

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Its Electric Distribution Rates.	)	Case No. 17-32-EL-AIR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 17-33-EL-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 17-34-EL-AAM
	)	
	)	

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**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AN OBJECTION  
*INSTANTER*, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO PRESENT  
TESTIMONY ON AN ADDITIONAL ISSUE**

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**I. INTRODUCTION**

Consistent with well-established precedent and the plain language of applicable statutes and rules, the Commission has broad discretion to allow parties to file a late objection to the Staff Report or to present testimony on additional issues beyond those raised in the parties' objections to the Staff Report. That is particularly true here, where the City of Cincinnati's ("City") proposed objection was filed only eight days late. Duke Energy Ohio, Inc.'s ("Duke") Memorandum Contra ("Memo Contra") betrays an incomplete understanding of the Commission's authority, which the Ohio Supreme Court and the Commission have previously rejected. Finally, the Memo Contra misconstrues and omits significant facts that support the relief requested by the City in its Motion for Leave to File an Objection *Instanter*, or in the alternative, Motion for Leave to Present Testimony on an Additional Issue ("Motion").

It is in the best interest of the Commission, the parties, and all Duke customers to allow the City to include one additional topic – i.e., Rider BDP – that is not included in the parties'

objections and that is directly impacted by the determination of Duke's future distribution rates. There is no down side to allowing the City to make a record regarding Rider BDP, as Duke is already well aware of this dispute and would not suffer any prejudice. The City has not proposed any extension of the discovery period and would not delay this proceeding in any way to address this issue.

On the other hand, the Commission and other parties would benefit if the City is allowed to pursue its objection. The City is intimately familiar with Rider BDP, and permitting the City to file the objection would provide the Commission with a full and complete record on which to evaluate Duke's proposed distribution rates. Moreover, this objection would not be duplicative of the City's pending complaint case regarding Rider BDP, as that proceeding relates to Rider BDP as currently applied to the City. The instant case relates to Rider BDP as part of the larger evaluation of Duke's future rates and the rider as applied to all customers. Duke itself has claimed in sworn testimony that this is the proper proceeding to evaluate Rider BDP. Finally, as Duke's Memo Contra shows, while Rider BDP was not expressly addressed by any party other than the City, Duke will use the Commission's decision in this case offensively against any party who seeks to contest Duke's inaccurate interpretation of Rider BDP at a later date. Therefore, the City is forced to raise this issue here, as well as in the related Rider BDP complaint case, in order to protect the record. Accordingly, the City respectfully requests leave to file its objection only eight days late, or alternatively, requests leave to address an additional issue not raised in the parties' objections.

## II. ARGUMENT

### A. The Commission Maintains Considerable Discretion to Allow Parties to File an Objection Out of Time or to Present and Develop Additional Issues Not Included in Objections to the Staff Report in a Rate Case Proceeding.

#### 1. *Well-Established Precedent from the Supreme Court of Ohio and the Commission Supports the Relief Requested by the City.*

In its Memo Contra, Duke lambastes the City for being “unable to cite to any precedential authority” to support its argument that the Commission maintains considerable discretion to allow testimony on a topic not included in objections to the Staff Report. Duke is mistaken. The Ohio Supreme Court and the PUCO have consistently affirmed the Commission’s authority to allow parties to present and develop additional issues that were not included in pre-filed objections to the Staff Report. For example, while the Ohio Supreme Court conceded that there is no right to present testimony on additional issues, the Court explicitly rejected the contention that the Commission does not have the “inherent and statutory authority” to consider such additional issues in its discretion:

In holding that pre-filed objections by a party are intended to present the issues to which evidence should be directed, and a party intervening solely by appearance may not, *as a matter of right*, broaden such issues, it does not follow that the commission must woodenly confine the hearing to such issues regardless of circumstances, and that the commission is without discretionary authority to allow development of additional issues it considers important. The scope of the commission inquiry properly extends to *any* matter put in issue by the application and related to the rate changes under consideration. The wide discretion of the commission over its order of business has been long recognized by this court.<sup>1</sup>

As the foregoing quote unequivocally illustrates, the Commission *is* empowered to allow parties to present additional issues that were not initially included in the parties’ pre-filed objections. Importantly, the Commission has allowed intervenors to raise additional issues that

