BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs.	))))	Case No. 16-576-EL-POR

MOTION TO MODIFY DUKE'S 2020 ENERGY EFFICIENCY PLAN TO ELIMINATE CHARGES TO CONSUMERS FOR UTILITY PROFITS AND REQUEST FOR EXPEDITED TREATMENT BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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December 9, 2019

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The Public Utilities Commission of Ohio ("PUCO") should modify Duke Energy's energy efficiency portfolio for 2020 to eliminate charges to consumers for profits on energy efficiency, sometimes referred to as "shared savings." The PUCO has the authority under recently-passed House Bill 6 to take this action. It should do so to protect Ohio consumers from continuing to pay too much for utility-run energy efficiency programs.

The Office of the Ohio Consumers' Counsel ("OCC") respectfully requests that the PUCO (i) authorize Duke to continue offering customer-funded energy efficiency programs in 2020, (ii) reject Duke's proposal to continue charging customers for utility profits ("shared savings"), (iii) approve a maximum budget of $37,497,874, all of which must be used prudently for the costs of administering Duke's energy efficiency programs, and (iv) grant this motion under Ohio Adm. Code 4901-1-12(C) on an expedited basis so that the utility can implement OCC's requested modifications effective January 1, 2020.[1]

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[1] In the alternative, if the PUCO authorizes Duke to charge customers for shared savings, the budget should be adjusted downward to $44,216,406 to correct an error in Duke's methodology, as explained below.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Customers can benefit from energy efficiency programs because those programs help customers lower energy usage, which lowers utility bills. Customers do not directly benefit when utilities charge them millions of dollars per year in "shared savings," which is a code name for utility profits.

In its recently-filed letter, Duke proposes that it continue to offer customer-funded energy efficiency programs in 2020, with an annual budget of $46,895,800.[2] According to Duke's letter, this would include program costs (*i.e.*, energy efficiency rebates plus the administrative costs of running the programs) plus utility profits, also known as "shared savings."[3]

The law (House Bill 6) might require Duke to continue its programs in 2020, but it does not require the PUCO to allow Duke to continue profiting off these programs on the backs of its customers. The PUCO should therefore exercise its authority under House Bill 6 (the relevant portions of which are now codified in R.C. 4928.66(F)) to modify Duke's energy efficiency portfolio plan to eliminate utility profits.

[2] Duke Correspondence (Dec. 2, 2019).

[3] *Id.*

I. RECOMMENDATIONS

A. The PUCO should exercise its authority to modify Duke's portfolio so that customers no longer pay for utility profits ("shared savings") in 2020.

1. Shared savings is not part of a utility's energy efficiency portfolio "budget" under R.C. 4928.66(F)(2), so the PUCO is not required to allow utilities to continue charging customers for shared savings.

Under R.C. 4928.66(F)(2), the PUCO is required to extend Duke's current 2017-2019 energy efficiency portfolio through December 31, 2020, after which the portfolio terminates. When a portfolio is extended as such, "the existing plan's budget shall be increased for the extended term to include an amount equal to the annual average of the approved budget for all years of the portfolio plan in effect as of the effective date" of House Bill 6.[4]

Naturally, then, a question of statutory interpretation arises: What is a "budget"?

Duke proposes an annual "budget" of $46,895,800, which would include both the costs of running the programs and utility profits ("shared savings").[5] Duke seemingly interprets the word "budget" in R.C. 4928.66(F) to include not only the cost of running the programs (administrative costs, rebates, marketing, costs to verify savings), but also the profits that Duke charges customers on those programs. The PUCO should reject Duke's interpretation. Instead, it should interpret the word "budget" in R.C. 4928.66(F)(3) to mean only the costs of running the programs, and not the utility profits on those programs.

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[4] R.C. 4928.66(F)(3).

[5] Duke Correspondence at 2.

The Revised Code does not define the word "budget" for purposes of R.C. 4928.66(F). The word "budget," in fact, is not used anywhere else in Revised Code chapter 4928. So we must look elsewhere to determine what the word "budget" means in this context. When we do so, all signs point to one conclusion: a utility's profits on energy efficiency programs ("shared savings") are not part of the energy efficiency "budget."

