

**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) Case No. 18-0397-EL-RDR
Revenues, and Performance Incentives)
Related to its Energy Efficiency and)
Demand Response Programs.)

**COMMENTS REGARDING DUKE'S CHARGES
TO CUSTOMERS FOR UTILITY ENERGY EFFICIENCY PROGRAMS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

In this case regarding Duke’s charges to customers for 2017 energy efficiency programs, the PUCO Staff’s review uncovered precisely the same types of overcharges as it did for 2016—and 2015—and 2014. Duke wants to charge customers, through its energy efficiency rider, for utility employee financial incentive compensation (\$314,219), food for Duke employees (\$5,570), promotional sponsorships (\$825), non-energy-efficiency labor expenses (\$583), Duke employee cell phone bills (\$7,786), and other miscellaneous non-energy-efficiency costs (\$599).¹ None of these charges belong in an energy efficiency rider, as the PUCO (adopting its Staff’s view) has determined in each of Duke’s last three energy efficiency rider cases.² The PUCO should not allow Duke to charge customers for these amounts, consistent with its past decisions.

¹ Case No. 18-397-EL-RDR, Staff Review & Recommendation (June 12, 2019) (the “2017 Staff Report”).

² Case No. 15-534-EL-RDR, Opinion & Order ¶ 20 (Oct. 26, 2016); Case Nos. 16-664-EL-RDR, 17-781-EL-RDR, Finding & Order ¶ 16 (May 15, 2019).

The PUCO should also affirmatively order Duke to stop including these types of charges in its energy efficiency rider. Every year, Duke tries to include these charges in its energy efficiency rider, and every year, Staff makes the same recommendation that they be disallowed. Without further PUCO action that expressly directs the utility to exclude these expenses in future filings, the trend will continue.

Duke's energy efficiency rider, as a result of these overcharges, is causing harm to customers. In October 2016, the PUCO declined to adopt its Staff's recommendation that Duke be ordered to improve its accounting practices for energy efficiency.³ Without an order requiring Duke to improve its accounting practices, Duke will continue to overcharge customers for expenses that the PUCO has consistently ruled are not appropriate charges. Customers should not continue to be at risk of paying for things that the PUCO has determined are unrelated to energy efficiency, with the hope that a subsequent audit will catch the overcharges.

Separately, the Office of the Ohio Consumers' Counsel ("OCC") also respectfully requests that the PUCO rule on this case as quickly as possible. As OCC explained in its recent interlocutory appeal, there was no true-up of this rider for five years because the PUCO delayed ruling on Duke's energy efficiency rider applications. As a result, residential customers have been overcharged tens of millions of dollars under this rider.⁴ Residential customers continue to pay energy efficiency charges every month, even though Duke's proposed rate is *negative* in this case (meaning that customers should be

³ See Case No. 15-534-EL-RDR, Opinion & Order (Oct. 26, 2016).

⁴ See Interlocutory Appeal at 2 (May 7, 2019) (calculation showing \$33.4 million in overcharges from 2016 to 2018).

receiving a credit on their bill, instead of a charge).⁵ Customers should not be in the business of loaning their hard earned money to the company. Customers deserve to get their money back, and they deserve to get it back now. If the refund to customers is delayed, Duke should be ordered to pay interest (at Duke's authorized cost of debt) to customers for the use of customers' fund from the overcharges in the energy efficiency rider.

II. BACKGROUND

A. Duke's history of including improper charges in its energy efficiency rider.

Duke charges customers for its energy efficiency programs through an energy efficiency rider on their bills. Customers pay for Duke's program costs (*e.g.* rebates for efficient appliances), program administration costs (*e.g.* the costs for Duke to market and deliver programs), and shared savings (profits to Duke for exceeding energy savings benchmarks).

In Duke's 2014 energy efficiency rider case,⁶ the PUCO Staff recommended disallowance of Duke's proposed charges for utility employee incentive pay, meals and entertainment for Duke employees, baseball tickets, and utility employee cell phone bills.⁷ The PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled around \$409,000.⁸

⁵ Case No. 18-397-EL-RDR, Ziolkowski Testimony, Attachment JEZ-1 at 15 (Duke proposing a rate of negative \$0.001172 per kWh in this case).

⁶ Case No. 15-534-EL-RDR (the "2014 Rider Case").

