

**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 ) Case No. 18-397-EL-RDR  
and Performance Incentives Related to its )  
Energy Efficiency and Demand Response )  
Programs. )

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**OBJECTIONS BY ENVIRONMENTAL LAW & POLICY CENTER,  
ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE  
COUNCIL, AND OHIO ENVIRONMENTAL COUNCIL**

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**I. INTRODUCTION**

On March 29, 2018, Duke Energy Ohio (“Duke” or the “Company”) filed an Application with the Public Utilities Commission of Ohio (“Commission”) seeking approval of recovery for costs related to its energy efficiency and peak demand reduction programs under Ohio Revised Code (“R.C.”) 4928.66(A)(1) for the period of January 1, 2017 to December 31, 2017. Ohio Admin. Code 4901:1-39-07(B) permits any person to file objections within thirty days of such a filing. Environmental Law & Policy Center, Environmental Defense Fund, Natural Resources Defense Council, and Ohio Environmental Council (“Environmental Intervenors”) accordingly file these objections to highlight three key issues.

First, we object to Duke’s application of R.C. 4928.662(B) in measuring energy savings which provides for counting of savings on the higher of a “deemed” or “as found” basis from Ohio utility energy efficiency programs, and request a Commission determination on the appropriate definition of “deemed” savings. Commission clarification of what qualifies as “deemed” savings is essential to provide safeguards ensuring that utilities rely on appropriate savings values and do not artificially inflate energy savings measurements by relying on outdated or inapplicable estimates. Second, we seek to highlight the aspects of the Duke filing showing

that the energy efficiency spending cap imposed by the Commission for Duke's 2017-2019 programs is adversely affecting the Company's programs going forward and depriving Duke customers of well-designed, cost-effective efficiency programs. Finally, we object to Duke's failure to indicate whether it is adjusting savings estimates for line losses and ask the Commission to require Duke to clarify whether it is counting energy savings that customers actually see at the meter, rather than adjusting for line losses to reflect savings at the point of generation.

## **II. OBJECTIONS**

### **A. The Commission Should Clarify the Definition of "Deemed" Savings Under R.C. 4928.662(B).**

In 2014, the Ohio General Assembly passed Senate Bill 310, which among other provisions enacted R.C. 4928.662 to add directives for determining the impacts of energy efficiency programs implemented by utilities to achieve the energy savings and peak demand reduction benchmarks in R.C. 4928.66(A)(1). R.C. 4928.662 now provides:

For the purpose of measuring and determining compliance with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code, the public utilities commission shall count and recognize compliance as follows: . . . .

(B) Energy efficiency savings and peak demand reduction achieved on and after the effective date of S.B. 310 of the 130th general assembly shall be measured on the higher of an as found or deemed basis, except that, solely at the option of the electric distribution utility, such savings and reduction achieved since 2006 may also be measured using this method. . . .

The testimony of Duke witness Trisha Haemmerle explains that the Company has applied this language by comparing initial "estimates of the load impacts per participant, derived either from initial estimates, previous EM&V [evaluation, monitoring, and verification] results or deemed savings" with evaluated impacts "[f]or those programs on which EM&V has been performed since the filing," and applying "the higher of the evaluated estimates of energy efficiency and/or

peak demand impacts . . . or the deemed values . . . until superseded by new EM&V results, if any.” Haemmerle Direct Testimony at 12 (footnote omitted).

In plain terms, it appears that Duke views R.C. 4928.662(B) as requiring it to treat past annual program evaluation results as “deemed” savings amounts, and apply those amounts in counting savings for compliance purposes if the past results are higher than a current year’s evaluation. One specific example of this is available in Duke’s evaluation of its Neighborhood Energy Saver Program, in which Duke’s program evaluator states that it is counting 412 kwh of annual energy savings per program participant based on an evaluation from 2013-2014, rather than a 303 kwh per participant savings estimate from the current year’s evaluation. Application, Att. 5 at 3, 21. Duke applies such savings values in determining total annual energy savings and peak demand reduction for compliance with the R.C. 4928.66 benchmarks, but also may use such savings results in determining how much excess savings above the benchmarks it may “bank” to use toward compliance in future years; in calculating shared savings incentive payments in years where the Company is eligible; and in computing lost distribution revenues to the extent Duke may recover those for certain customer classes.

