

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

SECOND AMENDED APPLICATION OF DUKE ENERGY OHIO, INC.

Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) submits this Second Amended Application to provide cost schedules that have been revised in accordance with the Fifth Entry on Rehearing issued on February 23, 2022, in Case No. 16-576-EL-POR.

On January 27, 2017, Duke Energy Ohio, along with other stipulating parties submitted an Amended Stipulation (Stipulation) for Commission approval, that among other things, provided for a cost recovery mechanism with no cost cap. The Commission approved Duke Energy Ohio's Stipulation in a modified form by imposing a cost cap; four percent of Duke Energy Ohio's total electric retail revenues as reported in the 2015 FERC Form 1 Annual Report.¹ Duke Energy Ohio timely sought rehearing of the Commission's Opinion and Order in this case and specifically argued that the Commission had no basis – legal or factual – upon which to impose a cap on cost recovery.² The Commission granted rehearing on November 21, 2017, for further consideration and granted the Company's waiver request

¹ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR, Opinion and Order, pp. 15-16 (September 27, 2017).

²*In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR, Duke Energy Ohio, Inc.'s Application for Rehearing (October 27, 2017).

regarding the imposition of the cost cap for 2017, but did so on the condition that the Company not receive any shared savings incentive for 2017.³ With that request for rehearing pending before the Commission, the Ohio Supreme Court struck down a virtually identical cost cap in *In re Ohio Edison Co.*, 2019-Ohio-4196, ¶ 11, 158 Ohio St. 3d 27. In accordance with this Ohio Supreme Court decision, the Company filed an Amended Application in this proceeding on December 20, 2019, which calculated the revenue requirement without the cost cap and *with* an \$8.0 million after-tax shared savings cap that had been included in the then-Commission-approved Stipulation.

In the meantime, the General Assembly enacted H.B. 6, which took effect on October 22, 2019, and eliminated the energy efficiency requirements previously imposed by R.C. 4928.66, after December 31, 2020. On February 26, 2020, the Commission granted the Company's request to extend the current portfolio through December 31, 2020, with an increased budget of \$46,895,800 (February Order).⁴ This amount was requested by the Company based on the stipulated shared savings cap of \$8.0 million after-tax and the elimination of the cost cap previously imposed by the Commission.

The Company sought rehearing of the February Order to clarify how the final true-ups for programs through the end of 2020 would be completed, and especially how the previously approved lost distribution revenues would be handled.⁵ Under its Commission-approved portfolio, the Company was entitled to recover lost distribution revenues for the

³ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR, Entry on Rehearing (November 21, 2017).

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case Nos. 16-576-EL-POR, *et al.*, Opinion and Order, pp. 3, 17 (February 26, 2020).

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case Nos. 16-576-EL-POR, *et al.*, Duke Energy Ohio, Inc.'s Application for Rehearing (March 27, 2020).

assumed three-year life of the installed energy efficiency measures,⁶ which meant that lost distribution revenues for 2020 programs would not be completely known until 2023.

In the November 18, 2020, Third Entry on Rehearing in Case No. 16-576-EL-POR (Third Entry), the Commission properly removed the “4 percent cost cap” as it was “consistent with the *FirstEnergy Decision*,”⁷ but then imposed a cap on the Company’s shared savings of \$7.8 million pre-tax.⁸ Additionally, in the Third Entry, the Commission held that “Duke may not continue to recover lost distribution revenue after December 31, 2020, even if the lost distribution revenue is attributed to energy savings achieved in 2018, 2019 or 2020.”⁹ The Company challenged the Third Entry on rehearing, as unreasonable and unlawful on five separate grounds.¹⁰

On February 23, 2022, the Commission issued the Fifth Entry on Rehearing in Case No. 16-576-EL-POR (Fifth Entry), which upheld the Commission’s imposition of a \$7.8 million pre-tax shared savings cap and held that “Duke cannot recover for lost distribution revenues that occur after December 31, 2020.”¹¹ In the Fifth Entry, the Commission ordered the Company to “file updated applications and exhibits consistent with this Entry in its 2018 application for cost recovery, Case No. 19-622-EL-RDR, within 30 days.”¹²

Accordingly, in compliance with the Fifth Entry, the Company now further amends its Application in this case to recalculate its revenue requirement in accordance with the Fifth

⁶ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No.16-576-EL-POR, Opinion and Order, p. 22 (September 27, 2017) (noting that the Stipulation “allow[s] for the deferral and subsequent recovery of EE/PDR costs recovery of program costs, lost revenues, and shared savings”); Supplemental Testimony of Trisha A. Haemmerle, Attachment JEZ-1, pp. 4-5 (October 14, 2016) (depicting three-year calculation of lost distribution revenues).

⁷ Third Entry, p. 22.

⁸ *Id.*

⁹ *Id.*, p. 24.

¹⁰ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No. 16-576-EL-POR, Duke Energy Ohio, Inc.’s Application for Rehearing, pp. 1-2 (December 18, 2020).

¹¹ Fifth Entry on Rehearing, p. 8.

¹² *Id.*, p. 9.

Entry. The Company's compliance with the Fifth Entry, via this filing, must not be construed as waiver of its right to appeal the Fifth Entry to the Ohio Supreme Court. The Company reserves its right to appeal and to update this Application in accordance with the Ohio Supreme Court's decision if appeal is taken.

This Second Amended Application continues to rely upon the testimony already filed by Duke Energy Ohio witnesses Trisha Haemmerle and James E. Ziolkowski (and not refiled with this second amended application), but also includes additional Supplemental Direct Testimony by James E. Ziolkowski and includes schedules of the Company's calculations in accordance with the Fifth Entry. Consistent with the Fifth Entry, the Company has revised its schedules in this proceeding to implement a \$7.8 million pre-tax shared savings cap. The lost distribution revenues included in this Second Amended Application run through 2018.

The Company has not included updated tariff sheets with this Second Amended Application. The Fifth Entry on Rehearing states that "additional applications for recovery and reconciliation will be addressed thereafter," *i.e.*, after this Second Amended Application is filed. The Company reads this to mean that the intent of the Fifth Entry on Rehearing is to update the Rider EE-PDRR a single time with a rate that reflects amounts to be collected after all pending filings are resolved. Accordingly, instead of updating the tariff in this proceeding, the Company intends to make subsequent filing(s) to resolve all open energy-efficiency-related cost recovery proceedings and update the tariff accordingly at that time.

As supported by the testimony of the Duke Energy Ohio witnesses filed previously with the Company's original application and the Supplemental Direct Testimony of James E. Ziolkowski, the Company respectfully submits its Second Amended Application in accordance with the Fifth Entry, and under reservation of its appeal rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 25th day of March 2022, upon the persons listed below.

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Summary: Amended Application Second Amended Application of Duke Energy Ohio, Inc. electronically filed by Mrs. Debbie L. Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Vaysman, Larisa and Kingery, Jeanne W and Akhbari, Elyse