

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc. for Approval of its Energy	)	Case No. 13-0431-EL-POR
Efficiency and Peak Demand Reduction	)	
Portfolio of Programs.	)	

**STIPULATION AND RECOMMENDATION**

Rule 4901-1-30, Ohio Administrative Code provides that 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 the parties that have signed below (Signatory Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all of the issues raised by Parties in this case relative to Duke Energy Ohio, Inc.'s (Duke Energy Ohio or Company) Energy Efficiency Portfolio Plan in the above-captioned proceeding. This Stipulation is supported by adequate data and information.

Duke Energy Ohio, the Office of the Ohio Consumers' Counsel, the Commission Staff<sup>1</sup>, The Greater Cincinnati Energy Alliance, Inc., Ohio Partners for Affordable Energy, EMC Development Company, Ohio Environmental Council, Ohio Energy Group, The Kroger Co., Environmental Law & Policy Center, Natural Resources Defense Council, Sierra Club and Ohio Advanced Energy Economy, parties to this proceeding, have signed the Stipulation and adopted it as a just and reasonable resolution of the issues raised in these proceedings. The Signatory Parties agree that the Stipulation violates no regulatory principle or precedent, and is the product of serious arm's length bargaining among knowledgeable and capable parties in an open and

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<sup>1</sup> The Commission Staff is a party for the purpose of entering into this Stipulation. O.A.C. 4901-1-10(C).

cooperative process in which all Signatory Parties were represented by able counsel and technical experts. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission, where, as here, it represents a comprehensive compromise of issues raised by parties representing a wide range of interests. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result. For purposes of resolving all issues raised by this proceeding, the Signatory Parties stipulate, agree and recommend as set forth below.

This Stipulation is submitted for purposes of this proceeding only. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation (including the information and data contained therein or attached) nor any Commission rulings adopting it, shall 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; thus, using the terms of this Stipulation in any other case is inappropriate and undermines the willingness of the parties to compromise. 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 recognizes that each Signatory Party may disagree with individual provisions of this Stipulation, but also recognizes that the Stipulation has value as a whole.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify<sup>2</sup> all or any part of this Stipulation, the Signatory Parties shall have the right, within thirty (30) days of issuance of the Commission's Order, to file an application for rehearing or to terminate

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

and withdraw the Stipulation by filing a notice with the Commission. The Signatory Parties agree they will not oppose or argue against another Signatory Party's notice of termination or application for rehearing that seeks, in this proceeding, to uphold the original, unmodified Stipulation. Should the Commission, in issuing an Entry on Rehearing, not adopt the Stipulation in its entirety and without material modification, any Party may terminate and withdraw from the Stipulation. Such termination and withdrawal shall be accomplished by filing a notice with the Commission, including service to all Signatory Parties, in the docket within thirty (30) days of the Commission's Entry or ruling on Rehearing or other ruling in this proceeding subsequent to the original order that does not adopt the Stipulation in its entirety without material modification, as applicable. Other Signatory Parties to this Stipulation shall not oppose 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 use their best efforts to work with the other Signatory Parties as circumstances allow to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the 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 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. Any Signatory Parties may submit a new agreement to the Commission for approval if

the discussions achieve an outcome they believe substantially satisfies the intent of this Stipulation.

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

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

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 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 Signatory 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 these proceedings approving this Stipulation in accordance with the following:

1. The portfolio of energy efficiency and peak demand reduction programs and measures submitted by the Company in its Application should be adopted and approved by the Commission, except as modified herein.
2. The mechanism for recovering costs from the Company's customers, including recovery of prudent program costs incurred,<sup>3</sup> lost distribution revenues and an incentive mechanism, shall expire at the end of 2015, as controlled by the Stipulation and Recommendation agreed to in Case No.11-4393-EL-RDR,<sup>4</sup> and adopted and approved by the Commission on August 15, 2012.
3. As controlled by paragraph 2 of the Stipulation and Recommendation in Case No. 11-4393-EL-RDR, all interested parties (no sooner than the third quarter of 2014), are permitted to assess the reasonableness and effectiveness of the incentive mechanism to consider whether or not they support its further use (as structured or as modified) for the remaining year (2016) of the five year portfolio. If the interested parties reach an agreement for implementing an incentive mechanism for the year 2016, the interested parties will jointly file their recommendation, related only to the incentive recovery mechanism, to seek the Commission's approval in 2015 for use in 2016. In the event no such agreement is reached, interested parties may seek the Commission's determination of whether an incentive mechanism should be implemented for the remainder of the portfolio plan period (for the year 2016).<sup>5</sup> Nothing in this Stipulation and

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<sup>3</sup> Staff, OCC and OPAE contest the calculation of allowable program costs in the calculation of shared savings. All three parties have filed comments in Case No. 13-753-EL-RDR and incorporate those comments here by reference.

