

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 14-0375-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 14-0376-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 15-0452-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 15-0453-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 16-0542-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 16-0543-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 17-0596-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 17-0597-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 18-0283-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 18-0284-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Implementation of the ) Case No. 18-1830-GA-UNC  
Tax Cuts and Jobs Act of 2017. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Approval of Tariff ) Case No. 18-1831-GA-UNC  
Amendments. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 19-0174-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 19-0175-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Authority to Defer ) Case No. 19-1085-GA-AAM  
Environmental Investigation and Remediation )  
Costs. )

In the Matter of the Application of Duke ) Case No. 19-1086-GA-UNC  
Energy Ohio, Inc., for Tariff Approval. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to Rider ) Case No. 20-0053-GA-RDR  
MGP Rates. )

In the Matter of the Application of Duke ) Case No. 20-0054-GA-ATA  
Energy Ohio, Inc., for Tariff Approval. )

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## STIPULATION AND RECOMMENDATION

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### I. INTRODUCTION

Under Ohio Adm. Code 4901-1-30, any two or more parties to a proceeding may enter into a written stipulation (settlement) covering the issues presented in such a proceeding. The purpose of this document is to set forth an understanding and agreement regarding certain matters pending before the Public Utilities Commission of Ohio (Commission), which understanding and

agreement enable benefits to the natural gas customers of Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) in the form of: elimination of certain charges for environmental investigation and remediation costs; credits on customers' utility bills for federal income tax (FIT) expense reductions; decreases in natural gas base rates that customer pay; utility bill payment assistance for qualifying customers; and a commitment to transition from Duke Energy Ohio's Gas Cost Recovery (GCR) to a Standard Service Offer (SSO) competitive auction format for natural gas supply.<sup>1</sup> The parties to this Stipulation and Recommendation (Stipulation) include Duke Energy Ohio, the Office of the Ohio Consumers' Counsel (OCC), Ohio Energy Group (OEG) and the Staff of the Public Utilities Commission of Ohio (Staff) (which, for the purpose of entering into this Stipulation, will be considered a party by virtue of Ohio Adm. Code 4901-1-10(C)) (each a Signatory Party and collectively, the Signatory Parties). The Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), and Ohio Partners for Affordable Energy (OPAE), have agreed not to oppose the Stipulation. The Signatory Parties recommend that the Commission approve and adopt this Stipulation, which resolves all the issues raised by the Signatory Parties in these proceedings.

The Stipulation, which shall be designated as Joint Exhibit 1.0, is supported by adequate data and information, represents a just and reasonable resolution of all issues raised in these proceedings; is in the public interest; violates no regulatory principle or precedent; and is the product of lengthy, cooperative, voluntary, and serious bargaining among knowledgeable and capable parties that represent various interests and are represented by experienced counsel and technical experts. Although this Stipulation is not binding on the Commission, it is entitled to

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<sup>1</sup> Contemporaneous with the filing of this Stipulation and Recommendation, Duke Energy Ohio is filing its pre-filing notice, initiating a proceeding before the Commission to implement the SSO competitive auction structure that is agreed to in Section III,B of this Stipulation.

careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Signatory Parties stipulate, agree and recommend as set forth below.

## II. RECITALS

**WHEREAS**, on November 13, 2013, in Case No. 12-1685-GA-AIR, *et al.*, the Commission issued its decision in Duke Energy Ohio's contested natural gas base rate case authorizing Duke Energy Ohio to collect \$55 million from customers for environmental investigation and remediation costs incurred between 2008 and 2012 relative to the Company's former operation and ongoing ownership of two manufactured gas plants (MGPs) (Gas Rate Case Order).<sup>2</sup> Further, the Gas Rate Case Order established the mechanism, Rider MGP, pursuant to which such costs are recovered;<sup>3</sup>

**WHEREAS**, in the Gas Rate Case Order, as affirmed, the Commission directed Duke Energy Ohio to make annual filings to update Rider MGP for environmental investigation and remediation costs incurred in the year prior;<sup>4</sup>

**WHEREAS**, on December 21, 2016, in Case No. 16-1106-GA-AAM *et al.*, the Commission granted Duke Energy Ohio a three-year extension (through December 31, 2019) of its deferral authority for environmental investigation and remediation costs at the East End site (Extension Order);<sup>5</sup>

**WHEREAS**, pursuant to the Gas Rate Case Order and the Extension Order, Duke Energy Ohio has submitted Applications annually between 2014 and 2020 for collection from customers

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<sup>2</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order, at pp. 70-74 (November 13, 2013) (hereinafter the Commission's Order).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 72.

