

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Administration of the)	
Significantly Excessive Earnings Test under)	Case No. 22-297- EL-UNC
Section 4928.143(F), Revised Code, and)	
Rule 4901:1-35-10, Ohio Administrative)	
Code.)	

STIPULATION AND RECOMMENDATION

INTRODUCTION

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 proceeding. The purpose of this document is to set forth the understanding and agreement of the parties that have signed below (the Signatory Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt the Stipulation and Recommendation (Stipulation), as part of its Opinion and Order (Order) in this proceeding, resolving all of the issues in the proceeding.

This Stipulation is supported by adequate data and information, represents a just and reasonable resolution of the issues in this proceeding, violates no regulatory principle or precedent, and is the product of serious bargaining among knowledgeable and capable Signatory Parties in a cooperative process and undertaken by the Signatory Parties representing a wide range of interests to resolve the aforementioned issues. For purposes of resolving the issues raised by this proceeding, the Signatory Parties stipulate, agree, and recommend as set forth below.

PARTIES

This Stipulation is entered into by and among Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), and Staff of the Commission (Staff) (collectively, the Stipulating Parties).

STIPULATION

In Case No. 17-1263-EL-SSO, the Commission established an electric security plan (ESP IV) for Duke Energy Ohio.¹ ESP IV includes a provision for the application of the significantly excessive earnings test (SEET). In its order, the Commission affirmed continued use of the then current methodology pursuant to which the SEET would be administered, which methodology had been established in the Company's previous electric security plan (ESP III).² In ESP III, the Commission refrained from setting a SEET threshold, indicating that it would establish an appropriate threshold in the SEET proceedings.³

In reliance upon the SEET provisions included in its ESP IV, Duke Energy Ohio has calculated its earned return on average electric common equity for the year ended December 31, 2021, to be 5.46 percent, below the allowed rate of 9.84 percent in effect for calendar year 2021.⁴ Accordingly, Duke Energy Ohio does not believe it has collected significantly excessive earnings. Staff conducted its own review of Duke Energy Ohio's return on average electric common equity and also does not believe Duke Energy Ohio collected significantly excessive earnings. Therefore, the Signatory Parties stipulate and agree and recommend that the Commission find that Duke Energy Ohio did not have significantly excessive earnings in 2021.

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 17-1263-EL-SSO, *et al.*, Opinion and Order (Dec. 19, 2018).

² *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 14-841-EL-SSO, *et al.*, Opinion and Order (Apr. 2, 2015).

³*Id.*, p. 84.

⁴ *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, *et al.*, Opinion and Order, pp. 92-93 (Dec. 19, 2018).

The Signatory Parties agree and recommend that the Commission admit the Company's Application and accompanying materials, as filed May 12, 2022, into the record of this proceeding and issue its Order in this proceeding determining that significantly excessive earnings under R.C. 4928.143(F) did not occur with respect to the Company's ESP IV in 2021.

PROCEDURAL ISSUES

This Stipulation is submitted for purposes of this proceeding. The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. The Signatory Parties agree that, if the Commission or any court of competent jurisdiction rejects all or any material part of this Stipulation, or otherwise materially modifies its terms, any adversely affected Signatory Party shall have the right to file an application for rehearing or motion for reconsideration. If the Commission does not adopt the Stipulation without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Commission ("Notice of Withdrawal"). No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross

examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing if necessary. Each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission and in any appeal from the Commission's adoption and/or enforcement of this Stipulation and will further cause its counsel to do the same. The Signatory Parties also recommend that the Commission accept and approve the terms hereof as promptly as possible.

IN WITNESS WHEREOF, this Stipulation has been signed by the authorized agents of the undersigned Parties, this 10th day of May, 2023.

STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO

By: /s/ Werner Margard (per email authorization May 9, 2023)
Werner Margard, Assistant Attorney General,
its Attorney

DUKE ENERGY OHIO, INC.

By: /s/ Elyse H. Akhbari
Elyse H. Akhbari, Senior Counsel,
its Attorney

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Case No(s). 22-0297-EL-UNC

Summary: Stipulation Duke Energy Ohio, Inc.'s Stipulation and Recommendation electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Akhbari, Elyse Hanson and Kingery, Jeanne and Vaysman, Larisa.