

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Approval of an	)	Case No. 19-0791-GA-ALT
Alternative Form of Regulation.	)	

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**POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.**

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February 24, 2021

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## **I. INTRODUCTION AND SUMMARY**

In these proceedings, the Public Utilities Commission of Ohio (Commission) is presented with a comprehensive settlement between Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and Staff of the Commission (Staff) that will provide numerous benefits to customers, including price certainty via mitigation of future natural gas rate increases outside of a natural gas base rate case.

Ohio Revised Code (R.C.) 4929.111, which became effective September 9, 2011, authorizes a natural gas company to file an application with the Commission to implement a capital expenditure program (CEP). By Application dated December 20, 2013, in Case No. 13-2417-GA-UNC, *et al.*, Duke Energy Ohio sought authorization to implement a CEP in accordance with R.C. 4909.18 and 4929.111 and for accounting approval to defer certain costs.<sup>1</sup> By Finding and Order dated October 1, 2014 (Deferral Order), the Commission approved Duke Energy Ohio's request.<sup>2</sup> The Deferral Order authorized the Company to commence deferral of its incremental depreciation expense, property tax, and post-in-service carrying costs (collectively the CEP Deferrals) associated with certain types of capital investments permitted under R.C. 4929.111.<sup>3</sup> The Commission's Deferral Order further authorized Duke Energy Ohio to accrue the CEP Deferrals until the accrued deferrals, if included in rates, would cause residential customers' rates to increase by more than \$1.50 per month.<sup>4</sup> The Company agreed that, if deferrals were to exceed the \$1.50 per month, the Company would stop accruing deferrals until it filed for authority to recover such costs.<sup>5</sup> The Deferral Order further directed Duke Energy Ohio to make annual informational filings

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 13-2417-GA-UNC, Application (December 20, 2013).

<sup>2</sup> *Id.*, Finding and Order (Oct. 1, 2014).

<sup>3</sup> *Id.*, p. 8.

<sup>4</sup> *Id.*, pp. 9-12.

<sup>5</sup> *Id.*, p. 9.

regarding its CEP deferrals and established a procedural schedule for interested parties to provide written comments.<sup>6</sup>

On May 3, 2019, Duke Energy Ohio filed its Application in this proceeding to establish an alternative rate plan and new CEP program rider adjustment mechanism (Rider CEP) (Application).<sup>7</sup> The Application and supporting testimony explained that, although the Company has not yet reached the previously established \$1.50 deferral cap, it was nonetheless seeking recovery for incremental capital investments from January 1, 2013, through December 31, 2018.<sup>8</sup> The proposed Rider CEP would allow the Company to collect the amounts accrued under the CEP Deferral and a return on and of the underlying CEP capital assets and would also permit the Company to continue its CEP Deferrals and recovery process for new assets placed into service.<sup>9</sup> The Company's Application did not propose caps on customer rates, investments, or deferrals.

On September 26, 2019, the Commission issued a request for proposal seeking a third party to conduct an audit of the Company's CEP.<sup>10</sup> The purpose of the audit was two-fold. The audit was, first, to review and attest to the accounting accuracy and used and useful nature of the Company's capital expenditures, excluding those recovered through existing riders,<sup>11</sup> and related assets and corresponding depreciation reserve since the date certain of the Company's last natural gas base rate case.<sup>12</sup> Second, the audit was to assess and form an opinion on the necessity, reasonableness, and prudence of the Company's capital expenditures, excluding those recovered

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<sup>6</sup> *Id.*

<sup>7</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation* Case No. 19-0791-GA-ALT, Application (May 3, 2019).

<sup>8</sup> *Id.*, pgs. 1, 2; Direct Testimony of Jay P. Brown (May 3, 2019), p. 3.

<sup>9</sup> *Id.*, p. 2.

<sup>10</sup> *Id.*, Entry (September 26, 2019).

<sup>11</sup> Rider Accelerated Main Replacement Program (Rider AMRP) and Rider Advanced Utilities (Rider AU).

