BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Programs.	))))))	Case No. 14-457-EL-RDR
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 Programs.	))))))	Case No. 15-534-EL-RDR

DIRECT TESTIMONY OF
DAVID C. RINEBOLT
ON BEHALF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is David C. Rinebolt. My business address is 231 West Lima Street, Findlay, Ohio 45840. I am the Executive Director of Ohio Partners for Affordable Energy (OPAE), and I appear in this case as a witness on its behalf.

Q. PLEASE DESCRIBE YOUR BACKGROUND AND QUALIFICATIONS FOR YOUR TESTIMONY IN THIS PROCEEDING.

A. My career has covered a broad spectrum of activities in human services programs and the energy industry including policy analysis and program management at both the federal and state levels. I served as Deputy Director of the State of Minnesota Washington Office from 1993 through 1995, focusing on human services, energy and environmental issues. Between 1995 and 1998 I served as Senior Research Associate for Energy with the Coalition of Northeastern Governors Policy Research Center, focusing on low income energy assistance programs and new energy technologies. I also served as Legislative Director for Representative Collin Peterson of Minnesota from 1991 through 1993, and was Director of Programs for the National Association of State Energy Officials from 1994 through 1996. In the latter position, I worked with states and utilities on the development of demand side management ("DSM") programs. I became executive director of Ohio Partners for Affordable Energy in 1996. During the last twenty years I have been actively involved in developing DSM programs and portfolios. I currently serve on the DSM collaboratives of several

Ohio utilities and have been actively involved in proceedings related to utility DSM portfolios.

I have a Bachelor of Liberal Study degree with concentrations in Communications, Political Science, English, and Russian Literature (1978) and a Juris Doctor degree from the Columbus School of Law at The Catholic University of America (1981). My professional career has focused on the development, operation and funding of DSM programs and renewable energy development programs. These concentrations have required a broad-based knowledge of the energy and utility sectors of the U.S. economy.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE OHIO PUBLIC UTILITIES COMMISSION ("PUCO" or "Commission")?

A. Yes. I submitted testimony on behalf of Ohio Partners for Affordable Energy in Case No. 11-3549-EL-SSO, et al.; Case No. 12-426-EL-SSO, et al.; Case No. 13-753-EL-RDR; Case No. 14-1297-EL-SSO; and, Case No. 15-1046-EL-USF.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of my testimony is to urge the Commission to follow existing precedent and deny Duke Energy Ohio ("Duke") any compensation related to shared savings for its 2013, 2014, and 2015 portfolios because of the failure to meet statutory benchmarks. The Stipulation and Recommendation (Stipulation) signed by Duke and the Staff of the Commission (Staff) and filed January 6, 2016

in these cases should be rejected. The Stipulation does not satisfy the three part test which applies to stipulations: the Stipulation is not the product of serious bargaining among capable, knowledgeable parties; the package fails to benefit ratepayers and the public interest; and, the settlement violates important regulatory principles and practice.

Q. DOES THE STIPULATION RESOLVE ALL CASES RELATED TO THE RECOVERY OF SHARED SAVINGS FROM DUKE ENERGY OHIO'S DEMAND SIDE MANAGEMENT PORTFOLIO?

A. No it does not. There is one other case that is relevant to the Stipulation submitted in these dockets, Case No. 14-1580-EL-RDR in which Duke seeks to extend its ability to collect shared savings. That case remains pending. In addition, a Finding and Order has been issued in Case No. 14-453-EL-RDR, and the settlement now before the Commission runs afoul of a significant holding in that Finding and Order.

Q. CAN YOU REVIEW THE PRIOR CASES RELATED TO THE ISSUES THE STIPULATION ATTEMPTS TO RESOLVE.

A. Duke filed its initial DSM portfolio in Case No. 08-920-EL-SSO. The portfolio was essentially an extension of already existing programs, but the method of cost recovery was changed significantly. The Commission approved the use of Duke's Save-a-Watt cost recovery methodology. Under the Save-a-Watt approach, Duke

did not recover the cost of programs directly. Rather, it recovered a percentage of the Company's avoided costs and lost revenue.[1] Duke Witness Schultz explained how the amount to be recovered under the Rider Save-a-Watt (Rider DR-SAW) would be determined:

> The percentage of savings achieved is determined by dividing the actual avoided energy and capacity costs at the end of the three-year period by the total forecasted avoided energy and capacity costs over the same period. This ratio determines the after-tax return on investment (ROI) cap the Company will be allowed. (Id.)