Environmental Intervenors seek a Commission determination, either in this docket or a cross-utility rulemaking, as to when savings estimates count as “deemed” savings for purposes of R.C. 4928.662(B). Although we do not assert that Duke’s savings estimates for any particular 2017 program are necessarily incorrect, we do believe that its overall approach is not a reasonable application of R.C. 4928.662(B), and that this issue would benefit from Commission clarification. Otherwise, the universe of “deemed” savings will be so expansive that utilities may be able to cherry-pick higher savings numbers for purposes of compliance, shared savings, and

lost distribution revenue calculations, resulting in greater costs for customers without any associated benefit.

**1. The Commission Should Seek Additional Stakeholder Input on the Definition of “Deemed” Savings Under R.C. 4928.662(B).**

R.C. 4928.662(B) uses the term “deemed” savings, but provides no definition for that language. Thus, Duke and other Ohio utilities are left with a wide range of potential savings estimates that might qualify as “deemed” savings. In 2013, the Commission approved a Technical Resource Manual, or “TRM,” that was developed in 2010 to provide default savings estimates for particular energy efficiency measures. *See In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry on Rehearing (July 31, 2013). Since that TRM has not been updated (despite the Commission’s directive to do so “in a timely and effective manner,” *see id.*), and does not even contain savings estimates for certain more recently developed measures such as smart thermostats, the Ohio utilities also rely on outside sources in developing savings estimates for program planning purposes. These may include TRMs from other jurisdictions, past evaluations from Ohio or elsewhere, or other industry standards such as Energy Star specifications.

Duke’s Application raises the important question of which of these values should count as “deemed” savings for purposes of comparison with the “as found” savings results of a utility’s ongoing evaluation process. Environmental Intervenors are concerned that, without Commission guidance on this point, a utility may rely on savings estimates as “deemed” savings without any *ex ante* review as to whether the estimates are in fact likely to represent accurate measures of actual customer energy savings from a given program or measure. This is particularly important since a utility’s energy efficiency plan may include multiple programs involving tens or

hundreds of individual measures, such that vetting the claimed savings for each measure for each utility for each year would be a Herculean task for Commission Staff or interested stakeholders. Establishing some “rules of the road” for what utilities may rely on as “deemed” savings will ensure up front that all savings assumptions pass at least some reasonable bar for whether they represent actual customer savings.

**2. The Commission Should Require an Update to the Ohio TRM or Limit Its Application for Purposes of R.C. 4928.662(B).**

As noted above, one source that utilities may rely on for “deemed” savings values is the Ohio TRM, which the Commission has designated as a “safe harbor” with respect to determining compliance with R.C. 4928.66. *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry on Rehearing (July 31, 2013) at 12. However, the current TRM was developed almost a decade ago and contains savings estimates that are woefully out of date. For example, in the most recent portfolio planning case for FirstEnergy, a witness for the Natural Resources Defense Council submitted testimony pointing out that the Ohio TRM assumption of 1376 kwh in annual energy savings from recycling an old, inefficient refrigerator is “considerably higher than assumed and/or found in other jurisdictions. Moreover, it is 35% higher than the Companies’ own most recent evaluation of their Appliance Recycling program (1020 kWh).” Case No. 16-743-EL-POR, Direct Testimony of Chris Neme (Sept. 13, 2016) at 34 (footnotes omitted). There are certainly similar examples for other measures, where allowing a utility to rely on the TRM for “deemed” savings numbers could significantly inflate savings estimates without delivering any real savings to customers.

Therefore, the Commission should either order an update to the TRM or limit the circumstances in which it can be relied upon as a source of “deemed” savings amounts, in order

to prevent abuse of the counting mechanism in R.C. 4928.662(B). The Commission has already recognized in originally approving the Ohio TRM that it “should be an evolving document that is updated and maintained in a timely and effective manner,” and therefore ordered “Staff to update the TRM, in coordination with the Independent Program Evaluator, to incorporate the above changes and to develop a process by which to update the TRM on a regular basis . . . .” *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry on Rehearing (July 31, 2013) at 12. Commission Staff have yet to implement that directive. This issue has new and added importance now that R.C. 4928.662(B) may prevent parties from disputing the use of TRM savings assumptions as valid estimates for purposes of determining present-day savings. Therefore, the Commission should at the least address this potential problem with respect to the application of R.C. 4928.662(B) going forward.

