

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application of Duke Energy Ohio, Inc., for an Adjustment to Rider AMRP Rates.	) ) )	Case No. 17-2318-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	) )	Case No. 17-2319-GA-ATA

**STIPULATION AND RECOMMENDATION**

Ohio Administrative Code (O.A.C), Rule 4901-1-30, provides that any two or more parties to a proceeding before the Public Utilities Commission of Ohio (Commission) may enter into a written stipulation covering the issues presented in that proceeding. This Stipulation and Recommendation (Stipulation) sets forth the understanding of Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company), and the Commission Staff (Staff)<sup>1</sup> (each of whom is a Signatory Party and together constitute the Signatory Parties). The Signatory Parties recommend that the Commission approve and adopt, as part of its Opinion and Order, this Stipulation that resolves all of the issues in the above-captioned proceeding.

This Stipulation is a product of serious, arm's-length bargaining among the Signatory Parties, who are all capable, knowledgeable parties, which negotiations were undertaken by the Signatory Parties to settle this proceeding and is not intended to reflect the views or proposals that any individual party may have advanced acting unilaterally. The issues in these proceedings were discussed among all parties. The Signatory Parties agree that this Stipulation is in the best interests of the public, and urge the Commission to adopt it.

This Stipulation is supported by adequate data and information. As a package, the

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<sup>1</sup> The Staff of the Public Utilities Commission of Ohio will be considered a party for the purpose of entering into this Stipulation pursuant to Ohio Administrative Code Rules 4901-1-10(C) and 4901-1-30.

Stipulation benefits customers and the public interest, represents a reasonable resolution of all issues in this proceeding, violates no regulatory principle or practice, and complies with and promotes the policies and requirements of Ohio Revised Code Section 4929.02. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission where, as here, it is sponsored by parties representing a wide range of interests.

Except for purposes of enforcement of the terms of this Stipulation, the information and data contained herein or attached, and any Commission rulings adopting it, shall not be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. The circumstances of this case are unique to it and, thus, imputing the terms of this Stipulation into any other case would undermine the willingness of the parties to compromise that is a necessary element of negotiating settlements in Commission proceedings. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation, or to any position, argument, or recommendation contained in the record of this proceeding or otherwise presented in this proceeding. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding. The Stipulation is a recognition that each Signatory Party might disagree with individual aspects of the Stipulation, but believes that the Stipulation has value as a whole. 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. If the Commission rejects or materially modifies all or any part of this Stipulation,<sup>2</sup> each and every Signatory Party shall have the right, within thirty days of issuance of the Commission's order, to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice with the Commission. The Signatory Parties agree they will not oppose or argue against any other Party's notice of termination or application for rehearing that seeks to uphold the original, unmodified Stipulation. If, upon rehearing, the Commission does not adopt the Stipulation in its entirety and without material modification, any Signatory Party may terminate and withdraw from the Stipulation. Termination and withdrawal from the Stipulation shall be accomplished by filing a notice with the Commission, including service to all Signatory Parties in this proceeding, within thirty days of the Commission's order or ruling on rehearing that does not adopt the Stipulation in its entirety and without material modification. Signatory Parties to this Stipulation agree to not oppose the termination and withdrawal from the Stipulation by any other Signatory Party. Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of such a notice, the Signatory Party wishing to terminate 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 terminate, 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

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<sup>2</sup> Any Signatory Party has the right, at its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Signatory Parties will be afforded the opportunity to present evidence through witnesses and cross-examination, present rebuttal testimony, and brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed.

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

WHEREAS, this Stipulation is the product of serious bargaining and negotiations among capable and knowledgeable Signatories Parties and is not intended to reflect the views or proposals that any individual Signatory Party might have advanced, acting unilaterally; and

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

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 the case set forth above concerning Duke Energy Ohio's Application to adjust Rider AMRP and for tariff approval;

NOW, THEREFORE, it is agreed that:

1. The Stipulating Parties agree that the Rider AMRP rates proposed by Duke Energy Ohio in its Application in the above-captioned proceedings should be accepted and approved, subject to potential reconciliation, adjustments, or refunds that may result from the Commission's findings and directives in Case No. 18-47-AU-COI.

2. The Signatory Parties also agree that Rider AMRP (P.U.C.O No. 18, Sheet No. 65) shall be amended to add the following language:

This Rider is subject to reconciliation, including, but not limited to, refunds or additional charges to customers, ordered by the Commission (a) as the result of annual audits by the Commission in accordance with the November 13, 2013, Opinion and Order in Case Nos. 12-1685-GA-AIR, *et al.*, if determined to be unreasonable or imprudent by the Commission in the docket in which those rates were approved; provided, however, that such reconciliation shall be limited to the twelve-month period of expenditures upon which the rates were calculated; or (b) based upon the impact to the rates recovered through the rider due to changes in federal corporate income taxes, including the Tax Cuts and Jobs Act of 2017 (TCJA), and pursuant to a final order by the Commission directing changes to this rider as a result of the TCJA.<sup>3</sup>

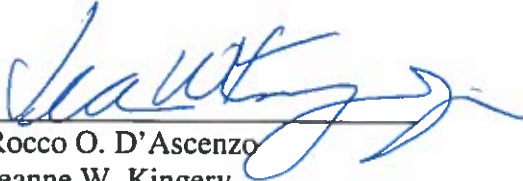
3. The Stipulating Parties expressly agree to all other matters addressed by the Company's Application.
4. The Stipulating Parties agree that this Stipulation shall be tendered to and filed with the Commission and offered into evidence as a joint exhibit, with each Stipulating Party expressly stating its consent to and approval of this Stipulation in its entirety.
5. The Stipulating Parties expressly agree to waive cross-examination of any witnesses who may offer testimony in support of this Stipulation.

IN WITNESS WHEREOF, the undersigned parties agree to this Stipulation and Recommendation as of this 5<sup>th</sup> day of April, 2018. The undersigned parties respectfully request the Commission to issue its Opinion and Order adopting and approving this Stipulation.

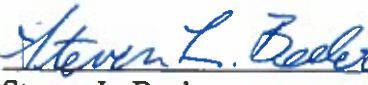
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<sup>3</sup> The Signatory Parties reserve their rights to assert or argue for or against the filed rate doctrine in this or other proceedings.

On Behalf of Duke Energy Ohio, Inc.

  
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On Behalf of Staff of the Public Utilities  
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*100% per  
email  
authorization*