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<sup>1</sup> *Office of Consumers' Counsel v. Pub. Util. Com.*, 56 Ohio St.2d 220, 227, 383 N.E.2d 593 (1978) (emphasis in original) (citations omitted).

were not included in pre-filed objections to a staff report. For example, in a prior rate case proceeding, OCC presented an additional issue during the latter stages of discovery and during the hearing that had not been raised in pre-filed objections to the Staff Report.<sup>2</sup> In response, Staff objected to the inclusion of this additional topic because the parties had not formally raised it in pre-filed objections.<sup>3</sup> In exercising discretion, the attorney examiner overruled Staff's objection and admitted the evidence on the additional issue.<sup>4</sup> Subsequently, the Commission upheld the attorney examiner's decision, reaffirming its inherent and statutory authority to regulate the scope of its proceedings by allowing the development and presentation of additional issues not included in objections to the Staff Report.<sup>5</sup> The Commission then relied on this OCC evidence and disallowed a portion of the expense identified in the untimely objection.<sup>6</sup>

In addition, in a prior DP&L electric distribution rate case ("DP&L Rate Case"), the Commission similarly demonstrated its discretionary authority to allow the presentation and development of additional issues not presented in pre-filed objections.<sup>7</sup> In the DP&L Rate Case, the parties entered into a stipulation and recommendation several days prior to the filing of the Staff Report.<sup>8</sup> Nonetheless, the attorney examiner established a date by which all parties could

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<sup>2</sup> *In the Matter of the Application of The Ohio-American Water Company to Increase Rates for water service provided to its Entire Service Area*, Opinion and Order (Jan. 14, 1981), Case No. 79-1343-WW-AIR, 1981 Ohio PUC LEXIS 3, at \*8-10.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *In the Matter of the Application of The Dayton Power and Light Company for Authority to Amend Its Filed Tariffs to Increase the Rates and Charges for Electric Service*, Entry (Nov. 27, 1991), Case No. 91-414-EL-AIR, 1991 Ohio PUC LEXIS 1356, at ¶ 5.

<sup>8</sup> *Id.* at ¶¶ 1, 2.

file objections to the Staff Report.<sup>9</sup> However, in exercising its broad discretionary authority over the scope of the rate case proceeding, the Commission sanctioned an “alternative process [that] would better facilitate matters in this case.”<sup>10</sup> The Commission explained as follows:

Although Section 4909.19, Revised Code, states that objections to the Staff Report should be filed within 30 days after the filing of the report, Rule 4901-1-28(C), Ohio Administrative Code (O.A.C.), provides that the Commission, the legal director, or the attorney examiner may designate additional issues or areas of inquiry in the case. If necessary, the Commission will provide the company and the intervenors who signed the stipulation an opportunity to file additional issues, which would be tantamount to objections to the Staff Report, at a later date. The Commission will accept the issues pursuant to Rule 4901-1-28(C), O.A.C., and designate them as additional issues in the case. The additional issues will be subject to appropriate motions to strike, as described in the November 14, 1991 entry issued in this case.<sup>11</sup>

The DP&L Rate Case demonstrates that the Commission enjoys considerable discretion in framing the issues in a rate case proceeding, so much so that the Commission is even empowered to create and approve an alternative procedural process to the one set forth in R.C. 4909.19 and O.A.C. 4901-1-28. Yet, according to Duke, the Commission is barred from exercising such discretionary authority. Duke insists that the Commission must strictly confine the issues at hearing to those formally raised in the objections to the Staff Report. But, as the foregoing case law reveals, the Ohio Supreme Court and the Commission have consistently rejected such an inflexible interpretation of Commission authority. The Commission can (and does) allow parties to present and develop additional issues that were not raised in pre-filed

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<sup>9</sup> *Id.* at ¶ 3.

<sup>10</sup> *Id.* at ¶ 4.

<sup>11</sup> *Id.* at ¶ 5.

objections. Duke’s claim that “neither law nor precedent support the [City’s] motion”<sup>12</sup> is simply incorrect.

