

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of its) Case No. 16-576-EL-POR
Energy Efficiency and Peak Demand)
Reduction Portfolio of Programs.)

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Public Utilities Commission of Ohio ("PUCO") protected consumers in this case by amending the proposed settlement¹ to limit the amount that Duke Energy Ohio can charge them for energy efficiency program costs and utility profits (shared savings). While in theory, all customers can benefit from energy efficiency programs (and those who participate in the programs benefit most), the PUCO was right to also consider the amount that all customers are charged on their monthly electric bills to pay for these programs.

On rehearing, the PUCO should make additional modifications to the Settlement. First, the PUCO should reduce the amount of profit that Duke can charge customers. Second, the PUCO should not allow Duke to exceed the PUCO-ordered spending cap for 2017. Third, the PUCO should not approve the proposed smart thermostat and space heating programs until, at a minimum, they are shown to be cost-effective. Fourth, if the smart thermostat program is permitted to go forward, the PUCO should not allow Duke to use customer money to pay rebates retroactively to competitive retail electric service

¹ Joint Ex. 2 (the "Settlement").

providers ("Marketers") and retailers for thermostats that they sold to customers before the program began.

These incremental modifications will improve the Settlement for the consumers who pay for Duke's energy efficiency programs.

The Order is unreasonable, unjust, and unwarranted in the following respects:

Assignment of Error 1: The Order is unreasonable because it allows Duke to charge customers an excessive amount for utility profits on energy efficiency programs.

Assignment of Error 2: The Order is unreasonable because it allows Duke to exceed the cost cap for 2017, and Duke has already demonstrated an inability or unwillingness to limit spending.

Assignment of Error 3: The Order is unreasonable because it allows Duke to charge customers for new programs that the PUCO has not properly vetted.

Assignment of Error 4: The Order is unreasonable because it will require customers to pay thermostat rebates to Marketers and retailers for thermostats sold before the new thermostat program even begins.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-9571
christopher.healey@occ.ohio.gov
(Willing to accept service by e-mail)

Dane Stinson (0019101)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-4854
dstinson@bricker.com
(Willing to accept service by e-mail)

Outside Counsel for the Office of the Ohio
Consumers' Counsel

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MEMORANDUM IN SUPPORT

The Office of the Ohio Consumers' Counsel ("OCC") supports the PUCO's decision to modify the Settlement in this case to place a 4.0% annual cap on the amount that Duke can charge its customers for energy efficiency program costs and utility profits. This limitation protects customers from paying too much for energy efficiency while still allowing Duke to offer a variety of energy efficiency programs for customers to participate in.

The PUCO, however, can provide additional benefits to consumers by further modifying the Settlement as OCC proposes in this application for rehearing.

I. STANDARD OF REVIEW

After an order is entered, intervenors in a PUCO proceeding have a statutory right to apply for rehearing "in respect to any matters determined in the proceeding."² An application for rehearing must "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful."³

In considering an application for rehearing, R.C. 4903.10 provides that the PUCO may grant and hold rehearing if there is "sufficient reason" to do so. After such rehearing,

² R.C. 4903.10.

³ R.C. 4903.10(B). *See also* Ohio Admin. Code 4901-1-35(A).

the PUCO may "abrogate or modify" the order in question if the PUCO "is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted."⁴

The Order is unreasonable, unjust, and unwarranted under R.C. 4903.10. The PUCO should grant OCC's application for rehearing. It should abrogate or modify the Order, consistent with OCC's recommendations in this application for rehearing.

Assignment of Error 1: The Order is unreasonable because it allows Duke to charge customers an excessive amount for utility profits on energy efficiency programs.

The Order authorizes Duke to charge customers up to \$12.5 million (\$8.0 million plus tax gross-up) in utility profits (shared savings).⁵ With a total cost cap of \$38.6 million,⁶ Duke can spend up to \$26.1 million on programs while still maximizing its profits.⁷ This means that utility profits could represent a 48% markup⁸ on program costs.

In fact, the markup could be even higher. From 2012-2015, Duke consistently overestimated the amount it would spend on programs while underestimating the amount of energy that its programs would save.⁹ Since the inception of Duke's current energy efficiency cost recovery mechanism, Duke has spent 85.5% of its budget and achieved 130% of its projected energy savings.¹⁰ This suggests that Duke may not even need to spend the full \$26.1 million to be able to charge customers the maximum \$12.5 million in profits.