The Save-a-Watt approach ultimately established an incentive of a 15% ROI on the value of savings when energy savings exceeded the statutory benchmarks by 125%; a 13% ROI if between 116% and 125% of the efficiency requirements were met; 11% for achievement between 111-115%; 6% for an achievement of 101-110%; and, no incentive ROI for savings equal to or less than 0%.[2]

Save-a-Watt had a built-in incentive structure. The Company would count all the energy and capacity savings produced during the year to determine the maximum the Company could collect, grossed up for taxes, with any amount

[1] Case Nos. 08-920-EL0SSO, et al., *In the Matter of the Application of Duke Energy Ohio for approval of an Electric Security Plan,* Direct Testimony of Theodore E. Schultz (July 31, 2008) at 7.
[2]Case Nos. 08-920-EL-SSO, et al., Stipulation (October 27, 2008) at 24.

above the cap returned to customers. Thus, the excess energy savings was counted as an incentive, and a portion of the value in excess of the caps refunded to customers.

In Case No. 09-1999-EL-POR, the Commission ruled that Save-a-Watt violated Ohio Administrative Code (OAC) Chapter 4901:1-39 because it compensated Duke for avoided generation capacity and energy. Duke had committed to follow the OAC rules, though Duke knew that those rules would be issued subsequent to the decision in Case No. 08-920-EL-SSO. Duke was permitted to retain the revenue recovered through Rider DR-SAW through the effective date of Chapter 4901:1-39, December 10, 2009, after which the over-recovery was refunded to customers.[3]

The question of recovery of Duke's energy efficiency portfolio costs, once it was ordered to abandon the Save-a-Watt concept, was raised in Case No. 11-4393-EL-RDR ("2011 Rider Case"). Because authorization for the DR-SAW mechanism expired in December 2011, Duke sought a new recovery mechanism. Duke proposed Rider EE-PDR, which would "recover program costs and an incentive in the form of the percentage of the avoided cost benefits realized." [Id. at 3.]

[3]Case No. 09-1999-EL-POR, *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak-Demand Reduction Programs and Portfolio Planning,* Opinion and Order (December 15, 2010), at 17.

The 2011 Rider Case ultimately defined the cost recovery mechanism to be used by Duke. Duke accepted the shared savings incentive proposal submitted by the Ohio Consumer and Environmental Advocates as a part of their comments in the 2011 Rider Case on October 5, 2011. Under this shared savings mechanism, Duke receives a percentage of the value of customer avoided costs as an incentive if the savings achieved during the year exceed the legal benchmarks. The agreement provides for recovery of projected program costs, subject to true up. The agreement also included a decoupling mechanism, which ensures recovery of lost distribution revenues. The recovery mechanism agreed to was identical in structure to the AEP Ohio shared savings mechanism approved by the Commission in Case Nos. 11-5568-EL-POR and 11-5569-EL-POR, with one exception -- there would be no cap on Duke's incentive. Given that the lack of a cap was the sole exception to the AEP Ohio mechanism, Duke cannot collect shared savings for any program year unless the savings during that program year exceed the annual statutory standards.

Q. DUKE HAS CLAIMED THAT IT HAS A POOL OF "ALLOWANCES" THAT HAVE NEVER BEEN USED FOR THE PURPOSES OF GENERATING SHARED SAVINGS INCENTIVES. IS THIS ACCURATE?

A. No. Energy efficiency allowances, i.e., savings, that are produced in a single year that exceed 115% of the statutory requirements have already been used by Duke to generate shared savings incentives in that they were a part of the pool of

allowances that triggered the shared savings incentives during that program year. There is no such thing as “allowances” that have not been used for the purposes of determining shared savings. Exceeding the statutory requirements is determined annually and all the savings accruing in that year count toward the determination of shared savings in that year. The fact that there are savings beyond the percentage which triggers shared savings is a distinction without a difference. A utility may bank savings that exceed statutory requirements for future compliance with the statutory benchmarks. However, there is no provision for banking savings above the 115% threshold for future use to achieve the shared savings incentive.

