

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates. |) | Case No. 17-32-EL-AIR |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval. |) | Case No. 17-33-EL-ATA |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods. |) | Case No. 17-34-EL-AAM |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR. |) | Case No. 17-872-EL-RDR |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR. |) | Case No. 17-873-EL-ATA |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods. |) | Case No. 17-874-EL-AAM |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service. |) | Case No. 17-1263-EL-SSO |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20. |) | Case No. 17-1264-EL-ATA |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Vegetation Management Costs. |) | Case No. 17-1265-EL-AAM |
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| In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant |) | Case No. 16-1602-EL-ESS |

to Chapter 4901:1-10, Ohio Administrative)
Code.)

**INITIAL POST-HEARING BRIEF
BY
CINCINNATI CLEAN ENERGY FOUNDATION**

I. INTRODUCTION

The Cincinnati Clean Energy Foundation (CCEF) herein submits to the Public Utilities Commission of Ohio (PUCO or Commission) this initial post-hearing brief in the above-captioned Duke Energy Ohio (Duke) rate case. On April 13, 2018 a Stipulation and Recommendation (Stipulation) was signed by a fraction of intervening parties and staff. CCEF did not sign the Stipulation primarily because the Stipulation is not in the public interest with respect to clean energy and efficiency issues. Namely, the Stipulation is not in the public interest because it does not contain any funding for clean energy customer education programs and it grants Duke authority to spend up to \$20 million through the DCI rider to install a battery storage project without any involvement from parties to the proceeding, including groups dedicated to furthering the public interest. The Commission should adopt CCEF's recommendations to modify the Stipulation as explained below.

II. ARGUMENT

In evaluating stipulations, PUCO must determine whether the agreement "is reasonable and should be adopted."¹ PUCO employs a three-part test to make this determination:

¹ In re Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Tariffs, Case No. 04-571-GA-AIR, Opinion & Order at 9, (Apr. 13, 2015).

- (1) Is the settlement a product of "serious bargaining" among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?²

The signatory parties to a stipulation bear the burden of demonstrating that the stipulation satisfies the Commission's three-part reasonableness test.³

A. The Commission should modify the Stipulation to require public input into the Duke battery storage pilot project.

Though CCEF is generally supportive of the proposition of a battery storage project, in order to ensure that the public interest is advanced and protected, the parties to the proceeding must have input in the development of the project. Under the current stipulation, Duke has complete discretion over such a project. There is no assurance that, if approved, this project will be sited, designed, or operated in a manner that serves the public interest. In order to ensure that any battery storage project does benefit the public interest, Duke should be required to convene a collaborative working group composed of any and all interested parties to this proceeding. The purpose of the working group should be to attempt to achieve agreement on choices of technology, placement, dissemination of data, and other issues. Further, Duke should be required to convene the working group within two months of the conclusion of these proceedings. Ten months after the formation of the working group, regardless of whether the collaborative

² In re Ohio Edison Co., 2016-Ohio-3021, ¶ 37, 146 Ohio St. 3d 222, 229, 54 N.E.3d 1218, 1225

³ In re Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agmt. for Inclusion in the Power Purchase Agmt. Rider, Case No. 14-1693-EL-SSO, Opinion & Order at 18 (Mar. 31, 2016).

working group has reached agreement, Duke should be required to file an application with the Commission for qualifying battery storage projects, which can be recovered through the Distribution Capital Investment (DCI) Rider, if said costs are deemed appropriate for recovery in the FERC accounts.

Modifying the stipulation to include this collaborative framework would provide additional assurance that the battery storage project will serve the public interest. This collaborative framework creates the opportunity for interested parties to have input and information about the potential project before it is approved. Involving interested parties in the siting and design of the battery project will ensure that the benefits to the public are realized. Yet Duke and the Commission can also take comfort in the fact that after a year's time, Duke will make its own filing even if no consensus has been reached. Thus, there will be no material delay in realizing the alleged benefits to customers of the battery storage projects. At best, Duke will propose a project that has broad stakeholder support; at worst, Duke will make its own proposal, and interested parties will preserve the right to oppose it.

B. The Commission should modify the Stipulation to incorporate customer education funds.

PUCO submitted the prefiled testimony of John L. Berringer in response to CCEF's objections to the Staff Report. Mr. Berringer describes PUCO's treatment of test year expenses as "long-standing practice."⁴ CCEF's objection is still valid, as this practice is not mandated by statute or regulation. Indeed, as pointed out in CCEF's Objection, Staff has the authority to include items not expended during the test year.⁵ What is more, the proposed customer education

⁴ In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, Case No. 17-32-EL-AIR, et al., Prefiled Testimony of John Berringer at 2 (July 2, 2018).

⁵ In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, Case No. 17-32-EL-AIR, et al., Objections to the Staff Report by CCEF at 4 (Oct. 26, 2017).

funding comports with the majority of the criteria in PUCO's long-standing practice to assess whether costs are prudent to include in test year expenses.⁶ The cost of the proposed customer education plan is known and measurable, and the education campaign is useful in providing utility service to customers. No statute or regulation prohibits the use of education funding after the test year, and exclusion on this basis deprives ratepayers of this resource for the duration of the rate.

In addition, inclusion of the education funds furthers the state policies reflected in R.C. 4928.02(M). Specifically, this additional funding would support education regarding renewable energy and energy efficiency programs and technologies to small business owners and ratepayers generally. As ratepayers increasingly gain control over their energy decisions, it is crucial that they have access to information regarding renewable energy and energy efficiency options available to them. This is a clear gap in the current stipulation that should be advanced with the modification set forth herein.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt CCEF's recommended modifications in order to satisfy the benefit to ratepayers and the public interest prong of the PUCO's three-part test for stipulations.

Respectfully submitted,

/s/ Justin D. Newman

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⁶ Prefiled Testimony of John Berringer at 2-3.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular electronic transmission to the persons listed below, on September 9, 2018.

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Summary: Brief electronically filed by Mr. Justin Newman on behalf of Cincinnati Clean Energy Foundation