<sup>4</sup> As per paragraph 8 in the Stipulation and Recommendation in Case No. 11-4393-EL-POR, the "program costs will be assigned for recovery purposes to the rate classes whose customers are directly participating in the program." For example, program costs for customers in a nonresidential customer class will not be collected from residential customers and residential program costs will not be collected from non-residential customers.

<sup>5</sup> Duke Energy Ohio would like to note that it proposed a cost recovery mechanism in its Application in this proceeding, to align cost recovery from its customers with duration of program approval per Duke Energy Ohio's understanding of the Commission's Order in Case No. 11-4393-EL-RDR. The cost recovery mechanism

Recommendation should be construed to alter, amend, or supersede the terms, conditions, and/or responsibilities contained in the Stipulation and Recommendation agreed to and approved by the PUCO in Case No. 11-4393-EL-RDR. And nothing in this Stipulation and Recommendation limits the recommendations that a Signatory Party may make to the Commission on the appropriateness of implementing an incentive mechanism for the year 2016.

**4. Specific Requirements for the Company's Proposed PJM Pilot Program**

- A. Duke Energy Ohio will create a PJM Interconnection, Inc. (PJM) Pilot Program that captures all the costs and benefits of PJM Reliability Pricing Model (RPM) (i.e., capacity market) participation.
- B. Duke Energy Ohio agrees to bid at least 80% of eligible<sup>6</sup>, projected cost-effective,<sup>7</sup> approved Program Portfolio resources<sup>8</sup> into the PJM Base Residual Auctions (BRA) occurring during the term of the 2014-2016 Program Portfolio. These resources will be identified and discussed with the Duke Energy Ohio Community Partnership (Collaborative) within 120 days of receiving a Commission Order approving this stipulation. Duke Energy Ohio will identify and discuss, in the Collaborative, any and all changes in those resources by

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recommended herein aligns with program duration except with respect to the shared savings incentive which is only approved to continue through 2015.

<sup>6</sup> "Eligible" is defined for purposes of this Stipulation as existing and planned energy efficiency savings and demand response that comply with PJM Manuals 18 and 18b.

<sup>7</sup> "Cost effective" is defined for purposes of Duke Energy Ohio's PJM Pilot Program as the projected auction revenues are greater than the projected costs for existing and planned energy efficiency and demand response, where the phrase "projected auction revenues" is defined as the estimated kW multiplied by the previous BRA clearing price for the Duke zone and "projected costs" are defined as the costs necessary to fully qualify and bid the resources into the PJM capacity auctions..

<sup>8</sup> "Program Portfolio resources" is defined as the energy efficiency and demand response resources, both existing and planned, that are expected to be created under Duke's 2014-2016 Program Portfolio application in Case No. 13-0431-EL-POR. Program Portfolio resources specifically exclude mercantile self-direct resources, unless a self-direct mercantile customer affirmatively and explicitly chooses to grant its energy efficiency capacity resources to Duke Energy Ohio, by separate agreement.

February 14 of the year before each respective BRA. Further, for purposes of including 2017 EE and DR resource megawatts in the BRAs held during the 2014 – 2016 Program Portfolio, Duke Energy Ohio will utilize projected megawatts from the 2017 program year to be equal to at least 50% of the eligible megawatts in the 2016 plan year.

- C. The BRAs occurring during the term of the 2014-2016 Program Portfolio are the BRA taking place in 2014, for PJM delivery year 2017/2018, the BRA taking place in 2015, for PJM delivery year 2018/2019, and the BRA taking place in 2016, for PJM delivery year 2019/2020.
- D. Duke Energy Ohio agrees to participate in the PJM Incremental Auctions by bidding in the eligible, projected cost effective, approved Program Portfolio resources that were not captured in the corresponding BRA as applicable based on the availability of the resources as determined by Duke Energy Ohio.
- E. Pursuant to the PJM Pilot Program, auction proceeds will be considered the avoided cost benefit of the program, and the reasonable incremental measurement and verification and administrative costs, including costs associated with any PJM audit of resources, associated incremental auction purchases or replacement capacity, and prudently incurred PJM penalties will be considered the program costs. PJM auction proceeds, less the reasonable incremental measurement and verification and administrative costs; PJM incremental auction or replacement capacity purchases (revenues or costs); and prudently incurred PJM penalties, will fall within the existing cost recovery and incentive mechanism under Rider EE-PDR. The resulting auction revenue or revenue short-fall shall be netted against

cost recovery under the rider and distributed or assessed proportionally to how many megawatts each customer class contributed to the PJM auction obligation.