⁷ 2014 Rider Case, PUCO Staff Review and Recommendations (June 23, 2016).

⁸ 2014 Rider Case, Opinion & Order ¶ 20 (Oct. 26, 2016).

In Duke's 2015 energy efficiency rider case,⁹ the PUCO Staff again recommended disallowance of Duke's proposed charges for utility employee incentive pay, meals and entertainment for Duke employees, baseball tickets, and utility employee cell phone bills.¹⁰ The PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled \$935,507.¹¹

In Duke's 2016 energy efficiency rider case,¹² the PUCO Staff again recommended disallowance of Duke's proposed charges for utility employee incentive pay, meals and entertainment for Duke employees, baseball tickets, and utility employee cell phone bills.¹³ And again, the PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled \$386,544.¹⁴

The current case involving Duke's 2017 energy efficiency rider charges continues the trend of Duke including non-energy efficiency expenses. Here, the PUCO Staff found, for the fourth straight year, that Duke tried to include charges to customers for utility employee incentive pay, meals and entertainment for Duke employees, promotional sponsorships, and utility employee cell phone bills.¹⁵ The PUCO Staff has recommended that these costs totaling \$329,582 not be charged to customers.¹⁶ We agree.

⁹ Case No. 16-664-EL-RDR (the "2015 Rider Case").

¹⁰ 2015 Rider Case, PUCO Staff Review and Recommendations (Nov. 13, 2017).

¹¹ 2015 Rider Case, Finding & Order ¶¶ 11, 16-17 (May 15, 2019).

¹² Case No. 17-781-EL-RDR (the "2016 Rider Case").

¹³ 2016 Rider Case, PUCO Staff Review and Recommendations (Sept. 18, 2018).

¹⁴ 2016 Rider Case, Finding & Order ¶¶ 13, 16-17 (May 15, 2019).

¹⁵ Case No. 18-397-EL-RDR (the "2017 Rider Case"), PUCO Staff Review and Recommendations (June 12, 2019).

¹⁶ *Id.*

But the PUCO should do more than disallow the charges. To protect customers from paying for these expenses in the future, the PUCO should order Duke to stop including these charges in the rider charge.

B. There is need for prompt action by the PUCO in this case.

Until a week ago, Duke's customers had been paying the same rate, \$0.003443 per kWh, for its energy efficiency programs for over five years, even though Duke has filed an application every year seeking to update that rate.¹⁷

In 2016, Duke filed an application to lower the rate to \$0.002642 per kWh, which would be a monthly charge of \$2.64 for a typical customer.¹⁸ In 2017, Duke filed an application to lower the rate to \$0.001544 per kWh, which would be a monthly charge of \$1.54 for a typical customer.¹⁹ The PUCO ruled on these two applications on May 15, 2019. Duke filed compliance tariffs on June 20 lowering the residential rate to \$0.001495 per kWh. Notably, however, this rate remains positive (a charge), even though Duke proposed a negative rate in this case.²⁰ Customers will continue to overpay for Duke's programs until the PUCO rules in *this* case involving Duke's 2017 energy efficiency expenses.

¹⁷ Duke Tariff Sheet No. 119.02 (effective date May 1, 2014). On June 20, 2019, Duke filed updated tariff sheets following the PUCO's order in Case Nos. 16-664-EL-RDR and 17-781-EL-RDR, lowering the residential rate to \$0.001495 per kWh.

¹⁸ Case No. 16-664-EL-RDR, Ziolkowski Testimony, Exhibit at 10.

¹⁹ Case No. 17-781-EL-RDR, Ziolkowski Testimony, Attachment at 10.

²⁰ See Case No. 18-397-EL-RDR, Ziolkowski Testimony, Attachment JEZ-1 at 15 (Duke proposing a rate of negative \$0.001172 per kWh in this case).

III. RECOMMENDATIONS

A. The PUCO should rule on this case as quickly as possible so that residential customers can get back the more than \$30 million they have overpaid for Duke’s energy efficiency programs.