<sup>12</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation* Case No. 19-0791-GA-ALT, Audit Report (May 11, 2020) (Audit Report), p. 2-2.

through existing riders, and related assets, with an emphasis on the CEP expenditures and assets from January 2013 through December 31, 2018.<sup>13</sup>

By Entry dated October 23, 2019, the Commission selected Larkin & Associates PLLC (Larkin) to conduct the aforementioned audit. Following several months of investigation, on May 11, 2020, Larkin submitted its Plant in Service and Capital Spending Prudence Audit of Duke Energy Ohio, Inc., (Natural Gas) Covering the Period April 1, 2012 through December 31, 2018 (Audit Report).<sup>14</sup> The Audit Report was comprehensive. While the Audit Report recommended certain adjustments to the Company's CEP deferrals and calculations, "Larkin did not find anything to indicate that the remaining CEP related capital expenditures and assets for the period January 1, 2013 through December 31, 2018, were unnecessary, unreasonable, or imprudent."<sup>15</sup>

On May 22, 2020, Staff filed its own report of investigation (Staff Report).<sup>16</sup> Among other things, the Staff Report adopted the Audit Report and made several additional recommendations, including the following:

- The Company should file annual Rider CEP updates to adjust the rider rate;<sup>17</sup>
- The annual Rider CEP should be set with fixed caps starting with the first year the rider is adjusted through until the filing of the next rate case. Staff recommended a fixed cap of \$1.00 per year for residential customers;<sup>18</sup>
- The annual Rider CEP should include reconciliation and true-up for the prior year;<sup>19</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id., p. 2-12.

<sup>16</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation* Case No. 19-0791-GA-ALT, Staff Report (Staff Report) (May 22, 2020).

<sup>17</sup> Id., p. 8.

<sup>18</sup> Id., p. 9

<sup>19</sup> Id.

- The first Rider CEP annual filing, in 2021, should include an audit of 2019 and 2020 costs;<sup>20</sup>
- The annual Rider CEP filings should occur by April 30 with rates going into effect November 1;<sup>21</sup>
- Deferrals of PISCC, property tax, and depreciation cease once the CEP assets begin to be recovered in rates;<sup>22</sup>
- Rider CEP rate caps will cap Duke Energy Ohio's capital expense deferral authority until the Company files its next alternative rate plan;<sup>23</sup>
- Rider CEP will cease on December 31, 2024, unless the Company files a new alternative rate plan application under R.C. 4929.05, requesting reauthorization of Rider CEP, with such filing including annual rate caps and annual audits;<sup>24</sup> and
- In the event the Company does not file an alternative rate plan by December 31, 2024, Rider CEP will be reset to zero and existing deferral authority will cease for assets placed in service on January 1, 2025, and later.<sup>25</sup>

In accordance with the established procedural schedule, parties were permitted to file objections to the Audit Report and Staff Report.<sup>26</sup> Both Duke Energy Ohio and the Office of the Ohio Consumers' Counsel (OCC) filed objections.<sup>27</sup> Following the submission of objections, parties, including Staff and the OCC, began meeting to discuss settlement and potential resolution

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<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation* Case No. 19-0791-GA-ALT, Entry (May 27, 2020), p. 3.

<sup>27</sup> *See, e.g.*, Objections of Duke Energy Ohio, Inc. to the Staff Report of Investigation and Summary of Major Issues (June 22, 2020); Objections by the Office of the Ohio Consumers' Counsel (June 22, 2020) (OCC Objections).

of the issues raised in this proceeding. Months of discussions and negotiations culminated in a Stipulation and Recommendation between Staff and the Company, filed November 16, 2020, which, if approved, would resolve these proceedings in a fair, reasonable, and comprehensive fashion.<sup>28</sup>

The Stipulation, if approved by the Commission, will benefit all of Duke Energy Ohio's natural gas customers by providing certainty, rate stability, and safe and reliable natural gas service. The provisions of the Stipulation work in tandem with one another to create a logical and meaningful regulatory framework. Thus, the provisions are interwoven so that, as a package, the Stipulation delivers benefits that will provide customers with value including, but not limited to, rate predictability and a commitment by Duke Energy Ohio to file an application for a natural gas base rate case earlier than it otherwise would have. The value concepts are immediate and meaningful.

In evaluating stipulations, the Commission applies a well-settled inquiry (Three-Part Test):

- (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?<sup>29</sup>

As discussed below, the Stipulation in these proceedings is reasonable and consistent with Ohio law. The Audit Report confirmed that the Company's CEP investments, subject to certain recommended adjustments, were reasonable, prudent, and necessary. Importantly, the Audit Report did not find any of the Company's capital expenditures imprudent. The Stipulation provides benefits to all stakeholders by establishing terms that include, but are not limited to, the following:

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<sup>28</sup> Stipulation (Joint Ex. 1).