⁴ R.C. 4903.10(B).

⁵ Order ¶ 51.

⁶ Order ¶ 46 (4.0% cost cap, which is equivalent to about \$38.6 million per year).

⁷ \$38.6 million - \$12.5 million = \$26.1 million.

⁸ \$12.5 million / \$26.1 million = 48%.

⁹ PUCO Staff Ex. 4. *See also* OCC Initial Brief at 7-8.

¹⁰ PUCO Staff Ex. 4. *See also* OCC Initial Brief at 7-8.

Allowing a utility to increase the cost of its energy efficiency programs by 48% or more is unreasonable and does not benefit customers or the public interest. The focus of utility-run energy efficiency programs should be on energy savings and cost savings for consumers. The PUCO has consistently found that it is appropriate to limit the amount that utilities can charge their customers for utility profits.¹¹

OCC expert witness Shutrump recommended an annual shared savings cap of \$7.8 million (about \$5.0 million plus tax gross-up).¹² With a \$7.8 million cap, Duke could spend up to \$30.8 million per year on program costs.¹³ Customers would pay a still-generous 25% surcharge on energy efficiency program costs under Ms. Shutrump's proposal.¹⁴ This level of utility profits is more than fair to Duke while offering additional protection to consumers. The PUCO should modify the Settlement to include a pre-tax shared savings cap of \$7.8 million.

Assignment of Error 2: The Order is unreasonable because it allows Duke to exceed the cost cap for 2017, and Duke has already demonstrated an inability or unwillingness to limit spending.

The PUCO did the right thing to protect consumers from paying too much for energy efficiency by imposing a \$38.6 million cost cap for 2017, 2018, and 2019. Under the Order, Duke is allowed to exceed the cap in 2017 only.¹⁵ The PUCO, however, placed limitations on Duke's ability to exceed the cap for 2017.

¹¹ OCC Ex. 13 (Shutrump Direct) at 12:3-5.

¹² OCC Ex. 13 (Shutrump Direct) at 12.

¹³ \$38.6 million - \$7.8 million = \$30.8 million.

¹⁴ \$7.8 million / \$30.8 million = 25%.

¹⁵ Order ¶ 47.

First, Duke can exceed the 2017 cap to recover program costs only; Duke cannot recover any profits (shared savings) above the cap.¹⁶ Second, Duke must seek a waiver from the PUCO to exceed its 2017 program budget.¹⁷ And third, Duke is required to scale back its programs (but not suspend them) to "avoid materially exceeding" its 2017 portfolio budget.¹⁸

The PUCO should amend the Order to eliminate the provision allowing Duke to exceed the cost cap in 2017. Just two weeks after the PUCO entered the Order, Duke violated it by asking to charge customers **\$56 million** or more in program costs for 2017.¹⁹ This "materially exceeds" Duke's 2017 portfolio budget. There is no evidence that Duke has made any attempt to scale back its programs, as the PUCO ordered. Duke's proposal to charge customers \$56 million or more for 2017 programs defies the clear intent of the PUCO's Order for Duke to control spending.

Duke's conduct demonstrates that the PUCO's Order permitting Duke to exceed the cost cap in 2017 is unreasonable. To protect customers from unjust and unreasonable energy efficiency charges, paragraph 47 of the Order should be modified to provide that the 4.0% cost cap applies for 2017, 2018, and 2019, without exception. Duke's shareholders, rather than its customers, should be responsible for spending in excess of the 4.0% cap.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See Motion of Duke Energy Ohio, Inc. for a Waiver (Oct. 12, 2017).

Assignment of Error 3: The Order is unreasonable because it allows Duke to charge customers for new programs that the PUCO has not properly vetted.

The Order states that "Duke is not prohibited from including the Stipulation's smart thermostat and space heating efficiency programs in its 2017-2019 Portfolio Plan because these provisions were not included in Duke's original application or market potential study."²⁰ But this is not the issue. No party asserted that Duke is *per se* prohibited from including new programs in a stipulation. A new program could conceivably be added to a portfolio through a stipulation, if that program is described in sufficient detail and, among other things, is projected to be cost-effective for consumers.

