

**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 and) Case No. 21-482-EL-RDR
Performance Incentives Related to its Energy)
Efficiency and Demand Response Programs.)

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

This case concerns the Amended Application, filed by Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) in this proceeding, for final reconciliation and recovery of program costs, lost distribution revenues, and a performance incentive for costs associated with energy efficiency programs implemented during calendar years 2018, 2019, 2020, and 2021, pursuant to its portfolio of energy efficiency and demand response programs, which was approved on September 27, 2017 in Case No. 16-576-EL-POR (Portfolio Programs). The Staff of the Public Utilities Commission of Ohio (Staff) filed its Review and Recommendations on March 17, 2023 (Staff Review).¹ On April 26, Duke Energy Ohio filed initial comments (Duke Energy Ohio Comments)² and the Office of the Ohio Consumers' Counsel (OCC) also filed initial comments (OCC Comments).³ Pursuant to the procedural schedule set by the March 27, 2023, Entry in this case, the following are the Company's reply comments.

¹ Staff's Review and Recommendations (March 17, 2023).

² Comments of Duke Energy Ohio, Inc. (April 26, 2023).

³ Initial Comments by Office of the Ohio Consumers' Counsel (April 26, 2023).

II. THE COMPANY HAS ONLY INCLUDED AMOUNTS ALREADY APPROVED BY THE COMMISSION IN RIDER EE-PDR RATES.

OCC appears to mistakenly conflate the Company's inclusion of incentive pay in its *applications for cost recovery* with inclusion of incentive pay in the *rates* charged to customers via Rider EE-PDR.⁴ This is simply incorrect factually.

Duke Energy Ohio does not recalculate its Rider EE-PDR rates until it receives an order from the Commission approving its request for cost recovery. And then, the Company only charges customers what the Commission order has authorized; any disallowances are deducted in accordance with the relevant order. Thus, for example, after the Commission issued its order in Case No. 18-397-EL-RDR, approving the Company's application subject to the disallowances described in the order, the Company's compliance tariff filed the following month only placed into rates the amounts authorized by the order.⁵ None of the amounts sought to be recovered in the pending cases have been charged to customers at this time. The Company will not update its Rider EE-PDR until the Commission authorizes such update. At that time, the Company's compliance tariff will be calculated in compliance with the order.

III. THERE IS NO GROUND OR BASIS FOR ANY ADDITIONAL AUDITING, MUCH LESS ANY FORFEITURE.

The PUCO has not categorically prohibited "charg[ing] customers for utility employee incentive pay," as OCC misleadingly implies.⁶ The most recent Commission order in the Company's energy efficiency portfolio annual filings was in Case No. 18-397-EL-RDR. In that case, the Staff made clear that it was potentially open to categorizing at least some incentive pay as recoverable. Although Staff stated it "does not support the recovery of financial incentives,

⁴ OCC Comments, pg. 4 (claiming Duke "continued to include [incentives] in its energy efficiency riders").

⁵ *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. 18-397-EL-RDR, Compliance Tariff Schedules, pg. 11 (August 26, 2019).

⁶ OCC Comments, pg. 2.

based upon a utility's financial goals,” it specifically “requested information from Duke to trace, verify, and separate non-financial from financial incentives within the employee pay incentives.”⁷ Although Staff ultimately found the information provided insufficient to facilitate categorization, the Commission also acknowledged the potential for distinguishing between categories of incentives in its order, stating “we agree with Staff’s exclusion of incentive *pay tied to financial goals*.”⁸ And indeed, in the present case, Staff stated that in its recommendation it “identified and allowed incentive pay that was related to nonfinancial goals.”⁹ Thus, there is no regulatory bar on incentive pay as a broad category.

OCC suggests that the amounts identified by Staff as incentive pay are somehow incomplete.¹⁰ There is no basis for this. The Company has been forthcoming during Staff’s thorough discovery in identifying such amounts.

Additional auditing would be redundant and burdensome, especially given how long the Company has already been waiting to resolve the three outstanding cases and the work that has already been performed during the extensive prior discovery.¹¹ Staff has issued at least ten rounds of discovery in each of the pending cases, and these included scrutiny of incentive pay. For example, in Case No. 20-613-EL-RDR, Staff requested individual incentive amounts for over 250 employees who had charged time to the Company’s EE/DSM programs.¹² This is just one example of the many, many labor-intensive data requests to which Company employees spent hours

⁷*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. 18-397-EL-RDR, Staff Review, pgs. 1-2 (June 12, 2019).

