BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates.	)))	Case No. 12-1685-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)))	Case No. 12-1686-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.	))))	Case No. 12-1687-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 12-1688-GA-AAM

DUKE ENERGY OHIO, INC.'S OBJECTIONS
TO STAFF REPORT OF INVESTIGATION
AND SUMMARY OF MAJOR ISSUES

On January 4, 2013, the Utilities and Service Monitoring and Enforcement Department (Staff) of the Public Utilities Commission of Ohio (Commission) filed its Staff Report of Investigation (Staff Report) in the above-captioned proceedings. Pursuant to R.C. 4909.19, O.A.C. 4901:1-1-28, and the Attorney Examiner's Entries dated January 10, 2013, Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) submits the following Objections to the Staff Report (Objections) and summary of major issues in which the Company specifically identifies areas of controversy with respect to certain findings, conclusions or recommendations contained in the Staff

Report, or the failure of the report to address certain items. Duke Energy Ohio reserves the right to supplement or modify these Objections in the event that the Staff makes additional findings, conclusions or recommendations or modifies its position with respect to any finding, conclusion or recommendation contained in the Staff Report. The Company further reserves the right to contest issues that are newly raised between the filing of the Staff Report and the closing of the record in these proceedings.

OBJECTIONS TO THE STAFF REPORT

REVENUE REQUIREMENT

(1) **Amount of Staff's Proposed Revenue Requirement.** Duke Energy Ohio objects to the revenue decrease range of $3,358,775 to $10,725,809 recommended by the Staff. Staff's proposed revenue decrease significantly understates the magnitude of the revenue requirement to which Duke Energy Ohio is entitled and that Duke Energy Ohio supported in its Standard Filing Requirements. As more specifically described in the following objections, Staff's recommended decrease results from unreasonable, unlawful, and erroneous adjustments that would yield rates that are insufficient to provide Duke Energy Ohio just compensation or an opportunity to earn an adequate return for providing safe, necessary, adequate, and reliable natural gas service for its customers.

RATE BASE

(2) **Materials and Supplies.** Duke Energy Ohio objects to Staff's recommendation that no allowance should be made for materials and supplies in rate base simply because Duke Energy Ohio did not file a lead/lag study. Staff's recommendation unnecessarily confuses and is contrary to the plain language of R.C. 4909.15(A), which, in pertinent part, explicitly provides for a "reasonable allowance for materials and supplies *and* cash working capital as

determined by the commission." (Emphasis added.) Although the Ohio Administrative Code does require that a lead/lag study be prepared to support a request for *cash working capital*, nothing in the Commission's rules or in the Ohio Revised Code conditions inclusion of materials and supplies in rate base other than that it be based on a thirteen-month average balance of that account, as the Company has done in its Application.

(3) Plant in Service – Rider AU Exclusions. Duke Energy Ohio objects to Staff's recommended adjustments to its Rider AU (Advanced Utility) in two respects:

(a) Duke Energy Ohio objects to Staff's exclusion of the uninstalled gas modules from plant in service. Neither Generally Accepted Accounting Principles (GAAP) nor the Uniform System of Accounts (Code of Federal Regulations, Title 18) precludes equipment from being classified as in service upon purchase. The Company is currently purchasing gas modules to inventory and requisitioning as needed to capital for the grid modernization conversion effort, which requires a quantity of gas modules to be on hand to ensure continuity of the program. It is not possible to track individual modules as plant in service solely based upon installation.

(b) Duke Energy Ohio objects to Staff's reclassification of software from gas to electric. In the Rider AU Annual Filing, the gas/electric split was incorrect for one project. The filing was revised for this correction. Because the project was correctly reflected in the accounting system, the rate base should not be adjusted for this project.

OPERATING INCOME

(4) Adjustment to Base Revenue. Duke Energy Ohio objects to the Staff's adjustment to the test year revenue based on an average consumption per customer methodology. Staff does not provide any compelling justification for its adjustment. Duke Energy Ohio submitted an estimate of sales based upon three months of actual and nine months of forecasted data in accordance with R.C. 4909.15(C)(1). Duke Energy Ohio's estimates as provided in the Application were reasonable and should be the basis for revenues during the test period.

(5) **Gross Revenue Conversion Factor.** Duke Energy Ohio objects to Staff's calculation of the Gross Revenue Conversion Factor because, without providing any basis, Staff failed to include the Commission and the Office of the Ohio Consumers' Counsel (OCC) maintenance fees when calculating the Gross Revenue Conversion Factor.

(6) **MGP Deferral.** Duke Energy Ohio objects to Staff's recommendations with respect to the Company's request for recovery of costs for environmental investigation and remediation of its two former Manufactured Gas Plant (MGP) sites, East End and West End, and particularly with the Staff's application of the used and useful standard. Staff makes its recommendation without regard to considering the strict liability placed upon the Company for investigating and cleaning up sites under federal and Ohio environmental laws. Staff further fails to include in its recommended recovery the value of property that is and/or was used and useful in rendering natural gas distribution service to the Company's customers. Specifically, Duke Energy Ohio objects to Staff's recommendations to divide the relevant parcels of land into segments based upon an arbitrary division of what Staff considers used and useful and further objects as follows:

(a) The Company objects to Staff's recommendation that the Company should only be permitted to recover MGP remediation expenses incurred for land 25 feet on each side of the centerline of gas pipelines located on the Eastern Parcel of East End. Staff's recommendation and determination of what property in the Eastern Parcel of the East

End site is, and is not, used and useful is arbitrary and contrary to previous Commission decisions with regard to the used and useful standard.

(b) The Company objects to Staff's recommendation that none of the MGP remediation expenses incurred at the Western Parcel of the East End site should be recoverable in natural gas distribution rates except for those incurred within a 50-foot buffer around the existing Vaporizer Building in a small area in the northeast corner of the parcel. Staff arbitrarily, unreasonably, and incorrectly concludes that none of the remediation expenses for the Western Parcel of the East End site, except those incurred within such 50-foot buffer, were incurred to operate, maintain, or repair property that is used and useful in rendering natural gas distribution service.

(c) Duke Energy Ohio objects to Staff's recommendation that deferred expenses related to the land referred to in the Staff Report as Purchased Property should not be recovered. Staff fails to adequately explain its rationale for this recommendation, merely stating that deferred expenses associated with the land purchase "should [not] be recovered from customers."[1]

(d) Duke Energy Ohio objects to Staff's recommendation relating to the recovery of expenses associated with remediation at the West End site, north of Mehring Way. Staff unreasonably applies a very narrow interpretation of the broad used and useful standard set forth in R.C. 4909.15(A)(1) when rendering its recommendation regarding this property.

(e) Duke Energy Ohio objects to Staff's recommendation regarding the recovery of expenses associated with remediation at the West End site, south of Mehring Way. Staff notes that this property is used for electric transmission and perhaps electric

[1] Staff Report at 43

distribution services and is therefore not used and useful in rendering natural gas distribution services. Staff's recommendation improperly overlooks the parcel's usefulness in the provision of natural gas distribution services,

(f) Duke Energy Ohio objects to Staff's failure to consider decisions rendered in numerous other jurisdictions which have authorized utility recovery of remediation costs for former MGP sites in ratemaking proceedings. Duke Energy Ohio objects to Staff's failure to consider that the MGP environmental remediation costs are substantial, extraordinary, and unforeseen costs that are related to gas utility operations and that prompt attention to the MGP sites remediation will likely benefit Duke Energy Ohio current gas ratepayers by minimizing environmental litigation or fines, which is a prudent business practice.

(g) Duke Energy Ohio objects to the Staff's failure to consider that the East End and West End sites have been utilized continuously by the Company for the provision of natural gas distribution service and were therefore used and useful during the time period of the MGP former operations, as well as today.

(h) Duke Energy Ohio objects to the Staff's failure to conclude that the cost of delivering utility service reasonably encompasses the current costs of doing business, including the necessary and prudently incurred costs of complying with environmental standards at utility-owned sites.

(i) Duke Energy Ohio objects to the Staff's recommendations regarding the Company's pursuit of insurance coverage for MGP remediation. Staff' recommendation is vague and unreasonable with respect to insurance coverage. Staff's recommendation is unreasonable in that it fails to allow Duke Energy Ohio to engage in collection efforts on a reasonable basis, it fails to allow for the possibility that Duke Energy Ohio might be able to collect less than all remediation costs, and fails to account for the Company's costs to pursue such coverage, if any such coverage exists. Further, Duke Energy Ohio objects to Staff's assumptions regarding the calculation of carrying costs.

(7) **<u>Labor Expense.</u>** Duke Energy Ohio objects to Staff's recommended adjustment to the Company's labor expense. Staff's adjustment is unreasonable, arbitrary, illogical and fraught with error. Specifically, the Company objects to Staff's objections in the following respects:

- *<u>Methodology</u>*: Staff made no finding as to the legitimacy of the Company's labor expense and, instead, simply substituted its own new and arbitrary methodology to estimate the Company's test year labor expense.
- *<u>Inconsistency</u>*: Staff used inconsistent methodologies between various categories of expense for its own arbitrary adjustment.
- *<u>Outside the Test Year</u>*: Staff used actual data for 2011 to estimate a portion of labor expense without any adjustment to project labor expense for 2012, which ignores the fact that 2012, not 2011, is the test year in the case.
- *<u>Oversimplification</u>*: Staff uses a snapshot of labor costs by selecting one pay period during the year to draw conclusions about the Company's labor expense for the entire year. This methodology is incapable of accurately capturing the changes in how shared employees allocate their time, which changes from week to week throughout the year.
- *<u>Discriminatory</u>*: Staff's methodology for calculating labor expense appropriately recognizes the fact labor expense for Duke Energy Ohio should be reduced for labor performed by Duke Energy Ohio employees for affiliates. However, Staff unfairly

ignores any labor expense allocated to Duke Energy Ohio from employees of its non-service company affiliates.

- *Contradictory*: Staff acknowledges in its Staff Report that the Company's affiliate and service company allocation processes are reasonable and appropriate. In making its recommendation for labor expense, however, Staff is contradicting its assessment of the affiliate and service company allocation processes by ignoring the very product of these processes. If the affiliate and service company allocation processes are reasonable and appropriate then the labor expenses allocated to Duke Energy Ohio from those processes must be reasonable and appropriate; consequently, there is no need to contrive an arbitrary analysis to estimate test year labor expense.

(8) **Property Taxes.** Duke Energy Ohio objects to Staff's recommended adjustment to property taxes in that Staff failed to include any provision for property taxes on real property.

(9) **Test Year Budget Adjustment.** Duke Energy Ohio objects to Staff's recommended budget adjustments. Staff's proposed adjustment is arbitrary, unreasonable, and violates long-standing prohibitions on single-issue ratemaking. Staff opportunistically chose to adjust only six of the more than seventy individual accounts that make up the Company's operation and maintenance (O&M) expense by adjusting the test year to include actual data for the first nine months and a thirteen-month average of historical actual data for the last three months. Not surprisingly, the adjustments to five of the six accounts proposed by Staff served to significantly lower O&M expense and, consequently, unreasonably lowered the Company's revenue requirement. The one positive adjustment was almost negligible compared to the five much larger negative adjustments made by the Staff.

Staff's adjustment is selective and results-driven by intentionally and deliberately not proposing a consistent adjustment for all accounts. Applying the Staff's methodology to all O&M accounts, as opposed to only portions of five accounts, reveals that there are increases to O&M expenses in other accounts that offset the decreases in the five O&M accounts that the Staff opportunistically selected to adjust. It violates traditional regulatory principles, not to mention any reasonable concept of fairness, to only address those adjustments that reduce revenue requirement, intentionally ignoring those adjustments that actually increase the revenue requirement under the same methodology. Staff must apply its logic consistently and either adjust all O&M accounts and sub-accounts to reflect updated actual 2012 expenses or, preferably rely upon the reasonable data submitted as part of the Company's test year. Staff cannot arbitrarily select only a few of those accounts that serve to reduce the Company's revenue requirement and wholly ignore all other accounts that offset the reduction or add to expense.

Staff's proposed adjustments are also inconsistent insofar as Staff uses different methodologies to arrive at its adjustments to the various accounts it chose to address.

(10) **Additional Camera Work.** Duke Energy Ohio objects to Staff's recommendation with respect to additional camera work required under its accelerated main replacement program (AMRP), and, more particularly, the ongoing expenses for camera work. Staff's recommendation recognizes the necessity of the expense and the virtue of the program but denies recovery of this important incremental activity being performed by the Company needed to help provide ongoing safe and reliable gas distribution service. Staff's suggestion that the Company should somehow recover the ongoing expense for camera work from revenue generated by the recovery of previously deferred expenses is illogical, unreasonable, and confiscatory. Furthermore, Staff's adjustment is at odds with sound regulatory principles, the Commission's rules, and the Ohio Revised Code. Denying recovery of this or any prudently incurred expense will deny the

Company a "fair and reasonable return" pursuant to RC 4909.15(A)(2) as the expense will impact the Company's operating income and, without recovery, will reduce the Company's return on its investment.

(11) **Maintenance Fees.** Duke Energy Ohio objects to the Staff's recommended adjustment to lower the amount of assessments for the maintenance fees charged by the Commission and the OCC. Staff's adjustment has a clerical error in that the formula excludes fees paid by Duke Energy Ohio to the Division of Forecasting.

(12) **Grid Modernization Savings.** Duke Energy Ohio objects to Staff's recommendation as to the grid modernization savings calculation on Schedule C-3.26. Pursuant to the stipulation agreed to in Case No. 10-2326-GE-RDR, savings will be passed back to customers through Rider AU and not base rates, similar to what is being done for the electric portion in Rider DR-IM. Staff's adjustment to reflect a level of savings in the test year revenue requirement overstates the expense, thereby illegally depriving the Company of its opportunity to earn a "fair and reasonable return" on its investment."

(13) **Miscellaneous Flow-Through Model Adjustments.** In addition to the adjustments mentioned above, Duke Energy Ohio further objects to the effect of these adjustments as they impact and flow through the revenue requirement model used by the Staff. Each of the aforementioned adjustments directly impacts other expenses in the model including pensions and benefits, payroll taxes, income, and various income and other tax calculations. Adjustments made and corrected must be carried through the models to accurately reflect the Company's operating expenses and ultimate revenue requirement.

RATE OF RETURN

(14) Cost of Equity. Duke Energy Ohio objects to the cost of equity used by Staff in its cost of capital analysis because Staff failed to apply generally accepted methods for accurately estimating the cost of equity. Staff's recommended range of 8.82% to 9.84% with an overall rate of return of 7.19% to 7.73% is confiscatory and contrary to the *Hope* and *Bluefield Water* jurisprudence.[2] More specifically, Staff's analysis contains numerous errors that result in an unreasonable and understated rate of return, including, but not limited to:

- Staff's Discounted Cash Flow analysis lacks statistical reliability as it relies on a very small sample of five companies and an understated flotation cost allowance.
- Staff's CAPM results are flawed and understate an appropriate Return on Equity for Duke Energy Ohio because Staff: (1) employed an improper Risk-Free Rate; (2) used an incorrect market risk premium adjustment; (3) understated the flotation cost adjustment; and (4) failed to use an empirical CAPM adjustment.

RATES AND TARIFFS

(15) Facilities Relocation Tariff (Rider FRT). Duke Energy Ohio objects to the Staff's recommendation to eliminate the proposed Rider FRT. Staff lists several reasons why it believes the Rider should not be approved in these proceedings. Staff's concerns in this regard are misplaced, raise issues that are beyond the jurisdictional capabilities of the Commission to consider and, in some cases, are simply false. As such the Staff's justification in recommending a denial of approval for Rider FRT is unfounded.

(16) Reconnection Fee. Duke Energy Ohio objects to Staff's recommendation that the Commission not approve a reconnection fee for customers who voluntarily disconnect and then reconnect the same service account within eight months. Staff's recommendation is contradictory

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[2] *Federal Power Commission v. Hope Natural Gas Company,* 320 U.S. 591 (1944); and *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia,* 262 U.S. 679 (1923).

with the basis for its own advocacy for a straight-fixed variable rate design where the majority of the Company's costs in providing services to residential customers are now recovered through a fixed monthly charge. The fixed monthly charge is designed to recover most of Duke Energy Ohio's cost of providing natural gas services on an annualized basis, *i.e.,* a full twelve months. Absent the proposed changes to the Reconnection Tariff or some similar adjustment to the customers' rates to account for the ability to avoid the fixed monthly charge, Duke Energy Ohio will be under recovering its costs in the near-term. In the long term, Staff's proposal will ultimately result in unfairly shifting responsibility for what even the Staff acknowledges are fixed costs from customers who can take advantage of the loophole to seasonally disconnect and reconnect gas service and avoid the utility's fixed costs of delivery through a rate design that is based upon an annual level of cost recovery, to customers who consume natural gas on a year-round basis.

(17) **Cost of Service/Rate Design.** Duke Energy Ohio objects to Staff's recommendation that the Commission require the Company to perform an analysis to determine whether a "facilities-based" approach may better reflect cost causation than the traditional "residential/general service" approach to rate design. There is no benefit to such an approach and Duke Energy believes it would likely result in disparate treatment between and among customer classes as well as increased intra-class subsidies.

(18) **Rider AMRP.** Duke Energy Ohio objects to Staff's recommended changes to the Company's AMRP. Duke Energy Ohio's program has been in place for nearly a decade and has historically run on time and on budget. Duke Energy Ohio's AMRP has become the pattern and example used by other utilities in the state. The Commission should not change this program from what has proven to be successful. More specifically, Duke Energy Ohio objects to the following specific recommendations in the Staff Report:

(a) That the Commission rescind the Company's waiver from reporting requirements.

(b) That recovery for meter relocation costs via the Rider be limited to those circumstances involving meters that will be connected to high pressure systems within two years of moving the meter;

(c) That the Company not be permitted to recover costs associated with replacing "ineffectively coated" steel pipes if testing indicates that the pipe is effectively coated.

(d) That the Company recover costs of system improvements for future growth purposes only if the over-sizing replaces cast iron or bare steel pipe and costs no more than an in-kind (size-for-size) replacement of such pipe.

(19) **Rider ASRP.** Duke Energy Ohio objects to the Staff's recommendation not to implement Rider ASRP and it further objects to Staff's recommendations with respect to proposed Rider LSLRP. Staff's recommendation to deny the implementation of Rider ASRP is illogical and inherently unreasonable, and it does not provide for safe and reliable ongoing gas distribution service. Duke Energy Ohio's proposed ASRP program is a proactive safety initiative designed to reduce the likelihood of future leaks that could present safety hazards for customers. Staff's proposal in this regard is a reactive approach designed to only address a leak after it is already present and a safety hazard has been identified. Staff's proposal in this regard is no different than what already occurs.

(20) **Economic Development Program.** Duke Energy Ohio objects to Staff's recommendation that Duke Energy Ohio proposed economic development incentive rider not be implemented. Economic Development provides benefits to customers through the creation of jobs and the ability to spread the Company's costs of doing service among more customers, thereby reducing individual rate payer impact. Duke Energy Ohio's proposal supports one of the key focuses of the state of Ohio by helping develop gas infrastructure to prepare "ready" industrial sites that will attract new and expanding businesses and create jobs.

SUMMARY OF MAJOR ISSUES

(1) The fair amount of revenue increase to which Duke Energy Ohio is entitled.

(2) The appropriate value of Duke Energy Ohio's rate base and used and useful assets for providing natural gas service to customers, including common plant and materials and supplies.

(3) The appropriate level of operating expenses allowable for ratemaking purposes, including, but not limited to, the elimination of labor and labor-related adjustments, maintenance assessments, depreciation and amortization expense, taxes, etc.

(4) The proper return on equity to be used in determining Duke Energy Ohio's allowable rate of return.

(5) The appropriate rate design.

(6) The appropriate reconnection fees for customers who voluntarily elect to disconnect and re-establish service within eight months.

(7) The amount of recovery to which Duke Energy Ohio is entitled for the legal mandated environmental remediation of its East End and West End manufactured gas sites.

(8) The implementation and cost recovery of various safety and reliability integrity management programs including but not limited to ongoing camerawork expense, the AMRP and proposed ASRP.

(9) Implementation of an effective economic development program that is properly and fairly funded.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing Application and the accompanying Schedules in support were served on the following parties of record by first class, U.S. mail, postage prepaid or electronic mail delivery this 4th day of February 2013.

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