THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF DUKE ENERGY OHIO, INC.'S DISTRIBUTION CAPITAL INVESTMENT RIDER.	**CASE NO. 19-1287-EL-RDR**

FINDING AND ORDER

Entered in the Journal on November 18, 2020

I. SUMMARY

{¶ 1} The Commission adopts the stipulation and recommendation entered into by Staff and Duke Energy Ohio, Inc. regarding the Distribution Capital Investment Rider of Duke Energy Ohio, Inc.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, respectively. As such, Duke is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility (EDU) shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On May 29, 2014, Duke filed its third ESP application. On April 2, 2015, the Commission issued an Opinion and Order modifying and approving Duke's ESP application for the period of June 1, 2015, through May 31, 2018. *In re the Application of Duke Energy Ohio for Authority to Establish a Std. Serv. Offer in the Form of an Electric Security Plan*, Case No. 14-841-EL-SSO, et al. (*ESP III Case*), Opinion and Order (April 2, 2015). As part of the approved ESP, the Commission authorized the establishment of the distribution capital investment rider (Rider DCI) to allow for the recovery of capital costs for distribution infrastructure investments. The rider is to be reviewed annually for accounting accuracy, prudency, and compliance with the Commission's Order. Further, the Commission found that a compliance audit of Rider DCI is to be completed annually to ensure conformance with the Opinion and Order.

{¶ 5} By Entry issued on May 30, 2018, in the *ESP III Case*, the Commission granted Duke's request to extend the ESP, including Rider DCI, until a new application for an ESP was approved. In doing so, the Commission initially extended the 2018 $35 million revenue cap collection period for Rider DCI until August 1, 2018. In a Second Entry on Rehearing issued July 25, 2018, the Commission granted Duke's application for rehearing, in part, and set a monthly $5 million cap for Rider DCI until a new ESP was approved. Thereafter, on December 19, 2018, the Commission issued an Opinion and Order modifying and approving an amended stipulation establishing ESP IV that extended Rider DCI through May 31, 2025, subject to certain conditions. *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al. (*ESP IV Case)*, Opinion and Order at ¶ 113-116 (Dec. 19, 2018).

{¶ 6} On June 19, 2019, the Commission directed Staff to issue a request for proposal to assist with the annual audit of Rider DCI. Prospective bidders were directed by the Commission to submit proposals to Staff by July 9, 2019. On July 31, 2019, the Commission issued an Entry selecting Rehmann Consulting (Rehmann) to perform the consulting activities for Duke's Rider DCI and directed Duke to enter into a contract with Rehmann for the purpose of providing payment for its auditing services. Thereafter, on December 13, 2019, Rehmann submitted its report (Audit Report).

{¶ 7} By Entry issued January 23, 2020, the attorney examiner, among other things, called for comments regarding the Audit Report. On February 28, 2020, initial comments were timely filed by Staff, Duke, and the Ohio Consumers Counsel (OCC). On March 20, 2020, reply comments were timely filed by Staff, Duke, and OCC.

{¶ 8} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health (DOH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the DOH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The DOH is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 9} Pursuant to R.C. 3701.13, the DOH has supervision of "all matters relating to the preservation of the life and health of the people" and the "ultimate authority in matters of quarantine and isolation." On March 12, 2020, the Director of the DOH issued an Order indicating that "all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible."

{¶ 10} On August 25, 2020, Duke filed a Stipulation and Recommendation (Stipulation) on behalf of the Company and Staff (collectively, Signatory Parties) that purports to resolve all of the issues in this case.

{¶ 11} On August 26, 2020, OCC filed a correspondence regarding the Stipulation stating that it neither supports nor opposes the Stipulation reached during the Signatory Parties' negotiation process. OCC states that it appreciates the efforts of Duke and Staff to negotiate a result that enabled OCC's non-opposition.

{¶ 12} By Entry issued September 24, 2020, the attorney examiner scheduled this matter for an evidentiary hearing on November 3, 2020.

{¶ 13} On October 2, 2020, Staff filed testimony in support of the Stipulation.

{¶ 14} On October 9, 2020, the Signatory Parties and OCC, as a non-opposing party, filed a joint motion for a modified procedural schedule and request for an expedited ruling. By Entry issued October 27, 2020, the attorney examiner continued the evidentiary hearing indefinitely to allow the Commission additional time to consider the waiver and, if necessary, the Stipulation.

