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. 18-397-EL-RDR

FINDING AND ORDER

Entered in the Journal on July 31, 2019

I. SUMMARY

{¶ 1} The Commission approves the application for recovery of program costs, lost distribution revenue and performance incentives related to Duke Energy Ohio, Inc.'s energy efficiency and peak demand reduction programs for 2017, 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 reduction (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 through Rider EE-PDR.

{¶ 6} On March 29, 2018, Duke filed an application for recovery of program costs, lost distribution revenue, and performance incentives related to its EE/PDR programs for 2017.

{¶ 7} Motions to intervene were filed by the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU), the Environmental Law & Policy Center (ELPC), the Ohio Manufacturers' Association Energy Group (OMA), and, collectively, the Ohio Environmental Council, Environmental Defense Fund, and Natural Resources Defense Council (Environmental Groups). Additionally, pursuant to Ohio Adm.Code 4901:1-39-07(B), timely objections were filed by IEU and the Environmental Groups.

{¶ 8} By Entry on May 2, 2019, the motions to intervene were granted. Also in that Entry, the attorney examiner established a procedural schedule requiring initial comments to be filed by June 27, 2019, and reply comments to be filed by July 11, 2019.

{¶ 9} Thereafter, Staff filed its Review and Recommendation on June 12, 2019. OCC filed comments on June 27, 2019, and Duke and OCC filed reply comments on July 11, 2019. OPAE filed a letter indicating its support of the Staff's Review and Recommendation as well as OCC's initial comments.

III. Discussion

{¶ 10} As discussed, on March 29, 2018, Duke filed an application for recovery of 2017 program costs, lost distribution revenue, and performance incentives related to its EE/PDR programs. According to Duke, the total revenue recovery during 2017 was $42,103,370. As explained in its application, Duke's calculation for Rider EE-PDR in this case includes the revenue requirement for the period January 2017 through December

2017, as well as the expected costs for 2018. Duke asserts it is not claiming any shared savings incentives for 2017, pursuant to the stipulation in Case No. 16-576-EL-POR.

A. Objections

{¶ 11} In its objections, IEU argues that Duke's request for lost distribution revenue should be denied and Duke's revenue requirement should be reduced. IEU maintains that Duke's calculation of lost distribution revenue is not justified. According to IEU, the Staff Report from Duke's most recent distribution rate case, Case No. 17-32-EL-AIR, demonstrates that the Company is collecting money above what is necessary to recover its costs and earn a fair and reasonable return.

{¶ 12} The Environmental Groups' objections initially ask that the Commission clarify R.C. 4928.662. The Environmental Groups' note that pursuant to R.C. 4928.622, EE/PDR is measured "on the higher of an as found or deemed basis." The Environmental Groups assert "deemed" savings are undefined. According to the Environmental Groups, Duke appears to rely on program evaluations results from past years, if those results are higher then the pending year. If this is permissible, the Environmental Groups contend that this could result in greater costs for customers without customers receiving any of the associated benefits. The Environmental Groups ask that the Commission clarify what "deemed" savings are or, alternatively, either open up a rule making proceeding or update the Technical Resource Manual approved in Case No. 09-512-GE-UNC. The Environmental Groups next object that cost caps imposed by the Commission in Case No. 16-576-EL-POR may result in less efficient EE/PDR programs and fewer cost-effective savings opportunities for customers. The Environmental Groups thus request that the Commission provide further monitoring of the impact of the cost cap on Duke's programs and customers. Lastly, the Environmental Groups submit the Company's application is unclear as to whether Duke measures savings at customers' meters or at the point of generation. The Environmental Groups request that the Commission seek clarification from Duke.

B. Staff Review and Recommendation

{¶ 13} 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. In its review, Staff identifies $329,582 in operation and maintenance (O&M) expenses that should be deducted from Duke's recovery amount. These deductions were for pay incentives, dining, sponsorships, labor, and employee expenses that are generally not recoverable. Staff affirms that Duke is not seeking any shared savings for 2017. Regarding lost distribution revenue, Staff explains that it is still reviewing the claimed energy savings through the evaluation, measurement, and verification (EM&V) process. Thus, Staff requests that if any cost adjustments are necessary once the process is complete, they can be permitted to be addressed in other proceedings considering the impacts of the EM&V process. In sum, Staff recommends that Duke's application be approved, subject to Staff's recommended adjustment and applicable carrying costs.

C. Comments

{¶ 14} OCC's comments offer three recommendations. First, OCC agrees with Staff's review and asks that the Commission adopt Staff's recommendation. OCC further states that, for several consecutive years, Duke has routinely asked for recovery of inappropriate items such as incentive pay and sponsorships and each year the Commission affirms Staff's assertion that such expenses should be disallowed. OCC requests that Duke be directed not to include such expenses in future applications. Finally, OCC asks that the application be approved promptly in order for the new, lower rates to take affect as soon as possible.

{¶ 15} In its reply, Duke disagrees with Staff's recommendation to remove incentive pay. The Company explains that Staff disapproves of incentives tied to financial goals and that Staff asked that that all incentive expenses be disallowed because Staff was not provided with sufficient information to determine whether the incentives were associated with financial goals or not. However, according to Duke, the Company provided Staff an explanation of the guidelines, policies, and procedures used to determine the pay incentives. Duke contends Staff should have been able to use that information to limit what incentives should be disallowed. Additionally, Duke avers that OCC's recommendation for Commission orders as to what recovery Duke can or cannot apply for is without merit. Duke states its applications for recovery are subject to review by Staff and other intervenors and the ultimate decision is up to the Commission. Duke contends that, if OCC's request is granted, it would circumvent the legal process.

{¶ 16} OCC's reply comments note that, since filing its initial comments, the Commission's Finding and Order regarding Duke's previous EE/PDR recovery applications became a final appealable order. Citing *In re Duke Energy Ohio, Inc.*, Case Nos. 16-664-EL-RDR and 17-781-EL-RDR, Finding and Order (May 15, 2019), OCC states that, in those proceedings, the Commission affirmed that incentive pay and other expenses not associated with EE/PDR should be disallowed.

D. Commission Decision

{¶ 17} The Commission concludes that Duke's application for recovery of program costs, lost distribution revenue, and performance incentives related to its EE/PDR programs is reasonable and should be approved, subject to the modifications described below. Consistent with our prior determinations, the Commission adopts Staff's recommendations to exclude incentive pay, dining, sponsorships, labor, employee, and other expenses identified by Staff. *See In re Duke Energy Ohio, Inc.*, Case Nos. 16-664-EL-RDR and 17-781-EL-RDR, Finding and Order (May 15, 2019). Regarding incentive pay, we agree with Staff's exclusion of incentive pay tied to financial goals and find Staff's evaluation was appropriate. Regarding lost distribution revenue and, specifically, Staff's ongoing evaluation of claimed energy savings, we find that if Staff determines modifications are necessary, the Commission will consider them in other associated proceedings.

{¶ 18} In sum, the Commission finds that Duke's application for recovery of program costs, lost distribution revenue and performance incentives should be approved subject to the specified recommendations found in Staff's audit. The Commission notes that Rider EE-PDR 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).

IV. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That Duke's application for recovery of program costs, lost distribution revenue and performance incentives related to Duke's EE/PDR programs be approved, subject to the modifications and clarifications set forth above. It is, further,

{¶ 21} ORDERED, That Duke be 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,

{¶ 22} 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,

{¶ 23} 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,

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

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
Lawrence K. Friedeman
Daniel R. Conway

NJW/hac