BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018 Through 2020.	Case No. 16-574-EL-POR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan.	Case No. 16-576-EL-POR
In the Matter of the Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 Through 2019.	Case No. 16-743-EL-POR
In the Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018-2020.	Case No. 17-1398-EL-POR

DUKE ENERGY OHIO, INC.'S
APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Ohio Revised Code and Rule 4901-1-35, O.A.C., Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby seeks rehearing of the Opinion and Order issued in this proceeding on February 26, 2020 (Order). As demonstrated in the attached Memorandum in Support, the Order is unreasonable and unlawful on the following grounds:

1. The Order is unreasonable and unlawful in that it fails to address how Duke Energy Ohio (and any other impacted electric distribution utilities) will, after December 31, 2020, complete true-ups for the year 2020 for the costs associated with energy efficiency programs.

2. The Order is unreasonable and unlawful in that it fails to address how Duke Energy Ohio (and any other impacted electric distribution utilities) will, after December 31, 2020, recover lost distribution revenues and

shared savings associated with energy efficiency programs for up through December 31, 2020,

As demonstrated in the attached Memorandum in Support, the Commission should grant Duke Energy Ohio's Application for Rehearing.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Order should be modified on rehearing to address two key aspects of the winding down of existing energy efficiency programs that it unreasonably and unlawfully did not address. The Order requires that "the termination of all EE/PDR portfolio plans must occur no later than December 31, 2020."[1] The Order appears to recognize that some "post-2020 cost reconciliation" will occur,[2] but does not address whether existing EE/PDR cost-recovery mechanisms (such as riders) will continue to exist after December 31, 2020, to enable impacted utilities to recover their program costs, lost margins, and any shared savings under the terms of the currently approved EE/PDR programs. The Order's failure to address these important issues has created tremendous uncertainty for the Company. Thus, the Order should be modified to address whether and how Duke Energy Ohio will be able to, after December 31, 2020: (1) complete the true-up for its 2020 programs; and (2) recover its lost distribution revenues and shared savings associated with programs that have been authorized to continue through 2020.

II. DISCUSSION

A. The Existing Cost-Recovery Mechanisms Approved for Duke Energy Ohio's Existing Portfolio Contemplate a True-Up For 2020 Programs and Recovery Of Lost Distribution Revenues Associated With 2020 Programs, Both of Which Cannot Occur Until After 2020 And Until After All Prior Years' Updates Have Been Resolved By The Commission.

1. *Reconciling program costs, shared savings, and lost distribution revenues takes a considerable amount of time after the conclusion of a given program year.*

The process of reconciling program costs, shared savings, and lost distribution revenues via Duke Energy Ohio's existing Rider EE-PDR takes time, and an update filing for a given program

[1] Order, p. 19.
[2] *Id.* (explaining that beginning wind-down on September 30, 2020, will allow utilities to "minimize post-2020 cost reconciliation").

year is often not resolved until years after December 31 of the program year.[3] Furthermore, complete recovery of lost distribution revenues associated with a particular energy efficiency measure is not achieved until over three years after the measure is installed.

a) General background of the Company's existing energy efficiency portfolio.

The Company's existing energy efficiency programs were implemented subject to the mandates set forth in Amended Substitute Senate Bill 221 and subsequently modified by Senate Bill 310, codified in Revised Code 4928.66. The Company first submitted an application for approval of an energy efficiency portfolio of programs in Case No. 13-0431-EL-POR. The Stipulation that was adopted and approved by the Commission, provided for implementation of Rider EE-PDR (shown in the Duke Energy Ohio electric tariff as Rider EE-PDR and Rider EE-PDRR) to be effective on January 1, 2014.

The Company's current portfolio was filed in 2016 for years 2017 through 2019 in Case No. 16-576-EL-POR. A stipulation with the majority of intervening parties was submitted on January 22, 2017. On September 27, 2017, the amended stipulation was approved by the Commission with modifications. The Company filed a request for rehearing, challenging a "cap" imposed by the Commission on its energy efficiency cost recoveries.[4] With that request for rehearing pending before the Commission in this case, the Ohio Supreme Court struck down a virtually identical cost cap in a case involving another utility.[5] The Company's request for rehearing currently remains pending for over two years.

