

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Duke Energy Ohio, Inc.     :  
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Case No. 21-0955-EL-UNC

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**JOINT STIPULATION AND RECOMMENDATION**

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**I.     Introduction**

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. This Joint Stipulation and Recommendation (Stipulation) sets forth the understanding and agreement of Duke Energy Ohio, Inc., (Duke Energy Ohio) and the Staff of the Public Utilities Commission of Ohio (Staff), each of whom is a “Signatory Party” and together constitute the “Signatory Parties.” The Signatory Parties recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation, which resolves all of the issues identified by the Staff in its Notice of Probable Noncompliance (Notice) dated June 11, 2021, attached hereto as Exhibit A.

When considering proposed stipulations, the Commission reviews whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria<sup>1</sup>:

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<sup>1</sup> The Commission’s use of these three criteria to evaluate the reasonableness of a stipulation has been endorsed by the Supreme Court of Ohio. *See, e.g., Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373; *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 2002-Ohio-1735.

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; and
3. Does the settlement package violate any important regulatory principle or practice?

For the first consideration, the Signatory Parties, all of whom are represented by capable and knowledgeable counsel, have engaged in lengthy, serious, arm's length bargaining in an effort to reach a mutually acceptable resolution that would address the concerns raised by Staff after reviewing the Company's annual filing and which necessitated the Notice. The Signatory Parties used their expert knowledge of the situation and relevant inspection and safety regulations to come to a mutually beneficial resolution of the problem.

This Stipulation meets the second consideration of the Commission's analysis because this Stipulation benefits customers and the public interest by resolving the concerns expressed by Staff in the Notice without the need for expensive and possibly lengthy litigation. In joining in this Stipulation, the Signatory Parties recognize that it is not in the public interest to subject the Signatory Parties and the Commission to the burdens and delays associated with litigating the issues raised in the Notice when a reasonable and acceptable outcome can be achieved through a settlement. The primary objective of this Stipulation is to resolve the issues alleged in the Notice, and to avoid, to the extent possible, the potential for future similar incidents. Further, as part of the

Stipulation, Duke Energy Ohio agrees to take numerous steps that address Staff's concerns. All of these measures benefit ratepayers and the public interest.

Finally, this Stipulation does not violate any important regulatory principle or practice; and it complies with and promotes the policies and requirements of Title 49 of the Ohio Revised Code.

## **II. History**

- A. On March 24, 2021, Duke Energy Ohio submitted its annual report for calendar year 2020 to Staff, as required under Ohio Adm. Code 4901:1-10-27(D) (Rule 27 Report).
- B. After reviewing Duke Energy Ohio's 2020 Rule 27 Report, Staff determined that forty-nine distribution circuits were last inspected in 2015 and therefore due for inspection by 2020.
- C. Due to an isolated data entry event that occurred during the transfer of data between systems that manage Duke Energy Ohio's inspection data, those forty-nine distribution circuits were not inspected in 2020.
- D. On June 11, 2021, Staff sent the Notice to Duke Energy Ohio, informing it of the probable violation and requesting that Duke Energy Ohio provide Staff with an action plan to address the violation.
- E. In the period between issuance of the Notice and the filing of this Stipulation, Duke Energy Ohio and Staff held numerous discussions

concerning the findings, recommendations, and measures appropriate to address the issue raised in the Notice.

- F. On June 25, 2021 Duke Energy Ohio responded to the Notice and provided Staff with an action plan. These measures have been developed in consultation with Staff, are collectively referred to as the Action Plan.
- G. The Action Plan, together with the other terms and conditions of this Stipulation, resolve all of the issues raised in the Notice.

### **III. Recitals**

- A. WHEREAS, all of the related issues and concerns raised by the Staff 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; and
- B. WHEREAS, Duke Energy Ohio has completed an inspection of all forty-nine of the previously missed distribution circuits; and,
- C. 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 Party may have advanced acting unilaterally; and,
- D. WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission; and,

- E. WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and
- F. WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in this matter;
- G. 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:

#### **IV. Joint Recommendation of Signatory Parties**

The Signatory Parties agree that, for purposes of settlement and in consideration of the terms and mutual promises set forth herein, and subject to Commission approval, Duke Energy Ohio will perform the following actions:

- A. Duke Energy Ohio shall implement all items contained in the Action Plan.  
To the extent Duke Energy Ohio and Staff mutually agree in writing to clarify or modify the requirements of the Action Plan, Duke Energy Ohio's obligations under this paragraph shall apply to such clarifications and modifications.
- B. Duke Energy Ohio has added the forty-nine (49) distribution circuits that were due for inspection by 2020 to the 2021 inspection list and has already

completed inspections of those forty-nine (49) distribution circuits. Further, Duke will prioritize any follow-up that results from these inspections.

