

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power )  
Company for an Increase in Electric ) Case No. 20-585-EL-AIR  
Distribution Rates. )

In the Matter of the Application of Ohio Power ) Case No. 20-586-EL-ATA  
Company for Tariff Approval. )

In the Matter of the Application of Ohio Power )  
Company for Approval to Change Accounting ) Case No. 20-587-EL-AAM  
Methods. )

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**REPLY IN SUPPORT OF OCC’S MOTION TO STRIKE AEP’S REQUEST TO  
PROFIT ON ENERGY EFFICIENCY AT CONSUMER EXPENSE  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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AEP has been charging its customers tens of millions of dollars, year after year, for utility profits on energy efficiency. In the past, AEP called these charges “shared savings,” which obscures their true nature (utility profits). Now, AEP wants to keep charging customers for utility profits on energy efficiency. The PUCO recently rejected a similar request by Duke Energy.<sup>1</sup> AEP attempts to side-step this precedent by noting that it has changed the name from “shared savings” to “administration fee” and tinkered with the formula for how the profits are calculated. But this tinkering does not change the fact that AEP is making the same proposal here that the PUCO rejected when it was made by Duke.

To protect customers from paying for AEP’s profits on energy efficiency, OCC filed a motion to strike AEP’s request for more customer-funded profits on energy efficiency.<sup>2</sup> AEP<sup>3</sup>

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<sup>1</sup> Case No. 20-1013-EL-POR, Entry (June 17, 2020).

<sup>2</sup> Motion to Strike AEP’s Request to Profit on Energy Efficiency at Consumer Expense (June 23, 2020) (the “Motion to Strike”).

<sup>3</sup> Memorandum in Opposition to OCC’s Motion to Strike (July 8, 2020) (the “AEP Memo Contra”).

and the Environmental Law & Policy Center (“ELPC”)<sup>4</sup> opposed OCC’s motion. But as explained below, their opposition is flawed and fails to overcome the PUCO’s recent precedent involving Duke Energy. The PUCO should grant OCC’s motion to strike. Customers should not pay another dime to AEP for utility profits on energy efficiency.

## I. REPLY

### A. Duke’s proposed “shared savings” mechanism is functionally indistinguishable, from a consumer perspective, from AEP’s proposed “administration fee,” and thus, the PUCO’s ruling striking Duke’s proposal for shared savings supports OCC’s motion to strike.

AEP and ELPC attempt to distinguish AEP’s proposed “administration fee” from Duke’s proposed “shared savings” fee by identifying superficial differences between the two.<sup>5</sup> The name alone—“administration fee” vs. “shared savings”—obviously cannot make a difference, as AEP was free to call its profits proposal whatever it wanted. The PUCO should not elevate form over substance.

It is also true, as ELPC notes, that the two proposals are not literally identical. But they are not “markedly different” either, as ELPC claims. Both require the utility’s programs to be cost effective. The exact amount of profits is calculated differently (AEP’s is calculated as 10% of program costs, and Duke’s is calculated as 10.3%<sup>6</sup> of net program benefits). But the end results are comparable, with AEP’s customers paying up to \$3.7 million annually in utility profits<sup>7</sup> and Duke customers paying up to \$4.0 million annually.<sup>8</sup> And importantly, neither AEP

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<sup>4</sup> Memorandum Contra Office of the Ohio Consumers’ Counsel Motion to Strike (July 8, 2020) (the “ELPC Memo Contra”).

<sup>5</sup> AEP Memo Contra at 6-8.

<sup>6</sup> Case No. 20-1013-EL-POR, Ziolkowski Testimony at JEZ-1, Page 2.

<sup>7</sup> Testimony of Jon Williams, Exhibit JWF-1 at 6.

<sup>8</sup> Case No. 20-1013-EL-POR, Ziolkowski Testimony at JEZ-1, Page 2.

nor ELPC disputes *the* critical fact: AEP’s “administration fee” and Duke’s “shared savings” are both ways for utilities to charge customers for utility profits on energy efficiency.

AEP and ELPC also both ignore the PUCO’s *reasoning* behind the PUCO’s striking Duke’s proposal to profit on energy efficiency. First, the PUCO discussed the intent of the General Assembly (including in H.B. 6) to reduce customer-funded subsidies for energy efficiency and concluded that the PUCO has a “duty to comport with, and effectuate, the General Assembly’s intent to reduce the costs to consumers in order to facilitate the state’s effectiveness in the global economy.”<sup>9</sup> This reasoning applies just the same to AEP’s proposal for an “administration fee” (utility profits)—but AEP and ELPC give it no mention.

