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**Via E-file**

September 11, 2017

Public Utilities Commission of Ohio  
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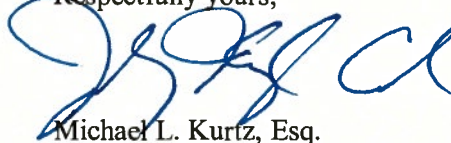
**In re: Case Nos. 17-1263-EL-SSO, 17-1264-EL-ATA and 17-1265-EL-AAM**

Dear Sir/Madam:

Please find attached the POST-HEARING BRIEF OF THE OHIO ENERGY GROUP e-filed today in the above-referenced dockets.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Michael L. Kurtz", is written over the typed name.

Michael L. Kurtz, Esq.  
Jody Kyler Cohn, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Encl.

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for Authority : Case No. 17-1263-EL-SSO  
to Establish a Standard Service Offer Pursuant to Section 4928.143, :  
Revised Code, in the Form of an Electric Security Plan, Accounting :  
Modifications, and Tariffs for Generation Service. :

In the Matter of the Application of Duke Energy Ohio, Inc., for Authority : Case No. 17-1264-EL-ATA  
to Amend its Certified Supplier Tariff, P.U.C.O. No. 20. :

In the Matter of the Application of Duke Energy Ohio, Inc., for Authority : Case No. 17-1265-EL-AAM  
to Defer Vegetation Management Costs. :

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**POST-HEARING BRIEF  
OF THE OHIO ENERGY GROUP**

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The Ohio Energy Group (“OEG”) submits this Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in this proceeding. OEG’s members who are participating in this intervention are: AK Steel Corporation, Air Products and Chemicals, Inc., Ford Motor Company, GE Aviation, General Motors LLC, Greif Packaging, LLC, MillerCoors LLC and Worthington Industries. OEG’s recommendations are set forth below.

**INTRODUCTION**

On June 1, 2017, Duke Energy Ohio, Inc. (“Duke” or “Company”) filed a proposed Electric Security Plan (“ESP”) in this proceeding. Nearly a year later, and after extensive negotiations among a wide array of parties, Duke submitted a Stipulation and Recommendation (“Stipulation”) that resolves not only the ESP proceeding, but also several other pending Duke proceedings, including its base electric distribution rate case, its application to populate the existing Price Stabilization Rider, and the Commission’s review of Duke’s electric service standards for 2016.<sup>1</sup> The Stipulation was signed by the Company, Commission Staff, OEG, the City of Cincinnati, Ohio Partners for Affordable Energy, Ohio Hospital Association, and People Working Cooperatively. Several parties

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<sup>1</sup> Joint Ex. 1 (Stipulation and Recommendation (April 13, 2018)).

also expressly indicated that they did not oppose the Stipulation, including The Kroger Co., Industrial Energy Users-Ohio, Ohio Manufacturers' Association Energy Group, Wal-Mart Stores East, LP, and Sam's East, Inc.

As discussed below, the Stipulation satisfies the Commission's traditional three-prong test for reviewing settlements: 1) the Stipulation does not violate any important regulatory principle or practice; 2) the Stipulation is the product of serious bargaining among capable, knowledgeable parties; and 3) the Stipulation as a package benefits customers and the public interest. Accordingly, the Commission should approve the Stipulation without modification.

### **STANDARD OF REVIEW**

While not binding on the Commission, the terms of stipulations are accorded substantial weight.<sup>2</sup> The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.<sup>3</sup> The ultimate issue for the Commission's consideration is whether the agreement, which embodies significant time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.<sup>4</sup>

### **ARGUMENT**

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<sup>2</sup> Opinion and Order, Case No. 11-3549-EL-SSO (November 22, 2011)("Duke ESP Order") at 41; Opinion and Order, Case No. 12-1230-EL-SSO (July 18, 2012)("FirstEnergy ESP Order") at 24 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155,157, 378 N.E.2d 480 (1978)).

<sup>3</sup> FirstEnergy ESP Order at 24; Duke ESP Order at 41 (citing e.g. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14,1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30,1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30,1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989), *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985)).

<sup>4</sup> Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, (68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel* at 126).

**I. The Stipulation Satisfies the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.**

**A. The Stipulation Is The Product Of Serious Bargaining Among Knowledgeable Parties.**

The parties either explicitly supporting or not opposing the Stipulation represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, industrial customers, commercial customers, municipal customers, low-income customers, and hospitals. Most, if not all, of those parties have significant experience in Commission proceedings and each was represented by competent counsel. Moreover, the parties to these proceedings had ample time to review and analyze issues surrounding Duke's proposals and were well-acquainted with those issues during settlement discussions. In those discussions, significant compromises were made on behalf of many of the parties in order to reach a reasonable settlement in these proceedings. The Stipulation therefore satisfies the first prong of the Commission's test.

**B. The Stipulation Benefits The Public Interest.**

The negotiations between Duke and the parties resulted in a Stipulation that is superior to DP&L's overall litigation position in the various proceedings resolved by the Stipulation. The Stipulation recommends a \$19.17 million reduction in the Company's base rates (incorporating a 9.84% return on equity) rather than Duke's proposed \$15.4 million increase (incorporating a 10.4% return on equity).<sup>5</sup> Additionally, the Stipulation avoids proposed increases to Duke's current customer charges, including the Company's proposal to increase the residential customer charge from \$6.00 to \$22.77.<sup>6</sup> As part of the settlement package, earnings-related incentive pay will be excluded from the Company's Distribution Capital Investment and PowerForward riders.<sup>7</sup> And Duke agrees to withdraw its Regulatory Mandates Rider and Incentive Ratemaking Mechanism proposals.<sup>8</sup> While fully litigating these issues may have led to similar results, the Stipulation brings about these outcomes in a more efficient and less

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<sup>5</sup> Joint Ex. 1 at 7-8; Company Ex. 5 (Direct Testimony of Amy B. Spiller (June 6, 2018)) at 6:7-10; Company Ex. 30 (Second Supplemental Testimony of William Don Wathen Jr. (June 6, 2018)) ("Wathen Testimony") at 6:11-14; Company Ex. 1 (Application, Case No. 17-32-EL-AIR (March 2, 2017)), Vol. I at 3 and 5.

<sup>6</sup> Joint Ex. 1 at 9; Company Ex. 30 at 6:6-7.

<sup>7</sup> Joint Ex. 1 at 9; Company Ex. 30 at 15:4-21.

<sup>8</sup> Joint Ex. 1 at 24; Company Ex. 30 at 26:14-27:3.

costly manner and without objection by Duke. The Stipulation therefore satisfies the second prong of the Commission's test.

**C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.**

None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. Rather, the Stipulation advances important policies and principles, including ensuring the availability to customers of adequate and reliable service, encouraging innovation, facilitating retail competition, and protecting at-risk populations. The Stipulation therefore satisfies the third prong of the Commission's test.

**CONCLUSION**

**WHEREFORE**, for the foregoing reasons, the Commission should approve the Stipulation without modification.

Respectfully submitted,



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September 11, 2018

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 11<sup>th</sup> day of September, 2017 to the following:

  
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Summary: Brief Ohio Energy Group (OEG) Post-Hearing Brief electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group