First, Duke itself has not previously used the word "budget" as including shared savings. In its energy efficiency portfolio application, Duke provided the "projected program budget" for each of its programs.[6] When describing the budget, Duke included only the cost of running the programs, and not its projected profits from running the programs.

Second, the PUCO's rules require a utility to include a "budget" with its energy efficiency portfolio application, and that budget shall include "projected expenditures, identifying program costs to be borne by the electric utility and collected from customers, with customer class allocation."[7] Shared savings is not a "cost to be borne" by Duke. When customers pay shared savings, they are not reimbursing Duke for a cost that it incurred; they are making an incentive payment to Duke that is passed on the shareholders as profit. Thus, under the PUCO's rule, shared savings is not part of the utility's "budget."

Third, the PUCO has used the word "budget" in its opinions to mean cost of running the programs, not utility profits. In FirstEnergy's most recent energy efficiency

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[6] Application (June 15, 2016); Amended Application (Oct. 14, 2016).

[7] Ohio Adm. Code 4901:1-39-04(C)(5)(i).

portfolio case, for example, the PUCO noted that FirstEnergy filed a portfolio with "an annual budget of approximately $89.5 million."[8] That $89.5 million amount was for the cost of running the programs and did not include any shared savings.[9]

Fourth, the everyday English language use of the word "budget" suggests that profits are not part of a budget. Webster's Dictionary defines a "budget" as "a plan for the coordination of resources and expenditures." Black's Law Dictionary similarly defines a "budget" as "a sum of money allocated to a particular purpose or project."[10] These everyday definitions accurately describe the budgeting process: project your costs and figure out if you have enough money to cover those costs. Profit is not a cost. It is a reward for good performance. Rewards for good performance are not part of the budgeting process, so shared savings (aka utility profits) are not part of a "budget."

In sum, while R.C. requires the PUCO to continue Duke's existing 2017-2019 plan using the "approved budget" from that plan, shared savings are not part of the "budget" and thus are not statutorily required to be approved.

2. House Bill 6 allows the PUCO to modify a utility's portfolio for 2020. The PUCO should do so by eliminating charges to customers for "shared savings," which really means utility profits.

The law does not give the PUCO discretion to modify a utility's "budget" when its current portfolio is extended through the end of 2020. Instead, it provides a specific

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[8] Case No. 16-743-EL-POR, Opinion & Order ¶ 33 (Nov. 21, 2017).

[9] Case No. 16-743-EL-POR, Stipulation and Recommendation Ex. A (Dec. 8, 2016) (showing a three-year budget of $268.5 million over three years, which is $89.5 per year, all of which is for program costs and not shared savings).

[10] In each of these dictionaries, there are various definitions of "budget," as the word can mean different things in different contexts. The two definitions provided are those that most accurately describe a utility's process of allocating funds to run energy efficiency programs.

formula, requiring the 2020 budget to be the average of the annual budget for the current portfolio (here, the average of the budget from 2017 through 2019). As explained above, however, "shared savings" is not part of the budget, so that section of the law does not apply to shared savings.

A different statutory provision, R.C. 4928.66(F)(4), on the other hand, does apply. Under that statutory provision, "All other[11] terms and conditions of a portfolio plan extended [by the PUCO] shall remain the same *unless* changes are authorized by the commission."[12] Thus, the law explicitly provides the PUCO with authority to modify the terms and conditions of Duke's portfolio plan. One term and condition of Duke's portfolio plan is that it is allowed to charge customers for "shared savings," which is another way of saying "utility profits."[13]

Allowing utilities to profit from energy efficiency in Ohio has been a disaster. In the past ten years, customers have paid more than $300 million in "shared savings" to their utilities. That money goes straight to shareholders, with no direct benefits to customers. What was originally intended to give the utilities an incentive to go above and beyond has become little more than easy money for the utility.

Further, utilities have been allowed to charge customers for "shared savings" (profits) as long as they exceed the statutory mandate, and the amount of profits increases as the utility goes higher and higher above the mandate. In other words, it is designed to give the utility an incentive not just to reach the statutory mandate, but to materially exceed that mandate.

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[11] "All other" means other than the "budget."

[12] R.C. 4928.66(F)(4) (emphasis added).

[13] Opinion & Order (Sept. 27, 2017) (approving "shared savings" for Duke for the 2017-2019 portfolio).

