

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of its)	Case No. 16-0576-EL-POR
Energy Efficiency and Peak Demand)	
Reduction Portfolio of Programs)	

REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC.

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I. INTRODUCTION

On March 16, 2016, Duke Energy Ohio, Inc. (“Duke”) filed an application to establish an energy efficiency and peak demand reduction portfolio plan (“Portfolio Plan” or “Application”). Following negotiations between a diverse group of parties, a stipulation and recommendation was submitted on December 22, 2016.¹ Following additional negotiations, on January 27, 2017, the majority of parties submitted an amended stipulation and recommendation.² Among other things, the amended stipulation recommended that Duke deploy a smart thermostat program if it is determined that such a program is cost-effective under the Total Resource Cost (“TRC”) test.

Following a hearing, several parties submitted initial briefs in support of the amended stipulation. The Office of the Ohio Consumers’ Counsel (“OCC”), however,

¹ The signatory parties include Duke, Ohio Hospital Association (“OHA”), Interstate Gas Supply, Inc. (“IGS”), Environmental Law and Policy Center (“ELPC”), Environmental Defense Fund (“EDF”), and the Ohio Environmental Council (“OEC”), and Natural Resource Defense Counsel (“NRDC”). Joint Ex. 1.

² The signatory parties include Duke, OHA, Ohio Partners for Affordable Energy, ELPC, EDF, the OEC, NRDC, IGS Energy, The Kroger Company, and The Ohio Manufacturers’ Association. Joint Ex. 2.

submitted a brief opposing the amended stipulation and the smart thermostat program. This reply brief is narrowly tailored to address OCC's meritless opposition.

Accordingly, the Commission should adopt Duke's proposed Portfolio Plan as modified by the amended stipulation and authorize Duke to deploy a smart thermostat program.

II. BACKGROUND AND ARGUMENT

The amended stipulation contemplates the potential for Duke to implement a smart thermostat rebate program, including a streamlined "instant rebate" process. Specifically, the amended stipulation provides the following roadmap to implement the smart thermostat program:

Smart Thermostat Program: Signatory Parties agree that Duke Energy Ohio will work with ELPC and IGS Energy and other interested parties to develop a smart thermostat program to be delivered through retail channels. By April 15, 2017, Duke Energy Ohio will assess whether such a program is likely to be cost-effective and present the results of that assessment to the Duke Energy Ohio Collaborative. For purposes of this assessment, Duke Energy Ohio's determination of cost-effectiveness will be based on application of the Total Resource Cost test including avoided natural gas and other non-electric fuel costs in addition to avoided electricity costs. If Duke Energy Ohio does determine that it could cost-effectively deliver the smart thermostat program, Duke Energy Ohio will seek to begin offering the program by the end of the third quarter of 2017. Once the Company's portfolio is approved by the Commission, a retailer or competitive retail electric supplier may, at their own risk, provide a customer with an instant discount prior to the full implementation of the Smart Thermostat Program. Following the deployment of the program, such instant rebates will be eligible for reimbursement at the incentive level established by the Company and approved by the Commission. Duke Energy Ohio will work to achieve a goal of providing incentives to 25,000 customers by the end of the 2017-2019 portfolio plan term and to offer customers an incentive or rebate on the purchase of a qualifying smart thermostat with the goal of paying an incentive of \$100 or higher if cost effective, except to the extent doing so would render the program non-cost-effective as defined in this provision. Duke Energy Ohio will not offer any incentive or rebate that

would, on its own or in combination with any applicable gas utility rebate, exceed the actual cost of the purchased smart thermostat.

Signatory Parties agree that Duke Energy Ohio will engage in efforts to promote and implement the smart thermostat program in ways that include, to the extent possible:

- Cross marketing across other residential programs, such as the My Home Energy Report Program, the Residential Energy Assessment Program, the Smart Saver Residential Program, and the Power Manager Program;
- Developing and sharing with the Duke Energy Ohio Collaborative a marketing plan to promote the benefits of smart thermostats and educate customers to their benefits; the plan may include engaging market partners as well as other local energy suppliers in order to streamline marketing, eligibility and application processes; and
- Ensuring appropriate product delivery channels are used in an effort to further streamline and simplify the customer purchase and incentive processes and, if appropriate, working towards implementation of an instant discount as soon as practicable.
- Duke will solicit and consider input from ELPC and IGS Energy and members of the Duke Energy Ohio Collaborative on each of these promotion and implementation efforts.
- Duke Energy Ohio will attempt to identify potential program areas where they may be able to coordinate marketing and rebate offerings, including residential audit and weatherization programs with its gas utility affiliate and other local gas distribution companies. The Company will regularly update interested parties through its Collaborative meetings regarding the status of these efforts.³

Thus, Duke committed to assess by April 15, 2017 whether a smart thermostat program would be cost-effective and to present those results to its collaborative. Cost-effectiveness will be based on application of the TRC test including avoided natural gas and other non-electric fuel costs in addition to avoided electricity costs. No incentive will be provided at a level that would make the program non-cost-effective. To the extent that Duke determines that the program is cost-effective, Duke committed to begin offering the program by the end of the third quarter of 2017.