The PUCO went on to explain that Duke’s proposal to profit on energy efficiency would be “against the objectives of this state which favors outcomes that provide customers with *effective choices* over the selection of supplies and suppliers and would discourage market access for cost effective supply- and demand-side retail services.”<sup>10</sup> Again, this reasoning applies just the same to AEP’s profits proposal. And again, AEP and ELPC ignore it.

The PUCO continued, noting that “Duke has not established that the shared savings provision is needed to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service” under R.C. 4928.02(A).<sup>11</sup> To the contrary, the PUCO highlighted the substantial reserve margin at PJM and concluded that given the reserve margin, “there is no need to provide an incentive to Duke to offer these EE programs in order to ensure the reliability of retail electric service in this state.”<sup>12</sup> And once again, this

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<sup>9</sup> Duke Entry ¶ 6 (emphasis in original).

<sup>10</sup> Duke Entry ¶ 6.

<sup>11</sup> Duke Entry ¶ 7.

<sup>12</sup> Duke Entry ¶ 7.

applies to AEP: there is simply no way that the safety and reliability of AEP's service to customers is dependent on AEP's ability to charge customers for utility profits on energy efficiency. AEP and ELPC do not address this issue in their respective filings either.

Every step of the way, the PUCO's decision in Duke's case can be directly and identically applied to AEP's request for continued utility profits on energy efficiency. There is no reasonable basis to distinguish the two cases.

**B. AEP's and ELPC's claims about the benefits of AEP's proposed energy efficiency programs are irrelevant because OCC's motion is not to strike the request for the programs—only the request to charge customers for utility profits on the programs.**

AEP and ELPC spend much of their time in their opposition to OCC's motion to strike touting their opinion on the benefits of energy efficiency. For example, AEP goes on at length about the ways that it believes its proposed energy efficiency programs are consistent with state policies.<sup>13</sup> ELPC similarly focuses on why AEP should be allowed to continue offering energy efficiency programs in the absence of mandates.<sup>14</sup>

But the merits of AEP's proposed energy efficiency programs are irrelevant. OCC's motion is not seeking to strike AEP's request to offer energy efficiency programs.<sup>15</sup> OCC is seeking to strike only AEP's request to *profit* on energy efficiency programs at consumer expense. The PUCO should not give AEP's and ELPC's claims about the benefits of energy efficiency any weight in the context of this motion to strike.

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<sup>13</sup> AEP Memo Contra at 5.

<sup>14</sup> ELPC Memo Contra at 5-6.

<sup>15</sup> OCC is taking no position at this time on AEP's proposal to offer customer-funded, non-mandated energy efficiency programs, and reserves all rights on that issue.

**C. R.C. 4909.18 does not prohibit the PUCO from striking AEP’s request to charge customers for utility profits on energy efficiency.**

AEP claims that the PUCO cannot rule on OCC’s motion to strike because R.C. 4909.18 requires the PUCO to hold a hearing if “it appears to the commission that the proposals in the application may be unjust or unreasonable.”<sup>16</sup> This statutory language does not prohibit the PUCO from granting OCC’s motion to strike a utility’s proposal.

If the PUCO determines, on the face of the application, that the utility’s proposals are *definitively* unjust or unreasonable, then no hearing is necessary. And that is precisely the case here. Based on the precedent set in the recent Duke Energy case, it is not true that AEP’s proposed charges for an “administration fee” *may* be unjust or unreasonable. To the contrary, based on very recent PUCO precedent, the utility’s proposal is *definitively* unjust and unreasonable on its face.<sup>17</sup>

**II. CONCLUSION**

Utilities, including AEP, have profited handsomely from energy efficiency—on the backs of consumers—for years. The PUCO recently protected Duke customers from continuing to fund utility profits on energy efficiency, given the General Assembly’s ending of energy efficiency mandates and related charges to consumers, among other things. The PUCO should provide the same protection here for AEP’s 1.3 million residential customers.

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<sup>16</sup> AEP Memo Contra at 4.

<sup>17</sup> See also Duke Entry (striking Duke’s similar proposal *sua sponte* and without a hearing).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 15th day of July 2020.

*/s/ Christopher Healey* \_\_\_\_\_  
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Reply Reply in Support of OCC's Motion to Strike AEP's Request to Profit on Energy Efficiency at Consumer Expense by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.