{¶ 15} Additionally, within the joint motion, the Signatory Parties request for the admission of certain documents into the record and submitted the case for decision on the merits in response to COVID-19 and the Executive Order. Further, Duke and Staff state there are no contested issues in this proceeding and the case is ripe for decision on the record without a formal evidentiary hearing. Therefore, Duke and Staff seek the admission of the following documents: the Stipulation filed on August 25, 2020; the testimony of Doris McCarter in Support of the Stipulation filed on October 2, 2020; and the Audit Report. According to Duke and Staff, the issues in this case are resolved and it is prudent to resolve this case without a hearing. OCC did not file any opposition to the request.

III. Discussion

A. Motion

{¶ 16} Initially, we will address the motion to admit documents and resolve this case on the merits without a hearing. The Commission acknowledges the recommendations in the Executive Order in response to COVID-19 which encouraged people to stay at home when possible. Further, the parties appear to be in agreement on the evidence to be admitted into the record, and there does not appear to be any issues that must be resolved at a hearing. Thus, the requested documents will be admitted into the record as follow:

- Joint Ex. 1 – Stipulation filed on August 25, 2020;
- Staff Ex. 1 – Direct Testimony of Doris McCarter in Support of the Stipulation filed on October 2, 2020;
- Staff Ex. 2 –Audit Report filed December 13, 2019.

{¶ 17} Further, we find it is appropriate to follow the directives from the Executive Order and find that there is sufficient evidence on the record in order for the Commission to properly conduct a review and issue a decision without a hearing.

B. Summary of the Audit Report and Comments

{¶ 18} In the Audit Report, Rehmann reviewed Duke's accounting accuracy, prudency, and compliance associated with Rider DCI. The review started with the Company's November 1, 2018 quarterly filing, and all other quarterly filings up through August 1, 2019. Below is a summary of the recommendations from the audit report, as well as related comments from the parties.

- The Audit Report recommends that the issue of unposted retirements in Power Plan be corrected as planned by the December 31, 2019 Rider DCI filing to minimize the need for significant on-top entries.

  Duke accepts this audit recommendation. Staff agrees with the Audit Report's recommendation.

- Further, the Audit Report recommends that the revenue requirement be reduced by $311,135 for the depreciation expense impact of the lag in unposted retirements and increased by $109,064 for the accumulated depreciation impact of the lag in on top entries over the four quarterly Rider DCI filings, which is the length of time of the June 30, 2019 filing.

  Duke accepts this audit recommendation and represents that the Company has already made the required change for the underlying plant. Additionally, the Company states that it will make the adjustment to the revenue requirement in the first rider filing after an order is issued in this proceeding. OCC and Staff are in support of the recommendation.

- The Audit Report recommends that the revenue requirement be reduced by $67,787 over three quarterly Rider DCI filings, which is the length of time the transmission plant overcharge went undetected during the audit period. Rehmann explains that this adjustment corrects the revenue requirement associated with transmission plant balances that were incorrectly included in Rider DCI plant-in-service balances.

  Duke accepts this audit recommendation. Staff agrees with the Audit Report's recommendation.

- Further, the Audit Report recommends that the Rider DCI September 30, 2019 be amended to reflect an adjustment to plant-in-service for the $198,254 transmission plant overcharges.

  Duke accepts this audit recommendation. OCC agrees with this recommendation because transmission plant is not permitted to be collected as part of Rider DCI. Staff is also in support of the Audit Report's recommendation.

- Additionally, the Audit Report recommends that each invoice and payroll time sheet that charges a distribution plant work order and has a correlated transmission plant work order, receive a second review and signature on invoices and payroll time sheets that no charges have been misapplied.

  Duke accepts this audit recommendation. Staff is in support of the Audit Report's recommendation.

  In response to OCC's recommendation that, in the next DCI Rider audit, any costs that exceed the original budget by more than 25 percent be disallowed in the Company fails to verify the "reasonableness of the cost overruns" and that the sample size of audited work orders be increased if more than 20 percent of the original sampled orders are over-budget by more than 25 percent -- Duke states that the Company has already implemented new processes, and Rehmann concluded that these enhanced controls will help ensure work order estimates more closely resemble actual costs to be incurred. Therefore, Duke reasons that there is no basis for OCC's recommendation.