2. *The Plain Language of O.A.C. 4901-1-28, R.C. 4909.19, and R.C. 4901.13 Also Support the Relief Requested by the City.*

In addition to the well-established precedent described above, O.A.C. 4901-1-28, R.C. 4909.19, and R.C. 4901.13 support the relief requested by the City’s Motion. First, O.A.C. 4901-1-28 is replete with explicit references to the Commission’s discretion to include or designate additional issues or areas of inquiry not included in the parties’ objections to the Staff Report. For example, Rule 4901-1-28(C) provides that the objections to the Staff report “frame the issues in the proceeding, **although the commission, legal director, the deputy legal director, or the attorney examiner may designate additional issues or areas of inquiry.**”<sup>13</sup> Rule 4901-1-28(C) continues, “[t]he **commission or the presiding hearing officer may, in their discretion, permit the parties to present evidence or conduct cross-examination concerning additional issues**” beyond those raised in objections to the Staff Report.<sup>14</sup>

Second, R.C. 4909.19(C) outlines the broad parameters of a rate case proceeding, which is not solely limited to or narrowly circumscribed by issues specifically raised in the parties’ objections; instead, the attorney examiner is “to take all the testimony with respect to the **application and objections** which may be offered by any interested party.”<sup>15</sup> Given that Duke’s application calls for the continuation and re-approval of Rider BDP, the attorney examiner is

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<sup>12</sup> Duke Memo Contra, at 6.

<sup>13</sup> O.A.C. 4901-1-28(C) (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> R.C. 4909.19(C) (emphasis added).

well within his legal authority to permit the City to present evidence or testimony on additional issues or areas of inquiry related to Rider BDP.

Finally, the Commission retains broad discretion in the conduct and process of its hearings under R.C. 4901.13, which states that the “commission may adopt and publish rules to govern its proceedings and to regulate the mode and manner of all valuations, tests, audits, inspections, investigations, and hearings relating to parties before it.” And the Commission has repeatedly and consistently recognized its broad discretion under R.C. 4901.13 to regulate the mode, manner, and scope of its proceedings.<sup>16</sup> Accordingly, pursuant to R.C. 4901.13, the Commission is statutorily empowered to adjust and/or regulate the mode and manner of its hearings or investigations as necessary. Duke’s claims to the contrary are simply belied by well-established precedent from the Supreme Court of Ohio and the Commission, as well as the plain language of R.C. 4901.13, R.C. 4909.19, and O.A.C. 4901-1-28.

3. *The Commission is Empowered to Waive or Modify Statutorily Based Procedural Deadlines.*

Duke claims that Ohio law “gives no discretion whatsoever to the Commission with regard to timing or the matters to be addressed at hearing” when it comes to filing objections to the Staff Report out of time.<sup>17</sup> In support of that erroneous proposition, Duke cites a Commission decision from 2008 where the Commission rejected late-filed objections.<sup>18</sup> In that

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<sup>16</sup> See, e.g., *In the Matter of the Application of Ohio Power Company for a Limited Waiver of Ohio Adm.Code 4901:1-35-10*, Case No. 15-386-EL-WVR, Entry, 2015 Ohio PUC LEXIS 365, \*5; *In the Matter of the Application of Black Fork Wind Energy, L.L.C. for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties, Ohio*, Case No. 10-2865-EL-BGN, Entry on Rehearing, 2012 Ohio PUC LEXIS 299, \*33; *In the Matter of McCleary Trucking Ltd., Notice of Apparent Violation and Intent To Assess Forfeiture*, Case No. 00-516-TR-CVF, Entry, 2000 Ohio PUC LEXIS 619, \*8 (finding the Commission has “broad discretion . . . to interpret its own rules” as repeatedly recognized by courts).

<sup>17</sup> Duke Memo Contra, at 2.

<sup>18</sup> *Id.* at 3.

case, the Commission merely summarized its finding, without discussion or explanation, that it *would not* accept the late-filed objections.<sup>19</sup> Importantly, however, the Commission did **not** say that it *could not* accept a late-filed objection. The only other case cited by Duke to support its narrow interpretation of Commission authority is an entry from an attorney examiner amending a procedural schedule in a prior rate case proceeding.<sup>20</sup> In that case, the attorney examiner merely modified a previously established procedural deadline that made objections to the staff report due within 30 days instead of 35.<sup>21</sup> Based on these two cases alone, Duke summarily concludes that “[t]here is, simply, no discretion whatsoever with regard to the deadline for filing objections to the Staff Report.”<sup>22</sup> Duke is wrong.

