

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

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

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**I. INTRODUCTION**

Duke is seeking to collect costs associated with its energy efficiency program that it has been ordered by the PUCO to stop charging consumers for. Given Duke's repeated refusal to follow PUCO orders, the PUCO should act to protect consumers. The PUCO should deduct carrying costs from Duke's revenue requirement, as the PUCO Staff recommended<sup>1</sup> (but Duke ignored<sup>2</sup>). Also, the PUCO should not finalize complete reconciliation of outstanding amounts, as Duke suggests<sup>3</sup>, until Duke's energy efficiency charges have been independently audited. And the PUCO should levy forfeitures against Duke for any non-compliance with PUCO orders.

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<sup>1</sup> Case No. 19-622-EL-RDR, Staff Review and Recommendation (December 12, 2019) at 5; Case No. 20-613-EL-RDR, Staff Review and Recommendation (December 17, 2021) at 4; Case No. 21-482-EL-RDR, Staff Review and Recommendation (March 17, 2023) at 3.

<sup>2</sup> Initial Comments (April 26, 2022) of Duke Energy Ohio, Inc. ("Duke Comments") at 5.

<sup>3</sup> Duke Comments at 5.

## II. REPLY COMMENTS

### A. Duke misrepresents the PUCO Staff's recommended adjustments to its revenue requirement, which include deducting carrying charges.

Duke states that it is “willing to forego contesting” the PUCO Staff’s adjustments to its revenue requirement.<sup>4</sup> However, Duke misstates what the PUCO Staff recommended. Duke asserts that the PUCO Staff suggested downward adjustments to the Company’s revenue requirement of \$337,893 in 2018, \$278,460 in 2019, and \$266,598 for 2020 & 2021.<sup>5</sup> However, the PUCO Staff also recommended these downward adjustments include “*applicable carrying charges*.”<sup>6</sup> The PUCO Staff recommended this, without variation, in all three cases which Duke seeks to resolve.

Yet, in its initial comments, Duke ignores the PUCO Staff’s recommended deduction of carrying costs. This despite representing to the PUCO that it is not contesting PUCO Staff’s recommendations. Consistent with the PUCO Staff’s suggested deductions and Duke’s supposed pledge not to contest them, Duke should not collect from consumers applicable carrying charges.

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<sup>4</sup> Duke Comments at 4.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> Case No. 19-622-EL-RDR, Staff Review and Recommendation (December 12, 2019) at 5; Case No. 20-613-EL-RDR, Staff Review and Recommendation (December 17, 2021) at 4; Case No. 21-482-EL-RDR, Staff Review and Recommendation (March 17, 2023) at 3.

**B. The PUCO should not finalize complete reconciliation of all outstanding amounts or authorize closure of Case Nos. 19-622-EL-RDR and 20-613-EL-RDR, as Duke requests, until it has performed an independent audit of Duke's energy efficiency charges and levied any forfeitures against Duke for inappropriate charges.**

Duke asks for final reconciliation of program costs and closure of related proceedings.<sup>7</sup> The PUCO should deny both requests to give it time to perform an independent audit of Duke's energy efficiency charges.

Over and over, Duke has failed to follow PUCO orders regarding its energy efficiency programs. The PUCO Staff has repeatedly<sup>8</sup> recommended that Duke not charge consumers for utility employee incentive pay. And the PUCO has routinely disallowed these charges.<sup>9</sup> Undeterred by the PUCO's instructions, Duke has sought to charge consumers for employee incentive pay anyway.

The PUCO should order an independent audit of Duke's energy efficiency rider charges. Duke has imposed improper charges on consumers repeatedly. An independent audit would ensure Duke is not charging consumers improperly. It is possible inappropriate expenses are still being charged to customers because they are not identified in PUCO Staff audits and not disallowed.

The PUCO's audit should include forfeitures against Duke for any improper expenses. The PUCO can levy forfeitures against a public utility under R.C. 4905.54.<sup>10</sup>

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<sup>7</sup> Duke Comments at 5.

<sup>8</sup> Case No. 15-534-EL-RDR, PUCO Staff Review and Recommendations (June 23, 2016); Case No. 16-664-EL-RDR, PUCO Staff Review and Recommendations (November 13, 2017); Case No. 17-781-EL-RDR, PUCO Staff Review and Recommendations (September 11, 2018); Case No. 19-622-EL-RDR, Staff Review and Recommendation (December 12, 2019).

<sup>9</sup> Case No. 16-664-EL-RDR, Finding & Order ¶¶ 11, 16-17 (May 15, 2019); Case No. 17-781-EL-RDR, Finding & Order ¶¶ 13, 16-17 (May 15, 2019), Case No. 19-622-EL-RDR, Direct Testimony of James E. Ziolkowski (March 25, 2022) at 7.

<sup>10</sup> See Case No. 22-391-EL-RDR, Entry (April 7, 2023) at 4 (ordering FirstEnergy to show cause why it should not be assessed forfeitures for late responses to data requests by a Commission-approved auditor).

Merely disallowing unlawful charges simply puts Duke in the same place it would have been had it excluded the expense itself. Forfeitures, on the other hand, will disincentivize Duke from making any future improper charges.

The PUCO should not finalize complete reconciliation of outstanding amounts or close Case Nos. 19-622-EL-RDR and 20-613-EL-RDR, as Duke suggests. The PUCO should only do this after it has ordered an independent audit to verify that Duke is not levying other inappropriate charges on consumers through its energy efficiency rider.

### **III. CONCLUSION**

The PUCO should deduct carrying charges from Duke's revenue requirement. The PUCO should also require an independent audit of Duke's energy efficiency rider charges before finalizing complete reconciliation of outstanding amounts or closing Case Nos. 19-622-EL-RDR and 20-613-EL-RDR.

Respectfully submitted,

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Duke goes further by ignoring altogether repeat PUCO directives not to charge consumers for employee incentives using its energy efficiency rider.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments was served on the persons stated below via electronic transmission this 11<sup>th</sup> day of May 2023.

/s/ Connor D. 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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