<sup>5</sup> *In re: Application of Duke Energy Ohio, Inc for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Finding and Order, p. 1 (December 21, 2016).

of its costs of investigating and remediating the impacts of the former MGP operations for the previous calendar year (MGP Cases);<sup>6</sup>

**WHEREAS**, Duke Energy Ohio's applications state that, between January 1, 2013 and December 31, 2019, it prudently incurred \$85,217,593 in environmental investigation and remediation costs related to the two MGPs (MGP Remediation Costs);<sup>7</sup>

**WHEREAS**, on December 21, 2018, in response to the passage of the 2017 Tax Cuts and Jobs Act (TCJA), Duke Energy Ohio filed its Application in Case No. 18-1830-GA-UNC, *et al.*, to establish its natural gas TCJA rider (Rider GTCJA) to address the impacts of the reduction in the corporate income tax rate from 35 percent to 21 percent for its natural gas operations (TCJA Case), including a reduction of the FIT rate and creation of excess accumulated deferred income taxes (EDIT), which would reduce natural gas bills for customers.<sup>8</sup> The OCC, among others, filed recommendations in the TCJA case;<sup>9</sup>

**WHEREAS**, Duke Energy Ohio has been deferring amounts that reflect the adjustment to the federal income tax (FIT) rate resulting from the TCJA. The deferred liability owed to customers

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<sup>6</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates*, Consolidated Case Nos. 14-0375-GA-RDR, *et al.*, Case Nos. 15-0452-GA-RDR, *et al.*, Case Nos. 16-0542-GA-RDR, *et al.*, Case Nos. 17-596-GA-RDR, *et al.*, Case Nos. 18-283-GA-RDR, *et al.*, Case No. 19-0174-GA-RDR *et al.*, and Case No. 20-0053-GA-RDR.

<sup>7</sup> *Id.*; *See also*; *In the Matter of the Application of Duke Energy Ohio for an Adjustment to Rider MGP Rates*, Case No. 20-0053-GA-RDR *et al.*, Staff Report, pg. 6 (July 23, 2020) showing total MGP remediation through December 31, 2019 is \$85,281,670, which total contains a \$269 typo and does not reflect an adjustment the Company made to reduce 2013 costs by \$63,808 as noted in the supplemental testimony of Ms. Lawler filed in *In the Matter of the Application of Duke Energy Ohio for an Adjustment to Rider MGP Rates*, Case No. 19-0174-GA-RDR, *et al.*, pg. 7, on October 4, 2019.

<sup>8</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1830-GA-UNC, Application, p. 2 (December 21, 2018)

<sup>9</sup> *Id.*; May 13, 2019.

through July 31, 2021 is \$54,251,681 (hereinafter FIT Deferral), which deferred liability will continue to accrue until resolved by placing rates into effect;<sup>10</sup>

**WHEREAS**, the reduction in the FIT rate also impacted the valuation of accumulated deferred income taxes currently reflected in natural gas rates, creating EDITs;

**WHEREAS**, on May 10, 2019, Duke Energy Ohio filed its Application in Case No. 19-1085-GA-AAM, *et al.*, seeking authorization to extend its deferral and collection of MGP investigation and remediation costs from customers beyond December 31, 2019, due to circumstances that Duke Energy Ohio described as exigent and outside of its control (2019 Deferral Extension Case);<sup>11</sup>

**WHEREAS**, consistent with the Gas Rate Case Order, the Company has pursued and obtained \$50,562,476 in net insurance proceeds (Insurance Proceeds) under historic policies applicable to Duke Energy Ohio's legal obligation for environmental investigation and remediation relative to the former MGP sites;

**WHEREAS**, Duke Energy Ohio has not been able to complete necessary investigation and remediation work at the East End MGP site where the propane facilities are located because of inaccessibility due to continuing natural gas operations on the site. The site will eventually require remediation completion once the areas become accessible;

**WHEREAS**, the above-styled proceedings have been subject to discovery, with all parties afforded due process, and involve disputed issues that create significant risks and uncertainty of

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<sup>10</sup> The FIT Deferral and protected EDITs that convert to unprotected EDITs as a result of normalization will continue to be updated for return to customers pursuant to the terms of this Stipulation until approved and rate adjustments go into effect.

