BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code.	))))	Case No. 22-869-EL-ORD

COMMENTS OF DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio) and respectfully submits its comments regarding administrative rules in O.A.C. Chapter 4901:1-39 (Chapter 39), addressing energy efficiency programs. The Public Utilities Commission of Ohio (Commission) issued an entry on October 5, 2022, proposing to rescind all of the rules in that chapter, stating that "recent legislation. . . has eliminated the energy efficiency savings and programs these rules were meant to regulate," and citing R.C. 4928.66.[1] Pursuant to the Commission entry, comments were to be filed no later than October 26, 2022.[2]

I. COMMENTS

Staff acknowledges that R.C. 106.03 requires the Commission to consider whether, among other things, "the rule is still pertinent" and "if the rule is still reasonably effective for enforcement purposes."[3] Respectfully, the Company believes it is mistaken, or at the very least premature, to

---

[1] Entry, p. 2 (October 5, 2022).
[2] *Id.,* pp. 1,3
[3] *Id.*, p. 1

conclude that the rules in Chapter 39 are no longer pertinent or effective and that complete rescission is appropriate.

Although substantial amendments to the Chapter 39 rules are warranted in light of the legislature's elimination of statutory ***requirements*** (including baselines) for implementing energy efficiency programs, the continued existence of rules for consideration and approval of energy efficiency programs continues to be pertinent and reasonable. Prior to the enactment of the first statutory energy efficiency mandate in Senate Bill 221 of the 127th General Assembly (S.B. 221), the Company's predecessor, The Cincinnati Gas & Electric Company, offered energy efficiency and demand-side management programs to its customers and recovered costs of these programs through a discrete recovery mechanism, a demand-side management rider (Rider DSM).[4] Rider DSM was initiated prior to the passage of S.B. 221, and the creation of an electric security plan under R.C. 4928.143.[5]

During a time when there was no legislative mandate to implement energy efficiency programs, the Commission observed that energy efficiency efforts "in the electric marketplace" were "rather limited" and most customers had not taken the initiative on their own to implement measures.[6] Additionally, the Commission noted that "demand for electric generation . . .

[4] *In the Matter of the Application for Recovery of Costs, Lost Margin, and Performance Incentive Associated with the Implementation of Electric Residential Demand Side Management Programs by The Cincinnati Gas & Electric Company*, Case No. 06-91-EL-UNC *et al.*, Finding and Order, pp. 4-5 (July 11, 2007).
[5] *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Electric Distribution Rates*, Case No. 05-59-EL-AIR *et al.*, Opinion and Order, pp. 6, 11 (December 21, 2005) (approving a non-residential DSM tracker, initially set at $0.00).
[6] *In the Matter of the Application for Recovery of Costs, Lost Margin, and Performance Incentive Associated with the Implementation of Electric Residential Demand Side Management Programs by The Cincinnati Gas & Electric Company*, Case No. 06-91-EL-UNC *et al.*, Finding and Order, p. 5 (July 11, 2007).

continue[d] to grow."[7] These observations are applicable and pertinent today as well. The elimination of a legislative requirement to implement energy efficiency programs did not eliminate the Commission's jurisdiction and discretion —which predated S.B. 221—to consider and approve energy efficiency programs offered voluntarily by utilities.

Not only does the Commission have jurisdiction to review and approve energy-efficiency and demand-side management programs, but a series of energy efficiency workshops recently conducted by the Commission demonstrated the breadth and depth of interest in such programs. Many diverse parties, including but not limited to Ohio Partners for Affordable Energy, the Ohio Hospital Association, the Ohio Environmental Council, the Midwest Energy Efficiency Alliance, and the Citizens' Utility Board, expressed support of such programs continuing in some form or another.[8] Among other benefits of such programs, workshop participants cited: cost savings to customers, job creation, serving of vulnerable populations underserved by the competitive market, such as low-income customers, and energy conservation. Indeed, after the conclusion of the workshops, Commission Chair French stated that "The [C]ommission encourages jurisdictional and non-jurisdictional interested parties to work collaboratively and cooperatively to propose energy efficiency initiatives."[9] Since such programs are within the Commission's jurisdiction to consider and approve and also have been encouraged by so many stakeholders as beneficial, Duke Energy Ohio recommends that the Commission revise—rather than rescind—Chapter 39, so that it will continue to have pertinent rules to govern the submission and review of such programs.

---

[7] *Id.*

[8] *See generally* https://puco.ohio.gov/utilities/electricity/resources/ee-workshops (last accessed October 26, 2022) (containing final comments from workshop participants).

[9] Gongwer Report, *PUCO Chair Encourages Energy Efficiency Proposals* (July 29, 2022).

In the event the Commission decides to rescind these rules entirely—which it should not—Duke Energy Ohio believes that such rescission should be delayed until all open proceedings pending under the existing rules are resolved. The Company still has cost recovery applications pending for energy efficiency programs conducted in calendar years 2018, 2019, 2020, and a portion of 2021, pursuant to statutory mandates and Commission orders.[10] These proceedings were filed under the existing rules and are still awaiting final resolution. The Chapter 39 rules should not be rescinded, at the very least, until such pending proceedings conclude.

II. CONCLUSION

For the reasons stated above, Duke Energy Ohio respectfully suggests that the Commission revise—rather than wholly rescind—the rules. If the Commission does choose to rescind the rules, Duke Energy Ohio respectfully requests that such rescission be delayed until after all proceedings pending under the existing rules are resolved.

[10] *See generally In the Matter 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. 19-622-EL-RDR; *In the Matter 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. 20-613-EL-RDR; *In the Matter 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. 21-482-EL-RDR .

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ *Larisa M. Vaysman*
Rocco D'Ascenzo (0077651)
Deputy General Counsel
Jeanne W. Kingery (0012172)
Associate General Counsel
Larisa M. Vaysman (0090290) (Counsel of Record)
Senior Counsel
Elyse H. Akhbari (0090701)
Senior Counsel
Duke Energy Business Services, LLC
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45202
(614) 222-1331 (telephone)
(614) 222-1337 (facsimile)
Rocco.D'Ascenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.Vaysman@duke-energy.com
Elyse.Akhbari@duke-energy.com
Willing to accept service electronically

Attorneys for Duke Energy Ohio, Inc.

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 26th day of October, 2022, upon the persons listed below.

/s/ Larisa M. Vaysman
Larisa M. Vaysman

John H. Jones
Section Chief
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone: 614-466-4397
Facsimile: 614-644-8764
John.Jones@ohioattorneygeneral.gov

Attorney for Staff of the Public Utilities Commission of Ohio