

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke        ) Case No. 16-1017-EL-WVR  
Energy Ohio, Inc. for a Waiver.                )

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**COMMENTS ON DUKE ENERGY OHIO, INC.'S APPLICATION TO DELAY  
ITS ENERGY EFFICIENCY PORTFOLIO FILING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

An electric distribution utility's energy efficiency and peak demand reduction portfolio filing must be designed to reduce usage and peak demand so that consumers will benefit from lower bills and increased reliability. Among other things, the utility must file a "market potential study" as part of its portfolio application. The market potential study provides the PUCO and consumers with a third-party analysis of the portfolio's potential for energy efficiency savings and peak demand reduction. The market potential study adds transparency to the process of developing a portfolio plan and assists parties in adequately reviewing the portfolio.

The Office of the Ohio Consumers' Counsel ("OCC") respectfully asks the Public Utilities Commission of Ohio ("PUCO") to deny Duke Energy Ohio, Inc.'s ("Duke") application for a waiver<sup>1</sup> because, if granted, Duke will be permitted to file a portfolio application that denies parties important information that is necessary for a complete evaluation of the portfolio plan.

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<sup>1</sup> See Application for Waiver of Duke Energy Ohio, Inc., Case No. 16-1017-EL-WVR (May 9, 2016) (the "Application").

The reasons to deny Duke's Application are: (i) Duke has already requested the same waiver in another case, and the PUCO denied that request, and (ii) there is no good cause to grant the waiver because filing the market potential study ("MPS") four months after the portfolio plan defeats the fundamental purpose of the MPS. Consistent with the PUCO's order in Case No. 16-576-EL-WVR<sup>2</sup>, Duke must file the MPS at the same time as its portfolio plan, on or before June 15, 2016.

## **II. RECOMMENDATIONS**

### **A. The PUCO has already denied Duke's request.**

In Case No. 16-576-EL-WVR, Duke asked for a waiver of Ohio Administrative Code ("OAC") 4901:1-39-04(A), which required it to file an energy efficiency and peak demand reduction ("EEPDR") portfolio plan by April 15, 2016.<sup>3</sup> Duke proposed that its portfolio plan be filed on October 15, 2016 instead.<sup>4</sup> The PUCO found that Duke's request for an extension to October 15 was excessive and directed Duke to file its portfolio plan by June 15, 2016.<sup>5</sup>

In this new case, Duke again asks for a waiver of OAC 4901:1-39-04(A). This time, however, Duke proposes that some of its EEPDR application be filed on June 15, as required by the PUCO's order, but that the rest of the application (namely, the MPS) be filed on October 15, 2016.

The MPS is a mandatory part of an EEPDR portfolio application. *See* OAC 4901:1-39-03(A) ("an assessment of potential energy savings and peak-demand reduction

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<sup>2</sup> *See* Entry at 4, Case No. 16-576-EL-POR (Apr. 7, 2016).

<sup>3</sup> *See* Application of Duke Energy Ohio, Inc. for a Waiver and Request for Expedited Ruling, Case No. 16-576-EL-WVR (Mar. 16, 2016) (the "First Waiver Application").

<sup>4</sup> *Id.*

<sup>5</sup> *See* Entry at 4, Case No. 16-576-EL-POR (Apr. 7, 2016).

from adoption of energy efficiency and demand-response measures . . . will be included in the electric utility's program portfolio filing"). Thus, Duke's request for an extension to October 15 for the filing of the MPS was included in the First Waiver Application, and the PUCO denied the request. For the reasons set forth in the comments filed by the Kroger Company and the Ohio Manufacturers' Association, the Application must be denied.<sup>6</sup>

**B. There is no good cause to grant Duke's Application.**

Duke has failed to establish that there is good cause for the PUCO to waive the requirement under OAC 4901:1-39-03(A) and OAC 4901:1-39-04(A) that it file its MPS with its portfolio application. *See* OAC 4901:1-39-02(B) ("The commission may . . . waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown."). Duke is required to complete a market potential study before filing its EEPDR portfolio application so that the portfolio is properly designed and maximizes benefits to consumers. It does not make sense for Duke to file the MPS four months after its EEPDR portfolio plan because Duke is required to consider the results of the MPS in developing and designing the portfolio.

OAC 4901:1-39-03, entitled "Program Planning Requirements," prescribes steps that an electric distribution utility must take in developing its EEPDR portfolio plan. The first requirement under OAC 4901:1-39-03 is that the utility must perform an "assessment of potential." This is done through what is commonly called a "market

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<sup>6</sup> *See* Motion to Intervene and Comments on Behalf of the Kroger Co. at 5-7, Case No. 16-1017-EL-WVR (May 20, 2016) (arguing that (i) if Duke wanted to pursue a request for an extension to October 15 with respect to the MPS, it was required to do so in an application for rehearing in Case No. 16-576-EL-POR, and (ii) the Duke request in this case is barred by the doctrine of collateral estoppel); Motion to Intervene and Comments of the Ohio Manufacturers' Association at 3-5 (May 26, 2016) (arguing that Duke's Application is barred by the doctrines of res judicata and collateral estoppel). OCC agrees with Kroger's and OMA's arguments and adopts them as though fully set forth in this opposition.

potential study." "Prior to proposing its comprehensive energy efficiency and peak-demand reduction program portfolio plan, an electric utility shall conduct an assessment of potential energy savings and peak-demand reduction from adoption of energy efficiency and demand-response measures within its certified territory." OAC 4901:1-39-03(A). The MPS is required to include an analysis of technical potential (reduction in energy usage or peak demand that would result if the most efficient measures were adopted, regardless of cost<sup>7</sup>), economic potential (reduction in energy usage or peak demand if the most efficient and cost-effective measures were all adopted<sup>8</sup>), and achievable potential (likely reduction in energy usage or peak demand taking into account barriers to customer adoption, including market, financial, political, regulatory, or attitudinal barriers<sup>9</sup>). In conjunction with the MPS, the utility is also required to "describe all attributes relevant to assessing [each measure's] value, including, but not limited to potential energy savings or peak-demand reduction, cost, and non-energy benefits." *See* OAC 4901:1-39-03(A)(4).

The MPS is an important part of the portfolio design process because it guides the utility in developing programs that can reasonably and efficiently provide savings for customers. In Duke's last EEPDR portfolio case,<sup>10</sup> Duke filed a market potential study that included, among other things, (i) a cost effectiveness analysis of potential EEPDR programs and measures, (ii) kWh savings projections, (iii) an analysis of consumers' electric use by end-use (*e.g.*, kWh used for heating, cooling, lighting, and other uses),

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<sup>7</sup> OAC 4901:1-39-01(X).

<sup>8</sup> OAC 4901:1-39-01(H).

<sup>9</sup> OAC 4901:1-39-01(A).

<sup>10</sup> Case No. 13-431-EL-POR.

(iv) data on housing stock characteristics, (v) calculations of technical, economic, and achievable EEPDR potential, (vi) an assessment of various EEPDR technologies, and (vii) in depth analyses on a program-by-program basis, including details on program rationale, participation rates, marketing, tracking, and budget assumptions.<sup>11</sup> All of this information is useful, if not essential, to the proper development of an EEPDR portfolio plan.

Indeed, in Duke's last case, the MPS was completed on January 7, 2013, but Duke did not file its portfolio plan until April 15, 2013.<sup>12</sup> Duke therefore benefitted from more than three months of additional planning and development and was able to take into account the analysis and findings of the MPS in developing and designing programs, deciding which programs to include in the portfolio plan, and ensuring that the proposed programs were cost effective and well-designed.

If, as Duke proposes, it be permitted to file the MPS four months after the portfolio plan, then there is no way that Duke can take into account the many important results and conclusions set forth in a well-constructed MPS. There is no good cause for the PUCO to grant Duke's unprecedented request that it be permitted to develop, design, and file a portfolio plan without first completing its MPS.

### **III. CONCLUSION**

As argued above, the PUCO should deny Duke's Application because (i) the PUCO has already denied Duke's request for the same waiver in Case No. 16-576-EL-

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<sup>11</sup> See Duke Energy Ohio: Market Assessment and Action Plan for Electric DSM Programs, Case No. 13-431-EL-POR (dated Jan. 7, 2013, filed Feb. 19, 2013).

<sup>12</sup> See Application, Case No. 13-431-EL-POR (Apr. 15, 2013).

WVR, and (ii) there is no good cause to waive the requirements of OAC 4901:1-39-03(A) and OAC 4901:1-39-04(A) that Duke's portfolio application include the MPS.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments were served on the persons stated below via electric transmission this 1st day of June 2016.

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