Since 2016, Duke’s residential customers have overpaid \$33 million—and counting—for Duke’s energy efficiency programs as a result of the PUCO’s delay in ruling on Duke’s energy efficiency applications.²¹ In this case, Duke proposed a rate of *negative* \$0.001172 per kWh, which would be a monthly *credit* of \$1.17 for a typical customer using 1,000 kWh per month.²²

Currently, however, Duke’s residential customers pay a rate of \$0.001495 per kWh (after paying \$0.003443 per kWh for five years). Customers should be receiving a refund, but instead they continue to pay millions of dollars for Duke’s energy efficiency programs. Customers are not going to get their money back until the PUCO rules on *this* case, where rates will finally turn negative.

Thus, for the reasons explained in OCC’s interlocutory appeal,²³ the PUCO should rule on this case immediately to stop customers from continuing to overpay for Duke’s energy efficiency programs and finally get their money back.

B. The PUCO should rule that Duke cannot charge customers \$329,582 for certain 2017 expenses unrelated to energy efficiency.

This energy efficiency rider case raises the same issues as each of Duke’s previous three. Duke repeatedly includes in its application charges to customers for

²¹ See Interlocutory Appeal at 2 (May 7, 2019).

²² Case No. 18-397-EL-RDR, Ziolkowski Testimony, Attachment JEZ-1 at 15.

²³ Interlocutory Appeal: Request for Certification to Commissioners and Application for Review by the Office of the Ohio Consumers’ Counsel (May 7, 2019).

things that should not be charged to customers through its energy efficiency rider: incentive compensation for Duke employees tied to the company's financial performance, meals and entertainment for Duke employees, baseball sponsorships, and employee cell phone bills. Duke has done the same in this case, where the PUCO Staff recommended \$329,582 in disallowances in these same categories. This cat and mouse game between Duke and the PUCO Staff auditors reviewing energy efficiency expenses must be stopped.

The PUCO has consistently held that these costs are unrelated to energy efficiency and do not help customers save money on their bills through energy efficiency. These types of expense are no different than the expenses that the PUCO and the Ohio Supreme Court has recognized as not includable in rates, as they do not provide a direct benefit to customers.²⁴ The PUCO has properly disallowed them in each of the past three years.²⁵ Thus, the PUCO should do the same here.

C. The PUCO should order Duke not to include these types of charges in its future energy efficiency rider applications.

Duke filed its application in this case in March 2018. Long before this application—in October 2016—the PUCO had already ruled on Duke's 2014 Rider Case. In that case, the PUCO ruled that Duke could not charge customers for utility employee incentive pay, meals and entertainment for Duke employees, baseball tickets, and utility employee cell phone bills.²⁶ Thus, at the time of its application in this case, Duke was

²⁴ See, e.g., *Cleveland v. PUC*, 63 Ohio St.2d 62(1980); *East Ohio Gas Co. v. PUC*, 1 Ohio St.3d 31 (1982).

²⁵ See section I above.

²⁶ 2014 Rider Case, PUCO Staff Review and Recommendations (June 23, 2016), Opinion & Order ¶ 20 (Oct. 26, 2016).

aware that these types of charges are not allowed, but it included them in its current application anyway.

Indeed, this is not the first time that Duke has failed to follow PUCO orders regarding its energy efficiency programs. In another of Duke's prior energy efficiency cases, the PUCO found that Duke demonstrated a "continued refusal to comply with the dictates of the [PUCO's] rules" and that the PUCO would "no longer tolerate Duke's unwillingness to follow our directives."²⁷ And more recently, the PUCO "expressed actionable disappointment with Duke Energy Ohio's litigation practices and its failure to follow the directives of the attorney examiner" in a case involving Duke's tree-trimming practices.²⁸

The PUCO should order Duke to stop including these categories of expenses in its energy efficiency rider filings. The PUCO should also consider levying a forfeiture for Duke to pay to the state treasury for disregarding PUCO expectations.²⁹

The PUCO Staff's audit is an essential part of the process in cases where customer rates are adjusted outside of a base rate case. But the PUCO Staff should not have to repeatedly find the imprudent or unreasonable spending being included in rates and then recommend a disallowance of the same types of expenses (food, baseball tickets, employee bonuses, etc.) that the PUCO has already made clear to Duke are not to be charged to customers through the energy efficiency rider.

²⁷ *In re Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism*, Case No. 11-4393-EL-RDR, Entry (May 9, 2012).