<sup>11</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, *et al.*, Application, pp. 12-13 (May 10, 2019).

ongoing litigation and expense, including appeals, absent a comprehensive resolution, and a full settlement of these issues will mitigate risks of ongoing litigation and expenses;

**WHEREAS**, the Signatory Parties, representing diverse interests, desire to resolve all issues in the above-styled proceedings in a manner that will provide certainty to all stakeholders, minimize rate impacts to customers related to MGP costs, mitigate legal uncertainties with appeals, and provide immediate and certain additional assistance to customers that is especially needed as a result of the COVID-19 pandemic;

**WHEREAS**, all the related issues and concerns raised by the Signatory Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues;

**WHEREAS**, this Stipulation is the product of the discussions and negotiations of the Signatory Parties and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally;

**WHEREAS**, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

**WHEREAS**, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in this matter.

**NOW, THEREFORE**, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

### III. JOINT RECOMMENDATION OF PARTIES

#### A. Resolution of Manufactured Gas Plant and Natural Gas Tax Cuts and Jobs Act Proceedings

1. The Signatory Parties support the consolidation of the above-listed proceedings for purposes of settlement.

2. Duke Energy Ohio's Applications filed in the MGP Cases and the TCJA Case shall be approved subject to the terms and customer benefits provided by this Stipulation, including but not limited to the below-described SSO competitive auction, and additional customer protections afforded hereunder. If any proposed rates, charges, terms, conditions, or other items set forth in Duke Energy Ohio's Applications are not addressed in this Stipulation, the proposed rate, charge, term, condition, or other item shall be treated in accordance with the relevant Application.

3. The Signatory Parties agree that Duke Energy Ohio has applied to recover from natural gas customers MGP remediation costs via Rider MGP, which if approved would result in additional MGP charges to customers, and, but for this Stipulation, benefits, such as resolution of the MGP disputes without increases in charges, the transition to an SSO auction for natural gas service, immediate bill credits, and other customer protections would not be possible.

4. As depicted in Table 1 below, Duke Energy Ohio's charges to customers for MGP Remediation Costs shall be reduced by \$11,357,579. The remaining \$73,860,014 (Net MGP



Remediation Costs)<sup>12</sup> incurred for environmental investigation and remediation activities between 2013 and 2019 shall be addressed as described further in paragraphs 6 through 8 below.

5. The Signatory Parties agree that the balances for protected (or normalized) and unprotected (or non-normalized) EDITs shall be determined as of March 31, 2012, the date certain in Duke Energy Ohio's last natural gas base rate case, except for the EDIT balances associated with costs recovered through the Company's Rider AU and Rider AMRP. The EDIT balances associated with Riders AU and AMRP shall be determined as of December 31, 2017.

6. Unprotected EDITs as of the dates outlined in paragraph 5 on a grossed up basis are \$28,106,996. Duke Energy Ohio shall withdraw its request to amortize the unprotected EDIT regulatory liability over a six-year period. The Signatory Parties agree that Duke Energy Ohio shall instead immediately apply the entire unprotected EDIT regulatory liability against natural gas customers' obligations for Net MGP Remediation Costs, thereby reducing customers' obligation (*i.e.*, reducing charges to customers) by \$28,106,996. The remaining Net MGP Remediation Costs after this reduction are \$45,753,018.<sup>13</sup>

7. The Signatory Parties further agree to allocate \$45,753,018 of the Insurance Proceeds to the remaining Net MGP Remediation Costs, thereby fully offsetting natural gas customers' obligations for said costs (with the disposition of the remaining \$4,809,458 of the Insurance Proceeds addressed below).

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<sup>12</sup> See *In the Matter of the Application of Duke Energy Ohio for an Adjustment to Rider MGP Rates*, Case No. 20-0053-GA-RDR *et al.*, Staff Report pg. 6 (July 23, 2020) showing total MGP remediation through December 31, 2019 is \$85,281,670 which contains a \$269 typo and does not reflect an adjustment the Company made to reduce 2013 costs by \$63,808 as noted in the supplemental testimony of Ms. Lawler filed in *In the Matter of the Application of Duke Energy Ohio for an Adjustment to Rider MGP Rates*, Case No. 19-0174-GA-RDR, *et al.*, pg. 7, on October 4, 2019;

<sup>13</sup> \$73,860,014 - \$28,106,996 = \$45,753,018.

