

# 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, AND PERFORMANCE INCENTIVES  
RELATED TO ITS ENERGY EFFICIENCY AND  
DEMAND RESPONSE PROGRAMS.

CASE NO. 16-664-EL-RDR

CASE NO. 17-781-EL-RDR

## FINDING AND ORDER

Entered in the Journal on May 15, 2019

### I. SUMMARY

{¶ 1} The Commission approves the applications for recovery of program costs, lost distribution revenue and performance incentives related to Duke's energy efficiency and demand response programs for 2015 and 2016 be approved, subject to modifications.

### II. PROCEDURAL BACKGROUND

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an EDU shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO must be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} Pursuant to R.C. 4928.66, EDUs are required to implement energy efficiency and peak demand response (EE/PDR) programs. Through these programs, the EDUs are mandated to achieve a specific amount of energy savings every year.

{¶ 5} By Opinion and Order issued August 15, 2012, the Commission approved a stipulation entered into between Duke and some of the parties. *In re Duke Energy Ohio, Inc.*, Case No. 11-4393-EL-RDR. Specifically, among other things, the Commission approved the

recovery of program costs, lost distribution revenue, and performance incentives related to Duke's EE/PDR programs.

{¶ 6} On March 30, 2016, Duke filed an application for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2015 in Case No. 16-664-EL-RDR (*2015 Recovery Case*). Duke's applications for recovery of expenses for 2013 and 2014 resulted in a Stipulation between Staff and Duke that was approved by the Commission on October 26, 2016, and affirmed on rehearing on April 10, 2019. *In re Duke Energy Ohio, Inc.*, Case No. 14-457-EL-RDR and *In re Duke Energy Ohio, Inc.*, Case No. 15-534-EL-RDR (*2013 & 2014 Recovery Cases*). Motions to intervene were filed by the Ohio Consumers' Counsel (OCC) and the Ohio Energy Group (OEG). No party objected to the motions to intervene and the motions should be granted.

{¶ 7} On November 13, 2017, Staff filed its review and recommendation for the *2015 Recovery Case*.

{¶ 8} On March 31, 2017, Duke filed an application for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2016 in Case No. 17-781-EL-RDR (*2016 Recovery Case*). Motions to intervene were filed by OCC and Ohio Partners for Affordable Energy (OPAE). No party objected to the motions and the motions should be granted.

{¶ 9} On September 11, 2018, Staff filed its review and recommendation for the *2016 Recovery Case*. Thereafter, Duke filed comments on October 11, 2018, and OCC filed comments on November 8, 2018.

### III. DISCUSSION

#### A. 2015 Recovery Case

{¶ 10} On March 28, 2016, Duke filed an application for recovery of 2015 program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs. According to Duke, the total revenue recovery during 2015 was \$33,472,453. As explained in its application, Duke's calculation for Rider EE-PDRR in this case includes the revenue requirement for the period January 2015 through December 2015, as well as the expected costs for 2016. Duke also states it will incorporate directives from the stipulation approved by the Commission in the *2013 & 2014 Recovery Cases*. As proposed, the residential rate would be reduced from \$0.003443 per kilowatt-hour (kWh) to \$0.002642 per kWh.

{¶ 11} In its review, Staff states it audited Duke's relevant revenues and expenses to determine if they were prudent, eligible for recovery, and truly incremental to base rates. Through document reviews, interviews, and interrogatories, Staff maintains it verified that costs were substantiated, or whether an adjustment was necessary. According to Staff, it also confirmed that expense adjustments were consistent with previous Commission orders, including the *2013 & 2014 Recovery Case*. After conducting its review, Staff identified a total of \$935,507 in operations and maintenance (O&M) transactions that should be deducted from Duke's proposed recovery amount. These deductions were for pay incentives, dining, sponsorships, and employee expenses that are generally not recoverable. Staff also identified a \$566,250 expense charged in error, which was acknowledged by Duke. In sum, Staff recommends that Duke's application be approved, subject to Staff's recommended adjustment and applicable carrying costs.

#### B. 2016 Recovery Case

{¶ 12} On March 31, 2017, Duke filed its application for recovery of 2016 program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs. Duke states that the total revenue recovery for 2016 was

\$46,661,244. Duke maintains that the calculation for Rider EE-PDRR in this case includes the revenue requirement for the period January 2016 through December 2016, as well as the expected costs for 2017. According to Duke, it incorporates directives from the stipulation approved by the Commission in the *2013 & 2014 Recovery Cases* and will additionally include any directives associated with the *2015 Recovery Case*. According to Duke's application, the residential rate would be further reduced to \$0.001544 per kWh.

{¶ 13} On September 18, 2018, Staff filed its review and recommendation for the *2016 Recovery Case*. As in the *2015 Recovery Case*, Staff audited Duke's relevant revenues and expenses to determine if they were prudent, eligible for recovery, and truly incremental to base rates. In its 2017 review, Staff identified \$386,544 in O&M expenses that should be deducted from Duke's proposed recovery total. Staff's recommended deductions were for similar reasons discussed in Staff's 2016 review. This includes deductions for incentive pay, dining, sponsorships, and employee expenses. Subject to Staff's recommendations, Staff asks that Duke's application be approved.

{¶ 14} In reply, Duke disputes portions of Staff's recommended deductions. First, Duke states it accepts Staff's recommendations to remove expenses for sponsorships, dining, and other miscellanea, such as gift cards. However, Duke submits that deductions for incentive compensation, employee expenses, and de minimis expenses were unreasonable, unsupported, and inconsistent with prior positions. Duke states the removal of incentive compensation accounts for \$299,822 of Staff's \$386,544 recommended deductions. Duke argues that while Staff typically removes incentive pay that is directly tied to financial goals, Staff erroneously excluded additional pay that should otherwise be recoverable. According to Duke, for certain incentives, only a percentage is explicitly tied to financial goals. Duke asks that, if any incentive pay is excluded, it be limited to only the pay that is tied to financial goals. According to Duke, this is consistent with previous Staff recommendations. Duke additionally disputes the exclusion of employee expenses. Duke maintains that employee expenses associated with EE/PDR programs are specifically

accounted for and are not included in base rates. In support, Duke notes that Staff acknowledged that energy efficiency expenses should not be included in rate base in the Company's recent rate case. Finally, Duke disagrees with Staff's removal of all de minimis expenses. Duke avers that Staff's exclusion of all expenses under \$10 was arbitrary and unsupported and, in total, accumulates to over \$27,000.

{¶ 15} OCC comments that Staff's recommendations should be adopted and that Duke should be directed to stop including expenses that are consistently found to be imprudent. OCC agrees with Staff that incentive pay, dining, sponsorships, employee expenses and de minimis expenses should not be recoverable. Regarding incentive pay, OCC states Staff regularly excludes all incentive pay and merely emphasizes that incentive pay associated with financial goals should not be included. OCC observes that Duke continues to include expenses that Staff routinely finds should not be recoverable. OCC argues that Duke should be directed to stop attempting to recover expenditures that the Company is aware are inappropriate. Further, OCC asks that Duke be required to include specific refund language in its tariff in order to guarantee refunds to customers for imprudent or unlawful EE-PDRR charges.

### **C. Commission Conclusion**

{¶ 16} Upon review, the Commission finds that Duke's applications for recovery of program costs, lost distribution revenue and performance incentives related to its energy efficiency and demand response programs are reasonable and should be approved, subject to the modifications described below. Initially, we note that Duke accepts Staff's removal of dining, sponsorships, and other miscellaneous expenses from the Company's Rider EE-PDRR recovery. For the 2016 *Recovery Case*, Duke submits that a significant portion of the Company's incentive pay is not directly associated with meeting financial goals, and therefore should still be eligible for recovery. However, Staff identifies financial incentives as including "performance awards, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and/or other financially motivated incentives

tied to the Company's bottom line" (2016 *Recovery Case*, Staff Review and Recommendation, Sept. 11, 2018). While not all of the performance goals may be explicitly tied to financial objectives, they are correlated with Duke's bottom line and meeting shareholder interests (See e.g. 2016 *Recovery Case*, Duke Comments, att. A at 40, Oct. 11, 2018). Thus, the Commission finds Staff appropriately excluded these expenses. The Commission is also not persuaded by Duke's argument that Staff inappropriately deducted recovery for employee expenses and other de minimis charges. Staff's recommendation to disallow recovery for employee expenses such as a cell phone reimbursements appear to be proper as they are either not directly associated with Rider EE-PDRR or not beneficial to Ohio ratepayers. Further, while Duke states Staff deducted all expenses under \$10 for arbitrary reasons, Staff asserted that the expenses were non-incremental and not directly associated with energy efficiency. We note that this is consistent with our most recent approval of EE/PDR recovery (*In re Duke Energy Ohio, Inc.*, Case No. 15-534-EL-RDR, Opinion and Order at ¶ 44, Oct. 26, 2016). Accordingly, we find Staff's removal of those expenses was proper. In doing so, we note Staff explained that many expenses were improperly categorized and/or unsupported by documentation.

{¶ 17} In sum, the Commission finds that Duke's applications for recovery of program costs, lost distribution revenue and performance incentives in both the 2015 *Recovery Case* and the 2016 *Recovery Case* should be approved subject to the specified recommendations found in Staff's audit. The Commission notes that Rider EE-PDRR is subject to reconciliation, including, but not limited to, refunds or additional charges to customers, ordered by the Commission as the result of annual audits by the Commission, pursuant to our order in Duke's most recent SSO case, *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018).

#### **D. Motions for Protective Order**

{¶ 18} Finally, a motion for protective order was filed in the docket in the 2016 *Recovery Case* regarding documents filed under seal by Duke. No memorandum contra the

motion for protective order was filed. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by Supreme Court of Ohio in *State ex rel Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), the Commission finds that the documents filed under seal in this docket contain trade secret information. Their release, therefore, is prohibited under state law. We also find that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, we note that the filings and documents have been redacted to remove the confidential information and the public versions of the pleadings and documents have been docketed in this proceeding. The Commission finds that the unopposed motion for protective treatment by Duke is reasonable and should be granted.

{¶ 19} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. The Commission finds that confidential treatment shall be afforded to the information filed under seal for a period ending 24 months from the date of a final, appealable order in this proceeding. Until that time, the Docketing Division shall maintain, under seal, the information filed confidentially. Further, Ohio Adm.Code 4901- 1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If a party wishes to extend its confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend the confidential treatment is filed, the Commission may release the information without prior notice.

#### IV. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That Duke's applications for recovery of program costs, lost distribution revenue and performance incentives related to Duke's energy efficiency and

demand response programs be approved, subject to the modifications and clarifications set forth above. It is, further,

{¶ 22} ORDERED, That the motions to intervene by OCC, OEG, and OPAC be granted. It is, further,

{¶ 23} ORDERED, That Duke is authorized to file tariffs, in final form, consistent with this Finding and Order. Duke shall file one copy in each case docket and one copy in its TRF docket. It is, further,

{¶ 24} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date the copies are filed with the Commission. It is, further,

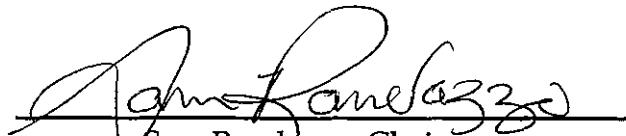
{¶ 25} ORDERED, That Duke notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date. A copy of this notice shall be submitted to the Commission's Service Monitoring and Enforcement Department at least 10 days prior to distribution to customers. It is, further,



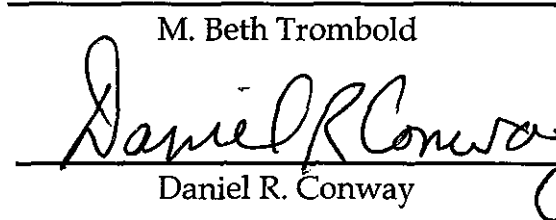
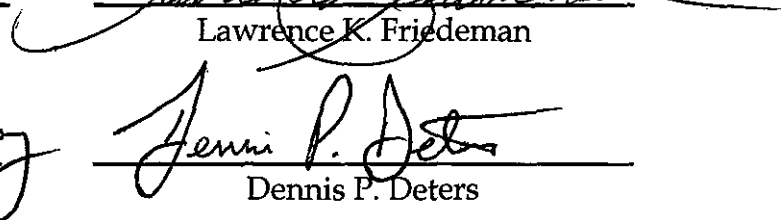
{¶ 26} ORDERED, That Duke's motion for protective order be granted. It is, further



{¶ 27} ORDERED, That a copy of this Finding and Order be served upon each party of record.

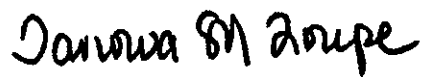
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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