

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Duke	)	
Energy Ohio, Inc., for an Adjustment to	)	Case No. 21-618-GA-RDR
the Capital Expenditure Program Rider	)	
Rate	)	

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**COMMENTS OF INTERSTATE GAS SUPPLY, INC.**

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**I. INTRODUCTION**

Interstate Gas Supply, Inc. (“IGS”) submits these comments to object to the failure of both the auditor and Staff of the Public Utilities Commission of Ohio (“Staff”) to recommend that Duke Energy Ohio, Inc. (“Duke”) remove financial incentives from its Capital Expenditure Program Rider (“CEP”). The audit report mistakenly relies on the terms and conditions of a Stipulation and Recommendation (“Stipulation”) that was approved in Case No. 19-791-GA-ALT, which authorizes Duke to recover incentive pay through its CEP using existing accounting policies and procedures.<sup>1</sup> That Stipulation was submitted for purposes of resolving Case No. 19-791-GA-ALT, and by its own terms, must not serve as precedent in any future proceeding<sup>2</sup>, including Duke’s CEP application at issue here.

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation*, Stipulation and Recommendation at ¶9, Case No. 19-0791-GA-ALT (Nov. 16, 2020). (hereinafter “Stipulation”)

<sup>2</sup> *Id.* at ¶21.

The audit report should not assume that the terms of a Stipulation filed in a prior proceeding govern Duke's application in this case. Rather, the auditor and Staff<sup>3</sup> should review Duke's application *de novo* to determine whether Duke's request to recover incentive pay through its CEP complies with Ohio law.<sup>4</sup> In doing so, the auditor and Staff should find that any incentive-based and stock-based compensation included in Duke's application in this case should be removed from the CEP Rider.

## **II. BACKGROUND**

On April 23, 2021, Duke Energy Ohio, Inc. ("Duke") filed an application with the Public Utilities Commission of Ohio ("PUCO" or "Commission") seeking approval, among other things, to continue to capitalize incentive pay through its Capital Expenditure Program Rider ("CEP"). Specifically, Duke seeks to recover stock-based and earnings-related financial incentives granted to its employees and executives via Short-Term and Long-Term Incentive Plans. Blue Ridge Consulting services performed an audit of Duke's application in this case and made several adjustments and recommendations. Commission Staff adopted the adjustments and recommendations contained in that audit report in its entirety.<sup>5</sup>

The audit report noted that despite recommendations from the auditor and Staff to remove financial incentives from Duke's CEP in Case No. 19-791-GA-ALT, the

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<sup>3</sup> IGS notes that Staff adopted the adjustments and recommendations contained in the audit report in its entirety.

<sup>4</sup> See R.C. 4929.111

<sup>5</sup> Staff Review and Recommendation at 4.

Commission approved a Stipulation and Recommendation<sup>6</sup> that authorized Duke to capitalize incentive pay using its existing accounting policies and procedures.<sup>7</sup> Due to the Commission's ruling in that case, the auditor indicated that it limited its review to the amount of incentive pay included in Duke's application to ensure that it is consistent with what was authorized under the Stipulation.<sup>8</sup> In other words, an evaluation of whether Duke should be entitled to recover any incentive pay compensation was not performed.

Nevertheless, the auditor identified two anomalies: (1) Duke increased the percentage related to earnings for the allocated incentives by approximately 10% since the last audit was performed; and (2) the incentive compensation that Duke allocated to capital spiked in 2019.<sup>9</sup> For those reasons, the auditor recommended that the capitalization and recovery of stock-based and earnings-related incentive compensation "should be monitored to ensure the amount does not significantly increase."<sup>10</sup> No additional adjustments or recommendations were provided.

### **III. COMMENTS**

The audit report mistakenly assumes that Duke's CEP application must be reviewed in connection with the Stipulation filed in Case No. 19-791-GA-ALT. By its own terms, the Stipulation was submitted for purposes of resolving Case No. 19-791-GA-ALT

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<sup>6</sup> Stipulation at ¶9.

<sup>7</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to the Capital Expenditure Program Rider Rate*, Plant-in-Service and Capital Expenditure Program Audit of Duke Energy Ohio, Inc., at 75, Case No. 21-0618-GA-RDR (Oct. 14, 2021). (hereinafter "Audit")

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 76.

<sup>10</sup> *Id.*

only. The Stipulation also provides that its terms shall not be cited as precedent in any future proceeding.<sup>11</sup> Thus, any audit or review of Duke's current application should have been performed independent of the Stipulation Duke filed in the prior case. That did not occur here.

Had the auditor and/or Staff reviewed Duke's application independently, either party likely would have arrived at the same conclusion it did in in Case No. 19-791-GA-ALT. There, the auditor determined that Duke should not permitted to include stock-based and earnings-related compensation in its CEP, because the expenses are intended to improve Duke's financial results for the benefit of its shareholders.<sup>12</sup> Staff agreed.<sup>13</sup> The situation here is no different. Duke continues to seek to capitalize expenses related to incentive pay that provide no direct benefit to ratepayers.

Moreover, longstanding Commission policy prohibits utilities from charging ratepayers for financial incentives. Although the Stipulation that the auditor mistakenly relied on to guide its evaluation represents a clear departure from that policy, the Commission has otherwise determined that "to the extent that a public utility awards financial incentives to its employees for achieving financial goals, shareholders are the primary beneficiary and, therefore, that portion of the incentive compensation should not

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<sup>11</sup> Stipulation at ¶21.

<sup>12</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Report of Plant in Service and Capital Spending Prudence Audit of Duke Energy Ohio, Inc., at 118, Case No. 19-0791-GA-ALT (May 11, 2020).

<sup>13</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Staff Report at 7, Case No. 19-0791-GA-ALT (May 22, 2020).

be recovered from ratepayers.”<sup>14</sup> Duke should not be entitled to reap the benefits of the auditor’s and Staff Report’s oversight by charging Ohio ratepayers for incentive payments that are potentially distributed to out-of-state executives<sup>15</sup> and employees. Based on the foregoing, IGS objects to the failure of both the auditor and Staff Report to recommend that Duke remove financial incentives from its CEP.

#### **IV. CONCLUSION**

IGS objects to the failure of both the audit and Staff Report to recommend that Duke remove financial incentives from its CEP. The incentive payments that Duke seeks to capitalize are unlikely to provide any measurable benefit to ratepayers and should therefore be removed from the CEP.

Respectfully submitted,

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<sup>14</sup> *In the Matter of the 2016 Review of the Distribution Investment Rider Contained in the Tariff of the Ohio Power Company; In the Matter of the 2017 Review of the Distribution Investment Rider Contained in the Tariff of the Ohio Power Company*, Consolidated Case Nos. 17-38-EL-RDR and 18-230-EL-RDR, Opinion and Order at ¶47 (Jun. 17, 2020).

<sup>15</sup> IGS notes that Duke Energy Ohio, Inc.’s parent company, Duke Energy, is headquartered in Charlotte, North Carolina.

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Comments of of Interstate Gas Supply, Inc.* was served this 8<sup>th</sup> day of November 2021 via electronic mail upon the following:

/s/ Michael Nugent

Michael Nugent

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Duke's CEP electronically filed by Regan Donoughe on behalf of Interstate Gas  
Supply, Inc.