did not seek an amendment to its portfolio plan.²⁰ Instead, it requested Commission approval of its cost recovery mechanism for 2016 as was contemplated and addressed in the stipulations and Commission orders in Case Nos. 11-4393 EL-RDR and 13-0431-EL-POR. The Company’s EE Portfolio Plan established the procedure to reconsider, modify, and approve the Company’s incentive mechanism for 2016. Consequently, the Commission would implement that plan if it approves the Company’s incentive mechanism for 2016 consistent with the Commission’s precedent on banked savings and the modification recommended by Staff.

CONCLUSION

Previous Commission-approved stipulations provided that the Commission can reconsider and modify the Company’s shared savings incentive mechanism for 2016. Therefore, Staff believes the Commission should implement the plan by approving the

¹⁸ Senate Bill 310 § 8.

¹⁹ *Id.* at § 7(B).

²⁰ Company Application at 4 (Sep. 9, 2014).

Company's application to continue its incentive mechanism through 2016 with the modification recommended by Staff and without allowing the Company to use banked savings to achieve shared savings incentive revenues.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via email upon the following Parties of Record, this 21st day of August, 2015.

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