

**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. 19-622-EL-RDR
Revenues, and Performance Incentives)
Related to its Energy Efficiency and)
Demand Response Programs.)

DUKE ENERGY OHIO'S MOTION TO FILE REPLY COMMENTS *INSTANTER*

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and hereby respectfully requests leave to file, *instanter*, the attached Reply Comments, one day late in the above-captioned case. Good cause exists to grant this motion, for the reasons described below.

Due to the timing of December holidays and the retirement of the counsel in this proceeding, the Company was not able to prepare and file its comments in reply to those submitted by the Office of the Ohio Consumer's Counsel (OCC) on December 26, 2019. For these reasons, as more fully set forth in the accompanying memorandum in support, the Company respectfully requests that the Commission grant leave, *instanter*, for the late filing of these Reply Comments.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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MEMORANDUM IN SUPPORT

On August 6, 2019, the Attorney Examiner issued a procedural schedule in this proceeding that provided for the timing of comments and reply comments, but without specific dates. Instead, the timing of the comments and reply comments instead was to be triggered by the filing of a Staff Report in these proceedings. Staff filed its report on December 12, 2019, resulting in initial comments being due December 26, 2019, and reply comments being due by January 2, 2020.

On December 20, Duke Energy Ohio filed an Amended Application and a request for a new procedural schedule. These filings were based upon the Staff Report's failure to account for the Ohio Supreme Court's decision in *In re Application of Ohio Edison Co.*¹ In that case, the Court found that the Commission lacked the authority under R.C. 4928.66 to impose a cap on cost recovery, as it did on the Company's energy efficiency portfolio in Case No. 16-576-EL-POR, which established the portfolio of programs at issue in these proceedings.

On December 26, 2019, the OCC filed its Comments on the Staff Report, basing the timing on the previously established procedural schedule. Based upon that schedule, Reply Comments would then have been due by January 2, 2019.

The Company submits that good cause exists to accept, *instanter*, the Company's Reply Comments one day late. Because the Commission's Entry establishing the timeline for responding to the Staff Report did not include a date certain for the filing of the Staff Report, the Company had been unable to plan with any certainty in advance to responsive pleadings. Given the fact that the filing timelines overlapped with the various December holidays, Company personnel had already scheduled and were out of the office for personal vacations. This was further compounded by the fact that the attorney handling this proceeding retired from the Company effective at the end of the year.

Accordingly, the Company respectfully requests that the Commission accept the attached Reply Comments.

¹ *In re Application of Ohio Edison Co.*, Slip Opinion, 2019-Ohio-4196.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 3rd day of January, 2020, to the parties listed below.

/s/ Jeanne W. Kingery
Jeanne W. Kingery

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