

In the Matter of the 2011 through 2016)
Review of the Energy Efficiency Rider) Case No. 17-0030-EL-RDR
Contained in the Tariffs of Ohio Power)
Company)

² See *In re Application of Ohio Power Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2017 through 2020*, Case No. 16-574-EL-POR, Opinion & Order (Jan. 18, 2017).

AEP's customers in Ohio pay for these programs through an energy efficiency rider. This rider imposes a charge on customers' utility bills to pay for incentives to customers (*e.g.* discounts on efficient appliances), program administration costs (*e.g.* costs AEP incurs to market and deliver programs), and profits to AEP for exceeding energy savings benchmarks.

But based on the Audit, from 2011 to 2016, AEP improperly charged customers over \$1.8 million for employee financial incentives, sporting events and other entertainment, and gift cards—none which provide any energy efficiency benefits (or other benefits) to Ohio customers.³ Customers should not be charged for these types of expenses. The PUCO should adopt OCC's recommendations (which supplement the auditor's recommendation) that these types of expenses be disallowed and refunded to consumers. And the PUCO should order AEP to discontinue the practice of including these in charges to customers under its energy efficiency rider.

II RECOMMENDATIONS

A. AEP should not charge Ohio consumers for financial awards it pays to its employees.

The auditor found that AEP included in its energy efficiency rider charges to customers for over \$320,000 in stock-based compensation and restricted stock incentives.⁴ The auditor concluded that there is no energy efficiency benefit to these costs and that customers should not pay for them:

³ See Audit Report at Exhibit 1-6 (showing the auditor's recommended disallowance of \$573,070).

⁴ *Id.* at 1-31 (\$245,328), 1-40 (\$5,550), 1-49 (\$7,969), 1-58 (\$33,621), 1-67 (\$23,313), 1-76 (\$4,230).

Ratepayers should not be required to pay for compensation that is based on the performance of the Company's (or its parent company's) stock price, or which has the primary purpose of benefitting the parent company's shareholders and aligning the interests of participants in the stock-based compensation plans with those of such shareholders.⁵

The auditor should have gone one step further. In addition to these stock-based awards, the auditor identified over \$1.5 million in other incentive pay to AEP's employees.⁶ There is no evidence that AEP's additional incentive pay rewards employees for providing energy efficiency benefits to customers as opposed to rewarding them for contributing to AEP or its parent company's profits. But the auditor only recommended a \$223,567 disallowance⁷ for these other employee incentives, which means that customers would still be charged over \$1.25 million for employee incentives.

Charging customers for AEP employee incentive pay is inconsistent with PUCO precedent. In recent cases involving Duke Energy Ohio's energy efficiency program, the PUCO Staff has recommended disallowance of charges to customers for "incentive pay, performance awards and restricted stock units."⁸ The PUCO adopted this recommendation, ordering the disallowance of over \$285,000 in such charges to consumers.⁹

⁵ *Id.* at 1-77.

⁶ *Id.* at 1-31 (\$268,442), 1-40 (\$152,964), 1-49 (\$249,858), 1-58 (\$272,749), 1-67 (\$314,350), 1-76 (\$257,769).

⁷ *Id.* at 1-31 (\$1,037), 1-40 (\$26,514), 1-49 (\$42,225), 1-58 (\$51,729), 1-67 (\$69,299), 1-76 (\$32,763).

⁸ *See, e.g., In re Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenues, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 15-534-EL-RDR, Staff Report (June 23, 2016).

⁹ *Id.*, Opinion & Order ¶ 44 (Oct. 26, 2016).

Consistent with this PUCO precedent, the PUCO should disallow and refund to customers the full amount of all identified employee incentive pay—\$1,836,142¹⁰—not the smaller partial disallowance that the auditor recommended.

B. AEP should not charge Ohio consumers for gift cards that AEP gives away at seminars and conferences outside of Ohio.

The auditor found that AEP included charges to consumers through its energy efficiency rider for gift cards in each of 2011, 2012, 2013, 2014, 2015, and 2016.¹¹ AEP gave these gift cards to attendees of seminars and conferences outside of Ohio.¹² These charges have nothing to do with energy efficiency programs in Ohio and do not benefit Ohio customers.

When asked by the auditor how gift cards relate to energy efficiency, AEP responded that gift cards “improve customer satisfaction,” “create a mental anchor between gift cards and energy efficiency,” and increase participation in AEP’s energy efficiency programs.¹³ These purported justifications do not hold up. AEP gave these gift cards out during out-of-state seminars and conferences. The PUCO simply cannot conclude that any of AEP’s *Ohio* customers were attending energy efficiency seminars in other states, receiving gift cards from AEP, and then returning to Ohio to use those gift cards to purchase energy efficient products to be used in AEP’s Ohio service territory.

¹⁰ See Audit Report at 1-80 (the sum of all rows marked “Amounts Included in EE/PDR Program Costs” under the “Incentive & Stock-Based Compensation” column).