As explained previously, the Commission enjoys broad discretion in controlling and regulating the mode and manner in which it conducts its investigations and hearings. As part of this inherent and statutory authority, the Commission is empowered to waive or modify statutorily based procedural deadlines. For example, R.C. 4928.143(C) requires the Commission to issue an order in an ESP proceeding 275 days after the filing of the ESP application: “[t]he commission *shall* issue an order under this division . . . not later than two hundred seventy-five days after the application's filing date.”<sup>23</sup> According to Duke, the Commission has no authority to deviate from a statutorily required deadline.<sup>24</sup> Importantly, however, the Ohio Supreme Court

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<sup>19</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR, *et al.*, Opinion and Order, at 4.

<sup>20</sup> Duke Memo Contra, at 3.

<sup>21</sup> *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Electric Distribution Rates*, Case No. 05-59-EL-AIR, *et al.*, Entry (September 20, 2005).

<sup>22</sup> Duke Memo Contra, at 4.

<sup>23</sup> R.C. 4928.143(C) (emphasis added).

<sup>24</sup> Duke Memo Contra, at 3, 4.



and the Commission have rejected such an unnecessarily stringent view of Commission authority.

For example, after an intervenor challenged the Commission for failing to issue an order within the time period prescribed by R.C. 4928.143(C), the Ohio Supreme Court held that the Commission could waive or modify this “required” deadline given that the statute “fixes the time simply for convenience or orderly procedure.”<sup>25</sup> Even though the statute used the word “shall”, the Ohio Supreme Court affirmed the Commission’s authority to waive or alter that statutorily based procedural deadline.<sup>26</sup> And as a matter of routine practice, the Commission often waives or modifies statutorily based procedural deadlines.<sup>27</sup> Thus, much like it has in other proceedings involving multiple parties with a variety of interests and issues at stake, the Commission is well within its authority to waive or modify statutorily based procedural deadlines like the 30-day deadline to file objections to the Staff Report. Duke’s assertion otherwise runs contrary to well-established Ohio Supreme Court precedent and routine Commission practice.

**B. There is No Prejudice to Duke or Any Other Party to this Proceeding If the Commission Grants the Relief Requested by the City.**

Duke claims that the inclusion of Rider BDP eight days after the deadline for filing objections is prejudicial to Duke. Duke’s sole support for this contention is that “the deadline for

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<sup>25</sup> *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 37 (applying the then applicable 150-day time period prescribed by R.C. 4928.143(C) for initial ESP applications).

<sup>26</sup> *Id.* at ¶¶ 36-43.

<sup>27</sup> See, e.g., *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO *et al.*, Application (December 20, 2013) & Opinion and Order (Feb. 25, 2015) (432 days); *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO *et al.*, Application (May 29, 2014) & Opinion and Order (April 2, 2015) (308 days); *In the Matter of the Application of The Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO *et al.*, Amended Application (Oct. 5, 2012) & Opinion and Order (Sept. 4, 2013) (334 days).

propounding discovery here is long since passed.”<sup>28</sup> As such, Duke reasons that “[i]f the Commission were to grant the City’s Motion, the Company would have no ability to engage in the discovery process that is critical to due process.”<sup>29</sup> This is demonstrably false.

First and foremost, Duke fails to grasp that discovery in this proceeding closed the same day the parties’ objections to the Staff Report were due. More specifically, discovery in this proceeding ended on October 26, 2017.<sup>30</sup> Objections to the Staff Report were due the same day on October 26, 2017.<sup>31</sup> Therefore, even if the City timely filed its Rider BDP objection to the Staff Report on October 26, 2017, Duke still would have been unable to propound any discovery concerning Rider BDP. In other words, whether the City timely filed its Rider BDP objection or not, discovery was closed to the parties. Accordingly, there is no prejudice to Duke if the Commission grants the relief requested by the City’s Motion.