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[3] *See, e.g. 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 Nos. 16-664-EL-RDR and 17-781-EL-RDR, Finding and Order (Applications were for program years ending on December 31 of 2015 and 2016, final order was not issued until May 2019).

[4] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No. 16-576-EL-POR, Duke Energy Ohio, Inc.'s Application for Rehearing, p. 1 (October 27, 2017).

[5] *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No. 16-576-EL-POR, Notice of Additional Authority

On February 26, 2020, in the Order, the Commission granted the Company's request to extend the current portfolio through December 31, 2020 with an increased budget of 46,895,800.[6]

b) <u>Factors affecting the time-frame of reconciliation and cost recovery for a given year's programs</u>.

First, under the cost recovery framework approved for the existing portfolio, the Company submits an update filing each year for Rider EE-PDR that "true[s] up" program costs, shared savings, and lost distribution margins for the ***previous*** year.[7] The lost distribution margins for rates DS, DP, and TS are then recovered over a three-year period. Thus, for example, the Company's update filing made in 2019 (March 2019 Update), contained the program costs and shared savings true-up for the year 2018 and the lost distribution revenues, based on lost kWh and kW in 2018, as well as in the previous three years' (2015, 2016, 2017) worth of EE/PDR filings.[8] Accordingly, the update filing containing these same true-ups for 2020 will not be filed until the end of March 2021, and will contain not only the 2020 true-up, but also remaining unrecovered amounts for prior EE/PDR filings (e.g., 2017, 2018, 2019).

Second, the annual update filings themselves require further adjustments when they are filed ***before*** the Commission's final orders for one or more prior years' update filings are issued. Thus, for example, when the Company filed its March 2019 Update, the Commission had not yet issued its final orders resolving the Company's update filings made in March 2016, March 2017, or March 2018, and the Company recognized that its March 2019 update would require future adjustments to

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Submitted by Duke Energy Ohio, Inc., pp. 1-2 (December 16, 2019); *In re Ohio Edison Co.*, 2019-Ohio-4196, ¶ 11, 158 Ohio St. 3d 27.

[6] Order, pp. 3, 17.

[7] *See In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan*, Case No. 16-576-EL-POR, Duke Energy Ohio Exhibit 7, Direct Testimony of James E. Ziolkowski, p. 4:10.

[8] *See 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. 19-622-EL-RDR, Application, Direct Testimony of James E. Ziolkowski, pp. 3-4, 7 (March 29, 2019).

account for the effects of these orders.[9] While the Commission has since issued its decisions for the Company's 2016, and 2017 EE/PDR proceedings, the 2018 proceeding remains pending. And the Company is poised to file its reconciliation for 2019 in the coming weeks.

Third, the Rider EE-PDR is also "subject to reconciliation, including, but not limited to, refunds or additional charges to customers, ordered by the Commission as the result of annual audits by the Commission."[10] The reconciliation process necessarily takes time for the Staff to conduct their review, for the Commission to issue its decision, and for the Company to recover its prudently incurred costs. The Commission's Order unreasonably fails to address these issues and should be clarified.

2. *Reconciliation for the Company's 2020 program year may not be entirely complete for several years.*

Given the status of the Company's pending update filing before the Commission (filed in March 2019, for 2018 cost and lost-revenue true-ups and amended in December 2019), and the forthcoming filings that will occur this month (for 2019 cost and lost-revenue true-ups) and in March 2021 (for 2020 cost and lost-revenue true-ups), it is quite likely that reconciliation and cost recovery for the Company's complete portfolio, as approved in the Order, will not be entirely complete for a few years, until the Commission addresses all pending EE/PDR recovery issues and the Company recovers its prudently incurred costs. The Company's current rider mechanism will need to continue until such time as those prudently incurred costs are fully recovered.

The Company's March 2019 Update is currently pending before the Commission in Case No. 19-622-EL-RDR. The Company filed an amended update in December 2019 after the Ohio Supreme Court decision in *Ohio Edison*, revising cost schedules to reflect the Company's

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[9] *See id.*, p. 6 ("Upon receipt of orders in Case No. 16-664-EL-RDR, Case No. 17-781-EL-RDR, and Case No. 18-397-EL-RDR the Company will make adjustments to this filing.").