<sup>29</sup> See, e.g., *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994).

- Approval of the Company's Application for recovery of deferred CEP assets and investments from January 1, 2013, through December 31, 2018;
- Agreement with all conditions included in the Audit Report and the Staff Report, except with regard to the issue of the capitalization of earnings-related incentive pay;
- Agreement to make annual Rider CEP filings, including reconciliation and true-up for any over/under recovery from the prior year;
- Agreed upon caps on residential customer rate increases, including \$2.92 for 2019 investments, \$2.70 for 2020 investments, and \$1.00 per year for investments beginning in 2021;
- Agreement that the residential rate cap will also cap the Company's CEP deferral authority, meaning that deferral of PISCC, property tax, and depreciation expense will cease for any assets excluded from the annual Rider CEP revenue requirement due to the application of the caps; and
- Commitment to file a natural gas base rate case as early as June 30, 2022, and no later than June 30, 2023, at which time Rider CEP will be reset to zero.

Additionally, the Stipulation, as a total settlement package, resulted in Duke Energy Ohio conceding numerous litigation positions. The Company's willingness to bargain away these items in lieu of litigating the underlying cases should not be discounted. Indeed, the Commission's own Three-Part Test acknowledges the weighing of a settlement as a total package, factoring in whether it is a product of serious bargaining. Here, given the number of issues resolved, some in customers' favor and some in the Company's favor, the settlement package is reasonable and strikes an appropriate balance of benefits to customers, the Company, and the overall public interest. The Commission should adopt and approve the Stipulation as filed by the parties.

## II. ARGUMENT

### A. The Stipulation Satisfies the Commission's Three-Part Test

As outlined above, on November 16, 2020, after months of negotiations, Staff and the Company entered into the Stipulation. If approved, that Stipulation would resolve all of the issues raised in these proceedings. Although not binding on the Commission, the terms of a stipulation are “accorded substantial weight” by the Commission.<sup>30</sup> The ultimate issue the Commission must consider is whether the stipulation is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the three criteria, as set forth above, in its Three-Part Test analysis. The Supreme Court of Ohio has endorsed the Commission's application of the Three-Part Test and confirmed that the Commission may place substantial weight on the terms of a stipulation even though the stipulation does not bind the Commission.<sup>31</sup>

#### i. The Stipulation Is a Product of Serious Bargaining Among Capable, Knowledgeable Parties.

The Stipulation represents an agreement of settlement between capable and knowledgeable parties, namely Staff and the Company, in this complex regulatory proceeding. It resulted from significant negotiations, spanning several months.<sup>32</sup> Both of these parties regularly participate in proceedings before the Commission, have significant experience in regulatory matters, and were represented by experienced, competent counsel.<sup>33</sup>

The fact that the final Stipulation does not simply adopt either the Company's Application or the Audit Report and Staff Report without modification *per se* demonstrates that serious bargaining occurred. Both parties made concessions in reaching this Stipulation. Between August

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<sup>30</sup> *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, citing *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

<sup>31</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994).

<sup>32</sup> Brown Supplemental Testimony (Duke Energy Ohio Ex. 7), pp.7, 8.

<sup>33</sup> *Id.*, pp. 9, 10.

and October 2020, all parties, including the OCC, participated in numerous virtual negotiation sessions.<sup>34</sup> As explained by Company Witness Jay P. Brown, “All parties were invited and participated in these settlement conferences. Parties were given the opportunity to raise issues and did in fact discuss positions and make recommendations for resolving the case.”<sup>35</sup>

In fact, these meetings resulted in a number of compromises that resulted in benefits not only to the Signatory Parties, but to customers as well, whose interests the opposing party, the OCC, purports to represent. For example, the Company agreed to the establishment of caps on its overall CEP deferrals, including a significantly lower cap of \$1.00, the level recommended by the Staff Report, for investments beginning in 2021. The Company was willing to do this in exchange for slightly higher caps for 2019 and 2020 CEP investments that provided it an opportunity to recover the investments already made while this application was pending before the Commission and during a time before the Company reached the initial \$1.50 deferral cap that had been initially established by the Commission.<sup>36</sup> Importantly, the Stipulation does not guarantee the recovery of the return on and of all these investments in 2019 and 2020, as they are still subject to an audit for prudence, reasonableness, and necessity. Additionally, the Company has agreed to file a natural gas base rate case as early as June of next year, a provision that was neither contained in the Company’s Application nor mentioned in the Staff Report or Audit Report. In fact, the filing of a natural gas base rate case was first advocated in the Objections filed by the OCC.<sup>37</sup> Likewise, the Stipulation provides that the Company will use its most recent annual customer billing determinants to determine the Rider CEP allocations, as OCC’s Objections advocated.<sup>38</sup>

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<sup>34</sup> Id., p. 10.

<sup>35</sup> Id.

<sup>36</sup> Id., p. 14.

<sup>37</sup> OCC Objections, p. 7.

<sup>38</sup> Stipulation, pg. 6; OCC Objections, p. 7.

This Commission has consistently and recently held that parties can bargain seriously without conceding to the OCC, or any other party, with regard to all of the desired settlement terms.<sup>39</sup> Moreover, it is well-established that no party has a veto over settlement agreements in Commission proceedings.<sup>40</sup> The fact that the OCC has elected to oppose the settlement neither constitutes evidence, nor supports a conclusion, that the Stipulation in these proceedings was not the product of serious bargaining among capable and knowledgeable parties. The record in these proceedings is clear that the Stipulation satisfies the first element of the Three-Part Test.

ii. **The Settlement Contained in the Stipulation, as a Package, Benefits Ratepayers and the Public Interest.**

As outlined in detail below, the Stipulation provides benefits to customers and is in the public interest. The Stipulation permits the CEP program to continue, which in itself is a benefit to customers. By law, R.C. 4929.111 permits deferral of:

- a. Any infrastructure expansion, infrastructure improvement, or infrastructure replacement program;
- b. Any program to install, upgrade, or replace information technology systems; and

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<sup>39</sup> See *In the Matter of the Commission's Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Noncompliance*, Case No 19-957-GE-COI, Opinion and Order (January 29, 2020).

<sup>40</sup> See, e.g., *Dominion Retail, Inc. v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2, 2005), p. 18, Entry on Rehearing (Mar. 23, 2005), p. 7; *In re East Ohio Gas Co.*, Case No. 05-474-GA-ATA, Opinion and Order (May 26, 2006), pg. 13; *In re East Ohio Gas Co.*, Case No. 05-219-GA-GCR, Entry on Rehearing (Mar. 21, 2007), pp. 2-4.

- c. Any program reasonably necessary to comply with any rules, regulations, or orders of the commission or other governmental entity having jurisdiction.<sup>41</sup>

Such investments provide enhancements to the overall safety, reliability, and capability of the natural gas delivery system. As explained by Company Witness Martin Petchul, the Company's investments are driven by several factors, including, but not limited to, the need to further enhance the safety of the system and to support customer growth.<sup>42</sup> A safer and more reliable natural gas system that can meet our regulatory requirements,<sup>43</sup> coupled with reasonable and agreed upon cost collars, are a direct benefit of this Stipulation.<sup>44</sup>

Mr. Brown explains that, while the Stipulation affords the Company an opportunity to recover its prudently incurred costs for natural gas capital expenditures, it also mitigates rate impacts for residential customers.<sup>45</sup> A key component of the settlement is the establishment of reasonable caps on future Rider CEP revenue requirements, including the deferral balances going forward. For investments that have already been made (*i.e.*, calendar years 2019 and 2020), the Signatory Parties have agreed to caps on residential customer rates of \$2.92 related to 2019 investments and \$2.70 related to 2020 investments.<sup>46</sup> For Rider CEP update filings made by the Company to recover the revenue requirement associated with investments and associated CEP regulatory assets beginning January 1, 2021, and forward, the monthly residential Rider CEP rate will be allowed to increase annually no more than \$1.00 over the prior year's residential Rider CEP rate.<sup>47</sup>

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<sup>41</sup> R.C. 4929.111(A).

<sup>42</sup> Petchul Direct Testimony (Duke Energy Ohio Ex. 8), pp. 4-5.

<sup>43</sup> Transcript Vol. 1, p. 44.

<sup>44</sup> Transcript Vol. 1, p. 32.

<sup>45</sup> Brown Supplemental Testimony (Duke Energy Ohio Ex. 7), pp. 11-12.

<sup>46</sup> *Id.*, p. 6.