8. As a result of the adjustments and immediate credits described in Paragraphs 4 – 7 above, and as depicted in Table 1 below, natural gas customers will receive the following benefits:
- a. Customers will not see any rate impact (*i.e.*, no rate increase) related to MGP remediation costs incurred through December 31, 2019;
  - b. Customers will not be billed for MGP river investigation costs; and
  - c. Customers will not be billed for remediation expense related to the currently inaccessible upland areas (Inaccessible Area) that could not be remediated due to safety and integrity of ongoing utility (*e.g.*, propane) operations.

TABLE 1:	
Duke Energy Ohio's MGP Remediation Costs	\$85,217,593
MGP Costs to be Disallowed from Charges to Customers	(\$11,357,579)
Duke Energy Ohio's Net MGP Remediation Costs	\$73,860,014
Use of TCJA Unprotected EDITs (3/31/12 valuation)	(\$28,106,996)
Duke Energy Ohio's Remaining Net MGP Remediation Costs	\$45,753,018
Use of the Majority of net Insurance Proceeds to offset MGP Charges to Customers	(\$45,753,018)
Remaining MGP Obligation	\$ 0

9. Protected EDITs as of March 31, 2012 and the protected EDITs included in Riders AU and AMRP as of December 31, 2017 on a grossed up basis are \$147,422,807. Per tax normalization rules, protected EDITs are amortized to unprotected balances on a monthly basis until the EDITs are reflected in customer rates. The protected EDIT balances remaining as of the end of the month preceding the month revised base rates and Rider GTCJA become effective in customer rates shall be normalized and will be provided as a credit on natural gas customer bills through the Company's Rider GTCJA as proposed in the Company's TCJA Case Application. As proposed in the Company's TCJA Case Application, Rider GTCJA will be credited to all customers, except for those taking natural gas service under Interruptible Transportation Service

(Rate IT), as a fixed monthly credit. For customers taking natural gas service under Rate IT, Rider GTCJA will be credited on a volumetric basis. Rider GTCJA will be effective on customer bills beginning with the first billing cycle of the first month 60 days following Commission approval, without material modification, of the Stipulation. The additional unprotected EDITS that were amortized from protected EDIT until the end of the month preceding the date of the order approving this stipulation shall be included in the bill credit described in paragraph 10 below. The additional unprotected EDITS that were amortized from protected EDIT to unprotected EDIT as of July 31, 2021 are \$12,097,270 on a grossed-up basis.<sup>14</sup>

10. Duke Energy Ohio shall withdraw its proposal to amortize the FIT Deferral liability over a one-year period. The Signatory Parties agree that, beginning with the first billing cycle of the first month 60 days after Commission approval, without material modification, of the Stipulation, the FIT Deferral liability shall be credited to natural gas customers as follows:

- a. Over a twelve-month period, in volumetric rates, for non-residential customers on Rate IT; and,
- b. As a one-time bill credit for all other natural gas customers.<sup>15</sup> The bill credit will be applied to natural gas customer bills on the first billing cycle of the first month 60 days after Commission approval, without material modification, of the Stipulation.

11. As discussed in paragraph 9, these bill credits will also include additional EDITS that became unprotected over time per tax normalization rules.

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<sup>14</sup> All tax-related balances owed to customers will continue to be updated for return to customers.

<sup>15</sup> Based upon July 31, 2021 FIT and unprotected EDIT balances (which will continue to be updated) and including the \$1 million of insurance proceeds as outlined in paragraph 18c, the estimated credit to a typical residential natural gas customer to be credited is approximately \$107.00. This total credit will continue to increase for tax-related applicable amounts until the Stipulation is approved and rate adjustments go into effect.

12. Because the credits for customers on Rate IT will be refunded to customers over a different time period than other customer classes, the Company may implement one or more riders to effectuate the agreed-upon credits and the Signatory Parties will support the mechanisms necessary to implement the credits. In order to effectively implement these credits, this/these rider(s) will be different and distinct from Rider GTCJA.

13. The Company will use the most current billing determinants in calculating the Rider GTCJA and the bill credits.

14. The Company's existing base revenues for natural gas service were established pursuant to a settlement that was approved by the Commission in the Gas Rate Case Order. Using the revenue requirement model approved by the Commission in the Gas Rate Case Order, the Company shall replace the FIT rate of 35 percent with the FIT rate of 21 percent established by the TCJA. Revising the revenue requirement as such reduces the overall base revenue requirement by approximately \$12.9 million (or 5.3558 percent of the base revenue approved in that case). Joint Exhibit 2.0 includes revised tariffs for all of the Company's retail rate classes that reduce the current base rates by 5.3558 percent. The Company's revised tariffs will be effective on customer bills beginning with the first billing cycle of the first month 60 days after Commission approval, without material modification, of this Stipulation.