- The Audit Report recommends that all work distribution plant work orders that have a correlated transmission plant work order, and are charged the Rider DCI from July 1, 2018, to June 30, 2019, be reviewed by Duke for appropriate charging between distribution and transmission plant. Rehmann clarifies that any detected overcharges should be quantified in a report for the revenue requirement impact and the impact applied to the December 31, 2019 Rider DCI filing.

  Duke disagrees with this audit recommendation. Specifically, Duke asserts that such a review would be difficult and overly burdensome to perform and impossible during the recommended timeframe. Additionally, Duke avers that the enhanced control auditor is recommending, and the Company is agreeing to in a previous recommendation, is sufficient. Lastly, Duke believes there is no need to re-perform the audit as Rehmann was required to do the review it is recommending within its own review. Staff is in support of the Audit Report's recommendation.

- According to the audit report, Duke's revenue requirement should be reduced by $70,969 to correct the revenue requirement associated with FERC 105 plant-in-service balances incorrectly included in Rider DCI plant-in-service balances.

  Duke accepts this audit recommendation, and Staff is in support of the Audit Report's recommendation.

- The next recommendation from the Audit Report states that an operational audit of contractor charges be completed to determine whether competitive bids are being obtained, contractors are complying with their bid specifications, contract terms are being adhered to, duplicate payments are not made, and contractor time sheets and equipment hours are being monitored by Duke. Any detected overcharges and operational improvements should be quantified in a report for the revenue requirement impact and the impact applied to the March 31, 2020 Rider DCI filing. Rehmann recommends any detected overcharges and operational improvements should be quantified in a report for the revenue requirement impact and the impact applied to the March 31, 2020 Rider DCI filing.

  Duke accepts the recommendation to perform an operational audit, but the Company states that it does not believe it will be possible to complete the audit in time to apply any impact to the March 31, 2020 Rider DCI filing. Therefore, the Company states that, by September 30, 2020, Duke will perform an operational audit of contractor charges for a period of work completed from January 1, 2020, to June 30, 2020, to determine:

  i. Competitive bids are being obtained;

  ii. Contractors are materially complying with their bid specifications;

  iii. Material contract terms are being adhered to;

  iv. Duplicate payments are not made; and

  v. Contractor time sheets and equipment hours are being monitored by Duke.

  Duke represents that any detected overcharges as part of this audit would be corrected within the plant balances when detected, and the impact of those overcharges on the revenue requirement would then be addressed in the next compliance audit of the July 1, 2019, to June 30, 2020 Rider DCI. OCC and Staff support the Audit Report's recommendation.

- Rehmann recommends when a contractor's estimated hours needed to complete the work exceeds the estimated hours produced by Maximo, then Duke authorized personnel should evaluate whether or not to approve a contract change order for the overage.

  Duke accepts this recommendation, and Staff is also in support of the Audit Report's recommendation.

- Rehmann reviewed Duke's procedures for estimating projects and recommends that the Automatic Review for Closing (ARC) rules follow-up be completed within nine months (consistent with the Work Order Estimation Process Document that was created September 30, 2019, which Rehmann concurs with) and in conjunction with more timely unitization.

  Duke accepts this recommendation for timely ARC rules follow-up but disagrees with the nine-month time limit. The Company proposes to comply with the Work Order Estimation Process document which permits one year for project unitization, pursuant to the Company's capital guidelines. OCC and Staff are in support of the Audit Report's recommendation. While Staff agrees with Duke's one-year timeline for project unitization, Staff recommends that Duke update their Work Order Estimation Process documentation for the 12-month timeframe as well.

- Rehmann recommends that the revenue requirement be increased by $45,927 over two quarterly Rider DCI filings (the length of time the undercharge went undetected during the audit period) in order to correct the revenue requirement associated with distribution plant balances that were incorrectly classified as transmission plant and excluded from Rider DCI plant-in-service balances.

Duke accepts this audit recommendation, and Staff is also in support of the Audit Report's recommendation.

- Rehmann recommends that the Vegetation Management Guidelines be evaluated for consideration of which processes should be applied at Duke. Rehmann clarifies that any proposed changes to the Vegetation Management Guidelines which are in addition to the changes recommended in this audit, including the non-application of provisions of the Vegetation Management Guidelines to Duke, should be submitted to the Commission for approval.

  Duke accepts the recommendation to evaluate the Vegetation Management Guidelines for which processes should be applied to Duke. Duke represents that it agrees to comply, as always, with Ohio Adm.Code 4901:1-10-27(F), which requires the Vegetation Management Guidelines to be filed with the Commission. Duke states that it does not agree to any additional requirements, beyond those required by Ohio Adm.Code 4901:1-10-27. Staff is in support of th Audit Report's recommendation.

- Rehmann recommends that before and after images be taken of the removed danger trees that clearly demonstrates the removed tree meets the Vegetation Management Guidelines and be named with the longitude and latitude of the tree location for six-year storage in a Vegetation Management network drive.

  Duke disagrees with this recommendation. The Company believes that such photographs would be helpful in determining whether a given tree should be categorized as capital or operations and maintenance (O&M). Duke clarifies that in order to depict whether a tree is dead, dying, diseased, or leaning would require multiple photographs, and capturing, transferring, and storing photographs of each tree would create an administrative and financial burden with limited benefits. As a final point, Duke argues that capturing such images is not in the current scope of work for the Company's contract foresters. Staff is in support of the Audit Report's recommendation.

- Rehmann recommends that the Distribution Tree Removal Form include the height of a dead, dying, or diseased tree or length of a leaning tree compared to the distance from the power line.

  Duke disagrees with this recommendation because it does not consider the constraints faced by the Company. Duke elaborates stating that requiring such measurements to be recorded on the Distribution Tree Removal Form would be beyond the current scope of work of its current unit-based contracts. In any event, Duke believes that any such data would be only a rough estimate because it would not be practical to give measuring wheels and range finders to all the field personnel performing this work. Lastly, Duke believes that its current Distribution Tree Removal Form is uniform across Duke affiliates and disrupting this uniformity by adding a field that only Duke would use could lead to confusion. Staff is in support of the Audit Report's recommendation.

- Rehmann recommends that the Vegetation Management Guidelines define that 10 percent of danger trees are reviewed before they are removed and a different 10 percent are reviewed after they are removed. Further, the quality assurance reviews should be documented on the Distribution Tree Removal Form.

  Duke disagrees with this recommendation. The Company suggests that a sliding scale audit procedure would be more productive. Duke states that its draft version of its Hazard Tree Program Business Case includes a sliding scale audit depending on deficiencies found during the audit. Staff is in support of Rehmann's recommendation. On reply, Staff clarifies that it cannot support

Duke's recommendation at this time because the Company's proposal lacks specificity, and in order to properly analyze or vet Duke's proposal, Staff requires more details.

- The Audit Report recommends that the revenue requirement be reduced for the tree trimming overcharges by $2,692.

  Duke accepts this audit recommendation, and Staff is also in support of Rehmann's recommendation.

- The Audit Report recommends that the Rider DCI September 30, 2019, be amended to reflect an adjustment to plant-in-service for the $11,538 of tree trimming overcharges.

  Duke accepts this audit recommendation and represents that adjustments have been made to the December 2019 filing and will be made in the general ledger in the first quarter of 2020. OCC opines that Rehmann's recommendation should be adopted because vegetation management is an O&M expense and is not related to Rider DCI. Accordingly, OCC argues that this cost is not an appropriate cost that should be collected from customers under Rider DCI. Staff is in support of the Audit Report's recommendation.

- Rehmann recommends a separate detailed audit of all tree trimming invoices charged the Rider DCI from July 1, 2018 to June 30, 2019, to cover the overcharge causes described in this Rider DCI Audit. Rehmann believes that any detected overcharges should be quantified in a report for the revenue requirement impact and applied to the December 31, 2019 Rider DCI filing.

  Duke disagrees with this recommendation and believes that there is no systematic overcharge issue that warrants a wholesale re-audit. Duke represents that improvements to reduce the risk of overcharges have been made and will continue to be made including education of design engineers responsible for the tree trimming planning, improved communication between vegetation management, and design engineering on the decisions around whether trimming should be capital or O&M, and finally vegetation management review of tree trimming invoices. Duke believes that the misclassification of $5,529 of tree trimming costs and a $6,009 invoice duplication is negligible considering the size and the scope of the Company's tree trimming activities. As a final point, Duke argues that any such audit would take a considerable amount of time and would not be complete in time to apply any impact. Duke states that there is no need to re-perform the audit given that Rehmann was required to do the review it is recommending as part of this audit. Staff is in support of Rehmann's recommendation.

- Rehmann recommends that a Tree Trimming Supervisor sign, date, and list on the invoice the amount of any O&M to capital overrides.

  Duke disagrees with this audit recommendation stating that it would not be practical to implement because invoices are processed electronically. Duke proposes to no longer update accounting after an invoice is submitted, but rather, request a corrected copy of the invoice from the vendor. Staff is in support of Duke's recommendation to no longer update accounting after an invoice is submitted and request a corrected copy of an incorrect invoice from the vendor.

- Rehmann recommends that all contribution in aid of construction (CIAC) entries be posted to work orders immediately upon invoicing. The revenue requirement should be reduced for the missing or untimely CIAC entries by $562,933 over the four quarterly Rider DCI filings (the length of time the overcharge went undetected).

Duke accepts this audit recommendation. OCC agrees with this recommendation to correct the revenue requirement impact of the CIAC. Further, OCC proposes that the Commission disallow in this audit, and in future audits, any CIAC that has not been properly recorded. OCC believes that this disallowance will ensure that Rider DCI is not collecting costs from customers that result in a return on non-investor supplied capital. OCC believes that, by not reflecting the proper CIAC amounts, the amount Duke charges its customers is overstated and customers are charged more than is just and reasonable. Staff is in support of Rehmann's recommendation.

On reply, Duke states that the Company has always agreed to make appropriate adjustments for CIAC that has not been properly recorded, and therefore, OCC is not suggesting anything that the Company is not already doing.

Staff disagrees with Duke that this is not a significant, systemic issue and believes that this argument also ignores the fact that the time frame of the audit would be completed prior to the time the improvements went into effect. Staff urges the Commission to require that Duke audit to review any other CIAC postings unrecorded in work orders and require Duke to credit customers for any errors found.

- The Audit Report recommends that the Rider DCI September 30, 2019 be amended to reflect an adjustment to plant-in-service for the $296,024 CIAC overcharge.

  Duke accepts this audit recommendation. OCC agrees with this recommendation to correct the revenue requirement impact of the CIAC. Further, OCC proposes that the Commission disallow in this audit, and in future audits, any CIAC that has not been properly recorded. OCC believes that this disallowance will ensure that Rider DCI is not collecting costs from customers that result in a return on non-investor supplied capital. OCC believes that, by not reflecting the proper CIAC amounts, the amount Duke charges its customers is overstated and customers are charged more than is just and reasonable. Staff is in support of the Audit Report's recommendation.

- Rehmann recommends a separate detailed audit for any other CIAC postings unrecorded in work orders and therefore the Rider DCI from July 1, 2018 to June 30, 2019. Any unrecorded CIAC should be quantified in a report for the revenue requirement impact and applied to the December 31, 2019 Rider DCI filing.

  Duke disagrees with this recommendation stating that the Company does not believe there is a systematic issue warranting such a wholesale re-audit. Duke proposes to allow the recently implemented improvements, outlined in the CIAC Tracking Process Document, per the auditor's recommendation in last year's audit, to continue for some time, and then to review the effectiveness of those improvements before considering whether any separate audit is necessary. Duke represents that Rehmann reviewed and concluded that these enhanced controls will help ensure invoices are billed on required dates and cash collections are followed-up when due dates pass. Lastly, Duke argues that there is no need to re-perform the audit given that Rehmann was required to do the review it is recommended as part of this audit. Staff is in support of Rehmann's recommendation.

- As part of the audit, Rehmann recommends that cost of removal in Retirement Work in Progress (RWIP) be captured for the incentive pay offset and for each future quarterly Rider DCI filing.

  Duke disagrees with this audit recommendation and the Company disagrees with the last four adjustments in Table 11 on page 38 of the Audit Report. Duke believes that any such adjustment would be a mere estimate and not accurate. Further, in the stipulation for the *ESP IV Case*, Duke agreed to remove incentive compensation related to earnings for incremental capital moving forward. Duke clarifies that the removal cost for the assets that are being replaced have already been accrued through ongoing Commission approved depreciation rates and relate to assets that were placed in service before the date certain of the *ESP IV Case*. Duke represents that the language of the Opinion and Order in the *ESP IV Case* allows the Company to recover earnings-based incentives on assets placed in service prior to the date certain of June 30, 2016. Staff is in support of the Audit Report's recommendation.

Staff disagrees with Duke's interpretation of the Opinion and Order in the *ESP IV Case*. The costs related to RWIP are new costs, not costs that were included as part of the plant in service amounts in the rate case. Therefore, as these are new costs, the financial based incentive compensation should be removed.

- Rehmann also recommends that the revenue requirement be reduced for the incentive pay offset overcharges by $19,527 over four quarterly Rider DCI filings (the length of time the overcharge went undetected).

  Duke disagrees with this audit recommendation for the reasons stated above. Staff is in support of Rehmann's recommendation.

- Lastly, Rehmann recommends that the Rider DCI September 30, 2019 be amended to reflect an adjustment to the incentive pay calculation by adding $66,361 to the cumulative total of gross plant incentives and $69,240 to the incentive pay offset total adjustment.

  Again, Duke disagrees with this audit recommendation for the reasons stated above. OCC argues that the Commission should adopt Rehmann's recommendations to remove incentive payments from Rider DCI and to reduce the applicable revenue requirement because these payments are not

> appropriate costs to collect from customers under Rider DCI. Staff is also in support of the Audit Report's recommendation.

{¶ 19} With respect to Rehmann's acknowledgement that Duke has made progress on its backlog of un-unitized work orders from in-service year 2017 and older, OCC points out there are significant un-unitized work orders that are over one year old from the in-service date and that Duke previously agreed that the un-unitized plant backlog would be caught up within a year from October 23, 2019. *See In Re Duke Energy Ohio, Inc.*, Case No. 18-1036-EL-RDR, Compliance Audit (Dec. 7, 2018) at 10. OCC believes several overcharges should be eliminated, but Duke has failed to comply with its previous commitment to get caught up on its work order backlog. OCC urges the Commission to enforce its previous orders and again adopt Rehmann's recommendations to require Duke to catch up this backlog within one year of the Commission's order adopting the settlement in Case no. 18-1036-EL-RDR.

{¶ 20} On reply, Duke states that the Company has already agreed to catch up on the unitization backlog by October 23, 2020, and the Commission has approved this deadline, and Rehmann concurred with the timeline as well. Duke argues that there is no evidence that the Company is out of compliance with the order, yet OCC seeks enforcement clauses because customers are supposedly paying unjust and unreasonable charges. Duke believes that OCC'c claim has no merit and has been made without evidence.

{¶ 21} As a final point, Duke clarifies that it understands the audit recommendations to be summarized accurately in Summary Table 11 on page 38 of the Audit Report. Rehmann recommends that the issue of unposted retirements in Power Plan be corrected as planned by the December 31, 2019 Rider DCI filing to minimize the need for significant on-top entries. Rehmann recommends that the revenue requirement be reduced by $311,135 for the depreciation expense impact of the lag in unposted retirements and increased by $109,064 for the accumulated depreciation impact of the lag in on top entries over the four quarterly Rider DCI filings (the length of time the entries occurred).

C. Summary of the Stipulation

{¶ 22} The Stipulation sets forth the understanding and agreement of the parties and purports to resolve all outstanding issues in this proceeding. Below is a summary of the recommendations.

- Duke will reduce the Total Rider DCI Revenue Requirement, which reduces the total charges to consumers, as follows:

	1st Quarterly Filing	2nd Quarterly Filing	3rd Quarterly Filing	4th Quarterly Filing
Classifying transmission plant as distribution plant	$(67,787)	0	0	0
Depreciation Expense Lag from Unposted Retirements	$(311,135)	0	0	0
On Top Accumulated Depreciation Entry Lag	$109,064	0	0	0
Contribution in aid of construction not recorded	$(562,933)	0	0	0
Tree Trimming Charged to Capital	$(2,692)	0	0	0
FERC 105 Correction Made in December 31, 2018 DCI Filing	$(70,969)	0	0	0
Incentive Pay (increase Offset)	$(19,527)	0	0	0
Total	$(880,052)	0	0	0

- Duke agrees to make the above corrections to its records regarding the Transmission Plant, Depreciation Expense Lag from Unposted Retirements, Accumulated Depreciation Entry Lag, CIAC, Tree Trimming, Transmission Plant Unitized to Distribution Plant, and FERC 105 recommendations in accordance with the Auditor's respective recommended adjustments, as depicted in Table 11 in Staff Ex. 1, page 38.