<sup>47</sup> *Id.*

Because R.C. 4929.111 does not require that a cap on revenue requirement or on qualifying deferrals must be established under a CEP, the agreement to establish a dollar limitation on the recovery of assets through the Rider CEP mechanism is a benefit to customers insofar as it limits future rate increases outside of a base rate proceeding and provides stability and predictability in rates beyond what is required by statute. Further, these potential future Rider CEP rate increases are constrained insofar as they will continue to be subject to annual prudence, reasonableness, and necessity audits. This audit process will confirm and ensure for customers that the Company's natural gas capital expenditures will be vetted by Staff prior to any additional incremental recovery.

The Stipulation adopts nearly all recommendations made in the Audit Report and the Staff Report, including adjustments to the current Rider CEP recovery through December 31, 2018, as well as adjustments to how the rate will be calculated going forward.<sup>48</sup> Specifically, the Company has agreed to eliminate cost recovery for the fitness center in its Kellogg Gas Operations Center, to apply corrections to allocations affecting IT investments, to make adjustments to the composite depreciation rates, and to remove various projects erroneously included in the CEP plant-in-service balance.<sup>49</sup>

The only adjustment that Staff agreed to forego, as part of the Stipulation, was related to capitalized incentives and this decision was consistent with Commission precedent. As Mr. Brown explains, the inclusion of capitalized incentives in capital assets is consistent with Generally Accepted Accounting Principles (GAAP), the Company's capitalization guidelines, and the Commission's approval of its natural gas base rates.<sup>50</sup> Moreover, this agreement to forego this recommended adjustment to capitalized incentives was consistent with how other natural gas

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<sup>48</sup> Stipulation (Joint Ex. 1), pp. 3-7.

<sup>49</sup> See, e.g., Staff Report (Staff Ex. 1), p. 7.

<sup>50</sup> Brown Supplemental Testimony (Duke Energy Ohio Ex. 7), p 4.

companies' base rates and capital expenditure program riders are calculated. There is no indication that any of the other natural gas utilities in Ohio have been required to remove capitalized incentives from the capital assets included in either capital expenditure program rider rates or natural gas base rates.

As Mr. Brown explained during cross-examination, customers have benefitted from the current deferral mechanism through steadily declining natural gas base rates for the last several years.<sup>51</sup> This steady decline has occurred because the CEP program has enabled the Company to delay filing a natural gas base rate increase since 2012 and is coupled with the availability of capital recovery through rider mechanisms.<sup>52</sup> The existence of other rider recovery mechanisms has caused the Company's typical bills to steadily decline since 2015 due to the completion of the Company's Accelerated Main Replacement Program (Rider AMRP) and Advanced Utility (Rider AU) programs. And even with the anticipated increases related to Rider CEP, customers will continue to experience lower rates on a typical bill basis than 2014 levels.<sup>53</sup>

The establishment of Rider CEP through the Stipulation will provide customers with the immediate benefit from the depreciation offset that mitigates increases to a customer's bill during the term of Rider CEP. The depreciation offset allows customers to realize the benefit associated with depreciating assets currently being recovered by the Company in base rates. Absent the depreciation offset in Rider CEP, customers would not see this benefit until the time of the next natural gas base rate case.

Additionally, while the Company will continue to invest in infrastructure that benefits customers and will be subject to an annual audit to determine the lawfulness, used and usefulness,

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<sup>51</sup> Transcript Vol. 1, p. 28.

<sup>52</sup> Transcript Vol. 1, pp. 29-30.

<sup>53</sup> Transcript Vol. 1, pp. 33, 35.

prudence and reasonableness of the assets placed in service, the depreciation, property taxes, and PISCC related to those assets will no longer be deferred into a regulatory asset related to those net additions above the stipulated cap.<sup>54</sup> Therefore, the amount paid by customers will be lower than if the stipulated rate cap had not been agreed to and the deferrals had continued until the Company's next natural gas base rate case proceeding.

Finally, through this Stipulation, the Company has committed to filing a natural gas base rate case as early as June 30, 2022, and no later than June 30, 2023.<sup>55</sup> This will provide customers with the assurance that all of the costs of the Company's provision of safe and reliable natural gas service will be examined in the near future to ensure that such costs continue to be reasonable.