³ Joint Ex. 2 at 8-9. See *also* Duke Ex. 4 at 4-5 (Supplemental Direct Testimony of Timothy Duff).

In recognition of the fact that Duke may receive an order approving the amended stipulation well in advance of the third quarter of 2017, the amended stipulation included a provision that would permit competitive retail electric service (“CRES”) providers and retailers to expeditiously offer an instant rebate if they bear the risk that the rebate they offer exceeds the amount ultimately determined to be cost-effective.

In its initial brief, OCC asserts two arguments in opposition to the proposed thermostat program. First, OCC alleges that Duke’s application and the amended stipulation failed to set forth sufficient detail to merit approval of the smart thermostat program. Second, OCC opposes the provision that would allow CRES providers to offer an expedited rebate in advance of final approval of the rebate level. As discussed below, both arguments lack merit.

A. The Smart Thermostat Program is Sufficiently Detailed

OCC alleges that Commission should reject the smart thermostat program because Duke failed to satisfy the criteria of Ohio Administrative Code (“OAC”), 4901:1-39-03 and 4901:1-39-04.⁴ Those provisions relate to the filing of a “market potential study” and the initial application filed by the utility. OCC claims the proposed thermostat program was not discussed in Duke’s market potential study and therefore the information required to be provided for proposed measures was not provided.⁵ Citing a prior Commission order in Duke’s 2011 portfolio plan case,⁶ OCC alleges that Duke’s failure

⁴ OCC Brief at 14-18.

⁵ *Id.*

⁶ OCC Brief at 16; *see generally In re Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism & for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Entry at 2-3 (Mar. 21, 2012) (hereinafter “2011 POR Case”).

to include the smart thermostat program in the market potential study is grounds to reject the smart thermostat program in its entirety. As discussed below, OCC mischaracterizes the law and the Commission precedent.

First, OCC's reliance on the requirement to file a market potential study and the Commission's order in Duke's *2011 POR Case* is misplaced. Under the Commission's rules, a utility is required to file a market potential study with its application to establish a portfolio plan. In the *2011 POR Case*, the Commission took issue with the fact that Duke failed to make such a filing with its application.⁷ Here, however, it is uncontested that Duke did in fact file a market potential study.⁸

OCC appears to argue that Duke was required to describe in its market potential study every single program that will ultimately be included in its portfolio plan. OCC's argument is absurd and would lead to an unworkable process. If Duke were required to analyze in its market potential study every program that is ultimately approved, there would be no way to deviate from the market potential study through a settlement or litigated process—the portfolio plan and its programs would effectively be set in stone before the application is filed and the hearing occurs. The Commission should reject OCC's overly narrow interpretation of the Commission's rules.

Second, OCC alleges that the stipulation and application fail to include the information required by OAC, 4901:1-39-04. Again, this section appears to apply to the initial application filed by the utility. Ultimately, that application was modified by the amended stipulation to include additional measures; thus, this rule arguably does not

⁷ *2011 POR Case*, Entry at 2-4.

⁸ See Duke Ex. 2.

apply. In any event, as discussed below, the stipulation included two pages of parameters describing the smart thermostat program to sufficiently comply with the Commission's rules.

For example, OCC lists the requirements of the Commission's rules and simply states that the thermostat program fails to comport with these requirements. A closer examination of the amended stipulation and testimony, however, shows that OCC is incorrect. Below is a point-for-point summary of the manner in which the thermostat program meets the criteria contained in OAC 4901:1-39-04(C)(5):

- *(a) narrative describing why the program is recommended pursuant to the program design criteria in OAC 4901-39*
 - Under the Stipulation, it is clear that the purpose is to incentive deployment of smart thermostats in a cost-effective manner through a streamlined process.⁹
- *(b) program objectives, including projections and basis for calculating energy savings and/or peak-demand reduction resulting from the program;*
 - Deployment of 25,000 smart thermostats. Savings for purposes of the TRC test to be calculating based upon "avoided natural gas and other non-electric fuel costs in addition to avoided electricity costs."¹⁰
- *(b) the targeted customer sector;*
 - Smart thermostats control heating, ventilation, and air conditioning ("HVAC"); thus, it is clear that the provision relates to customers with HVAC

⁹ Joint Ex. 2 at 8-9; Duke Ex. 4 at 4-5.

¹⁰ *Id.* at 8.

equipment that utilizes electricity and natural gas. Duke's initially proposed thermostat program was available to customers that install *new* HVAC systems; the amended stipulation does not contain that limitation.