- F. If the PJM Pilot Program costs associated with prudently-incurred penalties, incremental measurement and verification costs, and administrative costs are greater than the corresponding PJM revenue, the net costs will be recovered from customers through Rider EE-PDR. Costs that are prudently incurred beyond the 2014 – 2016 Program Portfolio will be recovered through Rider EE-PDR, or its successor, in the succeeding Program Portfolio or other rider as determined in a future proceeding.
- G. If Duke Energy Ohio estimates that it will fall short of the energy efficiency and/or demand response resources committed to the PJM BRA or Incremental Auctions for any delivery year, Duke Energy Ohio may purchase the shortfall from an Incremental Auction or other PJM acceptable source with a delivery year corresponding to the applicable PJM BRA or Incremental Auction in which the shortfall cleared. The balance of the purchase, whether positive (purchased capacity at a price lower than the PJM BRA or Incremental Auction) or negative (purchased capacity at a price higher than the PJM BRA or Incremental Auction) shall be credited or charged against the overall PJM auction proceeds for that delivery year. Incremental auction costs that are prudently incurred beyond the 2014 – 2016 Program Portfolio period will be recovered through Rider EE-PDR, or its successor, in the succeeding Program Portfolio or other rider as determined in a future proceeding.



- H. Duke Energy Ohio agrees to share information with the Collaborative regarding the PJM bidding process. The information that Duke will share with the Collaborative shall include: (1) the number of megawatts bid into the PJM BRA and incremental auctions; (2) the basis for calculating the megawatts bid; (3) the price at which those megawatts were bid; and (4) the administrative and measurement and verification costs associated with the bid. In addition, resources not bid into either the PJM BRA or incremental auctions will be identified and discussed with the Collaborative. Such discussions will necessarily take place after such bidding has concluded.
- I. Duke Energy Ohio will work with the Collaborative to explore the potential for Duke Energy Ohio to bid a greater number of projected resources from years beyond the term of the 2014-2016 Program Portfolio. No later than the third quarter of 2014, Duke Energy Ohio will present to the Collaborative the results of the 2017/2018 BRA. No later than the fourth quarter of 2014, Duke Energy Ohio will present to the Collaborative: (1) Duke Energy Ohio's analysis of the feasibility and potential benefits of bidding a greater number of projected resources from the 2017 and 2018 program years, and (2) Duke Energy Ohio's proposed bid of projected resources from the 2017 and 2018 program years into the 2018/2019 BRA.
- J. Duke Energy Ohio, in its 3<sup>rd</sup> Quarter 2014 Collaborative meeting, will propose potential alternatives to modify the PJM Pilot Program including transitioning the administration of the Program to a third-party administrator or vendor to aggregate and fully qualify the energy efficiency projects as qualified capacity

resources for purposes of bidding approved Program Portfolio resources into the PJM capacity auctions on behalf of Duke Energy Ohio. The Collaborative will evaluate the cost-effectiveness of these alternatives and any other considerations. If the Collaborative determines that transitioning the administration of the PJM Pilot Program is a potentially cost-effective modification, the Collaborative will recommend desired requirements and the scope of the work to be incorporated into an RFP. Duke Energy Ohio will issue the RFP for the purposes of selecting a third-party administrator or vendor to administer the PJM Pilot Program as soon as practicable, with the intent of having a qualified vendor in place in time for Duke Energy Ohio's participation in the 2015 Base Residual Auction. A third-party administrator or vendor will not be selected to administer the PJM Pilot Program unless it demonstrates, in its RFP bid submission, that it will administer the PJM Pilot Program in a more cost-effective manner than agreed upon in Section (4)(B) of this Stipulation and Recommendation, resulting in administrative savings<sup>9</sup> to customers. Nothing in this paragraph limits the rights of any Collaborative participant to advance any position of its choosing, within or outside the Collaborative, regarding modifications to the PJM Pilot Program including transitioning the administration of the Program to a third-party administrator or vendor.