- Duke agrees to reduce its revenue requirement to be charged to consumers by reducing incremental plant by the amount of earnings-based incentive pay charged to the distribution plant cost of removal account. The earnings based incentive pay reduction will be adjusted by the factor (t/Book Life), where "t" equals the time in years and quarters from the current filing minus the date certain (currently June 30, 2016), and the book life will be calculated from the approved composite depreciation rate of distribution assets (currently 39.37 years) from the Company's most recent base rate case, Case No. 17-32-EL-AIR. This reduction to incremental plant will be applied to the first rider filing following an order from the Commission but shall include an adjustment calculated from the audit test period beginning July 1, 2019, going forward.

- Duke agrees to implement a process change to ensure consumers are correctly charged. Specifically, each project that charges a distribution plant work order and has a correlated transmission plant work order will receive a second review to ensure that no distribution charges have been erroneously applied to transmission work orders and vice versa. This second review will be documented in writing.

- Duke agrees, by September 1, 2021, to ensure consumers are charged correctly by performing an operational audit of contractor charges for the period of work completed from January 1, 2020 to June 30, 2020 to determine the following:

a. Competitive bids are being obtained;

b. Contractors are materially complying with their bid specifications;

c. Material contract terms are being adhered to;

d. Duplicate payments are not made; and

e. Contractor time sheets and equipment hours are being monitored by Duke.

Duke agrees that any detected undercharges or overcharges would be corrected within the plant balances when detected. The impact of any such undercharges or overcharges would be addressed in the next Rider DCI filing on or before November 1, 2021.

Duke agrees to implement a process change, to ensure consumers are charged correctly, whereby the Company's Area Operations Directors and Project Managers will review and approve (or disapprove) requests from contractors to complete additional work beyond the hours estimated by Maximo, the Company's work management system. Additionally, such approvals shall document the specific reason for the additional work beyond the hours estimated by Maximo.

Duke agrees that the Company will continue to comply with the ARC rules and the Work Order Estimation Process Document created on September 30, 2019 in order to ensure plant unitization within one year.

Duke agrees to perform an operational audit of hazard trees beginning July 2020 moving forward, pursuant to the process laid out in Appendix 1. Specifically, the audit is intended to ensure consumers are charged correctly and to demonstrate the Company's compliance with its Capitalization Guidelines, as pertaining to vegetation management. Duke agrees that any hazard tree removals that are found not to qualify for capitalization under the Company's Capitalization Guidelines will be disallowed. Additionally, any tree included as capital in Rider DCI that is capitalized "due to its proximity, shape, type or size otherwise endangers these assets" as per the Company's Capitalization Guidelines shall have additional picture or video and written documentation as to why it was removed.

Duke agrees to implement a process change, such that a Tree Trimming Supervisor will reject any invoices with incorrect accounting and request a corrected invoice from the vendor.

- In the next annual Rider DCI audit, Duke agrees that the auditor will be able to review a sample of tree-trimming invoices of the auditor's selection, as well as a sample of Distribution Tree Removal Forms. The auditor will have discretion to increase the size of the sample if the auditor identifies issues of concern.

  Duke agrees to implement a process change, whereby all CIAC entries will be posted to work orders immediately upon invoicing, to accrue when the project is placed into service.

  Duke agrees, by September 1, 2021, to perform an assessment and verification for all CIAC postings unrecorded in work orders from July 1, 2018 to June 30, 2019. Any unrecorded CIAC will be quantified in a report by the Company's internal audit staff and the revenue impact will be applied to the earliest possible Rider DCI filing.

IV. CONCLUSION

{¶ 23} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 24} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g.*, *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable 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?

{¶ 25} The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 26} Initially, we find that the first prong of the three-part test is met. Staff witness Doris McCarter testified that negotiations were an open process and parties were represented by able, experienced counsel. Further, all parties had technical experts experienced in regulatory matters before the Commission. Ms. McCarter testified that settlement meetings were open to all parties. (Staff Ex. 1 at 2.) Ms. McCarter states that the Stipulation represents a comprehensive compromise of issues raised by parties with diverse interests. Lastly, Ms. McCarter states that all parties to this proceeding were present at negotiations that resultedg in the Stipulation. Accordingly, the Commission finds that the Stipulation is a product of serious bargaining among capable, knowledgeable parties.

{¶ 27} Regarding the second part of the test, Duke and Staff assert that the Stipulation benefits ratepayers and the public interest. Ms. McCarter states that the Stipulation reduces Duke's Rider DCI revenue by $880,052. Further, according to Ms. McCarter, another benefit of the agreement is the implementation of a new hazard tree operational audit for costs associated with hazard tree removals. Ms. McCarter explains that this ongoing audit procedure is intended to demonstrate the Company's compliance with its capitalization guidelines pertaining to vegetation management and provides remedies for the Company's failure to do so. Ms. McCarter adds that the Stipulation results in an agreement with Duke to reduce its revenue requirement by reducing incremental plant by the amount of earnings-based incentive pay charged to the distribution plant cost of removal account. Lastly, as an additional benefit to ratepayers and the public interest, the Stipulation requires Duke to perform additional audit and/or assessment tasks with any resulting corrections to be reflected in the appropriate Rider DCI filing. (Staff Ex. 1 at 3-4.)

{¶ 28} Finally, as to the third prong, Duke and Staff maintain that the Stipulation does not violate any important regulatory principles or practices. Specifically, Ms. McCarter testifies that, based on her experience, involvement in this proceeding, and review of the

Stipulation, it is Staff's conclusion that the Stipulation does not violate any relevant and important regulatory principles and practices. The Commission finds that the Stipulation does not violate any important regulatory laws or principles.

{¶ 29} Accordingly, we conclude that the Stipulation is a product of serious bargaining among capable, knowledgeable parties; as a package, benefits ratepayers and the public interest; and does not contravene any important regulatory principles. Thus, we find that the Stipulation meets the three-part test and should be approved.

V. FINDINGS OF FACT AND CONCLUSION OF LAW

{¶ 30} Duke is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 31} On April 2, 2015, the Commission established Rider DCI to allow for the recovery of capital costs for distribution infrastructure investments. The rider is to be reviewed annually for accounting accuracy, prudency, and compliance with the Commission's Order. *ESP III Case*, Opinion and Order (Apr. 2, 2015).

{¶ 32} On July 31, 2019, the Commission issued an Entry selecting Rehmann consulting to perform the consulting activities for Duke's Rider DCI and directed Duke to enter into a contract with Rehmann for the purpose of providing payment for its auditing services. Thereafter, on December 13, 2019, Rehmann submitted the Audit Report.

{¶ 33} On August 25, 2020, Staff and Duke filed a joint stipulation and recommendation.

{¶ 34} On August 26, 2020, OCC filed a correspondence regarding the Stipulation stating that it neither supports nor opposes the Stipulation reached during the Signatory Parties' negotiation process.

{¶ 35} By Entry issued September 24, 2020, the attorney examiner scheduled this matter for an evidentiary hearing on November 3, 2020.

{¶ 36} On October 2, 2020, Staff filed testimony in support of the Stipulation.

{¶ 37} On October 9, 2020, the Signatory Parties and OCC, as a non-opposing party, filed a joint motion for a modified procedural schedule and request for an expedited ruling, and by Entry issued October 27, 2020, the attorney examiner continued the evidentiary hearing scheduled for November 3, 2020, indefinitely.

{¶ 38} Joint Ex. 1, Staff Ex. 1, and Staff Ex. 2 are admitted into the record. Further, we find it is appropriate to follow the directives from the Executive Order and find that there is sufficient evidence on the record in order for the Commission to properly conduct a review and issue a decision without a hearing.

{¶ 39} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VI. ORDER

{¶ 40} It is, therefore,

{¶ 41} ORDERED, That the motion for admission of evidence and waiver of a hearing be approved. It is, further,

{¶ 42} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 43} ORDERED, That Duke take all necessary steps to carry out the terms if the Stipulation and this Finding and Order. It is, further,

{¶ 44} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 45} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

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

LLA/hac