- *(d) the proposed duration of the program;*
 - "Duke Energy Ohio will work to achieve a goal of providing incentives to 25,000 customers by the end of the 2017-2019."¹¹
- *(e) an estimate of the level of program participation;*
 - "Duke Energy Ohio will work to achieve a goal of providing incentives to 25,000 customers by the end of the 2017-2019."¹²
- *(f) program participation requirements, if any;*
 - The existence of an HVAC system. Rebates may not exceed the cost of a thermostat.¹³
- *(g) a description of the marketing approach to be employed, including rebates or incentives offered through each program, and how it is expected to influence consumer choice or behavior;*
 - Providing smart thermostat rebates through retail channels including an "instant discount" as opposed to a traditional rebate form.¹⁴
- *(h) a description of the program implementation approach to be employed;*

¹¹ *Id.* at 8.

¹² *Id.* See also *Duke Ex. TAH1* at 17.

¹³ *Id.*

¹⁴ *Id.* at 8-9.

- “The plan may include engaging market partners as well as other local energy suppliers in order to streamline marketing, eligibility and application processes.”¹⁵
- *(i) a program budget with projected expenditures, identifying program costs to be borne by the electric utility and collected from its customers, with customer class allocation, if appropriate;*
 - While there is not an absolutely specific budget authorized, given a target of 25,000 thermostats and a target incentive of \$100, the three-year program budget would be in the range of \$2,500,000.¹⁶ This budget would potentially be higher or lower depending on the cost-effectiveness of the evaluation Duke submits on April 15, 2017.
- *(j) participant costs, if any;*
 - Any portion of a thermostat not funded by an incentive provided by a CRES provider, retailer, or Duke’s Portfolio Plan.
- *(k) proposed market transformation activities, if any, which have been identified and proposed to be included in the program portfolio plan; and*
 - “Developing and sharing with the Duke Energy Ohio Collaborative a marketing plan to promote the benefits of smart thermostats and educate customers to their benefits; the plan may include engaging market partners

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 8.

as well as other local energy suppliers in order to streamline marketing, eligibility and application processes.”¹⁷

- *(l) a description of the plan for preparing reports that document the electric utility's evaluation, measurement, and verification of the energy savings and/or peak demand reduction resulting from each program*
 - See Duke Ex. 1 at 18 and Duke Ex. 5 at TAH1.

Thus, the proposed smart thermostat program is sufficiently detailed to comply with the Commission's rules.

Moreover, any uncertainty regarding the proposed smart thermostat program is mitigated by the fact that Duke has committed to implement the program only to the extent that it is cost-effective as a standalone program. This commitment is stricter than the Commission's rules require. Under OAC 4901:1-39-04, Duke is required to “demonstrate that its program portfolio plan is cost-effective *on a portfolio basis*.” (emphasis added). While programs within the portfolio plan must also be cost effective, “each measure within a program need not be cost-effective.”¹⁸ Moreover, “an electric utility may include a program within its program portfolio plan that is not cost-effective when that program provides substantial nonenergy benefits.”¹⁹ Here, the additional scrutiny that may attach to a non-cost effective measure included in an otherwise cost-effective is simply not

¹⁷ *Id.* at 9.

¹⁸ 4901:1-39-04(B), OAC.

¹⁹ *Id.* Indeed, many low-income focused programs and measures do not pass the TRC test, but that does not mean that this group of customers should be neglected.

required. Duke will evaluate the results of the cost-effectiveness of the thermostat program on a standalone basis and set incentive levels appropriately.

B. CRES providers should be authorized and encouraged to provide thermostat rebates in advance of the third quarter of 2017

OCC claims that, to the extent the Commission authorizes the smart thermostat program, CRES providers should be prohibited from providing customers discounted thermostats—at their own risk—between the time the Commission authorizes the program and the time the rebate level is ultimately established.²⁰ OCC alleges that this provision would allow retailers like Lowe's and CRES providers to receive a “wind fall.”²¹ OCC's argument is absurd and would undermine the interest of the customers it represents.

Although an order is likely to be issued in this proceeding by the end of the second quarter of 2017, for several reasons outside of control of the parties to this proceeding, Duke will not finalize the cost-effective incentive level for a smart thermostat until the third quarter of 2017. Despite the uncertainty of the ultimate rebate level, signatory parties have agreed that CRES providers and retailers may at their own risk provide customers with an instant discount before the incentive level is ultimately determined, with the understanding that the compensation they receive from Duke may not ultimately cover the discount provided to the customer. In other words, the stipulation contemplates the potential that IGS provides a customer a thermostat at a \$150 discount and Duke authorizes a \$100 rebate. In that case, a customer effectively receives two discounts—

²⁰ OCC Brief at 18-19.

²¹ *Id.* at 19.

\$100 from Duke's Portfolio Plan and \$50 from IGS. OCC is correct that this may be a windfall, but the beneficiaries of the windfall would be distribution customers in the Duke service territory. Thus, OCC's arguments lacks merit.

III. CONCLUSION

For the reasons stated herein, IGS urges the Commission to approve Duke's Application as modified by the amended stipulation, including the proposed smart thermostat program.

Respectfully,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Reply Brief of Interstate Gas Supply, Inc.* was served this 7th day of April 2017 via electronic mail upon the following:

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