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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke :  
Energy Ohio, Inc. for Recovery of : Case Nos. 14-457-EL-RDR  
Program Costs, Lost Distribution Revenue : 15-534-EL-RDR  
and Performance Incentives Related to tis :  
Energy Efficiency and Demand Response :  
Programs. :

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**STIPULATION AND RECOMMENDATION**

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Rule 4901-1-30, Ohio Administrative Code (O.A.C.), 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 or Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves issues raised by the Parties in these cases relative to Duke Energy Ohio, Inc.'s (Duke Energy Ohio or the Company) Applications for Recovery of Program Costs, Lost Distribution Revenue and Performance (Shared Savings) Incentives Related to its Energy Efficiency and Demand Response Programs in the above-captioned matters (collectively, Applications). This Stipulation is supported by adequate data and information including, but not limited to,

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Duke Energy Ohio's Applications and testimony filed on June 13, 2014,<sup>1</sup> and the Attachments filed therewith, and the Application and testimony filed on March 30, 2015,<sup>2</sup> and the Attachments filed therewith and the annual status reports submitted annually by the Company in compliance with the Commission's Rules.<sup>3</sup>

The Stipulation represents a just and reasonable resolution of the issues raised in Case No. 14-457-EL-RDR and the shared savings mechanism involved in Case No. 15-534-EL-RDR, violates no regulatory principle or precedent, and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff (Staff), to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving the aforementioned issues raised by these proceedings, the Parties stipulate, agree, and recommend as set forth below.

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 14-457-EL-RDR (Application) (Jun. 13, 2014).

<sup>2</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 15-534-EL-RDR (Application) (Mar. 30, 2015).

<sup>3</sup> *In the Matter of the First Annual Energy Efficiency Status Report of Duke Energy Ohio, Inc.*, Case No. 10-317-EL-EEC (Application) (Mar. 15, 2010); *In the Matter of the Annual Energy Efficiency Status Report*, Case No. 11-1311-EL-EEC (Application) (Mar. 15, 2011); *In the Matter of the Annual Energy Efficiency Status Report*, Case No. 12-1477-EL-EEC (Application) (May 15, 2012); *In the Matter of the Annual Energy Efficiency Status Report*, Case No. 13-1129-EL-EEC (Application) (May 15, 2013); *In the Matter of the Annual Energy Efficiency Status Report*, Case No. 14-456-EL-EEC (Application) (Mar. 26, 2014); *In the Matter of the Annual Energy Efficiency Status Report*, Case No. 15-454-EL-EEC (Application) (Mar. 13, 2015).

This Stipulation is a reasonable compromise that balances diverse and competing interests and does not necessarily reflect the position that any one or more of the Parties would have taken had these issues been fully litigated. This Stipulation represents an agreement by all Parties to a package of provisions rather than an agreement to each of the individual provisions included within the Stipulation. 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.

The Signatory Parties agree that the settlement and resulting Stipulation are products of serious bargaining among capable, knowledgeable Parties. This Stipulation is the product of an open process in which all Parties were represented by able counsel and technical experts. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. The Signatory Parties<sup>4</sup> have signed the Stipulation and adopted it as a reasonable resolution of these 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 package does not violate any important regulatory principle or practice.

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<sup>4</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 Sections 4901-1-10(C) and 4901-1-30.

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>5</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 the Stipulation by filing a notice with the Commission. The Signatory Parties agree they will not oppose or argue against any other Signatory 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. In that event, 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 and other Signatory Parties to this Stipulation agree to not oppose the termination and withdrawal of 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

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<sup>5</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.

includes the Signatory Party wishing to terminate, then the new agreement shall be filed for Commission review and approval.

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

WHEREAS, Duke Energy Ohio and the Ohio Partners for Affordable Energy filed applications for rehearing in Case No. 14-457-EL-RDR, which the Commission has granted; and

WHEREAS, the Parties filing applications for rehearing disagree with respect to the calculation of an energy efficiency and peak demand reduction shared savings incentive; and

WHEREAS, the Commission expressly stated in its Opinion and Order in Case No. 14-457-EL-RDR that the Company was entitled to recover program costs, lost distribution revenue and shared savings incentives related to energy efficiency and demand response programs.