5. Until such time as the Commission develops regulations for the counting of energy savings from Combined Heat and Power (CHP) and Waste Energy Recovery (WER) under Revised Code 4928.66(A)(1)(a), or the Commission develops a CHP/WER pilot

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<sup>9</sup> "Administrative savings" means that the incremental EM&V and PJM bid qualifying costs will be less than what would otherwise be incurred by Duke Energy Ohio.

program or other mechanism, Duke Energy Ohio shall work with interested customers in developing CHP, to create a potential incentive or reasonable arrangement mechanism to be jointly filed with the Commission for approval.

6. Duke Energy Ohio agrees to work with the Natural Resources Defense Council (NRDC) to develop a pilot program targeting cost effective Information Technology (IT) system efficiency, to be presented to the Collaborative for its consideration in the second quarter of 2014. Duke agrees to investigate with NRDC the potential IT system energy efficiency measures described on pages 3-4 of NRDC's Objections and Recommended Modifications.
7. Duke Energy Ohio agrees to work with the NRDC to develop a pilot program for continuous commissioning/monitoring-based commissioning of large buildings (>100,000 square feet), where building performance is optimized with a combination of installed measures and operational changes (and then monitored over time to ensure persistence of savings). The pilot program will be presented to the Collaborative for its consideration in the second quarter of 2014.
8. Duke Energy Ohio agrees to work with the NRDC to develop a cool roofs measure, to be presented to the Collaborative for its approval in the second quarter of 2014.
9. Duke Energy Ohio agrees to work with ELPC to develop an outdoor lighting LED program to be presented to the Collaborative consideration in the second quarter of 2014.
10. Duke Energy Ohio agrees to provide the Collaborative an update on the impact that the implementation of the EISA standards has had on the lighting component of its SmartSaver Residential Program. That information shall include updated information on market saturation and development. This update shall occur at the 2014 3rd Quarter

Collaborative Meeting and will include discussion of the different lighting technologies being incentivized under the program offered, as well as the potential use of new and different delivery channels to cost effectively reach customers given the new market conditions. Specifically, the Company agrees to consider changes to the program based on the outcome of that analysis, including potential modifications to the delivery of customer incentives, program structure, and the shifting of funds to a CFL buy-down or discount program.<sup>10</sup> Nothing in this paragraph allows for increasing the total costs to customers that are outlined in Duke Energy Ohio's Energy Efficiency Portfolio that was filed on April 15, 2013.

11. Duke Energy Ohio agrees to work with the Greater Cincinnati Energy Alliance (GCEA) to develop proposals (to be submitted to the Collaborative) for a partnership and coordination between the two organizations regarding the following:<sup>11</sup>

- The recruitment and training of contractors to participate in Duke Energy Ohio's energy efficiency programs.
- The potential development of a pilot program that coordinates the Duke Energy Ohio and GCEA efforts related to the home energy improvements that deliver electric energy efficiency in Duke Energy Ohio's service territory. Any pilot program will address the leveraging of existing resources and assets, and the creation of a single source mechanism to process multiple incentives.
- A plan for Duke Energy Ohio to work with the GCEA to leverage the Greater Cincinnati Home Energy Loan Program in order to potentially enable customers

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<sup>10</sup> Nothing in this Stipulation and Recommendation limits the future actions or positions that Signatory Parties may take with regard SmartSaver Residential Program lighting recommendations resulting from the provisions under this paragraph.

<sup>11</sup> Nothing in this Stipulation and Recommendation limits the future positions that Signatory Parties may take with regard to Duke Energy Ohio and GCEA's recommendations under this paragraph.

to implement more robust energy efficiency projects and facilitate more customer participation in Duke Energy Ohio's energy efficiency programs.

- A plan that would allow Duke Energy Ohio to potentially support the GCEA's deployment of a Property Assessed Clean Energy Program within Duke's service territory. All of these proposals will include an explicit recommendation and plan addressing the attribution of impacts from the coordinated activities.
- Duke Energy Ohio and GCEA will jointly present these proposals to Collaborative within 120 days of receiving a Commission Order approving this stipulation.
- Duke Energy Ohio will begin working with GCEA as soon as practicable.

The undersigned hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 6<sup>th</sup> day of September, 2013.

DUKE ENERGY OHIO, INC.

By: Elizabeth H. Watts  
Elizabeth H. Watts, Associate General Counsel

STAFF OF THE PUBLIC UTILITIES  
COMMISSION OF OHIO

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Summary: Stipulation Stipulation and Recommendation electronically filed by Carys Cochern  
on behalf of Watts, Elizabeth H. Ms.