**iii. The Settlement Package Contained in the Stipulation Does Not Violate any Important Regulatory Principle or Practice.**

Mr. Brown testifies and supports that, based upon his experience, the Stipulation complies with all relevant and important principles and practices.<sup>56</sup> In fact, the Stipulation actually furthers important regulatory principles, including mitigation of rate shock, through the aforementioned rate caps for its residential customers and furthers the interests of cost causation and the avoidance of unreasonable subsidies. The Company agreed to caps on the Rider CEP revenue requirement associated with costs already spent, which balances the interests of recovering prudently incurred costs spent to date and mitigating rate shock for customers, including significantly reduced residential rate caps for Rider CEP beginning with investments placed in service in 2021 and going forward.<sup>57</sup> The Company is also committing to file a natural gas base rate case, during which the Commission will have the opportunity to examine all of the Company's natural gas customer rates. These commitments, in turn, result in additional benefits to customers.

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<sup>54</sup> Brown Supplemental Testimony (Duke Energy Ohio Ex. 7), p. 8.

<sup>55</sup> Stipulation (Joint Exhibit 1), p. 5.

<sup>56</sup> Brown Supplemental Testimony (Duke Energy Ohio Ex. 7), p. 11.

<sup>57</sup> Id.

The Stipulation includes proposed rates for Rider CEP that appropriately and fairly allocate costs among customer classes. Per the Stipulation, the initial Rider CEP rates are as follows:

<b>Estimated Monthly Rate Impact</b>	<b>\$</b>
Rate RS / RFT / RSLI / RFTLI	3.69
Rate GS / FT Small	7.20
Rate GS / FT Large	44.85
Rate IT / GGIT	1,281.32

As explained by Mr. Brown, in establishing these rates, Duke Energy Ohio has allocated costs between customer classes utilizing the allocation percentages from its last natural gas base rate case, Case No. 12-1685-GA-AIR, *et al* (Gas Rate Case). Next, the allocated revenue requirement was converted to a monthly fixed charge based on the number of customer bills for the twelve months ended December 31, 2018. This process not only fairly and appropriately allocates costs in accordance with cost causation as it follows the methodology previously approved by the Commission, but, by updating allocations based upon more recent customer counts, it also means that no unreasonable cross-subsidies are created via the Stipulation. As all customers benefit from the improvements made to the natural gas delivery system, it is appropriate that all customers also share in the costs.

Additionally, the use of the previously approved return on equity and cost of capital for Rider CEP is reasonable and consistent with established Commission precedent. The Commission has repeatedly utilized the last authorized rate of return to calculate the revenue requirement in

various rider proceedings for natural gas utilities.<sup>58</sup> In fact, in addressing a recent (and identical) challenge by the OCC regarding use of a previously determined return for purposes of calculating a CEP program rider, the Commission affirmed that “[i]t is the Commission’s practice to utilize the cost of capital and capital structure approved in the utility’s rate case in subsequent alternative rate plan and rider proceedings.”<sup>59</sup> The CEP deferrals at issue in these proceedings, which began in 2013, are for incremental natural gas capital investments made immediately following the test year of the Company’s last natural gas base rate proceeding, Case No. 12-1685-GA-AIR, *et al.*<sup>60</sup> Similarly, the depreciation rates used for purposes of calculating the CEP depreciation offset and deferred depreciation were established in the Company’s last natural gas base rate case. No party is arguing that those depreciation rates are unreasonable. To the contrary, the Audit Report explicitly concludes that both 1) the Company’s methodology for calculating depreciation and 2) the Commission approved depreciation rates from Case No. 12-1685-GA-AIR, *et al.*, that were used in Duke Energy Ohio’s calculations were reasonable.<sup>61</sup>

As such, the pre-tax rate of return proposed in the Company’s Application should also be based upon the capital structure and cost of capital authorized in the Company’s Gas Rate Case.<sup>62</sup> Neither Staff nor Larkin, which performed a comprehensive financial audit of the Company’s CEP program, recommended any deviation from that previously approved rate of return. Moreover, the

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<sup>58</sup> See, e.g., *In re Columbia Gas of Ohio, Inc.*, Case No 16-2422-GA-ALT, Opinion and Order (January 31, 2018) (reauthorizing the Infrastructure Replacement Program); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) (reauthorizing the Distribution Replacement Rider); *In re The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 19-1945-GA-RDR, Finding and Order (April 8, 2020) (approving Dominion’s AMR recovery charge); *In re the East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 19-1944-GA-RDR, Finding and Order (April 8, 2020) (approving Dominion’s PIR recovery charge).

<sup>59</sup> *In the Matter of the Application of the East Ohio Gas Company for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order (December 31, 2020).

