

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matters of the Applications of Duke)	
Energy Ohio, Inc. for Recovery of)	Case No. 16-664-EL-RDR
Program Costs, Lost Distribution)	
Revenues, and Performance Incentives)	
Related to its Energy Efficiency and)	Case No. 17-781-EL-RDR
Demand Response Programs.)	

**MEMORANDUM CONTRA DUKE ENERGY
OHIO, INC.’S APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Public Utilities Commission of Ohio (“PUCO”) should deny Duke’s application for rehearing.¹ In its order, the PUCO ruled that Duke cannot charge customers for incentive compensation paid to Duke employees in 2015 and 2016, as the PUCO Staff had recommended.² Duke has failed to establish that this ruling was unreasonable or unlawful, as required by R.C. 4903.10(B). To the contrary, the ruling is reasonable and consistent with PUCO precedent that excludes from rates charged to customers incentive pay that is linked to the financial performance of the utility. Thus, the PUCO should deny Duke’s application for rehearing and reaffirm its ruling that customers should not pay for utility employee incentive compensation linked to financial performance.

¹ Application for Rehearing of Duke Energy Ohio, Inc. (June 14, 2019) (the “Duke AFR”).

² Finding & Order ¶ 16 (May 15, 2019) (the “Order”); Staff Review & Recommendation, Case No. 16-664-EL-RDR (Nov. 13, 2017); Staff Review & Recommendation, Case No. 17-781-EL-RDR (Sept. 11, 2018).

I. RECOMMENDATIONS

A. **The PUCO denied Duke’s request to charge customers for incentive compensation paid to utility employees in Duke’s previous energy efficiency rider case (Case No. 15-534-EL-RDR), so the Order is consistent with PUCO precedent.**

Duke argues that it should be allowed to charge customers for utility employee incentive pay.³ In support of its position, Duke cites three PUCO base rate cases (one natural gas, one electric, and one water), and three cherry-picked cases from other jurisdictions (California, Massachusetts, and Illinois).⁴

But Duke ignores the most relevant precedent: the PUCO’s ruling in Duke’s own energy efficiency rider case, Case No. 15-534-EL-RDR (the “2014 Rider Case”), which immediately preceded the two cases that are the subject of the Order. In the 2014 Rider Case, the PUCO Staff recommended disallowance of utility employee incentive pay, as follows:

Staff’s review of Rider EE-PDR expenses found incentive pay, performance awards and restricted stock units totaling \$286,509 included in the rider. This is comprised of executive short term incentives of \$17,919, incentives allocated of \$264,997 and a performance award of \$3,593. Staff typically does not allow the recovery of incentives, especially those based on financial results. Staff recommends that incentives and restricted stock units in the amount of \$286,509 be excluded from the Rider EE-PDR recovery request.⁵

This is nearly identical to the recommendations that the PUCO Staff made in the current cases, where it recommended disallowance of “incentive pay, performance

³ Duke AFR at 2-6.

⁴ Duke AFR at 4-6.

⁵ Case No. 15-534-EL-RDR, PUCO Staff Review & Recommendation (June 23, 2016).

awards, and restricted stock units linked to the financial performance of the Company.”⁶ And in the 2014 Rider Case, the PUCO agreed with the PUCO Staff and ruled that Duke could not charge customers for this incentive pay.⁷

Duke claims that the PUCO’s ruling in the current cases is a “significant departure from past cases.”⁸ This is false. The ruling is consistent with the Duke energy efficiency rider case immediately preceding these, in which the PUCO made the exact same ruling as it did here. And it is consistent with PUCO cases that have found incentive compensation related to financial incentives should not be charged to customers.⁹

B. The PUCO Staff found that the incentive pay in question in these cases is tied to Duke’s financial performance, and thus, PUCO precedent supports disallowance.