Duke did exceed the statutory energy savings requirements during the period when Save-a-Watt was in effect. As previously discussed, Save-a-Watt did not function like the shared savings approach adopted in the 2011 Rider Case. Instead, under Save-a-Watt, the savings in excess of the benchmarks triggered an incentive ROI. Thus, the excess allowances during 2009-2011 have already triggered an incentive, just not the same type of incentive as the shared savings model currently in place.

Q. HAS THE COMMISSION PREVIOUSLY RULED ON THE ISSUE OF USING BANKED SAVINGS TO TRIGGER SHARED SAVINGS?

A. Yes. The Commission has twice ruled that banked savings cannot be used to trigger shared savings incentives. Specific to Duke, in Case No. 14-457-EL-RDR

(14 Rider Case*)* Duke filed an application to modify Rider EE-PDR, which recovers the cost of its energy efficiency and demand side management portfolio plan. The filing makes clear that Duke failed to meet the required statutory energy efficiency benchmark in 2013, missing the benchmark by 56,102 Mwh, achieving only 69.1% of the goal. Duke complied with the benchmark through the use of 'banked' efficiency savings; i.e., savings achieved in earlier years in excess of the amount of efficiency savings required by statute as permitted by Commission rules. However, Duke also claimed it was still entitled to a shared savings incentive, because the use of banked efficiency savings from prior years exceeded 113% of the benchmark. The Commission issued a Finding and Order in the 14 Rider Case on May 20, 2015 rejecting Duke's position on the shared savings incentive:

> [a]s to Duke's use of banked savings, the Commission agrees with OMA and finds the Company may only use the banked savings to reach its mandated benchmark. Therefore, the Commission finds Duke's use of banked savings to claim an incentive is improper. [Finding and Order at 5.]

The other precedent is the Commission's decision in the only litigated DSM portfolio application, *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. (FE 2012 Portfolio Case). The FE 2012 Portfolio Case established a template for the structure of a DSM portfolio that complies with Ohio law. Among the components of the decision, the Commission determined that a shared savings incentive can be awarded based on a tiered-scale when annual savings exceed the mandate; the savings are grossed up for taxes; banked savings can only be counted toward shared savings in the year they are banked; the Utility Cost Test ("UCT") is to be used when calculating the incentives; and, the incentive should be capped. [Case No. 12-2190-EL-POR, Opinion and Order at 15-17 (March 23, 2013).]

Current Commission precedent is clear. The fact that Duke has filed for rehearing of the Finding and Order in Case No. 14-453-EL-RDR is irrelevant given prior Commission rulings. Reply Comments filed by Staff in Case No. 14-1580-EL-RDR reflect the current state of the law by recommending that if the shared savings incentive mechanism is extended to 2016 it should be clear that banked savings should not be used to trigger shared savings. Staff Reply Comments at 6.

Q. DOES THE PROPOSED STIPULATION MEET THE FIRST PRONG OF THE THREE-PART TEST FOR STIPULATIONS, WHETHER THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

A. No, it does not. While there is no doubt that the two parties involved in the Stipulation are capable and knowledgeable about the regulatory process, there could be no serious bargaining. First, there are only two parties to the Stipulation, one which will not pay the $19.75 million and one that will receive the $19.75 million. None of the consumer parties whose members or clients will pay the incentive for Duke's nonperformance with the annual statutory benchmark was consulted during the development of the Stipulation and none have signed the agreement. There was no bargaining because paying Duke any amount of shared savings for the nonperformance of its 2013 and 2014 DSM portfolios is not supported by Commission precedent and has not been supported by Staff. This is simply a giveaway of ratepayer funds to Duke.

Q. DOES THE PROPOSED STIPULATION MEET THE SECOND PRONG OF THE THREE-PART TEST FOR STIPULATIONS, WHETHER THE PACKAGE BENEFITS RATEPAYERS AND IS IN THE PUBLIC INTEREST?

A. No. The Stipulation speaks to the mitigation of the risk that ratepayers could be forced to pay as much as "$55 million in pre-tax dollars for calendar years 2013, 2014, 2015, and 2016 combined." Stipulation ¶2 at 6. This significantly overstates the risk to customers. First, the Commission ruled in the FE 2012 Portfolio Case that banked savings from prior years cannot be used to trigger shared savings. And, in Case No. 14-453-EL-RDR the Commission ruled that Duke could not collect shared savings for 2013. That is the state of the law.