¹¹ *Id.* at 1-80.

¹² See AEP’s Response to PUCO Staff Data Request 22-1.

¹³ Audit Report at 6-15 to 6-16.

Consistent with Ohio Supreme Court precedent,¹⁴ the PUCO should adopt the auditor's recommendation to disallow and refund to customers all of AEP's costs for gift cards. The gift cards do not provide energy efficiency benefits to Ohio consumers and are promotional utility advertising costs that should not be charged to consumers.¹⁵

C. AEP should not charge Ohio consumers for its employees to attend sporting events and other entertainment events.

From 2011 to 2013, AEP included charges to consumers for an Ohio State basketball game attended by AEP Ohio employees and AEP vendors and other sports and entertainment events.¹⁶ As the auditor concluded, "the costs for sporting and entertainment events are not needed for energy efficiency and should not be included in costs charged to the [energy efficiency] programs."¹⁷

The auditor's conclusion is consistent with PUCO precedent as well. In a recent case involving an audit of Duke Energy Ohio's energy efficiency rider, the PUCO Staff found that Duke was attempting to charge customers for sporting events and recommended disallowing all such costs.¹⁸ The PUCO adopted this recommendation and disallowed the full amount that the PUCO Staff recommended.¹⁹ The PUCO should follow its precedent from the Duke case and disallow (and refund to consumers) the full amount that the auditor recommended.

¹⁴ *Cleveland v. PUCO*, 63 Ohio St. 2d 62 (1980) (utility cannot charge customers for "institutional and promotional advertising" because it does not provide "direct, primary benefits to consumers").

¹⁵ Audit Report at 1-80.

¹⁶ *Id.* at 1-28, 1-38, 1-47, 1-80.

¹⁷ *Id.* at 1-29.

¹⁸ *In re Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenues, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 15-534-EL-RDR, Staff Report (June 23, 2016).

¹⁹ *Id.*, Opinion & Order ¶ 44 (Oct. 26, 2016).

D. The PUCO should adopt the auditor’s recommendation that AEP improve its accounting to protect customers from being double-charged for energy efficiency labor expenses.

When labor costs are charged to customers through a rider (like AEP’s energy efficiency rider), there is the potential for double charges. As the auditor explained, it is possible that a utility might include certain labor costs in base rates, and then, subsequent to the test period, move those costs to a rider, thus resulting in double-charges to customers.²⁰ The auditor did not find any evidence of such double-charges here. But as added protection for consumers, the auditor recommended that AEP develop additional procedures to track costs, including labor costs of employees whose costs had been included for recovery in base distribution rates.²¹

Specifically, the auditor recommended that AEP prospectively develop a verifiable audit trail.²² The audit trail should clearly show annually the separation between the labor costs related to the provision of electric distribution service and included in base rates and the labor costs included in the energy efficiency rider. To protect consumers from double charges, the PUCO should adopt this recommendation.

E. The PUCO should evaluate whether utility corporate credit card and travel policies provide adequate protections from improper charges to customers for energy efficiency programs.

As described above and in more detail in the audit report, AEP included various charges to consumers in its energy efficiency rider that have nothing to do with energy efficiency. It appears that although AEP has corporate credit card and travel policies,

²⁰ See Audit Report at 1-11 (“there could be a situation where labor costs are included for recovery in base rates for electric distribution service, then after such rates have been set, labor costs could be shifted into riders such as the EE/PDR rider while still being recovered in base rates”).

²¹ *Id.*

²² *Id.* at 1-77.

these policies do not provide sufficient protections for AEP's customers that fund energy efficiency programs. The PUCO should require AEP to update its policies to inform employees that customers are not to be charged for sporting events and other entertainment events because they do not provide any energy efficiency benefits to consumers. And the updated policies should be filed in this case for review by parties and the PUCO.

III. CONCLUSION

AEP charges its customers millions of dollars per year for energy efficiency programs. Many of those dollars benefit AEP—including its \$170 million in profits (shared shavings) from offering energy efficiency programs to customers. As the steward of customer funds, AEP has a responsibility to spend money on energy efficiency wisely. In some instances, as demonstrated by the audit report and by OCC's comments herein, AEP did not do so.

In this regard, AEP should not charge customers for financial incentives to AEP employees. AEP should not charge customers for gift cards that AEP gives away at conferences and seminars in other states. And AEP should not charge customers for AEP employees to attend sporting and other entertainment events. The PUCO should disallow all charges for these types of expenses as the auditor and OCC recommended.

The PUCO should order AEP to improve its policies to protect customers from double-paying for labor charges. And it should require AEP to update its corporate credit card and travel policies to prevent its employees from charging non-energy-efficiency expenses to customers under the energy efficiency rider.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 19th day of October 2018.

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Summary: Comments Comments on the Audit of AEP's Charges to Consumers for Energy Efficiency Programs by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.