

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Authority to Adjust)	Case No. 19-1750-EL-UNC
its Power Forward Rider.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval to Change)	Case No. 19-1751-GE-AAM
Accounting Methods.)	

STIPULATION AND RECOMMENDATION

Under Ohio Adm. Code 4901-1-30, any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company), The Ohio Energy Group (OEG), the Ohio Energy Leadership Council (OELC), and the Staff of the Public Utilities Commission of Ohio (Staff) (which, for the purpose of entering into this Stipulation and Recommendation, will be considered a party by virtue of Ohio Adm. Code 4901-1-10(C)) (collectively, the Signatory Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all the issues raised by the Signatory Parties in this case.

The Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in this proceeding; is in the public interest; violates no regulatory principle or precedent; and is the product of cooperative, voluntary, and serious bargaining among knowledgeable and capable parties that represent various interests and are represented by experienced counsel and technical experts. Although this Stipulation is not binding

on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by this proceeding, the Signatory Parties stipulate, agree, and recommend as set forth below.

Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification by the Commission; provided, however, that each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Stipulation contains a "material modification" thereof. Should the Commission reject or materially modify all or any part of this Stipulation, any Signatory Party shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an Entry on Rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may terminate their status as a Signatory Party and withdraw from the Stipulation. Such termination and withdrawal shall be accomplished by filing a notice with the Commission, including service to all parties, in the docket within thirty days of the Commission's Entry on Rehearing.

Prior to filing a notice of withdrawal, the Signatory Party wishing to withdraw agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory

Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, then the Signatory Party wishing to withdraw may proceed with withdrawal from the Stipulation. Other Signatory Parties to this Stipulation shall not oppose the withdrawal from the Stipulation by any other Signatory Party.

Upon the filing of a notice of withdrawal, the Commission will convene an evidentiary hearing to afford the withdrawing party the opportunity to contest the Stipulation by presenting evidence through witnesses, cross-examining all witnesses, presenting rebuttal testimony, and briefing all issues that shall be decided based upon the record and briefs.

The Signatory Parties fully support this Stipulation in its entirety and urge the Commission to accept and approve the terms herein.

The Stipulation represents a comprehensive compromise of issues raised by Signatory Parties with diverse interests. The Signatory Parties have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits ratepayers and is in the public interest. The Signatory Parties agree that the settlement does not violate any regulatory principle or practice.

WHEREAS, Duke Energy Ohio's Power Forward Rider, Rider PF, was adopted and approved by the Commission in Case No. 17-0032-EL-AIR, *et al.* on December 19, 2018 (2017 Order). Pursuant to the 2017 Order, the Commission accepted Staff's recommendations as to the first annual filing for the third component of Rider PF to be an application in an electric rider case,

separate from the case established for the cost recovery associated with the second component of Rider PF. In this filing, the costs associated with the third component, the Company's infrastructure modernization plan, would be eligible for cost recovery.

WHEREAS, on September 24, 2019, Duke Energy Ohio filed its Application for Approval of Component Three of Its Rider PF seeking approval for recovery of costs related to Component Three of its Rider PF, which included: (1) investments needed to upgrade the Company's customer Information System (CIS), also known as Customer Connect; (2) a new Land Mobile Radio (LMR) Communication System; (3) a Smart Cities Infrastructure Acceleration Program (Smart Cities); and (4) a pilot electric vehicle (EV) program.

WHEREAS, On April 15, 2020, the Staff of the Commission issued its Staff Review and Recommendation (Staff Report). In brief,¹ the Staff Report recommended:

1. that the Commission modify the CIS proposal and approve cost recovery and deferral authority for the modified CIS, with deferred O&M becoming eligible for recovery only after Staff deems the CIS used and useful and it is placed into service;²

2. that costs associated with the Smart Cities program and the new LMR system be excluded from Rider PF;³

3. that the Commission deny deferral authority for the EV program;⁴ and,

4. that the Company modify the EV program to be a rebate-only program.⁵

¹ The brief summary of the Staff Report provided here is for convenience and is not intended to supersede in any way the actual language in the Staff Report.