[10] *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. 18-397-EL-RDR, Finding and Order, p.6 (July 31, 2019).

expectation that the Commission would no longer impose a cost cap on its shared savings.[11] The Commission has not yet issued its order in that case. Nor has the Commission ruled on the applicability of the cost cap.

At the end of this month, the Company will file its annual update to reconcile 2019 program costs, shared savings, and lost distribution revenues. This annual update will—unless the Commission rules on the March 2019 Update this week—require a subsequent adjustment for the Commission's eventual order regarding the March 2019 Update.

Under established and currently-approved procedures, the Company expects to file an update in March 2021, containing true-ups for program costs and lost distribution revenues for 2020. This filing may require a subsequent adjustment if the Commission, at that point, will not yet have issued a final order on one or both of the Company's filings in March of 2019 and March of 2020. The lost distribution revenues associated with the energy efficiency measures installed in 2020 will not be completely known until early 2023. Additionally, while the Company has completed the required audits for years up to and including 2018, audits will have to be completed for 2019 and 2020.

The Company must be allowed to complete cost recovery of its lawfully approved portfolio. The Commission has already approved the existing cost recovery framework for the Company's energy efficiency programs and already approved the Company's existing portfolio for both 2017 through 2019 (in the September 27, 2017 Opinion and Order) and through 2020 (in the Order). It would be unlawful, at this point, and inconsistent with the Commission's prior orders to truncate the Company's true-ups for program costs, shared savings, and lost distribution margins for its 2019 and 2020 programs in a manner inconsistent with what has been approved for the existing portfolio

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[11] *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. 19-622-EL-RDR, Amended Application of Duke Energy Ohio, Inc. (December 20, 2019).

as a whole. In some instances, premature truncation of the truing-up process could result in customers losing out on adjustments in their favor. Accordingly, the Commission should clarify on rehearing that the Company will be able to complete cost recoveries and true-ups using the framework that the Commission has approved.

B. The Order Unreasonably and Unlawfully Does Not Address How The Company Will Complete Its Required True-Up for Program Costs for 2020.

The Order permitted the Company to continue the current portfolio through December 31, 2020 with an increased budget of $46,895,800.[12] In order to continue the existing programs through this time period and to complete all of the required reconciliation under existing cost recovery mechanisms and in accordance with previously approved processes, the Company will need to be able to make adjustments to Rider EE-PDR far past December 31, 2020. The Commission's failure to state that existing cost recovery mechanisms, such as riders, will continue for as long as necessary to complete the required program costs true-up for calendar year 2020 portfolios, is inconsistent with its precedent in the Company's energy efficiency cases described above. The Commission should grant rehearing and modify its Order to clarify this point.

C. The Order Unreasonably and Unlawfully Does Not Address How The Company Will True-Up For Lost Distribution Revenues And Shared Savings Associated With 2020 Programs.

Order permitted the Company to continue the current portfolio through December 31, 2020 with an increased budget of $46,895,800.[13] In order to continue the existing programs through this time period and to complete all of the required reconciliation of lost distribution revenues and shared savings under existing cost recovery mechanisms and in accordance with previously approved processes, the Company will need to be able to make adjustments to Rider EE-PDR past December 31, 2020, and at least until early 2023, depending upon when the Commission issues its

[12] Order, pp. 3, 17.
[13] Order, pp. 3, 17.

final order. As described above, the lost distribution revenues associated with the energy efficiency measures installed in 2020 will not be completely known until early 2023, due to the assumed three-year life of the installed energy efficiency measures. Moreover, the cost recovery under the rider may need to continue to fully recover the costs over a reasonable period for customers. The Commission's failure to state that existing cost recovery mechanisms, such as riders, will continue for as long as necessary to complete the required lost distribution revenues true-up for 2020, is inconsistent with its precedent in the Company's energy efficiency cases described above. The Commission should grant rehearing and modify its Order to clarify this point.

III. CONCLUSION

The Commission should grant rehearing of the Order so that it may clarify how, after December 31, 2020, Duke Energy Ohio will complete its true-up for 2020 program costs, shared savings, and recover the three-years' worth of lost distribution revenues for periods up to and including calendar year 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 27th day of March, 2020, to the parties listed below.

/s/ Larisa M. Vaysman
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