15. Duke Energy Ohio will remove from its balance sheet the difference in EDIT balances between the values outlined in paragraph 5 (*i.e.*, balances as of March 31, 2012 for base rates and December 31, 2017 for riders) and December 31, 2017, which will partially mitigate write-offs incurred by the Company under the Stipulation.<sup>16</sup> The Signatory Parties agree that

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<sup>16</sup> Such write-offs include the previously incurred but disallowed costs reflected in Table 1, and the known, estimable, and probable, but yet-to-be spent remediation in the currently inaccessible upland areas at the MGP site.

potential remediation, if any, in the Ohio River will be addressed separately as further explained herein.

16. Duke Energy Ohio shall withdraw its request in the 2019 Deferral Extension Case for deferral authority of costs to remediate the Inaccessible Areas and investigate the Ohio River. The Commission shall close the 2019 Deferral Extension Case.

17. Upon approval of this Stipulation without material modification, Rider MGP shall be withdrawn. Duke Energy Ohio expressly reserves the right to seek deferral authority for costs to remediate the Ohio River, and all Signatory Parties reserve all substantive and due process rights related to such a deferral request. The Stipulating Parties agree that Duke Energy Ohio should only be permitted to seek deferral authority and future cost recovery, if any, for Ohio River remediation after an Ohio EPA or U.S. EPA order, consent decree, or settlement has imposed a legal obligation to incur costs to remediate in and/or under the Ohio River, or after a written statement issued by the Ohio EPA or U.S. EPA that remediation in and/or under the Ohio River is necessary to meet applicable standards under applicable environmental laws. Any future remediation cost recovery, if at all, must be addressed in a future application by the Company. Such future application shall recommend adoption of the same customer class allocation and rate design that was used to recover costs under Rider MGP. Any such future requests by Duke Energy Ohio shall not include any deferral authority for costs to investigate the Ohio River contamination or investigate or remediate the Inaccessible Areas.<sup>17</sup> Duke Energy Ohio agrees that any such filing for deferral authority for Ohio River Remediation shall be made within five years of an order approving this Stipulation without material modification.

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<sup>17</sup> Staff takes no position on Duke Energy Ohio's reservation of rights for seeking future deferral of river remediation expense, but supports the process agreed to in this paragraph.

18. The remaining Insurance Proceeds (\$4,809,458) shall be addressed as follows:
- a. \$3,309,458 shall be allocated for utility bill payment assistance from Duke Energy Ohio to qualifying low-income, residential natural gas customers (per criteria agreed to by Duke Energy Ohio and OCC), and to qualifying seniors (per paragraph 18. a. i. and 18.b.) who are residential natural gas customers in Duke Energy Ohio's service territory, including those who have been adversely affected by the COVID pandemic. Such funds shall be administered by third-parties agreed upon by Duke Energy Ohio and OCC in accordance with mutually agreed upon program assistance criteria. The costs of program administration, audit, oversight and advertising, if any, shall be allowed for payment to the third-party administrators to cover their actual costs of administering the program, which shall not exceed ten percent of the total program funds. This provision is subject to reasonable and appropriate audits and oversight, and the administrators shall make program financial information (including audit and oversight information) available to Duke Energy Ohio, the OCC, and the Commission Staff upon request. The \$3,309,458 will be distributed by Duke Energy Ohio as follows:
    - i. The Company will reserve \$309,458 to be available to qualifying senior citizen customers, age 65 or older, whose income qualification is at or below 250 percent of the federal poverty level. For a single-person household, this equates to an annual income of \$31,900. These funds will be made available within 30 days of filing this Stipulation. The reserved \$309,458 of funds shall remain available from Duke Energy

Ohio to transfer to eligible customers whether or not the Stipulation is approved.

- ii. Within 60 days of approval of this Stipulation without material modification, the Company will make available \$3 million for transfer to eligible low-income customers who are identified for benefits by the agreed-upon third parties.
- iii. The agreed-upon third parties will identify the eligible low-income customers and facilitate Duke Energy Ohio's distribution of the \$3,309,458 to qualified customers no later than October 1, 2023. Efforts shall be made to achieve significant distribution of the funds in 2021 and 2022, with the goal of all funds being distributed by December 31, 2022. The agreed-upon third party program administrators shall provide regular reporting to Duke Energy Ohio, OCC, and any other Signatory Party at least annually.
- iv. Any such funds not used by December 31, 2022, shall be carried over to be used by October 1, 2023, with any funds remaining after that date to be credited to Rider UE-G (Uncollectible Expense Rider for natural gas customers). No unused bill payment funds shall be retained by Duke Energy Ohio.
- v. Only customers who meet the above criteria will be eligible.