The PUCO Staff’s findings in these cases is clear: the incentive pay provided to Duke’s employees in question is related to Duke’s financial performance and thus should not be charged to customers. In the 2015 rider case (Case No. 16-664-EL-RDR), the PUCO Staff report concluded: “Staff discovered expenses related to incentive pay, performance awards, and restricted stock units *linked to the financial performance of the Company.*”¹⁰ Likewise, in the 2016 rider case (Case No. 17-781-EL-RDR), the PUCO Staff report concluded: “Staff discovered within Rider EE-PDR, expenses related to

⁶ Case No. 16-664-EL-RDR, PUCO Staff Review & Recommendation (Nov. 13, 2017); Case No. 17-781-EL-RDR, PUCO Staff Review & Recommendation (Sept. 11, 2018).

⁷ Case No. 15-534-EL-RDR, Opinion & Order ¶ 20 (noting that the PUCO Staff recommended disallowing \$409,096 in expenses, which includes employee pay incentives), ¶ 44 (agreeing with the PUCO Staff’s recommendation in its entirety).

⁸ Duke AFR at 2.

⁹ See section I.B. below.

¹⁰ Case No. 16-664-EL-RDR, PUCO Staff Review & Recommendation (Nov. 13, 2017) (emphasis added).

incentive pay, performance awards, and restricted stock units *linked to the financial performance of the Company*.”¹¹

The very cases that Duke cites in support of its application for rehearing confirm that the charges in question should be disallowed. For example, Duke cites *In re Application of Ohio American Water Company* in support of its application for rehearing.¹² In that case, the PUCO found that certain employee incentives were tied to the financial performance of the utility, and it ruled that the utility could not charge customers for that incentive pay.¹³ Duke also cites *In re Application of [FirstEnergy]*.¹⁴ But again, in that case, the PUCO disallowed all charges related to employee incentives for achieving financial goals, stating that “the primary benefit of such financial incentives accrues to shareholders and that portion of incentive compensation should not be recovered from ratepayers.”¹⁵

PUCO precedent confirms that payments to utility employees intended to compensate them for the financial success of the utility shall not be charged to customers. The PUCO Staff found that the incentive payments included in Duke’s energy efficiency rider in these cases were “linked to the financial performance of the Company.”¹⁶ The PUCO’s ruling to exclude the incentive payments from rates customers pay was reasonable. Such incentive payments primarily benefit shareholders not customers. The

¹¹ Case No. 17-781-EL-RDR, PUCO Staff Review & Recommendation (Sept. 11, 2018) (emphasis added).

¹² Case No. 09-391-WS-AIR (cited on page 5 of Duke AFR).

¹³ Case No. 09-391-WS-AIR, Opinion & Order at 21-22 (disallowing all employee compensation that was “related to financial goals”).

¹⁴ Case No. 07-551-EL-AIR (cited on page 4-5 of Duke AFR).

¹⁵ Case No. 07-551-EL-AIR, Opinion & Order at 17 (Jan. 21, 2009).

¹⁶ Case No. 16-664-EL-RDR, PUCO Staff Review & Recommendation (Nov. 13, 2017); Case No. 17-781-EL-RDR, PUCO Staff Review & Recommendation (Sept. 11, 2018).

PUCO should continue to follow its precedent and not allow Duke to charge these amounts to customers.

II. CONCLUSION

The PUCO has consistently ruled that customers should not be charged for incentives that a utility pays to its employees in which the compensation is based on the financial performance of the utility. This includes Duke's 2014 Rider Case—that is, the rider case that immediately preceded the current cases regarding 2015 and 2016 energy efficiency rider charges. The PUCO should follow that precedent here. The Office of the Ohio Consumers' counsel respectfully requests that the PUCO deny Duke's application for rehearing in its entirety.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone: (614) 466-9571
christopher.healey@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission, this 24th day of June 2019.

/s/ Christopher Healey _____

Christopher Healey

Assistant Consumers' Counsel

SERVICE LIST

John.jones@ohioattorneygeneral.gov

dboehm@BKLawfirm.com

mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylern@BKLawfirm.com

Elizabeth.watts@duke-energy.com

Rocco.dascenzo@duke-energy.com

cmooney@opae.org.

Attorney Examiner:

Nicholas.walstra@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/24/2019 10:05:16 AM

in

Case No(s). 16-0664-EL-RDR, 17-0781-EL-RDR

Summary: Memorandum Memorandum Contra Duke Energy Ohio, Inc.'s Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.