As a result, no shared savings can accrue for 2014 because Duke once again failed to meet the statutory benchmark requirements with efficiency savings generated during that year. The Stipulation also fails to mitigate any risk to customers if Duke produced efficiency savings that exceed the statutory benchmark requirements in 2015 because the 2011 Rider Case, Case No. 11-4393-EL-RDR already allows this. In contrast, there is no risk associated for 2016 because under current stipulations approved by the Commission Duke is not permitted to recover shared savings for 2016 because there was no agreement among the parties to extend the incentive. Case No. 11-4393-EL-RDR, Opinion and Order at 8; Case No.13-431-EL-POR, Opinion and Order at 6; Case No. 14-1580-EL-RDR, Application at 3.

In 2013 Duke failed to produce enough energy savings to meet annual statutory benchmark requirements. It used banked savings from previous years to achieve compliance. The same is true for 2014. This is the likely result for 2015 as well. It is not in the public interest to reward a utility that fails to meet the statutory standards during a program year. Customers have not benefited from over-performance. Instead, they have been harmed because of the failure of Duke to meet even the minimum requirements. This stipulation simply requires customers to pay Duke $19.75 million for doing a poor job in its management of its DSM portfolio. That is neither a benefit to ratepayers nor is it in the public interest. During the debate over the recently enacted Senate Bill 310, the

General Assembly evinced significant concerns about the cost of DSM portfolios. It is not in the public interest nor a benefit to ratepayers to provide incentives for poor performance.

Q. DOES THE PROPOSED STIPULATION MEET THE THIRD PRONG OF THE THREE-PART TEST FOR STIPULATIONS, THAT THE SETTLEMENT DOES NOT VIOLATE IMPORTANT REGULATORY PRINCIPLES AND PRACTICE?

A. No. The proposed Stipulation violates important regulatory principles and practice. As an initial matter, the Stipulation fails to clarify that Duke will not, in fact, claim shared savings incentives for program years 2015 and 2016. The Stipulation states that "The Parties agree that for the remaining years of the Company's approved energy efficiency and peak demand reduction portfolio (*i.e.*, 2015 and 2016), the Company will not recover a shared savings incentive." Stipulation at 6. The Stipulation also states that "[b]eginning in 2017, the Company will not file for recovery of the shared savings mechanism in any portfolio plan year after 2014 in which banked savings have been used to meet the annual benchmark requirements." Id. However, the Stipulation then goes on to state that:

> Should any change in law or regulation regarding shared savings occur, the Parties expressly agree that Duke Energy Ohio is

permitted to seek a shared savings incentive consistent with such change in law, regulation, or order. Id.

This final sentence completely undermines Duke's commitment that no shared savings will be collected for 2015 and 2016. A change in law is possible, as is a subsequent change in regulation, given that the General Assembly is contemplating legislation to follow-up the freeze on the annual benchmarks that was included in Senate Bill 310. Moreover, at the end of the sentence, the word "order" has been inserted, which could potentially allow Duke to recover shared savings for 2016 if the Commission approves Duke's application in Case No. 14-1580-EL-RDR to extend its shared savings incentive for 2016; that is the case not resolved by this Stipulation that is relevant to the recovery of shared savings. That would constitute a change under the Stipulation because it is an order, mooting the agreement in the Stipulation that Duke will forego recovery of a shared savings incentive for 2016. This violates the third prong of the test because it renders the Stipulation a sham, violating important regulatory principles and practice.

In addition, the settlement countermands existing precedent as described above, by bypassing two decisions that make clear that banked savings cannot be used to trigger a shared savings incentive. This is also a

violation of important regulatory principles and practice. Customers should not be placed at risk in this manner.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does, though I reserve the right to supplement my testimony if new information is made available.

CERTIFICATE OF SERVICE

A copy of the foregoing Testimony of David C. Rinebolt will be served electronically by the Commission's Docketing Section upon the following electronically subscribed parties identified below in this case on this 4th day of March 2016.

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Summary: Testimony of David C. Rinebolt electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy