BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan.	:	Case No. 16-576-EL-POR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver to File a New Energy Efficiency and Peak Demand Reduction Portfolio Application.	:	Case No. 16-576-EL-WVR

REPLY BRIEF

SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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On behalf of the Staff of
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INTRODUCTION

The Amended Stipulation and Recommendation ("Amended Stipulation")[1] fails to benefit ratepayers and the public interest, a requirement under the three-prong test established by the Public Utilities Commission of Ohio ("Commission") to evaluate a stipulation. To satisfy the three-prong test, the Commission should modify the Amended Stipulation to include an overall cost cap on the program costs and shared savings incurred through Duke's plan. The cost cap proposal benefits customers by providing them price security and mitigating the risk of increasing costs without sacrificing their

1 *In re the Application of Duke Energy Ohio, Inc., for Approval of its Energy Efficiency Peak Demand Reduction Portfolio Plan*, Case Nos. 16-576-EL-POR, *et al*. ("*In re Duke Portfolio Plan*") (Amended Stipulation and Recommendation) (Jan. 27, 2017) (Joint Ex. 2).

access to program quality and energy savings. No Ohio law gives a utility company the right to have an unlimited budget to spend on energy efficiency programs.

Historically, Duke has significantly over-achieved its annual and cumulative energy savings requirements and targets. To put this in perspective, Duke's annual savings mandate is 203,000 MWh[2] and its projected target is 236,694 MWh,[3] a significant over-achievement. And, as of 2015, Duke was two years ahead on its cumulative energy savings requirement.[4] These significant over-achievements are proof that Duke has an excessive budget that allows it to overspend on energy efficiency programs. This overspending is the reason why Duke's energy efficiency rider is one of the highest riders on customers' bills.[5] If the Commission adopts Staff's cost cap it can tap the brakes on Duke's escalating program cost trend and prevent its rider from becoming *the* highest rider on customers' bills. Staff's annual cost cap makes sense and is good public policy. Ratepayers need this protection.

ARGUMENT

By modifying the Amended Stipulation to include an overall cost cap on program costs and shared savings, the Amended Stipulation could be found to be just and reasonable under the three-prong test and could then be approved by the Commission.

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2 *In re Duke Portfolio Plan* (Amended Application at 12) (Oct. 14, 2016); Tr. at 57.

3 Tr. at 59 (239,148 + 26.582 + 234.352 = 710,082/3 = 236,694 MWh).

4 Tr. at 26.

5 *In re Duke Portfolio Plan* (Prefiled Direct Testimony of Patrick Donlon) (Staff Ex. 1 at 6) (Feb. 6, 2017)

Duke Energy Ohio, Inc. ("Duke" or "Company"), Ohio Partners for Affordable Energy ("OPAE"), Environmental Law & Policy Center ("ELPC"), Ohio Environmental Council ("OEC"), Environmental Defense Fund ("EDF") and Natural Resources Defense Council ("NRDC") filed Initial Briefs attacking the Staff of the Public Utilities Commission of Ohio ("Staff") and The Office of the Ohio Consumers' Counsel ("OCC") for opposing the Amended Stipulation because it does not include an overall cost cap to limit the amount of costs customers pay for energy efficiency programs and shared savings. Staff and OCC stand united against these parties because they are wrong about the need for a cost cap to control Duke's escalating energy efficiency costs and prevent its rider from becoming the highest charge on customers' bills.

A. Historical acquisition cost comparison shows that Duke can meet and exceed its mandates.

Staff looked at acquisition costs and evaluated that its cost cap would give Duke approximately $140 per MWh.[6] Staff analyzed acquisition costs from Duke's historical cost and achievement data for 2009-2015, and it calculated an average cost of $125 per MWh.[7] Staff used 2009-2015 to evaluate Duke's history rather than 2013-2015, the latter of which reflect years that Duke designed program budgets for achieving savings below the statutory mandate and relied on its banked savings to make up the difference.[8] In

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6 Tr. at 172.

7 Staff Ex. 4 at 4, Tr. at 172, 178-179.

8 Tr. at 176-178.

comparison, Duke's analysis of acquisition costs was unreasonably limited to 2013-2015. Using this limited time period, Duke calculated an average cost of $18.3 cents per kWh, which equates to $183 per MWh.[9]

Duke's method of calculating its acquisition costs using 2013-2015 is flawed because the Company designed its portfolio plan during those years not to meet its mandates. A reduced program budget and under-achieved mandates for 2013-2015 distort the average costs for that time period and result in misleading acquisition costs. Staff's broader historical analysis (2009-2015) and resulting calculation of cost per MWh are more reliable and accurate given Duke's portfolio plan design to underachieve its mandates and use banked savings in 2013-2015.

The Environmentals argue[10] that Duke's portfolio costs have increased because the average cost per kWh of saved energy nearly doubled from 2010-2012 to 2013-2015. This argument fails for the same reasons noted by Staff in the preceding two paragraphs above. The historical period 2013-2015 is not broad enough to provide a good overall portfolio costs trend analysis. This limited time period cannot provide an accurate and reliable picture because it is not representative of the cost required for Duke to meet its mandate without relying on banked savings.

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9 Tr. at 178.

10 *In re Duke Portfolio Plan* (Initial Post-Hearing Brief of Environmental Law & Policy Center, *et al*. at 15) (Mar. 31, 2017) ("Environmentals' Brief").

B. Historical spending and over-achievement trend shows Duke can achieve its mandates under the proposed $33.8 million cost cap.

Duke proposed an annual program budget of $38 million to achieve an average projected savings of 236,694 MWh per year.[11] This calculates to 16 cents per kWh for Duke's energy efficiency programs.[12] On average from 2012-2015, Duke spent 86% of its projected budget and over-achieved its projected energy savings by 129%.[13] If Duke continues that trend into its proposed portfolio plan, it will only require approximately $32,680,000 for Duke to achieve approximately 305,335 MWh per year,[14] an over-achievement of 102,335 MWh. In that case, the Company can comply with Staff's cost cap of $33.8 million and exceed its annual mandates.

Under the cap, Duke would need to achieve energy savings at a cost of 15 cents per kWh[15] in comparison to Duke's 16 cents per kWh using its proposed budget and savings to be achieved. These calculations make clear that Duke has inflated its energy efficiency programs budget. Duke's annual savings mandate is 203,000 MWh.[16] In

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11 Duke Response to IGS First Set of Interrogatories (OCC Ex. 5); Tr. at 59.

12 $38,000,000/236,694 MWh = 16 cents per kWh.

13 Tr. at 51-52, 55-56.

14 $38,000,000 * 86% = $32,680.000 and 236,694 MWh * 129% = 305,335 MWh.

15 $33,800,000/227,360 MWh = 15 cents per kWh. The 227,360 MWh is 112% over achievement of annual savings mandate of 203,000 MWh to include eligibility for maximum shared savings.

16 *In re Duke Portfolio Plan* (Amended Application at 12) (Oct. 14, 2016) (Duke Ex. 3).

addition to inserting a 14% cushion[17] in the program budget to begin with, Duke's budget is also projected to achieve 236,694 MWh per year, which exceeds the annual mandate and the projected savings target of 227,360 MWh[18] needed to comfortably obtain its maximum earnings for shared savings. And if Duke performs consistent with its historical trend it will over-achieve its projected savings by 129% for savings of 305,335 MWh, which is 102,335 MWh above its annual mandate and 77,975 MWh above what it needs to earn its annual maximum shared savings incentive.

C. Duke's budget containing unlimited program costs and additional firm costs to guarantee maximum profit for Duke is unreasonable.

The parties opposing Staff's cost cap proposal assume as fact, and calculate as an additional firm cost to the energy efficiency program portfolio budget, annual shared savings costs of $12.5 million or $37.5 million over the plan.[19] The overall budget for Duke's portfolio plan should be designed to meet the benchmark, and should not include maximized shareholder incentive. Duke is only *eligible* to earn that incentive *if* the Company goes above and beyond to exceed the annual statutory benchmark by 112%.[20] The Signatory Parties do not want a limitation on program spending to achieve energy savings, but they *do* want a budget that guarantees Duke maximum shared savings.

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17 Tr. at 51-52.

18 203,000 MWh * 112% = 227,360 MWh.

19 Environmentals' Brief at 3; Tr. at 41.

20 Joint Ex. 2 at 5.

Maximizing shared savings, rather than having an energy efficiency plan that can meet and exceed the mandates at the lowest possible cost to ratepayers, appears to be the Signatory Parties' focus and priority. Staff believes the main goal is Duke complying with the mandates set by the legislature.[21] The incentive structure was created by the Commission to incentivize over-compliance.[22] While over-compliance at a reasonable cost is desired, the amount of over-compliance is less important than Duke's program budget having a nexus to complying with the mandates at the least cost to ratepayers.[23] How much over-compliance is achieved depends on how well Duke, with input from the collaborative, manages the programs in the portfolio plan.

Duke and Intervenors who oppose the cost cap appear to have tunnel vision when it comes to program spending; they support unlimited spending and energy savings without regard to costs to ratepayers.[24] They attack Staff and OCC for focusing on overall portfolio costs and attempting to find a balance between achieving an optimal

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21 Tr. at 171.

22 *Id*.

23 *In re the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (Fifth Entry on Rehearing at 147) (Oct. 12, 2016) ("The Companies are expected in the energy efficiency program portfolio plans to budget for the annual statutory energy efficiency mandate rather than the goal. The Commission expects the goal to be achieved by efficiently administering the approved programs and achieving energy savings for the least cost rather than by setting the program budget to the stipulated goal.").

24 Tr. at 35-36.

amount of energy savings and protecting customers from rising costs. Duke's budget is inflated significantly to over-spend on programs in order to significantly over-achieve mandates and projections, and to guarantee Duke maximum earnings for shared savings of $37.5 million dollars over the plan period. The Signatory Parties' position and plan to reject a cost cap and continue increasing costs to customers begs a policy change because their position and plan are neither just nor reasonable for ratepayers.

D. Duke's inequitable argument should be denied because it is illogical and not sufficiently explained and supported.

Duke argues that Staff's cost cap proposal provides an inequity in funding among Ohio's electric utility companies.[25] Duke relies on a different methodology than Staff for its request that the Commission treat it exactly the same as AEP-Ohio in regard to a cap on its portfolio plan budget.[26] Duke proposes an annual cap of $52,046,662 based on spending proportionality to AEP-Ohio on a per MWh basis.[27]

Duke's alternative cost cap represents a 54% increase over Staff's proposed $33.8 million annual cap. In fact, the alternative cap is higher than Duke's proposed plan and annual program budget of $38 million, plus $12.5 million more in guaranteed shared sav-

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25 *In re Duke Portfolio Plan* (Initial Post Hearing Brief of Duke Energy Ohio, Inc. at 7) (Mar. 31, 2017) ("Duke Brief").

26 *Id*.

27 Duke Brief at 7; *In re Duke Portfolio Plan* (Rebuttal Testimony of Timothy J. Duff at 7-8) (Mar. 7, 2017) (Duke Ex. 13).

ings totaling $50.5 million.[28] Duke's alternative cap proposal is excessive and does not benefit ratepayers. Also, this alternative cap was offered at the last moment in the hearing through the rebuttal testimony of witness Tim Duff for Duke.[29] Mr. Duff's proposed cap in his rebuttal testimony is lacking in analysis and explanation.

The similarity between Duke's overall annual portfolio plan budget proposal to achieve projected savings of 236,694 MWh per year at a cost of $50.5 million and its alternative cap proposal of $52 million both are embedded with a guaranteed annual profit of $12.5 million in shared savings for Duke. Instead of approving a budget that permits Duke to significantly exceed its savings mandate and targets to guarantee maximum shareholder incentive, the Commission should make Duke earn shared savings the way it originally intended them to - by efficiently administering its programs to meet it mandates and achieve the highest energy savings possible for the least cost to its customers.

For the foregoing reasons, Staff requests that the Commission reject Duke's proposed alternative cap.

CONCLUSION

Staff respectfully requests the Commission modify the Amended Stipulation to include Staff's proposed cost cap on program costs and shared savings. With this modi-

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28 OCC Ex. 5; Tr. at 40-42.

29 Duke Ex. 13 at 7-8.

fication, the Amended Stipulation would be just and reasonable and satisfy the three-prong test and should be approved.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the following Parties of Record, this 7th day of April, 2017.

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