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Via E-FILE

December 19, 2018

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

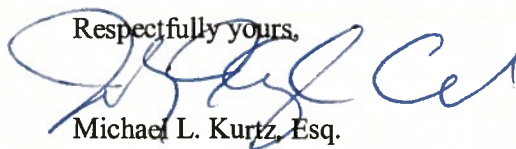
In re: Case No. 18-1185-EL-UNC and 18-1186-EL-ATA

Dear Sir/Madam:

Please find attached the OHIO ENERGY GROUP'S MOTION TO ESTABLISH PROCEDURAL SCHEDULE e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Michael L. Kurtz", is written over the typed name.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Duke Energy Ohio, Inc.,	:	Case No. 18-1185-EL-UNC
For Implementation of the Tax Cuts and Jobs Act of 2017	:	
	:	
In The Matter Of The Application Of Duke Energy Ohio, Inc.,	:	
For Approval of Tariff Amendments.	:	Case No. 18-1186-EL-ATA
	:	

**MOTION TO ESTABLISH PROCEDURAL SCHEDULE
OF THE OHIO ENERGY GROUP**

Pursuant to Ohio Admin. Code 4901-1-12, the Ohio Energy Group ("OEG") moves the Attorney Examiner for an entry establishing an expedited procedural schedule in this case that allows for a prehearing conference among the parties as well as an opportunity for intervenor testimony and a hearing. The reasons supporting this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,



Michael L. Kurtz, Esq.

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December 19, 2018

COUNSEL FOR THE OHIO ENERGY GROUP

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Duke Energy Ohio, Inc.,	:	Case No. 18-1185-EL-UNC
For Implementation of the Tax Cuts and Jobs Act of 2017	:	
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In The Matter Of The Application Of Duke Energy Ohio, Inc.,	:	
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	:	

MEMORANDUM IN SUPPORT

On July 25, 2018, Duke Energy Ohio, Inc. (“Duke” or “Company”) filed an Application in the above-captioned proceedings seeking to flow through as a credit to retail customers federal income tax (“FIT”) savings and \$224.3 million in excess accumulated deferred income taxes (“EDIT”) resulting from the Tax Cuts and Jobs Act of 2017 (“TCJA”). Duke requests permission to flow both the FIT savings and the amortization of the EDIT through the same new rider, Rider Electric TCJA (“Rider ETCJA”), which the Company proposes to allocate among rate classes based upon their percentage of base distribution revenues. Duke initially proposed the following procedural schedule:

Deadline for Intervention – August 1, 2018

Initial Comments – August 15, 2018

Reply Comments – September 1, 2018

Shortly after Duke’s Application was filed, multiple entities moved to intervene in these proceedings, including OEG, Industrial Energy Users-Ohio, the Ohio Manufacturers’ Association Energy Group, the Kroger Co, the Office of the Ohio Consumers’ Counsel, Ohio Partners for Affordable Energy, and the Ohio Cable Telecommunications Association.

To date, those motions to intervene have not yet been addressed by the Attorney Examiner and no procedural schedule has been established in these proceedings. Nevertheless, on December 17, 2018, Staff filed a Review and Recommendation supporting the Company’s Application.

Given that Staff has already filed a formal Report in these proceedings, OEG respectfully requests that the Attorney Examiner establish an expedited procedural schedule that provides interested entities a meaningful opportunity to respond to both Duke's Application and the Staff Report prior to any Commission order substantively considering Duke's Application. That procedural schedule should include both a prehearing conference among the parties as well as an opportunity for intervenor testimony and a hearing.

In making this request, OEG does not wish to unduly delay the resolution of these proceedings. But there is at least one major issue raised by Duke's Application that has not yet been fully addressed in the current record. Specifically, Duke's proposed base distribution revenue allocation methodology for Rider ETCJA is unreasonable. As OEG will explain in greater detail in testimony, while it is appropriate to credit the FIT savings to customer classes on the basis of current distribution revenues since it is easy to verify that the FIT costs are currently being paid on the same basis, that rationale does not hold true for the \$224.3 million in EDIT.

Accumulated deferred income taxes ("ADIT") resulting from book accounting/tax accounting timing differences were collected over the 40 to 50-year useful lives of thousands of distribution assets. As a result of the new tax law, 40% of that ADIT is now excessive and will never have to be paid over to the federal government. Based upon multiple Cincinnati Gas & Electric, Cinergy, and Duke cost-of-service studies over the last two decades, and based upon Commission Orders that go back even further, it is certain that the ADIT collected from each rate schedule was not in alignment with cost-of-service. Over that 40-50 year period, many rate schedules had a negative return, which means that they paid no federal corporate income taxes, while other rate schedules paid a disproportionate share of taxes. To now assume that all rate schedules should receive a share of the \$224.3 million EDIT based upon current base distribution revenue ignores how federal taxes were collected in the first place. Accordingly, OEG seeks an opportunity to present a different and fairer allocation methodology for the EDIT in these proceedings.

It would violate due process to completely foreclose interested stakeholders from meaningfully participating in these proceedings. Moreover, it would be contrary to the intent of the Commission set forth in its October 24, 2018 in the generic TCJA proceeding, Case NO. 18-47-AU-COI (the "TCJA Order"). In that Order, the Commission stated that it "*intends to employ a deliberative and thorough approach to evaluating the*

complicated effects of the TCJA on each Ohio rate-regulated utility."¹ In pursuit of this intent, the Commission directed Ohio rate-regulated utilities to file an application in separate, company-specific proceedings to resolve outstanding issues related to the TCJA. It would thus be contrary to the Commission's expressed desire for a *"thorough and deliberative approach"* if the Commission rushed to judgment on Duke's application without meaningful feedback from interested stakeholders.

Accordingly, in order to allow interested entities to raise important issues associated with Duke's Application, such as the one identified by OEG above, the Attorney Examiner should establish an expedited procedural schedule which allows for a prehearing conference among the parties as well as an opportunity for intervenor testimony and a hearing.

Respectfully submitted,



Michael L. Kurtz, Esq.

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December 19, 2018

COUNSEL FOR THE OHIO ENERGY GROUP

¹ TCJA Order at 17.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, OH io Administrative Code, the PUCO'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 this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 19th day of December, 2018 to the following:



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in

Case No(s). 18-1185-EL-UNC, 18-1186-EL-ATA

Summary: Motion Ohio Energy Group (OEG) Motion to Establish Procedural Schedule electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group