²⁸ The Commissioners expressed their opinions at the May 15, 2019 Commission meeting. The meeting minutes, quote above, are available at <https://www.puco.ohio.gov/calendar/commission-minutes-may-15-2019/>.

²⁹ See R.C. 4905.54.

This business-as-usual approach to including unreasonable charges and ignoring PUCO directives by Duke has been without risk or consequence to Duke (but at a great expense to Duke's customers): if the PUCO Staff doesn't catch the improper expenses when auditing, then Duke gets away with charging customers for them. If the PUCO Staff's audit does catch Duke's improper expenses, then there is no penalty or risk to Duke for bad acts but simply a dollar-for-dollar disallowance. That puts Duke in the same place as if it excluded the expenses itself. Further, OCC understands that the PUCO Staff audit is a sampling of Duke's expenses, not a comprehensive review of every receipt. Thus, the possibility exists that some inappropriate expenses are still being charged to customers because they weren't identified by the Staff's audit, and thus not disallowed. That is why a forfeiture should be considered for protection of Duke's customers and to deter Duke's continued disregard of PUCO's directives.

D. The PUCO should order Duke to improve its accounting practices so that the PUCO Staff can thoroughly audit the energy efficiency rider charges.

In the 2014 Rider Case, the PUCO Staff was concerned with Duke's accounting practices. It noted that it was difficult to verify the prudence of expenses, difficult to verify that energy efficiency charges were truly incremental to base rates, difficult to verify that charges were related to the energy efficiency rider, and that Duke's accounting entries were not descriptive enough.³⁰ In light of these difficulties, the PUCO Staff recommended that Duke be required to (i) "be more consistent and specific in identifying its labor expense, employee ... expense, and expense allocations when recording expenses to the rider," and (ii) "improve upon its recording of accounting transactions to be more

³⁰ 2014 Rider Case, PUCO Staff Review & Recommendation (June 23, 2016).

descriptive and to ensure the availability of accounting records to support the assertion that the charges are directly related to Rider EE-PDR.”³¹ The PUCO adopted Staff’s recommendation to disallow \$409,096 in charges to consumers for these non-energy-efficiency costs but did not order Duke to take any specific steps to improve its accounting practices.³²

It appears that three years later, Duke’s accounting has not improved. In the current case, the PUCO Staff requested information from Duke to trace, verify, and separate non-financial from financial incentives.³³ Duke’s responses to Staff’s request did not provide sufficient detail for the PUCO Staff to adequately perform its review, thus leaving the PUCO Staff no choice but to recommend disallowance.³⁴

OCC shares the PUCO Staff’s concerns regarding Duke’s energy efficiency accounting practices. Duke must stop charging for inappropriate costs. It does not appear that Duke has improved its accounting practices, as demonstrated by Duke’s inability to provide the PUCO Staff with the information that it needs.

The PUCO should order Duke to improve its accounting practices as the PUCO Staff recommended so that the PUCO Staff can more efficiently and accurately audit Duke’s energy efficiency rider charges to consumers. These improvements should be in place before Duke files its next energy efficiency rider update in 2020 so that these types of expenses are excluded from that application.

³¹ *Id.*

³² Case No. 15-534-EL-RDR, Opinion & Order ¶ 44.

³³ PUCO Staff Review and Recommendations (June 12, 2019).

³⁴ *Id.*

The PUCO should also protect consumers by requiring a comprehensive financial and managerial audit on actual program costs by an independent auditor to make more certain that Duke is improving its internal practices and procedures so that imprudent charges cease.

Without these consumer protections, consumers could pay unjust and unreasonable rates for energy efficiency. The PUCO should protect consumers from this unlawful result.

IV. CONCLUSION

The PUCO has made it clear that costs like employee compensation tied to the utility's financial results, meals, drinks, baseball tickets and sponsorships, and personal cell phones, are not directly related to providing energy efficiency programs to customers and are imprudent. Customers should not pay for these costs. The PUCO should order Duke to stop trying to charge customers for these types of costs. Duke's accounting controls for its energy efficiency rider must improve to help the PUCO Staff track Duke's spending in future audits. The PUCO should consider levying a forfeiture for Duke's failure to modify its behavior, now and in the future. And the PUCO should rule on this case immediately so that customers can get tens of millions of dollars back, which they have overpaid to Duke in recent years.

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 27th day of June 2019.

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