⁸ *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. 18-397-EL-RDR, Order, pg. 5 (emphasis added) (July 31, 2019).

⁹ “As a result of this review, Staff identified and allowed incentive pay that was related to nonfinancial goals and removed all other incentive pay that was unsubstantiated, tied to generation, and/or related to the Company’s financial goals.” Staff’s Review and Recommendation at 2 (March 17, 2023).

¹⁰ OCC Comments, pg. 3.

¹¹ See Duke Energy Ohio Comments, pg. 4.

¹² See Attachment A attached hereto.

compiling responses which Staff must have spent hours reviewing and auditing over the course of the past four-plus years. In its comments, OCC appears to have no awareness of the deep and labor-intensive discovery already performed and provides no specifics on which information is lacking. Its comments offer no basis for discarding the hard work of both the Company and the Staff in the three outstanding dockets.

Furthermore, since the clarification provided in the order in Case No. 18-397-EL-RDR on July 31, 2019 (after the original application in Case No. 19-622-EL-RDR had already been filed on March 29, 2019), the Company has been proactive and forthright in explicitly addressing the issue of incentive pay in its supporting testimony for new applications. Thus, for the original applications in Case Nos. 20-613-EL-RDR,¹³ and 21-482-EL-RDR, filed on April 14, 2020, and May 14, 2021, respectively, the supporting testimony of James E. Ziolkowski has explicitly highlighted the category of incentive pay and explained the Company's position in detail.¹⁴ The Company has not been concealing these amounts, contrary to any insinuations by OCC.

The Company has not engaged in any prohibited or duplicitous conduct. The extended pendency of these cases—it has now been more than four years since the application in Case No. 19-622-EL-RDR was first filed—has created uncertainty and, in the interim, the Company accordingly sought to preserve its potential rights by including incentive pay in the applications. Even the Company's initial comments in this case explicitly catalogue—rather than attempt to conceal—all of the incentive pay disallowance recommendations that remain pending. Under these circumstances, there is no basis whatsoever for requiring any additional auditing or forfeiture and Duke Energy Ohio opposes any such requirement.

¹³*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. 20-613-EL-RDR, Direct Testimony of James E. Ziolkowski, pgs. 6-8, (April 14, 2020).

¹⁴ See Direct Testimony of James E. Ziolkowski, pgs. 8-9 (May 14, 2021); see also Supplemental Direct Testimony of James E. Ziolkowski, pgs. 4-5 (April 14, 2022) (filed later with the Amended Application).

IV. CONCLUSION

The Company respectfully requests that the Commission's order in this case be in accordance with the above comments and the Company's initial comments, and that the Commission reject OCC's request for additional auditing and forfeitures.

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 11th day of May 2023, upon the persons listed below.

/s/Larisa M. Vaysman

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From: [REDACTED]
To: [REDACTED]
Subject: FW: [EXTERNAL] DR 4a - EE Incentive Dollars - Due 12/7/2020
Date: Tuesday, December 1, 2020 7:56:06 AM
Attachments: [Data Request #4a - EE Incentive Dollars.xlsx](#)
[image001.png](#)

Hi [REDACTED],

I am so so sorry, this one somehow got missed (I thought [REDACTED] had input it but I don't see it).

Do you mind inputting this one in today or tomorrow as the First Supplemental?

I can fix the two that are already in there so that everything is named correctly.

Thank you.

[REDACTED]
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Date Issued: 11/19/2020

Date Due: 12/7/2020
Case No: 20-0613-EL-RDR

In reference to the attached spreadsheet regarding EE incentive dollar information for 2019, please complete and return to Staff with the following information:

- a. Total incentive dollars charged to the EE rider
- b. Total incentive dollars for Duke Energy Ohio for the year
- c. Calculation of the percentage of EE incentive dollars that each employee charged to the EE rider for the year

For the requested information, please use only one line per Employee ID. Additionally, if an EE employee does not have dollars charged, enter "0".

If a listed employee is no longer with Duke Energy Ohio, please indicate this on the spreadsheet.

If there are EE Employee ID numbers that are missing or need to be deleted, please edit as necessary (include an explanation of what was edited and why).

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Case No(s). 21-0482-EL-RDR

Summary: Comments Reply Comments of Duke Energy Ohio, Inc. electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Vaysman, Larisa and Kingery, Jeanne.