- b. Within 60 days of approval of this Stipulation without material modification, an additional \$500,000 shall be made available for the above-described senior citizen program.
- c. The remaining approximately \$1 million in Insurance Proceeds shall be allocated to non-residential customers and credited as part of the bill credits described in paragraph 10 above.

**B. Transition to a Standard Service Offer Competitive Auction Process for Natural Gas Service**

19. Contemporaneously with the filing of this Stipulation, Duke Energy Ohio shall file its notice of intent to file an application to transition to a natural gas auction in the form of an SSO (not a standard choice offer) and to transition away from its GCR process.

20. Duke Energy Ohio will conduct stakeholder sessions with interested parties to discuss the transition to the SSO auction in an effort to gain agreement among interested parties. The first of these sessions shall be held within fifteen business days of the filing of this Stipulation (unless otherwise agreed upon by Signatory Parties). Duke Energy Ohio will conduct a minimum of two such sessions within 60 days of filing of this Stipulation. Duke Energy Ohio shall hold auction workshops following initial auction implementation to evaluate learnings that may be incorporated in future SSO auctions.

21. Within five business days of the Commission's approval of this Stipulation without material modification, Duke Energy Ohio shall file its application to transition to an SSO (Auction Application).

22. The Signatory Parties agree that the Company's Auction Application shall include a transition contingent upon recovery of reasonable and prudent costs to exit the GCR and to



develop, transition to, implement, and operate the desired SSO auction process. Deferral authority should be granted herein as part of the approval of this Stipulation for prudently-incurred costs incurred prior to implementation of the identified recovery mechanism(s) with recovery of such deferral for prudently-incurred costs to be proposed and determined as part of the Auction Application proceeding. The Application shall propose such recovery consistent with the following parameters:

- a. SSO Transition Costs (including but not limited to, incremental external labor and consultants necessary to expedite preparation of its Auction Application and obtain approval thereof) to be recovered by a non-bypassable rider on residential natural gas customer bills and by a bypassable rider on non-residential natural gas customer bills;
- b. Ongoing costs incurred by the Company to administer the SSO auctions shall be recovered in a bypassable rider on natural gas customer bills;
- c. A plan to address the end, including any necessary reconciliation and true-ups, of the GCR process to ensure a smooth transition for all customers;
- d. Following approval of the Company's Auction Application without material modification, Duke Energy Ohio shall conduct its first SSO auction for natural gas supply as soon as January 2022, but no more than three months following the Commission's order approving the Auction Application. In order to avoid early termination penalties associated with its GCR and to have sufficient time to implement the auction results, the first delivery period under the auction shall commence no sooner than November 2022, but will occur no later than three months following the first auction.

- e. Should the Commission order an initial SSO auction delivery date prior to November 2022, any termination penalties for existing contracts used to manage the GCR process, including, but not limited to, asset management agreements, shall be recoverable as Transition Costs.
- f. Duke Energy Ohio will regularly apprise OCC of its actions to advocate for the SSO structure described in this Stipulation, including any appeals and defending against any appeals of Commission Orders that vary from conformance with this Stipulation.

23. The Signatory Parties agree to use best efforts to minimize any regulatory delays and to cooperate to achieve an expeditious resolution of the transition to an SSO.

**C. Billing System Changes**

24. The Signatory Parties agree that Duke Energy Ohio shall add the SSO price-to-compare on its natural gas bills for customer information. Such billing system change shall commence with the second billing month that a customer is billed based upon the SSO. Duke Energy Ohio shall include this billing format change as part of its Auction Application.

- a. The Price-to-Compare message on bills for shopping customers shall prominently include language similar to the following: “In order for you to save money, a natural gas supplier must offer you a price lower than \$X.XX per CCF for the same usage that appears on this bill.”
- b. The Price-to-Compare message should be included on all shopping customer bills, including those customers who have gas only and those customers who are combination gas and electric.

