

**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. 21-482-EL-RDR
and Performance Incentives Related to its)	
Energy Efficiency and Demand Response)	
Programs.)	

**INITIAL COMMENTS
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

For years, Duke has tried to impose unlawful charges on consumers through its energy efficiency rider. In a prior energy efficiency case, 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.”¹ Given Duke’s persistent refusal to stop its inappropriate energy efficiency rider charges, the PUCO should act to protect consumers. Consumers should be protected by ordering an independent audit of Duke’s energy efficiency charges. And the PUCO should levy forfeitures against Duke for its continued non-compliance with PUCO orders.

¹ *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).

II. RECOMMENDATIONS

A. **To protect consumers, the PUCO should order an independent audit of Duke's energy efficiency charges and levy forfeitures against Duke for any inappropriate charges the audit reveals.**

Duke has routinely failed to follow PUCO orders regarding its energy efficiency programs. In Duke's 2014 energy efficiency rider case,² 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.³

Duke tried to charge consumers for utility employee incentive pay again anyway in its 2015 energy efficiency rider case.⁴ PUCO Staff again recommended rejection of Duke's proposed charges.⁵ The PUCO again agreed and disallowed Duke charges for these expenses, which totaled \$276,290.⁶

The PUCO yet again rejected Duke's attempts to charge consumers \$299,822 for utility employee incentive pay in Duke's 2016 energy efficiency rider case⁷ and \$314,219 in Duke's 2017 energy efficiency rider case⁸.

In Duke's 2018 energy efficiency rider case,⁹ the PUCO Staff again found that Duke was trying to charge customers for \$288,593 in employee incentives and recommended denying Duke's request.¹⁰ Apparently frustrated that Duke continued to

² Case No. 15-534-EL-RDR.

³ Case No. 15-534-EL-RDR, PUCO Staff Review and Recommendations (June 16, 2023).

⁴ Case No. 16-664-EL-RDR.

⁵ Case No. 16-664-EL-RDR, PUCO Staff Review and Recommendations (Nov. 13, 2017).

⁶ Case No. 16-664-EL-RDR, Finding & Order ¶¶ 11, 16-17 (May 15, 2019).

⁷ Case No. 17-781-EL-RDR, PUCO Staff Review and Recommendations (Sept. 11, 2018).

⁸ Case No. 17-781-EL-RDR, Finding & Order ¶¶ 13, 16-17 (May 15, 2019).

⁹ Case No. 19-622-EL-RDR.

¹⁰ Case No. 19-622-EL-RDR, Staff Review and Recommendation (Dec. 12, 2019).

include these charges in the rider, the PUCO Staff recommended that the PUCO instruct Duke “to no longer include these expense categories in future Rider EE-PDR filings.”¹¹

Duke apparently was not convinced. Despite the PUCO rejecting the request four years in a row, Duke once again included charges to consumers for utility incentive pay, totaling \$292,925 for 2019.¹²

Considering Duke’s continued disregard of the PUCO’s disallowance of charges for employee incentives, the PUCO should order an independent audit of Duke’s energy efficiency rider charges. 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 OCC understands that the PUCO Staff audit is generally a sampling of Duke’s expenses, not a comprehensive review of every receipt. So, it is possible inappropriate expenses are still being charged to customers because they are not identified in PUCO Staff audits and not disallowed. An independent audit would ensure Duke is not charging consumers for charges that are improper for collection, as they have shown a proclivity to do so.

And even when the PUCO Staff’s audit does catch Duke’s improper expenses, there has so far been no penalty for Duke’s non-compliance but a dollar-for-dollar disallowance. That puts Duke in the same place as if it excluded the expenses itself.

To disincentivize Duke’s behavior (which is to ignore prior PUCO directives), the PUCO should also levy a forfeiture against Duke.¹³ The PUCO has authority to levy forfeitures “against a public utility...that violates a provision of [R.C. 4901, 4903, 4907,

¹¹ *Id.*

¹² Case No. 19-622-EL-RDR, Direct Testimony of James E. Ziolkowski (March 25, 2022) at 7.

¹³ R.C. 4905.54.

and 4909] or that after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated.” Under such violations, the PUCO can assess a forfeiture for each violation of up to \$10,000 per day.¹⁴ The PUCO should levy forfeitures against Duke. Duke has received due notice of its unlawful employee incentive charges through numerous PUCO orders; yet it continued to include them in its energy efficiency riders. The PUCO recently directed First Energy to show cause why it should not be assessed a forfeiture for delayed responses to data requests by a Commission-approved auditor.¹⁵ By continuing to include employee incentive charges in its energy efficiency rider, Duke goes further and ignores prior PUCO directives altogether. Duke should pay forfeitures for including these improper charges.

For years, Duke has attempted to use its energy efficiency rider to impose inappropriate charges on consumers. The PUCO should stop it by ordering an independent audit of Duke’s energy efficiency rider and imposing forfeitures if improper charges are uncovered.

III. CONCLUSION

The PUCO should require an independent audit of Duke’s energy efficiency rider charges, given Duke’s past refusal to comply with PUCO orders disallowing employee incentive charges. The PUCO should levy forfeitures against Duke.

¹⁴ *Id.*

¹⁵ Case No. 22-391-EL-RDR, Entry (April 7, 2023) at 4.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Comments was served on the persons stated below via electronic transmission, this 26th day of April 2023.

/s/ Connor Semple

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Assistant Consumers' Counsel

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: Comments Initial Comments by Office of the Ohio Consumers' Counsel
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