² Staff Review and Recommendations (April 15, 2020), pg. 15.

³ *See Id.*, at 9 (expressing "appreciat[ion for] the advancement that the installation of multi-use poles and smart cities technologies can provide," but declining to support the program "as proposed").

⁴ *Id.*, pp.14, 16-17.

⁵ *Id.*, pg. 12, 13. Regarding the Company's DC Fast Charging Program, Staff recommended it be "modified so that the incentives for the DCFC program focus on areas where investment would assist in the establishment of 'corridor-ready' alternative fuel corridors for EVs, as defined by the FHA." Staff also recommended eliminating the proposed Residential Level II charger program in order to "focus on incentives at sites where EV infrastructure will be made available to the public or, at a minimum, to multiple users." *Id.*, pg. 13.

WHEREAS, the Signatory Parties have filed initial and/or reply comments regarding the Company's Application, as well as held a number of settlement discussions;

WHEREAS, all the related issues and concerns raised by the Signatory Parties have been addressed in settlement discussions and/or in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues;

WHEREAS, this Stipulation is the product of the discussions and negotiations of the Signatory Parties and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally;

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in this matter;

NOW, THEREFORE, the Signatory Parties stipulate, agree, and recommend that the Commission make the following findings and issue its Opinion and Order in this proceeding approving this Stipulation in accordance with the following:

1. The Signatory Parties recommend approval of the Company's Application, as modified by the withdrawals and conditions set out below:
 - a. **Customer Connect:** The Company will be eligible to recover, through its annual Rider PF update filings and subject to the review described in subsection (e.) below, the revenue requirement associated with the return on the electric

Customer Connect capital assets placed in-service and the associated depreciation and property tax expenses. The Company will have authority to defer all electric and natural gas O&M costs associated with the implementation of the Customer Connect Program, with the electric O&M costs to be eligible for recovery through the annual Rider PF update filings. The annual Rider PF update filings will be subject to the review described in subsection (e.) below and, ultimately, approval by the Commission. By agreeing to the deferral of costs in this proceeding, Signatory Parties are not agreeing to the collection of those deferrals from consumers. Deferred amounts cannot be collected from consumers unless such collection is approved by the Commission pursuant to the review described in subsection (e.). No additional electric O&M costs associated with the implementation of the Customer Connect program will be included in Rider PF after the March 31, 2024, annual Rider PF filing, and the total amount of electric O&M costs included in Rider PF for Customer Connect shall not exceed \$31 million.

The Company will include all capital costs associated with electric service assets already placed in service as of December 31, 2022, in its next annual Rider PF application, to be filed no later than 30 days after the approval of this Stipulation without material modification. Capital costs associated with electric service assets placed into service after December 31, 2022, will be included in subsequent Rider PF filings. No additional capital costs associated with electric service assets for the implementation of the Customer Connect program will be added into the annual Rider PF filings after the March 31, 2024,

annual Rider PF filing. Additionally, the total electric plant-in-service assets included in Rider PF for the implementation of the Customer Connect program shall not exceed \$38 million.

- b. **LMR:** The Company hereby agrees to withdraw its request for inclusion of the LMR program in its infrastructure modernization plan and thus recovery of any costs associated with the LMR program in Rider PF. The Company still plans to make these investments and will seek recovery of the costs in a base rate case proceeding once the assets are placed in service. The Signatory Parties reserve the right to challenge any such cost recovery request in future proceedings.
- c. **Smart Cities:** The Company hereby agrees to withdraw its request for inclusion of Smart Cities in its infrastructure modernization plan and thus recovery of any costs associated with Smart Cities in Rider PF. The Company reserves the right to make similar proposals through different forums in the future as deemed necessary. Although the Company is withdrawing its application for purposes of settlement, the Company will continue to work with customers, throughout its service territory, to identify solutions for their growing interest in Smart City technologies. The Signatory Parties reserve the right to challenge any such proposals in future proceedings.
- d. **EV Pilot Program:** The Company hereby agrees to withdraw its request for inclusion of the EV Pilot Program in its infrastructure modernization plan and thus recovery of any costs associated with the EV Pilot Program in Rider PF. The Company reserves the right to make EV-related proposals similar to those included in its Application in this proceeding through different forums in the

future as deemed necessary. The Signatory Parties reserve the right to challenge any such proposals in future proceedings.