- C. Duke Energy Ohio will complete any necessary corrective actions that are identified because of these inspections by December 31, 2021.
- D. To prevent future issues, Duke Energy Ohio will require a peer review and manager approval of its inspection lists prior to performing the inspections.
- E. To further secure performance of the obligations undertaken in this Stipulation, Duke Energy Ohio stipulates to a forfeiture of fifty thousand dollars (\$50,000), to be held in abeyance and payable if any of the following occur, subject to the process described in Paragraph F below:
  - 1. Duke Energy Ohio materially breaches any provision of this Stipulation and fails to remedy such breach after notice and opportunity to cure, unless such breach or failure to cure is the result of events or factors beyond Duke Energy Ohio's reasonable control.
  - 2. In the five years after this Stipulation is approved by the Commission, Duke Energy Ohio fails to inspect its distribution circuits as required under Ohio Adm. Code 4901:1-10-27(D).
- F. If Staff believes that an event set forth in paragraph E has occurred, and wishes to recommend imposition of the Stipulated Forfeiture, in whole or in part, the following process shall be observed:
  - 1. Staff shall make an appropriate filing with the Commission, recommending the Stipulated Forfeiture be imposed and the reasons

for such recommendation, to which Duke Energy Ohio shall be provided a reasonable opportunity to respond.

2. The Parties acknowledge that the Commission, in accordance with generally applicable legal requirements, shall be responsible for determining the procedures that shall be applied thereafter.

## **V. Procedural Matters**

- A. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. 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.
- B. 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 all or any part of this Stipulation, the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by

filing a notice with the Commission, including service to all Parties, in the docket within thirty days of the Commission's entry on rehearing. Prior to the filing of such a notice, the Signatory Party wishing to withdraw 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 includes the Signatory Party wishing to withdraw, 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, and a Signatory Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.

- C. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.



## VI. Conclusion

The undersigned hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 17<sup>th</sup> day of September, 2021.

STAFF OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO

By: Jodi Bair

**Jodi Bair**

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DUKE ENERGY OHIO

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**Public Utilities  
Commission**

Mike DeWine, Governor  
Jenifer French, Chair

**Commissioners**

M. Beth Trombold  
Lawrence K. Friedeman  
Dennis P. Deters  
Daniel R. Conway

June 11, 2021

Larisa Vaysman  
Senior Counsel  
Duke Energy Ohio  
139 East Fourth Street, 1312-Main  
Cincinnati, OH 45202

Dear Ms. Vaysman:

Pursuant to Ohio Administrative Code ("Ohio Adm.Code") 4901:1-23-02, this letter is a notice of probable non-compliance to Duke Energy Ohio ("Duke"). On March 24, 2021, Duke submitted its annual "Rule 27" report for calendar year 2020 to Staff of the Public Utilities Commission of Ohio ("Staff"). Annual "Rule 27" reports are required under Ohio Adm.Code 4901:1-10-27(D).

With respect to distribution circuit inspections, Ohio Adm.Code 4901:1-10-27(D)(1) states the following: "(1) Distribution – all distribution circuits and equipment shall be inspected at least once every five years."

After reviewing Duke's 2020 "Rule 27" report, Staff determined that forty-nine (49) distribution circuits were last inspected in 2015 and therefore due for inspection by 2020. According to Duke's 2020 "Rule 27" report, these forty-nine (49) circuits were not inspected. Please see the attached list of circuits which Staff believes to be in violation.

Ohio Adm.Code 4901:1-10-30(A) states the following with respect to failure to comply with the rules contained within Ohio Adm.Code 4901:1-10:

(A) Any electric utility or CRES provider that fails to comply with the rules and standards in this chapter, or with any commission order, direction, or requirement promulgated thereunder, may be subject to any and all remedies available under the law, including but not limited to the following:

(1) Forfeiture to the state of not more than ten thousand dollars for each such failure, with each day's continuance of the violation being a separate offense.