<sup>60</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Increase in Natural Gas Rates*, Case No. 12-1685-GA-AIR, *et al.*

<sup>61</sup> Public Version of Audit Report (Staff Ex. 2A), p. 2-6.

<sup>62</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Increase in Gas Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order (November 13, 2013), pp. 13-14, 78.

Staff Report itself reflects Staff's belief that the Company did not have excessive earnings during the review period.<sup>63</sup> Accordingly, the previously approved rate of return is not excessive,<sup>64</sup> is consistent with Commission precedent, and its use is not a violation of any important regulatory practice. The Commission should not deviate from this practice here.

Finally, the Commission has approved similar alternative rate plan applications for capital expenditure plan deferrals and recovery riders in Case Nos. 19-468-GA-ALT and 17-2202-GA-ALT. If the Stipulation is approved without major modification, it would provide fair and equitable regulatory treatment among the natural gas utilities.

**B. The Company's Natural Gas Capital Expenditures Were Reasonable and Prudent.**

The Audit Report confirms that the Company's capital investment records through December 31, 2018, are accurate and the Company's depreciation calculations were reasonable.<sup>65</sup> Although the Audit Report recommended some adjustments, Larkin did not find anything to indicate that the CEP-related capital expenditures and assets for the period January 1, 2013, through December 31, 2018, were unnecessary, unreasonable, or imprudent.<sup>66</sup> Further, the Audit Report itself demonstrates that, since 2014, the Company's total annual incremental natural gas plant in-service for the period under review has been lower than 2013, the first year of the CEP deferral.<sup>67</sup>

As discussed above, Company witness Petchul supports the drivers of the Company's investments, both during the audit review period and going forward. These drivers include: customer growth, government-driven relocations, replacement of aging infrastructure,

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<sup>63</sup> Staff Report (Staff Ex. 1), pg. 7.

<sup>64</sup> Id.

<sup>65</sup> Audit Report, pp. 2-5, 2-9,

<sup>66</sup> Id., p. 2-12.

<sup>67</sup> Id., Exhibit 6-2, pp. 6-7.

infrastructure improvements, and investments required to meet existing and emerging state and federal integrity management requirements.<sup>68</sup> Those drivers align with the statutory categories established for CEP projects established under R.C. 4929.111, namely: 1) infrastructure expansion, improvement, or replacement programs; 2) programs to install, upgrade, or replace information technology systems; and 3) programs reasonably necessary to comply with Commission or other governmental agency rules or regulations.<sup>69</sup> There is no evidence that the Company's natural gas system investments to date have been unreasonable, imprudent, or unnecessary.

While the OCC expresses concern regarding the magnitude of the Company's investments since the Commission's approval of the Company's CEP deferrals, the OCC cannot dispute that the level of investments at issue in these proceedings, through December 31, 2018, fell well within the previously established \$1.50 deferral cap.<sup>70</sup> Moreover, the Company's CEP deferrals did not exceed the previously established cap during 2019 and only reached that cap in late 2020.<sup>71</sup> Accordingly, the OCC's concern regarding the Company's capital spending and the magnitude of the potential increases is really an improper and untimely attempt to seek rehearing of the Commission's initial decision to establish the \$1.50 CEP deferral cap more than six years after-the-fact. The Commission should not entertain the OCC's attempts to undermine well-settled law regarding rehearing of Commission decisions.

### **III. CONCLUSION**

The Stipulation in these proceedings presents a reasonable, supported, and fair conclusion to a complex regulatory proceeding that should be approved. The Stipulation was the product of

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<sup>68</sup> Petchul Direct Testimony (Duke Energy Ohio Ex. 8), pp. 12-13.

<sup>69</sup> R.C. 4929.111(A)(1)-(3).

<sup>70</sup> See Brown Direct Testimony (Duke Energy Ohio Ex. 2), p. 9.; Transcript Vol. 1, pp. 61-62.

<sup>71</sup> Brown Supplemental Testimony (Duke Energy Ohio Ex. 7), p. 14.

nearly three months of negotiations and, as a complete package, will provide regulatory certainty and stability for customers, stakeholders, and the Company. The terms of the Stipulation do not violate any important regulatory principle or practice and comprise a package that, on balance, was designed to resolve issues of significant importance for the signing parties. For the reasons stated above, the Stipulation should be approved as filed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by electronic service, this 24<sup>th</sup> day of February, 2021.

/s/ Rocco O. D'Ascenzo  
Rocco O. D'Ascenzo

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