BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. to Establish a Rider to Credit its Natural Gas Customers with the Benefits of the Tax Cuts and Jobs Act	))))	Case No. 18-1830-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments	)))	Case No. 18-1831-GA-ATA

TESTIMONY
OF
JONATHAN J. BORER
RESEARCH AND POLICY DIVISION
RATES AND ANALYSIS DEPARTMENT

STAFF EXHIBIT NO. _____

TESTIMONY OF JONATHAN J. BORER

1. Q. **Please state your name and business address.**

A. My name is Jonathan J. Borer. My business address is 180 East Broad Street, Columbus, Ohio 43215-3793.

2. Q. **By whom are you employed and in what capacity?**

A. I am employed by the Public Utilities Commission of Ohio (PUCO or Commission) as a Utility Specialist I in the Research and Policy Division of the Rates and Analysis Department. My duties include conducting investigations of assigned phases of rate case applications and other financial audits of public utility companies subject to the jurisdiction of the PUCO.

3. Q. **Would you briefly state your educational background?**

A. I earned a Bachelor of Science in Accounting and a Bachelor of Science in Management from Purdue University in 2014. In 2017, I attended the Annual Regulatory Studies Program offered by the Institute of Public Utilities as well as the National Association of Regulatory Utility Commissioners (NARUC) Utility Rate School.

4. Q. **Please briefly outline your work experience.**

A. I have been with the PUCO since November 2016 with my entire time spent in the Rates and Analysis Department. Prior to working at the PUCO, I was employed with Morgan Stanley within the Global Wealth Management Group.

5. Q. **Have you previously provided testimony before the PUCO?**

A. Yes. I have provided testimony in multiple cases before the Commission.

6. Q. **What is the purpose of your testimony in this proceeding?**

A. I will be addressing the specific aspects of the Staff Review and Recommendation with which Duke Energy Ohio Inc. (Duke or Company) does not agree.

7. Q. **Please summarize the Staff recommendations with which Duke disagrees.**

A. Duke disagrees with two general aspects of Staff's recommendations:

1. Refunding the Federal Income Tax (FIT) adjustment through Rider Gas Tax Cuts and Job Act (Rider GTCJA).

2. Refunding Normalized[1] and Non-Normalized Excess Accumulated Deferred Income Taxes (EDIT) based on the balances as of December 31, 2017.

8. Q. **Does Duke disagree with Staff's recommendation to refund the FIT adjustment through Rider GTCJA?**

A. Yes. Duke's application in this case (Application) proposed to revise all of its base rates to reflect the impact of the lower FIT, which would result in a reduction to base rates by 5.3558 percent. Staff recommended that the FIT adjustment be incorporated into Rider GTCJA.

9. Q. **Why does Staff make this recommendation?**

A. Staff believes that refunding the FIT adjustment through Rider GTCJA is more transparent to customers. For a typical customer, it is easier to understand that FIT savings are being passed back if there is a specific line item on the customer's bill to reflect the reduction. Staff believes that this increased transparency is a benefit to all customers.

[1] The Company's Application and Reply Comments refer to this as "Protected EDIT". For purposes of this Testimony, "Normalized EDIT" and "Protected EDIT' are intended to have the same meaning.

While Duke is correct that the tax case involving Columbia Gas of Ohio (Columbia Gas Case) resulted in base rate reductions for Columbia[2], Duke is incorrect to suggest that there are other cases which resulted in the Commission approving, or for cases without a Commission Order, Staff recommending that the FIT savings be incorporated as a base rate reduction. The Columbia Gas Case has been the only TCJA-related case in which the FIT adjustment has been reflected as a base rate reduction.

Staff disagrees with the Company's suggestion that Staff's recommendation would require the Company to establish two separate riders. Staff's recommendation would result in a rider with two components: a percent reduction to base rates for the FIT adjustment, and a bill credit for the amortization of EDIT and refund of tax savings deferred from January 1, 2018 (Stub Period).

10. Q. **Why does Duke disagree with Staff's recommendation regarding the treatment of EDIT?**

A. In its Application, Duke proposed to base the EDIT balances as of March 31, 2012, which was the date certain of the previous rate case. Staff recommended that the EDIT balances be based on the balances as of

[2] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism,* Case No. 17-2202-GA-ALT, Opinion and Order at 20-21 (November 28, 2018).

December 31, 2017, which would ensure that 100 percent of the EDIT be refunded to customers. There are three primary reasons why Duke disagrees with Staff's recommendation to use the December 31, 2017 balance for EDIT:

1. The recommendation would be inconsistent with recent Commission decisions and Staff's own positions in other cases;
2. It would result in Duke refunding EDIT not currently in customer rates; and
3. A non-trivial portion of the Non-Normalized EDIT is related to regulatory assets not yet approved for recovery through rates.

11. Q. **Is Staff's recommendation inconsistent with recent Commission decisions and Staff's own positions in other cases?**

A. The Stipulation and Recommendation in the Columbia Gas Case[3] represents the only instance where Staff used a different approach with the EDIT balances. Additionally, that Stipulation was part of Columbia Gas' Capital Expenditure Program, so the issues involved were not limited to the narrow scope of the TCJA. In fact, the Stipulation represents a compromise of all the issues involved and "does not necessarily represent the position

[3] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism,* Case No. 17-2202-GA-ALT, Stipulation and Recommendation (Oct. 25, 2018).

any signatory Party would have taken" absent that compromise.[4] Other than the Columbia Gas case, Staff has been consistent regarding the date for which refundable EDIT balances be determined. With this in mind, Staff believes it is not reasonable to use the Columbia Gas case as precedent for establishing the proper treatment of TCJA-related issues for natural gas companies.

12. Q. **Does Staff agree with Duke's proposal to refund EDIT based on the balances as of the date certain in the Company's previous rate case?**

A. No.

13. Q. **Why does Staff recommend that the Company should refund EDIT based on the balances as of December 31, 2017?**

A. Tax deferrals act as interest-free loans from the federal government. Although current base rates do not include these EDIT balances, the underlying capital investments will be incorporated into customer rates at the time the Company files for its next base rate case. Therefore, customers will ultimately pay for the underlying investments. This is a critically important fact because the purpose of interperiod tax allocation, also known as tax normalization, is to allow both the utility and the ratepayers to

[4] *Id.* at 13.

recognize the full tax benefits of book/tax differences such as accelerated depreciation. Since customers will be funding the investments, it is proper to suggest that the customers recognize over the life of the investments, the same tax benefits as the Company. If the Company does not have to refund all of its jurisdictional EDIT, then the Company will realize a permanent tax savings, which will never be realized by the ratepayer. Attachment JJB-1 illustrates how the Company would realize a permanent tax savings because the tax advantages of accelerated depreciation were more substantial when the federal income tax rate was 35%. Based on this example, the Company will realize a permanent tax savings of $938,222 if they are only refund to ratepayers the EDIT balances as of the date certain in the Company's previous rate case. As a result of the permanent tax savings, customers will fail to realize the same amount of tax savings realized by the Company over the life of the asset.

Taking this into account, Staff reiterates it recommendation that the Company should refund to ratepayers, all jurisdictional EDIT balances as of December 31, 2017, not just the EDIT balances as of the date certain in the Company's previous rate case.

14. Q. **Does the Company raise any additional objections associated with refunding EDIT based on the balances as of December 31, 2017?**

A. Yes. The Company has indicated there are non-trivial portions of the Non-Normalized EDIT balance that are attributable to regulatory assets recorded by the Company after March 31, 2012, and not yet approved for recovery through rates. The Company believes that if any of these deferred assets are determined at some point to be unrecoverable through rates, it would mean refunds of the EDIT attributable to the disallowances would be improper.

15. Q. **Does Staff agree with this objection?**

A. The Company's rationale is reasonable, and actually comports with Staff's rationale for refunding EDIT balances as of December 31, 2017 as discussed earlier in my testimony. Put simply, Staff's recommendation is that the Company should refund EDIT associated with rate base items for which customers will ultimately fund. Conversely, if there exist EDIT balances attributable to items for which recovery is disallowed, then the Company should not be required to refund such EDIT balances. The Company has highlighted the $12 million of Staff's recommended disallowances (through December 31, 2017) in the various cases for the Company's manufactured gas plants (MGP Cases).[5]

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[5] *In the Matter of the Application of Duke Energy Ohio, Inc., for the Implementation of the Tax Cut and Jobs Act of 2017*, Case No. 18-1830-GA-UNC, Duke Energy Ohio, Inc.'s Comments on the Staff Review and Recommendation at 13-15 (May 10, 2019).

Although Staff agrees with the underlying rationale, Staff disagrees that the appropriate remedy would be to exclude from refunds all Non-Normalized EDIT accumulated after March 31, 2012 because some of this EDIT could be affected by a disallowance that may be approved some time in the future. Staff asserts that the appropriate remedy would be to have the Company refund EDIT balances, including MGP-related EDIT, in accordance with Staff's recommendations; however, at the time of a Commission Order in the MGP cases, the Company would be permitted to work with Staff in order to reconcile any disallowances with the associated EDIT that may have already been refunded through Rider GTCJA.

16. Q. **The Company indicates that Staff's recommendation to segregate EDIT for the Company's Accelerated Main Replacement Rider (Rider AMRP) and its Advanced Utility Rider (Rider AU) is not necessary if the December 31, 2017 balance of EDIT is used. How do you respond?**

A. Staff believes the recommendation requires clarification. Staff does not disagree that Rider AMRP- and Rider AU-related EDIT balances are included in the total balance of EDIT as of December 31, 2017. Staff's recommendation was to have Rider AMRP and Rider AU EDIT balances flow through the respective riders, while the rest of the EDIT be refunded through Rider GTCJA. The revenue requirement in both Rider AMRP and Rider AU is, in part, based on the underlying rate base attributable to each rider's approved capital investments. The unamortized balance of EDIT is incorporated as a reduction to the rate base in these riders, so as the EDIT is amortized and refunded to customers, the rate base will increase by the cumulative amount refunded. Because of the effect of the amortization of EDIT associated with Rider AMRP and Rider AU, Staff determined that the EDIT should be refunded through the riders themselves as opposed to Rider GTCJA.

17. Q. **Does this conclude your testimony?**

A. Yes it does. However, I reserve the right to submit supplemental testimony as described herein, as new information subsequently becomes available or in response to positions taken by other parties.

CERTIFICATE OF SERVICE

This is to certify that the foregoing **Testimony of Jonathan J. Borer** has been served upon all of the parties of record in the above-captioned cases by electronic mail and/or U.S. mail, postage pre-paid, this 31st day of July, 2019.

/s/ Robert Eubanks
Robert Eubanks
Assistant Attorney General

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Attachment JJB-1

Year	Tax Depreciation Rate (MACRS)	Tax Depreciation Expense	Book Depreciation Expense	Inrease to ADIT Balance (Pre-TCJA)	Inrease to ADIT Balance (Post-TCJA)	Cumulative ADIT*	Excess ADIT	RATE CASE - 2022: Tax Benefits Realized With Refund of EDIT: Duke	RATE CASE - 2022: Tax Benefits Realized With Refund of EDIT: Ratepayers	RATE CASE - 2022: Tax Benefits Realized Without Refund of EDIT: Duke	RATE CASE - 2022: Tax Benefits Realized Without Refund of EDIT: Ratepayers
	(A)	(B) = (A) * \$30MM	(C) = 2.08% * \$30MM	(D) = [(B) - (C)] * 35%	(E) = [(B) - (C)] * 21%	(F) = ∑ ((D) + (E))	(G) = $(F)_{2017}$ * 40%	(H) = $(F)_{2022} + (G)_{2022}$	(I) = $(F)_{2022} + (G)_{2022}$	(J) = $(F)_{2022} + (G)_{2022}$	(K) = $(F)_{2022}$
2012	3.750%	1,125,000	624,000	175,350		175,350					
2013	7.219%	2,165,700	624,000	539,595		714,945					
2014	6.677%	2,003,100	624,000	482,685		1,197,630					
2015	6.177%	1,853,100	624,000	430,185		1,627,815					
2016	5.713%	1,713,900	624,000	381,465		2,009,280					
2017	5.285%	1,585,500	624,000	336,525		2,345,805					
TCJA Signed Into Law											
2018	4.888%	1,466,400	624,000		176,904	1,584,387	938,322				
2019	4.522%	1,356,600	624,000		153,846	1,738,233	938,322				
2020	4.462%	1,338,600	624,000		150,066	1,888,299	938,322				
2021	4.461%	1,338,300	624,000		150,003	2,038,302	938,322				
2022	4.462%	1,338,600	624,000		150,066	2,188,368	938,322	\$ 3,126,690	\$ 3,126,690	\$ 3,126,690	\$ 2,188,368

Permanent Tax Savings - Duke	\$ 0
Permanent Tax Savings - Duke	\$ 938,322

Assumptions	
Type of Investment	Plastic Pipeline (Mains)
Original Cost	\$ 30,000,000
MACRS System	GDS
Convention	Half-Year
Recovery Period/Class	20 (Years)
Book Depreciation Accrual Rate (From 12-1685-GA-AIR)	2.08%

*The 2018 ADIT is reduced by the Excess ADIT balance, then increased by the incremental amount of ADIT for 2018. For example, 2018 ADIT equals [2,345,805 - 938,322 + 176,904].