(2) Corrective action to effectuate compliance.

### **Probable Non-Compliance Violations**

Ohio Adm.Code 4901:1-10-27(D)(1), which requires that “all distribution circuits and equipment shall be inspected at least once every five years.”

### **Proposed Corrective Action**

To address these issues of probable non-compliance, Staff proposes that Duke provide Staff with an action plan that addresses the deficiencies noted above.

### **Proposed Forfeiture**

Finally, Staff notes that this is the second consecutive year that Duke has failed to comply with a “Rule 27” requirement. Staff is therefore proposing a forfeiture of fifty thousand dollars (\$50,000) against Duke for repeated failure to comply with Ohio Adm.Code 4901:1-10-27(D).

By June 25, 2021, please respond to this notice of probable non-compliance with Duke’s plan to address the above proposed corrective actions.

Sincerely,

*Jacob J. Nicodemus*

Jacob J. Nicodemus  
Electric Reliability Specialist

Attachment (1)

Circuit	Alias	Last Inspection
H4921060041	NORTH POLE 41	7/27/2015
H4931220041	VERA CRUZ 41	8/26/2015
H40C0130043	CHARLES 43	4/27/2015
H5021330041	DIMMICK 41	5/4/2015
H40C0150042	WEST END 42	8/18/2015
H4611620041	UNION 41	8/20/2015
H4611620049	UNION 49	8/30/2015
H38H1650041	SPRINGDALE 41	8/24/2015
H38H0170058	TERMINAL 58	8/18/2015
H493178000B	CLERTOMA B	5/5/2015
H4611790042	SPRINGBORO 42	8/5/2015
H5021910046	SIMPSON 46	8/5/2015
H492197000A	GREENBUSH A	7/6/2015
H4922060041	MT. WASHINGTON 41	7/29/2015
H40C0210046	BRIGHTON 46	4/14/2015
H40C2230041	SAYLER PARK 41	7/30/2015
H4932650043	FELDMAN 43	7/9/2015
H5022680041	WYSCARVER 41	8/20/2015
H40C2830041	FAIRFAX 41	5/6/2015
H40C2930044	QUEENSGATE 44	8/4/2015
H40C0030046	WALNUT HILLS 46	8/19/2015
H4613220041	OTTERBEIN 41	7/23/2015
H4610330043	MIDDLETOWN 43	7/15/2015
H4610340041	FRANKLIN 41	6/8/2015
H4610340044	FRANKLIN 44	6/10/2015
H4623530041	GILMORE 41	6/25/2015
H4623630041	NILLES 41	7/20/2015
H4610370041	CARLISLE 41	5/5/2015
H38H0390044	CENTRAL 44	4/29/2015
H38H039000A	CENTRAL A	4/28/2015
H38H0410041	LATERAL 41	7/9/2015
H38H0460051	EVENDALE 51	5/5/2015
H38H0470042	FINNEYTOWN 42	7/13/2015

Circuit	Alias	Last Inspection
H4921060041	NORTH POLE 41	7/27/2015
H4931220041	VERA CRUZ 41	8/26/2015
H38H0480041	IVORYDALE 41	7/8/2015
H4920580051	BROWN 51	4/27/2015
H40C0640041	CUMMINSVILLE 41	4/29/2015
H40C0640043	CUMMINSVILLE 43	4/30/2015
H40C0640046	CUMMINSVILLE 46	5/4/2015
H4610650041	JACKSON 41	6/16/2015
H4610650043	JACKSON 43	7/3/2015
H40C0680041	EBENEZER 41	5/4/2015
H40C0680043	EBENEZER 43	5/5/2015
H4930690055	SUMMERSIDE 55	8/12/2015
H4930690059	SUMMERSIDE 59	8/25/2015
H40C007000A	RYAN A	8/13/2015
H38H0910041	CHESTER 41	4/21/2015
H38H0950041	LINCOLN 41	7/15/2015
H38H0950044	LINCOLN 44	7/20/2015
H38H0950048	LINCOLN 48	7/20/2015

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 21-0955-EL-UNC**

Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO