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 Revenues, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs.	))))))	Case No. 19-622-EL-RDR

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

Duke's charges to customers for 2018 energy efficiency programs are the subject of the PUCO Staff's review, which has uncovered the same types of overcharges as it did for 2017—and 2016—and 2015—and 2014. The PUCO has repeatedly rejected Duke's attempts to charge customers through its energy efficiency rider for things like utility employee financial incentive compensation, food and refreshments for Duke employees, Duke employee personal cell phone bills, and non-energy efficiency expenses.[1] Yet again, the PUCO Staff uncovered more than $335,000 in improper expenses. In fact, this year, Duke also included things like employee bonuses tied to generation, personal vehicle mileage reimbursement, gift cards, clothing, publication renewals, furniture repair, books, membership dues, association fees, and conference fees.

---

[1] *See* Case No. 15-534-EL-RDR (Duke's 2014 energy efficiency expenses); Case No. 16-664-EL-RDR (2015 expenses); Case No. 17-781-EL-RDR (2016 expenses); Case No. 18-397-EL-RDR (2017 expenses).

The Office of the Ohio Consumers' Counsel has implored the PUCO to affirmatively order Duke to stop including these expenses in its rider filings.[2] Now appears the PUCO Staff is equally frustrated, recommending in its report that "Duke be instructed to no longer include these expense categories in future Rider EE-PDR filings."[3] OCC agrees.

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.[4] 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.

---

[2] *See, e.g.,* Case No. 18-397-EL-RDR, Comments Regarding Duke's Charges to Customers for Utility Energy Efficiency Programs by the Office of the Ohio Consumers' Counsel at 5 (June 27, 2019) ("T]he PUCO should do more than disallow the charges. To protect consumers from paying for these expenses in the future, the PUCO should order Duke to stop including these charges in the rider charge.").

[3] Staff Report at 4.

[4] *See* Case No. 15-534-EL-RDR, Opinion & Order (Oct. 26, 2016).

I. DUKE'S HISTORY OF HARMING CUSTOMERS BY 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,[5] 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.[6] The PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled around $409,000.[7]

In Duke's 2015 energy efficiency rider case,[8] 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.[9] The PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled $935,507.[10]

In Duke's 2016 energy efficiency rider case,[11] the PUCO Staff again recommended disallowance of Duke's proposed charges for utility employee incentive

---

[5] Case No. 15-534-EL-RDR (the "2014 Rider Case").

[6] 2014 Rider Case, PUCO Staff Review and Recommendations (June 23, 2016).

[7] 2014 Rider Case, Opinion & Order ¶ 20 (Oct. 26, 2016).

[8] Case No. 16-664-EL-RDR (the "2015 Rider Case").

[9] 2015 Rider Case, PUCO Staff Review and Recommendations (Nov. 13, 2017).

[10] 2015 Rider Case, Finding & Order ¶¶ 11, 16-17 (May 15, 2019).

[11] Case No. 17-781-EL-RDR (the "2016 Rider Case").

pay, meals and entertainment for Duke employees, baseball tickets, and utility employee cell phone bills.[12] The PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled $386,544.[13]

In Duke's 2017 energy efficiency rider case,[14] the PUCO Staff found 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 not be charged to customers.[16] And again, the PUCO agreed with these recommendations and ruled that Duke could not charge customers for these types of expenses, which totaled $329,582.[17]

The current case involving Duke's 2018 energy efficiency rider charges continues the trend of Duke including non-energy efficiency expenses. Here, the PUCO Staff found—for the fifth straight year—that Duke tried to include charges to customers for utility employee incentive pay, meals and entertainment for Duke employees, and utility employee cell phone bills (among other things).[18] The PUCO Staff has recommended that these costs totaling $337,893 not be charged to customers.[19]

---

[12] 2016 Rider Case, PUCO Staff Review and Recommendations (Sept. 18, 2018).

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

[14] Case No. 18-397-EL-RDR (the "2017 Rider Case").

[15] 2017 Rider Case, PUCO Staff Review and Recommendations (June 12, 2019).

[16] *Id.*

[17] 2017 Rider Case, Finding & Order (July 31, 2019).

[18] Case No. 19-622-EL-RDR (the "2018 Rider Case"), PUCO Staff Review and Recommendations (Dec. 12, 2019).

[19] *Id.*

II. RECOMMENDATIONS

A. The PUCO should rule that Duke cannot charge customers $337,893 for certain 2018 expenses unrelated to energy efficiency.

This energy efficiency rider case raises the same issues as each of Duke's previous four. Duke repeatedly includes in its application charges to customers for 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, and employee cell phone bills. Duke has done the same in this case, where the PUCO Staff recommended $337,893 in disallowances in these same categories. In fact, Duke has found additional (but equally inappropriate) ways to try to overcharge customers. Not only is Duke trying to charge customers for employee financial incentive, now it is trying to charge them for financial incentives tied to *generation*, which the PUCO does not even regulate.[20] 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. The PUCO has properly disallowed them in each of the past four years.[21] Thus, the PUCO should do the same here.

[20] *See* Staff Report at 2 ("Staff also found that portions of their safety goals were related to generation activities, all of which are not appropriate for recovery.").

[21] *See* section I above.

B. To protect consumers, 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 2019. 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.[22] Thus, at the time of its application in this case, Duke was 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."[23]

In light of Duke's continued inability to make proper energy efficiency rider filings, the PUCO Staff has recommended that the PUCO instruct Duke to "no longer include these expense categories in future Rider EE-PDR filings." OCC could not agree more. The PUCO should order Duke to stop including these unjustified categories of expenses for collection from consumers in its energy efficiency rider filings. The PUCO

---

[22] 2014 Rider Case, PUCO Staff Review and Recommendations (June 23, 2016), Opinion & Order ¶ 20 (Oct. 26, 2016).

[23] *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).

should also consider levying a forfeiture for Duke to pay to the state treasury for disregarding PUCO expectations.[24]

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 included in rates and then recommend a disallowance of the same types of expenses (food, employee bonuses, etc.) that the PUCO has already made clear to Duke are not to be charged to customers through the energy efficiency rider.

Without an affirmative order from the PUCO—and the threat of real financial penalties—Duke will continue its current practice. After all, if the PUCO Staff doesn't catch the improper expenses when auditing, then Duke gets away with charging customers for them. And even when the PUCO Staff's audit does catch Duke's improper expenses, then there is no penalty 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 generally 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.

By virtue of the PUCO's Orders disallowing these charges for 2014 to 2017, the PUCO should find that Duke has been adequately warned regarding the inappropriateness of these charges. The PUCO should now find that Duke's attempts to again try to collect these types of improper expenses from consumers constitutes a violation of R.C.

---

[24] *See* R.C. 4905.54.

4905.54.[25] Under such violations, the PUCO can assess a forfeiture for each violation of up to $10,000 per day.[26] To end five years of Duke's creative bookkeeping, with continued cat and mouse tactics, the PUCO should impose forfeitures in an amount that will gain Duke's attention and provide consumer protection.

III. CONCLUSION

The PUCO has made it clear that costs like employee compensation tied to the utility's financial results, meals, drinks, 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 adopt Staff's recommended disallowance of $337,893 and order Duke to stop trying to charge customers for these types of unwarranted costs that have no place in an energy efficiency rider. The PUCO should consider assessing a forfeiture for Duke's failure to modify its behavior, now and in the future.

---

[25] R.C. 4905.54 states: "Every public utility or railroad and every officer of a public utility or railroad shall comply with every order, direction, and requirement of the public utilities commission made under authority of this chapter and Chapters 4901., 4903., 4907., and 4909. of the Revised Code, so long as they remain in force. Except as otherwise specifically provided in section 4905.95 of the Revised Code, the public utilities commission may assess a forfeiture of not more than ten thousand dollars for each violation or failure against a public utility or railroad that violates a provision of those chapters or that after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated. Each day's continuance of the violation or failure is a separate offense. All forfeitures collected under this section shall be credited to the general revenue fund.".

[26] *Id.*

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey

Christopher Healey (0086027)
Counsel of Record
Ambrosia Logsdon (0096598)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [Logsdon]: (614) 466-1292
christopher.healey@occ.ohio.gov
ambrosia.logsdon@occ.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 26th day of December 2019.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

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

SERVICE LIST

John.jones@ohioattorneygeneral.gov
cmooney@opae.org

Elizabeth.watts@duke-energy.com
Rocco.dascenzo@duke-energy.com

Attorney examiners;

Lauren.augostini@puco.ohio.gov
Nicholas.walstra@puco.ohio.gov