25. The Signatory Parties agree that beginning with the second billing month following approval of this Stipulation, Duke Energy Ohio will begin promptly providing the OCC, upon OCC's request, shadow billing information for natural gas customers in a format to be mutually agreed upon by the OCC and the Company. The shadow billing information shall also include calculations of historic twenty-four months of data comparing aggregate shopping customer costs to what those customers would have paid had they been served on Duke Energy Ohio's GCR or SSO (beginning with the twenty-four months prior to the signing of this Stipulation) and will be carried forward with aggregate customer data each month thereafter. Duke Energy Ohio shall provide OCC with the shadow billing for the historic twenty-four months of data upon the signing of the Stipulation. The aggregated shadow billing information is not to be considered confidential.<sup>18</sup>

**D. Timing of Implementation and Notice to Customers**

26. The Signatory Parties agree that beginning with the first billing cycle of the first month 60 days after Commission approval, without material modification, of the Stipulation:

- a. Duke Energy Ohio will file new tariffs to reduce natural gas base rates for customers by 5.3558 percent to reflect the lower FIT rate of 21 percent until such time as new base rates are implemented as part of an application filed pursuant to R.C. 4909.18. The lower FIT rate of 21 percent has already been reflected in Riders AU and AMRP since the effective date of the TCJA. Revised Tariff Sheets are included in Joint Exhibit 2 to this Stipulation.
- b. Duke Energy Ohio will file Rider GTCJA to begin crediting customers for the amortization of protected EDITs. This amortization will include the

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<sup>18</sup> Staff takes no position on this provision.

amortization of protected EDITs associated with the recently suspended Rider AU and the existing Rider AMRP.

- c. Duke Energy Ohio will process the bill credit to customers through one or more riders to effectuate the agreed-upon credits and the Signatory Parties will support the mechanisms necessary to implement the credits as discussed in this Stipulation.

27. The Company will notify customers via bill messages of implementation of this Stipulation upon Commission approval. The Company agrees to discuss wording of such bill messages with OCC.

28. Rider GTCJA shall remain eligible for inclusion of any future changes in the FIT Rate.

#### **IV. ADMISSION OF EXHIBITS AND OTHER TERMS AND CONDITIONS**

29. The Signatory Parties agree that the following exhibits should be admitted into the consolidated record: Joint Exhibit 1.0 Stipulation and Recommendation; Joint Exhibit 2.0 Revised Tariff Sheets; Duke Energy Ohio Exhibit 1.0 Duke Energy Ohio's Application in Case No. 20-0053-GA-RDR, *et al.*, with attached exhibits (as amended on July 7, 2020); Duke Energy Ohio Exhibit 2.0 Direct Testimony of Sarah Lawler in Case No. 20-0053-GA-RDR, *et al.*, (as amended on July 7, 2020); Duke Energy Ohio Exhibit 3.0 Direct Testimony of Shawn Fiore in Case No. 20-0053-GA-RDR *et al.*, (filed March 29, 2020); Duke Energy Ohio Exhibit 4.0 Direct Testimony of Keith Butler in Case No. 20-0053-GA-RDR, *et al.*, (filed March 29, 2020); Duke Energy Ohio Exhibit 5.0 Direct Testimony of Todd Bachand in Case No. 20-0053-GA-RDR, *et al.*, (as amended on July 7, 2020); and Staff Exhibit 1.0 Staff Report in Case No. 20-0053-GA-RDR, *et al.*, (filed

July 23, 2020). Signatory Parties shall have the right to submit testimony in support of this Stipulation in accordance with Commission rules.

30. The Signatory Parties agree that for purposes of evaluating the reasonableness of this Stipulation, the existing evidentiary records in the above-styled proceedings (MGP Cases, 2019 Deferral Extension Case, and TCJA Case) and shall be consolidated into Case No. 20-0053-GA-RDR *et al.*

31. This Stipulation is entered into as an overall compromise and resolution of the issues presented in these proceedings and does not necessarily represent the position that any Signatory Party would have taken absent its execution. The Signatory Parties believe that this Stipulation represents a reasonable compromise of the varying interests that have been asserted in this proceeding.

32. This Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission; provided, however, that each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Stipulation contains a material modification thereof.