The issue here is that the Settlement includes a barebones proposal for two new programs with virtually no information about how these programs will be run, what types of incentives will be offered, how much the programs will cost, how much energy the programs might save, whether the programs will be cost-effective, requirements for participating in the programs, costs that participants might incur with respect to these programs, or how the programs will be evaluated.²¹

And while it may be true that the PUCO can evaluate the proposal to include the new smart thermostat and space heating programs in the context of weighing the Settlement as a package,²² the PUCO also has the authority to modify particular provisions in the Settlement that do not benefit customers.²³ Indeed, the PUCO did just that in this case by modifying the Settlement to include a 4.0% cost cap, rather than

²⁰ Order ¶ 50.

²¹ See OCC Initial Brief at 16-18.

²² See Order ¶ 50.

²³ See, e.g., *In re Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for its Residential & Commercial Customers*, Case No. 16-1309-GA-UNC, Opinion & Order (Dec. 21, 2016) (modifying settlement and approving it as modified).

approving the Settlement's proposal for unlimited charges to customers.²⁴ At a bare minimum, the PUCO should modify the Settlement to provide that Duke cannot charge customers for the smart thermostat and space heating programs unless they are cost-effective under the total resource cost test.²⁵

Assignment of Error 4: The Order is unreasonable because it will require customers to pay thermostat rebates to Marketers and retailers for thermostats sold before the new thermostat program even begins.

To the extent the PUCO allows Duke to charge customers for the smart thermostat program, those charges should be prospective only. Under the Settlement, however, Marketers and retail companies can receive customer money from Duke for thermostats sold before the smart thermostat program begins.²⁶ This is inconsistent with the fundamental goal of energy efficiency programs, which is to incentivize customers to be more energy efficient than they otherwise would.

Energy efficiency programs encourage customers to reduce their usage (and accordingly their bills) by offering them rebates on energy efficient equipment for their homes. But under the Settlement, Marketers and retailers would be allowed to provide to Duke a list of customers who purchased a smart thermostat without a utility-sponsored rebate, and the Marketer or retailer would then receive a rebate from Duke, paid with customer dollars. This type of retroactive reimbursement to non-customers does not in any way incentivize customers to be more energy efficient. It simply provides free money to Marketers and retailers who happen to have previously sold thermostats to customers

²⁴ Order ¶¶ 46-47.

²⁵ Ohio Adm. Code 4901:1-39-04(B) ("each program proposed within a program portfolio plan must also be cost-effective"); Ohio Adm. Code 4901:1-39-01(F) ("Cost effective" means the measure, program, or portfolio being evaluated that satisfies the total resource cost test.").

²⁶ Joint Ex. 2 at 8.

without a utility-sponsored rebate. The PUCO should modify the Settlement to provide that rebates will only be paid for smart thermostats that are sold to customers after the smart thermostat program actually begins. Otherwise, Marketers and retailers will receive a windfall at customer expense.

II. CONCLUSION

The Order provides some benefits to customers by limiting the total amount that they can pay to Duke for energy efficiency program costs and shared savings. The PUCO should make additional changes to the Settlement, as proposed by OCC, to maximize the benefits that customers receive from the programs that they pay for.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-9571
christopher.healey@occ.ohio.gov
(willing to accept service by e-mail)

Dane Stinson (0019101)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-4854
dstinson@bricker.com
(willing to accept service by e-mail)

Outside Counsel for the Office of the Ohio
Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 27th day of October 2017.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

SERVICE LIST

Bojko@carpenterlipps.com
Ghiloni@carpenterlipps.com
perko@carpenterlipps.com
paul@carpenterlipps.com
mfleisher@elpc.org
fdarr@mwncmh.com
mpritchard@mwncmh.com
joliker@igsenergy.com
John.jones@ohioattorneygeneral.gov

Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
cmooney@ohiopartners.org
tdougherty@theOEC.org
jfinnigan@edf.org
rdove@attorneydove.com
rick.sites@ohiohospitals.org
mwarnock@bricker.com
dborchers@bricker.com

Attorney Examiner:

Richard.bulgrin@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/27/2017 4:06:55 PM

in

Case No(s). 16-0576-EL-POR

Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.