NOW THEREFORE, it is agreed that:

1. In this Stipulation, the Parties agree to resolve the program costs, lost distribution revenue, and shared savings mechanism in Duke Energy Ohio's pending application for rehearing in Case No. 14-457-EL-RDR and the shared savings mechanism in the Company's Application in Case No. 15-534-EL-RDR.

2. The Parties agree that, should the Company prevail in its application for rehearing in Case No. 14-457-EL-RDR, it could be entitled to a shared savings incentive of approximately \$55 million, in pre-tax dollars, for calendar years 2013, 2014, 2015, and 2016 combined. The Parties further acknowledge and agree that the rehearing process involves the risk of protracted litigation and future appeals in respect to the Company's ability to use its banked historic over-compliance with annual mandates (not previous used to determine incentive achievement levels) toward the calculation of shared savings incentive for 2013, 2014, 2015, and, if the mechanism is extended by the Commission in Case No. 14-1580-EL-RDR, 2016, respectively.
3. For purposes of resolving disputed issues, as referenced herein, the Parties agree as follows:
  - a. Duke Energy Ohio shall recover a total of \$19.75 million for its shared savings incentive mechanism under its energy efficiency and peak demand reduction portfolio plan for 2013 and 2014, collectively. The Parties agree that for the remaining years of the Company's approved energy efficiency and peak demand reduction portfolio (*i.e.*, 2015 and 2016), the Company will not recover a shared savings incentive. Beginning in 2017, the Company will not file for recovery of the shared savings mechanism in any portfolio plan year after 2014 in which banked savings have been used to

meet the annual benchmark requirements. Should any change in law or regulation regarding shared savings occur, the Parties expressly agree that Duke Energy Ohio is permitted to seek a shared savings incentive consistent with such change in law, regulation, or order.


- b. The Parties agree that Staff will accept Duke Energy Ohio's application and 2013 cost recovery as filed in Case No. 14-457-EL-RDR. The Parties further agree that the Company's program cost and lost distribution revenue for 2014 in Case No. 15-534-EL-RDR will be addressed and resolved through a separate review process and Staff will file its audit findings in that case within six months of the filing of this Stipulation.
- c. The Parties agree that the Company's 2013, 2014, 2015, and 2016, energy efficiency programs will remain subject to the Commission's Evaluation, Measurement & Verification (EM&V) process. The Parties further agree that such EM&V process will not, in any way, affect the amount recovered by the Company under paragraph 3(a) above as long as the attributed banked savings are adjusted accordingly.
- d. The Parties agree that Duke Energy Ohio will retire 150,000 MWH of the Company's banked energy savings that have never been used for the purposes of determining the Company's incentive in the past.

- e. The Parties agree that Staff and Duke Energy Ohio shall work together to develop a mutually agreeable timeline, consistent with any Commission directives, for the completion of audits for the remaining two years of the Company's approved energy efficiency and peak demand reduction portfolio of programs (*i.e.*, 2015 and 2016).
- f. The Parties shall work to support the Stipulation if the Stipulation is contested and no Signatory Party will oppose an application for rehearing designed to defend the terms of the Stipulation.
- g. Except for enforcement purposes or to establish that the terms of the Stipulation are lawful, this Stipulation shall not be cited as a precedent in any future proceeding for or against any Party, if the Commission approves the Stipulation. Nor shall the acceptance of any provision within the Stipulation be cited by any Party so as to imply or state that any Party agrees with any specific provision of the Stipulation.

The Parties respectfully request that the Commission approve this Stipulation in an expedited manner on or before the end of January 2016.

IN WITNESS THEREOF, the undersigned Parties agree to this Stipulation and Recommendation as of this 12<sup>th</sup> day of January, 2016. The undersigned Parties respectfully request the Commission to approve and adopt this Stipulation.

On behalf of Duke Energy Ohio, Inc.:



**Amy B. Spiller**

**Elizabeth H. Watts**

Duke Energy Business Services LLC

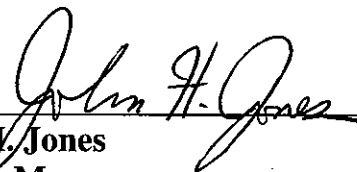
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