Further, as explained in the City’s Motion, Duke already propounded significant rounds of discovery (including taking a multitude of depositions) on the Rider BDP issue, and Duke fully considered and briefed Rider BDP issues in Case No. 16-1975-EL-CSS (“the Rider BDP Complaint Case”). In short, Duke is intimately familiar with Rider BDP and all arguments/concerns related to it. As such, there is no prejudice to Duke (or any other party) if

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<sup>28</sup> Duke Memo Contra, at 4.

<sup>29</sup> *Id.*

<sup>30</sup> Per O.A.C. 4901-1-17(B), “[i]n general rate proceedings, no party may serve a discovery request later than fourteen days after the filing and mailing of the staff report of investigation required by section 4909.19 of the Revised Code.” Staff initially filed the Staff Report on September 26, 2017, but then supplemented it on October 12, 2017. Taking October 12, 2017 as the final filing date of the Staff Report, discovery closed fourteen days later on October 26, 2017.

<sup>31</sup> See Entry (Sept. 28, 2017), at ¶ 5; see also R.C. 4909.19 and O.A.C. 4901-1-28(B).

the Commission, in its discretion, allows the City to raise one additional topic pertinent to this proceeding.

**C. Allowing the City to Present and Develop Additional Testimony on Rider BDP Would Be Beneficial to the Commission, the Parties, and All Duke Customers.**

Duke alleges that the City is “simply using the Motion and the upcoming hearing in these proceedings as a forum to re-argue its position.”<sup>32</sup> Duke further claims that “[g]ranting the City’s motion would interject the identical issues that have already been brought before the Commission in a separate and pending proceeding.”<sup>33</sup> Duke is wrong on both counts.

In the “separate and pending proceeding” to which Duke is referring (i.e., the Rider BDP Complaint Case), the City and Duke litigated specific, fact-intensive claims related to Rider BDP that were largely unique to the City and inapplicable to other Duke customers.<sup>34</sup> Importantly, the Rider BDP Complaint Case did **not** address the broader impact of Rider BDP on other Duke customers, nor did it address other issues that may be of importance to other parties. Unlike the Rider BDP Complaint Case, this proceeding will allow other parties, not just the City, to develop and present evidence for the record concerning Rider BDP’s broader impact in a variety of different circumstances and scenarios. As such, all Duke customers would benefit from the City placing the issue of Rider BDP squarely before the Commission, which will give the

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<sup>32</sup> Duke Memo Contra, at 8.

<sup>33</sup> *Id.*

<sup>34</sup> For example, the City argued that the prior course of conduct and long-standing relationship between the City and Duke precluded Duke from applying Rider BDP to certain facilities that Duke helped the City operate for the benefit and protection of the public and the environment over the last eighty years. *See* Complaint, Case No. 16-1975-EL-CSS, at ¶¶ 7, 28, 38, 41. The City also alleged that unlike other customers, the City was/is legally mandated to have access to a standby or alternative power source. *Id.* at ¶ 6. The City also raised a Miller Act claim against Duke after Duke threatened to withdraw or terminate the City’s backup delivery service. *Id.* at ¶¶ 65-71. As these few examples demonstrate, the Rider BDP Complaint Case involved many issues that were uniquely applicable to the City, and, thus, was better suited for resolution in a complaint proceeding before the PUCO.

Commission and all stakeholders a more complete and balanced understanding of Rider BDP and its impact on many customers, not just the City.

Duke cannot credibly dispute this point. In the Rider BDP Complaint Case, Duke made this same point when it sought to dismiss the City's Rider BDP complaint for being litigated in an improper forum. In pre-filed testimony of James E. Ziolkowski (who also submitted pre-filed testimony on behalf of Duke in this proceeding) in the Rider BDP Complaint Case, Mr. Ziolkowski testified that he was "advised by counsel that the City's complaint case is not the appropriate forum for determining the rates for a service like that provided under Rider BDP."<sup>35</sup> Mr. Ziolkowski continued:

The appropriate forum for addressing the rates for existing utility services is a base electric distribution case. Coincidentally, the Company currently has a base electric distribution rate case pending before this Commission, in Case No. 17-0032-EL-AIR, and it should be noted that the City has filed for intervention participant in that case. The City, like all intervenors, will have an opportunity to address its concerns over the pricing of any tariff in due course as that case proceeds. Questioning the existing rates, rates that the City has already agreed to in prior stipulations, should not be entertained in this case.<sup>36</sup>

As the foregoing illustrates, Duke is now speaking out of both sides of its mouth. In the Rider BDP Complaint Case, Duke advised the Commission that the Rider BDP issues raised by the City should be addressed in this distribution rate case, not a complaint proceeding. However, now that the City has moved for the inclusion of Rider BPD in this case, Duke wants the Commission to exclude Rider BDP issues as they "have already been brought before the Commission in a separate and pending proceeding."<sup>37</sup> Obviously, Duke does not want any Commission oversight or scrutiny of Rider BDP. Duke knows that Rider BDP is vulnerable to

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<sup>35</sup> See Direct Testimony of James E. Ziolkowski (July 26, 2017), Case No. 16-1975-EL-CSS, at 28.

<sup>36</sup> *Id.* at 29.

<sup>37</sup> Duke Memo Contra, at 8.

legitimate criticism as it is wholly unsupported by any cost of service study, does not reflect the actual costs incurred to provide Rider BDP service, improperly enables double recovery of distribution service, and is not revenue neutral to Duke. As Duke acknowledged in the Rider BDP Complaint Case, these criticisms are ripe for debate and discussion in a distribution rate case proceeding like this one. Allowing the City to present and develop testimony on these issues will benefit the Commission, the parties, and all of Duke customers.

**D. The City Has Accurately Characterized the Record Related to Duke's Failure to Offset All Rider BDP Revenue Against Its Overall Revenue Requirement.**

Duke concedes that it did not include the estimated \$1.2 million per year in Rider BDP revenue that Duke seeks to charge the City under Rider BDP. However, Duke disputes that it has any obligation to include this estimated revenue since it would be “improper to include any speculative increases in revenues for the Rider BDP that may occur, outside of the rate case test period,” and that it was “not appropriate to include any adjustments for Rider BDP contracts that may terminate outside of their normal terms and conditions outside of the rate case test period.”<sup>38</sup> In essence, Duke claims that Rider BDP revenues attributable to the City are “not known and measurable” and “occur outside the rate case test period,” and, thus, should be excluded.<sup>39</sup>

Curiously, however, Duke did **not** adopt this same cautious approach to calculating its test period revenue when it included projected annual spending of \$3,694,000 in O&M expenses for Duke's customer information system (“CIS”).<sup>40</sup> According to Duke witness Retha Hunsicker, Duke “estimate[s]” that it will spend \$22,164,000 in O&M expenses for the CIS

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<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.*

<sup>40</sup> Direct Testimony of Retha Hunsicker on behalf of Duke Energy Ohio, Inc. (Mar. 16, 2017), at 2-9.

upgrade over a six-year period.<sup>41</sup> Duke then divided that estimate by six years to arrive at \$3,694,000 in expenses that it included in its revenue requirement based on future estimated spending.<sup>42</sup> Once again, Duke is talking out of both sides of its mouth. On the one hand, Duke **excludes** the estimated \$1.2 million in Rider BDP revenue from the City for being too speculative. On the other hand, Duke **includes** an estimated \$3.6 million in O&M expenses for CIS that it just as speculative. Duke cannot have it both ways.

### III. CONCLUSION

In conclusion, for the foregoing reasons, consistent with well-established precedent and Ohio law, the Commission should grant the City leave to file an objection *instanter*, or in the alternative, grant the City leave to present testimony on an additional issue pertinent to this proceeding.

Respectfully submitted,

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

and

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**CERTIFICATE OF SERVICE**

I certify that the foregoing Reply in Support of the Motion for Leave to File Objections *Instantly*, or in the alternative, Motion for Leave to Present Testimony on Additional Issues was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 8th day of November, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney

One of Attorneys for the City of Cincinnati



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Summary: Reply in Support of Motion for Leave to File an Objection, Instantly, or in the alternative, Motion for Leave to Present Testimony on an Additional Issue electronically filed by Mr. Mark T Keaney on behalf of City of Cincinnati