Under House Bill 6, the mandates will soon end (likely long before the end of 2020).[14] Thus, logic compels the conclusion that shared savings profits should also end. If profits are a reward for exceeding a mandate and there no longer is a mandate, then there is no need for a reward.

R.C. 4928.66(F)(4) allows the PUCO to stop the bleeding for Duke's customers in 2020. The PUCO should exercise its statutory authority under R.C. 4928.66(F)(4) to modify Duke's portfolio to eliminate shared savings.

3. If shared savings are removed from Duke's portfolio, the annual budget for 2020 should be limited to $37,497,474.

In its correspondence, Duke proposed a 2020 budget of $46,895,800 for program costs plus shared savings. Duke arrived at this number by taking the average of 2017, 2018, and 2019, as follows:

	Total Revenue Requirement*	
2017 Budget	$	47,758,444
2018 Budget	$	46,687,446
2019 Budget	$	46,241,512
2020 Budget**	$	46,895,800

Duke's budget numbers derive from Supplemental Attachment JEZ-1, attached to the Supplemental Testimony of Trisha A. Haemmerle, filed in this case on October 14, 2016. That attachment, which is attached hereto as Exhibit A, includes the same numbers that Duke provided in its December 2, 2019 correspondence: $47,758,444 for 2017; $46,687,446 for 2018; and $46,241,512 for 2019:

[14] The mandates end when Ohio's electric utilities collectively reach 17.5% cumulative savings. According to the PUCO Staff's most recent report, utilities are expected to reach 17.29% savings by the end of 2019, which suggests that the 17.5% mandate will be reached very soon.

	1	2	3
Res from Portfolio	$22,726,474	$22,579,645	$21,621,046
NonRes from Portfolio	$25,031,970	$24,107,801	$24,620,466
Total	$47,758,444	$46,687,446	$48,241,512

As Attachment JEZ-1 shows, these numbers are composed of three categories of cost: program costs and overhead, measurement and verification ("M&V"), and utility profits ("shared savings"). To arrive at the correct budget for 2020, therefore, shared savings must be removed from this calculation, as follows:[15]

	2017	2018	2019
Program Costs & Overhead	$36,401,147	$35,481,500	$35,684,703
M&V Costs	$1,654,393	$2,012,188	$1,259,692
Total Budget	$38,055,540	$37,493,688	$36,944,395
		Average:	**$37,497,874**

The 2020 budget should be $37,497,874.

B. Even if the PUCO does allow Duke to charge customers for shared savings in 2020 (which it should not), Duke's proposed $46,895,800 budget is inaccurately calculated and should instead be lowered to $44,216,406.

Duke calculated its proposed $46,895,800 budget by taking the average of what Duke says were the approved budgets for 2017, 2018, and 2019.[16] It is true that under R.C. 4928.66(F)(3), the 2020 budget is "an amount equal to the annual average of the approved budget for all years of the portfolio plan in effect as of the effective date" of House Bill 6. If the PUCO interprets the word "budget" in this statute to include shared savings (which it shouldn't, as described above), then Duke's proposed $46,895,800 must be lowered to account for two errors that Duke made in its calculations.

[15] These number come from Duke's Attachment JEZ-1.

[16] Duke Correspondence at 2.

First, the PUCO must correct Duke's math by applying the correct federal income tax rate. As the PUCO is well aware, the federal corporate income tax rate was lowered to 21% under the Tax Cuts and Jobs Act of 2017 ("TCJA"). Duke's proposed budget, however, uses the old tax rate, thereby inflating the budget.

Duke's budget numbers derive from Supplemental Attachment JEZ-1, attached to the Supplemental Testimony of Trisha A. Haemmerle, filed in this case on October 14, 2016. As Attachment JEZ-1 shows, these numbers are composed of three categories of cost: program costs and overhead, M&V, and utility profits ("shared savings"). For example, the $47,758,444 amount for 2017 consists of $37,469,679 in program costs, $1,656,393 in M&V costs, and $8,632,371 in shared savings:

	1
Total Avoided Costs	$93,214,666
- Program Costs & Overhead	$36,401,147
- M&V Costs	$1,654,393
Shared Savings	$55,159,126
x Utility Sharing Rate	15.6%
Utility Share	$8,632,371
+ Program Cost & Overhead Recovery	$37,469,679
+ M&V Cost Recovery	$1,656,393
Total Revenue Requirement	$47,758,444

As this image shows, Duke used a 15.6% "utility sharing rate" to calculate the "utility share" of the "shared savings." This means that Duke calculated the total amount of savings, and Duke gets to keep 15.6% of it (*i.e.*, customers pay 15.6% to Duke). But the 15.6% number is based on a tax rate of 36.10%, as also shown on Attachment JEZ-1:[17]

Discount Rate	7.73%
Shared Savings (Pre-tax)	15.65%
Shared Savings (After tax)	10.00%
Tax	36.10%

The problem, however, is the federal income tax rate is now just 21% as a result of the tax cuts and jobs act. Thus, the pre-tax shared savings should be 12.66%, not 15.6%.[18] Thus, even if we use Duke's own methodology, the budget is inflated because it is calculated using a tax rate that no longer exists.

Duke's calculation also includes a second mistake, as shown in the following table, which is from Attachment JEZ-1:

	1	2	3
Total Avoided Costs	$93,214,666	$89,252,884	$89,232,972
- Program Costs & Overhead	$36,401,147	$35,481,500	$35,684,703
- M&V Costs	$1,654,393	$2,012,188	$1,259,692
Shared Savings	$55,159,126	$51,759,197	$52,288,578
x Utility Sharing Rate	15.6%	15.6%	15.6%
Utility Share	$8,632,371	$8,100,284	$8,183,132
+ Program Cost & Overhead Recovery	$37,469,679	$36,572,974	$36,796,688
+ M&V Cost Recovery	$1,656,393	$2,014,188	$1,261,692
Total Revenue Requirement	$47,758,444	$46,687,446	$46,241,512

Note that in the second line, the program costs and overhead for 2017 (which is under the number 1) are $36,401,147. But when calculating the amount to be recovered from customers, Duke incorrectly used a higher number, $37,469,679. There is no explanation for this higher number. Duke made the same error for 2018 and 2019. This error also needs to be corrected to arrive at the appropriate budget.

[17] 10.00% / (1 – 0.361) = 15.6%

[18] 10.00% / (1 – 0.21) = 12.66%.

Using Duke's methodology (including charges for shared savings, which OCC does not agree with as explained above), but correcting for these errors (wrong tax rate and unexplained increase in program costs and overhead), the 2020 budget would be $44,216,406, as shown here:

	2017	2018	2019
Total Avoided Costs	$93,214,666	$89,252,884	$89,232,972
Program Costs & Overhead	$36,401,147	$35,481,500	$35,684,703
M&V Costs	$1,654,393	$2,012,188	$1,259,692
Shared Savings	$55,159,126	$51,759,197	$52,288,578
Utility Sharing Rate	12.66%	12.66%	12.66%
Utility Share	$6,983,145	$6,552,714	$6,619,734
Program Costs & Overhead Recovery	$36,401,147	$35,481,500	$35,684,703
M&V Cost Recovery	$1,654,393	$2,012,188	$1,259,692
Total Revenue Requirement	$45,038,685	$44,046,402	$43,564,129
		Average:	**$44,216,406**

II. REQUEST FOR EXPEDITED TREATMENT

The PUCO should grant this motion on an expedited basis. Under House Bill 6 (R.C. 4928.66(F)), Duke's 2019 energy efficiency portfolio will be continued on January 1, 2020. As explained above, the PUCO has the authority to modify the portfolio by eliminating charges to customers for utility profits. To allow the PUCO an opportunity to rule on this motion at its December 18, 2019 meeting (presumably the last meeting before 2020), OCC respectfully requests that this motion be heard on an expedited basis.

III. CONCLUSION

House Bill 6 allows Duke to keep running customer-funded energy efficiency programs in 2020, and OCC supports the continuation of those programs. But to protect consumers from paying too much for energy efficiency, the PUCO should exercise its statutory authority to order Duke to stop charging customers for utility profits ("shared savings") for its 2020 programs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on the persons stated below via electronic transmission, this 9th day of December 2019.

/s/ *Christopher Healey*___________
Christopher Healey
Counsel of Record

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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