33. If the Commission rejects or materially modifies all or part of this Stipulation, any Signatory Party shall have the right, within 30 days of issuance of the Commission's Order, to apply for rehearing or to withdraw from and terminate the Stipulation by filing a notice with the Commission (Notice of Withdrawal) in this proceeding and serving all Signatory Parties.<sup>19</sup> If, upon rehearing, the Commission does not adopt the Stipulation without material modification, or if the

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<sup>19</sup> Staff believes that a Signatory Party should not be permitted to withdraw from a Stipulation prior to an Entry on Rehearing issued by the Commission. Staff further believes that a Signatory Party should not be permitted to terminate a Stipulation supported by more than two parties. However, for purposes of this Stipulation only, Staff does not object to including those provisions in this agreement.

Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within 30 days of the Commission's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from and terminate the Stipulation by filing a notice with the Commission in this proceeding (Notice of Withdrawal) and serving said Notice of Withdrawal upon all Signatory Parties. Duke Energy Ohio reserves the right to withdraw its SSO notice and Auction Application if any Party withdraws from the Stipulation because the Commission materially modifies this Stipulation or, on rehearing or remand, reverses a decision approving this Stipulation. No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Party(ies) to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing if necessary.

34. Unless a Signatory Party exercises its right to terminate its Signatory Party status or withdraws from the Stipulation as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission and in any appeal that it participates in from the Commission's adoption and/or enforcement of this Stipulation.

35. This Stipulation is submitted for purposes of these proceedings only. The term “these proceedings” includes the above-captioned proceedings as well as the subsequent proceeding to implement the SSO auction. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.

36. The Signatory Parties stipulate, agree, and recommend that the Commission issue a final Opinion and Order in these proceedings, ordering the adoption of this Stipulation, including the terms and conditions agreed to in this Stipulation by all Signatory Parties. The Signatory Parties fully support this Stipulation in its entirety and urge the Commission to accept and approve the terms herein. The Signatory Parties agree that the Stipulation represents a comprehensive compromise of issues raised by Signatory Parties with diverse interests. The Signatory Parties have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result. The Signatory Parties agree that this Stipulation, as a package, benefits ratepayers and is in the public interest. The Signatory Parties agree that the Stipulation does not violate any regulatory principle or practice.

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The undersigned **Signatory Parties** hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 31<sup>st</sup> day of August, 2021.

On Behalf of Duke Energy Ohio, Inc.:

By: /s/ Rocco O. D'Ascenzo  
Rocco O. D'Ascenzo (0077651)  
Deputy General Counsel  
(Counsel of Record)  
Jeanne W. Kingery (0012172)  
Associate General Counsel  
Duke Energy Business Services, Inc.  
139 East Fourth Street, ML 1301  
Cincinnati, Ohio 45202  
Phone: 513-287-4320  
Rocco.dascenzo@duke-energy.com  
Jeanne.kingery@duke-energy.com

On Behalf of Staff Of The Public Utilities Commission Of Ohio:

By: /s/ Werner L. Margard III  
Werner L. Margard III (0024858)  
Assistant Attorney General – Public Utilities Section  
30 E. Broad Street 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
(by e-mail authorization 8/30/21)

On Behalf of the Office Of The Ohio Consumers' Counsel:

By: /s/ Christopher Healey  
Christopher Healey (0086027)  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
(by e-mail authorization 8/30/21)



On Behalf of Ohio Energy Group:

By: /s/ Jody Kyler Cohn  
Jody Kyler Cohn (0085402)  
Boehm, Kurtz, & Lowery  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
(by e-mail authorization 8/27/21)

**IN WITNESS THEREOF**, the undersigned Non-Opposing Parties agree not to challenge this Stipulation and Recommendation as of this 31st day of August, 2021.

On Behalf of The Ohio Manufacturers Association Energy Group:

By: /s/ Kimberly W. Bojko  
Kimberly W. Bojko (0069402)  
Carpenter Lipps & Leland LLP  
280 North High Street, #1300  
Columbus, OH 43215  
(by e-mail authorization 8/31/21)

On Behalf of The Kroger Co.:

By: /s/ Angela Paul Whitfield  
Angela Paul Whitfield (0068774)  
Carpenter Lipps & Leland LLP  
280 North High Street, #1300  
Columbus, OH 43215  
(by e-mail authorization 8/30/21)

On Behalf of Ohio Partners for Affordable Energy:

By: /s/ Robert Dove  
Robert Dove (0092019)  
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65 E State St., Ste. 1800  
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**in**

**Case No(s). 14-0375-GA-RDR, 14-0376-GA-ATA, 15-0452-GA-RDR, 15-0453-GA-ATA, 16-0542-GA-RD**

Summary: Stipulation Stipulation and Recommendation electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Rocco D'Ascenzo and Kingery, Jeanne W.