- e. **Review of Cost Recovery Filings:** Either Staff or a third-party designee of Staff shall perform an annual audit of Duke Energy Ohio's annual Rider PF update filings to determine the lawfulness, used and usefulness, prudence and reasonableness of the costs included, as well as to determine that the costs included have not been otherwise recovered in electric or gas base rates or any other rider mechanisms. Duke Energy Ohio shall only recover those costs which have been prudently and reasonably incurred, and shall only recover capital costs for property that is used and useful. The Signatory Parties reserve the right to challenge the findings of any such audit. Costs cannot be collected from consumers unless approved by the Commission.

Collection of deferred amounts is not guaranteed for the Company. Deferred amounts cannot be collected from consumers unless approved by the Commission in an appropriate future proceeding wherein the Company will have the burden of proof. In that proceeding, issues including, but not limited to, used and usefulness, prudence, proper computation, proper recording, reasonableness, and any potential double-recovery, will be fully considered by the Commission.

- f. **Rate Design:** For the Rider PF "Component Three" investments authorized for recovery through Rider PF in Case Nos. 17-0032-EL-AIR, *et al.*, the revenue requirement shall be allocated based on the percentage of base distribution revenues approved in the Company's most recent electric distribution base rate

case, and then billed to residential and non-residential consumers using a fixed monthly distribution charge. In the Company's next electric distribution base rate case, the Company will include in its application a proposal to roll plant-in-service assets, depreciation, and property taxes included in its Rider PF filings into base rates. The Signatory Parties reserve all rights to challenge the Company's application in the next electric distribution base rate case.

The undersigned **Signatory Parties** hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 2nd day of August, 2023.

On Behalf of Duke Energy Ohio, Inc.:

By: /s/ Larisa M. Vaysman
Rocco D'Ascenzo (0077651)
Deputy General Counsel
Larisa M. Vaysman (0090290)
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(Counsel of Record)
Duke Energy Business Services LLC
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On Behalf of Staff of The Public Utilities Commission of Ohio:

By: /s/ Thomas Lindgren
Thomas Lindgren (0039210)
Assistant Attorney General – Public Utilities Section
(Counsel of Record)
(by e-mail authorization 7/28/2023)

On Behalf of The Ohio Energy Group:

By: /s/ Jody Kyler Cohn
Jody Kyler Cohn (0085402) Counsel of Record
(by e-mail authorization 7/27/2023)

On Behalf of Ohio Energy Leadership Council:

By: /s/ David F. Proaño
David F. Proaño (0078838) Counsel of Record
(by e-mail authorization 7/27/2023)

The undersigned **Non-Opposing Parties** agree not to challenge this Stipulation and Recommendation, so long as it is adopted by the Commission without any material modification, as of this 2nd day of August, 2023.

On Behalf of Ohio Hospital Association:

By: /s/ Rachael Mains

Rachael Mains (98681) Counsel of Record
(by e-mail authorization 7/31/2023)

On Behalf of The Kroger Co.:

By: /s/ Angela Paul Whitfield

Angela Paul Whitfield (0068774) Counsel of Record
(by e-mail authorization 7/27/2023)

On Behalf of Ohio Manufacturers' Association Energy
Group LLC:

By: /s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) Counsel of Record
(by e-mail authorization 8/2/2023)

On Behalf of Ohio Environmental Council:

By: /s/ Chris Tavenor

Chris Tavenor (0096642) Counsel of Record
(by e-mail authorization 7/27/2023)

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Summary: Stipulation Stipulation and Recommendation electronically filed by Mrs. Minna Sunderman on behalf of D'Ascenzo, Rocco and Vaysman, Larisa and Duke Energy Ohio, Inc..