**B. Duke’s Application Demonstrates How that the Energy Efficiency Cost Cap Is Damaging Customers’ Access to Well-Designed and Cost-Effective Efficiency Programs.**

In its order approving Duke’s 2017-2019 energy efficiency portfolio plan, the Commission imposed a cap on Duke’s annual program spending. Case No. 16-576-EL-POR, Opinion and Order (Sept. 27, 2017). That order did not provide any mechanism for monitoring the impacts of the cost cap on Duke’s programs or customers. However, Duke’s documentation regarding its 2017 programs provides some insight into this issue, showing that the cap is leading Duke to limit costs by artificially cutting off savings opportunities for customers and declining to pursue proven program improvements. We object to Duke’s Application only to the extent that the Commission has not required such information to be monitored and documented as part of implementation of the cost cap.

Duke explains in its concurrently filed Annual Energy Efficiency Status Report that the results of its SmartSaver Non-Residential Prescriptive program significantly improved in 2017, with energy savings per type of measure increasing by 40% to 80% relative to 2016. Case No. 18-396-EL-EEC, Annual Energy Efficiency Status Report of Duke Energy Ohio, Inc. at 35-36 (Mar. 29, 2018). The program producing these increased savings was cost-effective under the Total Resource Cost test, meaning that the overall cost of saving the energy was less than the cost of purchasing it. *Id.* at 55. Duke was able to expand access to these cost-effective efficiency improvements thanks in significant part to “major improvements” to the program designed to make rebates instantly accessible to commercial and industrial customers, a change that accounted for 37% of total program savings and double the rebates in 2016. *Id.* at 37. This is a clear example of program costs increasing because of a broader reach to help more customers save energy, not because of increased rebates for individual customers or greater overhead costs. Unfortunately, this positive change now appears to be a victim of its own success. Duke has noted that it can no longer sustain this program growth and will now return to a more cumbersome rebate application process. *Id.* at 42. Effectively, Duke is having to make it harder for customers to implement efficiency measures through its programs in order to ensure the Company complies with plan cost limitations – a seemingly perverse result.

These immediate impacts of the Commission-imposed cost cap are early warning signs that it may result in worse programs and fewer cost-effective savings opportunities for customers. Environmental Intervenors therefore urge the Commission to pay close attention to the effects of the cost cap going forward, rather than assuming the baby will not be thrown out with the bathwater.

**C. The Commission Should Ensure that Duke Is Counting Customer Energy Savings Rather than Savings at the Point of Generation.**

Duke's Application lacks information on one key aspect of measuring savings: whether Duke is measuring savings at the customer's meter, or adding a line loss adjustment to measure savings at the point of generation. Duke's 2016 Plan filing indicates that its kwh savings projections were for "Gross Cumulative kWh w/losses." Case No. 16-576-EL-POR, Duke Application for Energy Efficiency and Peak Demand Reduction Portfolio of Programs (June 15, 2016) at 20. However, it is not clear whether Duke's measurement of actual savings for purposes of this filing includes such an adjustment. Therefore, the Commission should seek clarification from the Company as to whether it is measuring the savings that customers actually see at the meter, consistent with R.C. 4928.66(A)(1)(a).

**III. CONCLUSION**

Environmental Intervenors appreciate the opportunity to submit these Objections and ask that the Commission take the following actions: (1) open a rulemaking docket, or at least set a hearing in this proceeding, to resolve ambiguities in the interpretation of R.C. 4928.662(B); (2) either order Commission staff to expeditiously update the Ohio TRM, or provide guidelines for whether its savings assumptions may qualify as "deemed" savings under R.C. 4928.662(B); (3) direct Commission Staff to monitor the impacts of the cost cap on Duke's efficiency programs; and (4) require Duke to clarify whether it is adjusting customer savings estimates for line losses. These actions are critical to protect customers and ensure consistency and transparency as utilities determine and report savings under R.C. 4928.66.

Dated: April 30, 2018

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Objections* was served by electronic mail upon the following Parties of Record on April 30, 2018.

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Summary: Objection Objections by the Environmental Law & Policy Center, Environmental Defense Fund, Natural Resources Defense Council, and Ohio Environmental Council electronically filed by Madeline Fleisher on behalf of Natural Resources Defense Council and Environmental Law and Policy Center and Ohio Environmental Council and Environmental Defense Fund