OCC EXHIBIT NO._______

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DIRECT TESTIMONY
OF
KERRY J. ADKINS

On Behalf of
Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215

January 25, 2022

TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. PURPOSE/BACKGROUND...3

III. ANALYSIS AND RECOMMENDATIONS 4

IV. CONCLUSION..23

ATTACHMENTS:

Attachment KJA-01

I. INTRODUCTION

Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.

A1. My name is Kerry J. Adkins. My business address is 65 East State Street, 7th Floor, Columbus, Ohio 43215. I am employed by the Office of the Ohio Consumers' Counsel ("OCC") as a Senior Regulatory Analyst.

Q2. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.

A2. I earned a Bachelor of Arts degree in History with a pre-law option from Ohio Northern University in 1983. In 1988, I earned a Master of Public Administration degree with specializations in Regulatory Policy and Fiscal Administration from The Ohio State University. In addition, I have attended various utility regulatory seminars and training programs sponsored by the Public Utilities Commission of Ohio ("PUCO") and OCC.

My professional experience in the utility regulation field began when I was hired by the PUCO in August 1989 as a Researcher II in the Nuclear Division of what was then the Consumer Services Department. In that capacity, I monitored the financial and operating performance of utility-owned and operated nuclear power plants and made policy and recommendations regarding nuclear power issues in rate proceedings. In addition, I served as staff to the Utility Radiological Safety Board of Ohio ("URSB") and liaison to the URSB's Citizens Advisory Council.

Around 1995, my career transitioned towards deregulation and the development of competitive options for formerly utility-supplied services. I was a PUCO Staff representative to various committees and working groups that oversaw the development of customer choice ("Choice") pilot programs, and I analyzed and made recommendations concerning the pilot programs as they progressed. Later, as the pilot programs matured into legislatively-sponsored restructuring programs, I worked with the General Assembly's Legislative Service Commission on draft bill language concerning the consumer protection provisions in Substitute Senate Bill 3 (122nd General Assembly) that restructured the electric industry in Ohio and Substitute House Bill 9 (124th General Assembly), which restructured the natural gas industry. After the restructuring laws were enacted, I managed PUCO Staff teams that were responsible for drafting and enforcing the PUCO's rules governing certification of competitive energy suppliers and the competitive suppliers' interactions with Ohio consumers. In 2008, I transferred to what was then the PUCO's Utilities Department (now the Rates and Analysis Department) where I supervised Staff teams responsible for analyzing and making recommendations regarding utility rate filings, primarily related to the natural gas industry. I retired from the PUCO in September 2018. I began my current employment at OCC in November 2018. At OCC, I review and analyze utility filings at the PUCO and other regulatory agencies and make recommendations to protect the interests of residential utility consumers.

Q3. ***HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?***

A3. Yes. The cases in which I have submitted testimony or have testified before the PUCO can be found in Attachment KJA-01.

II. PURPOSE/BACKGROUND

Q4. ***WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

A4. The purpose of my testimony is to support the consumer protection comments that OCC filed in this case on November 8, 2021 ("Comments"), except for OCC's comments pertaining to the appropriate rate of return that the PUCO should apply to Duke's Capital Expenditure Program ("CEP") Rider ("CEP Rider"). OCC witness Dr. Daniel Duann will testify in support of OCC's comments relating to the appropriate CEP Rider rate of return. I am also supporting OCC's November 18, 2021 Response to Blue Ridge Consulting Services, Inc.'s ("Blue Ridge") November 8, 2021 Supplement to its initial Audit Report withdrawing its proposed Adjustment #7.[1]

---

[1] *In the Matter of the Annual Application of Duke Energy Ohio, Inc. for an Adjustment to the Capital Expenditure Rider Rate*. Case No. 21-618-GA-RDR -- Supplement to Report for Plant-In-Service & Capital Expenditure Program Audit Duke Energy Ohio, Inc. (Natural Gas) - ISSUE: Adjustment #7—Premature Plant-in-Service Date (November 8, 2021) ("Blue Ridge Supplemental Report").

III. ANALYSIS AND RECOMMENDATIONS

Q5. CAN YOU BRIEFLY SUMMARIZE OCC'S RECOMMENDATIONS INCLUDED IN OCC'S COMMENTS, OTHER THAN THOSE RELATING TO RATE OF RETURN?

A5. Yes. First, OCC agreed with Blue Ridge's recommended adjustments to Net Rate Base and Operating Expenses for calculating Duke's 2019 and 2020 revenue requirements described on pages 34-37 of Blue Ridge's Audit Report.[2] And OCC recommended that the PUCO should adopt all of Blue Ridge's recommended adjustments to the CEP revenue requirements.

Second, OCC recommended that Duke's 2019 and 2020 CEP spending represented an improper and unauthorized acceleration of capital replacements and expenditures and should be capped to avoid consumers paying more for the CEP than they should. OCC recommended that the PUCO should apply $1.00 per month residential rate caps (adopted in Case No. 19-791-GA-ALT) for Duke's 2021 and forward CEP investments to Duke's 2019 and 2020 CEP investments. OCC pointed out that Duke's 2019 capital expenditures were a massive 547% increase over Duke's first year of the CEP in 2013. OCC also pointed out that in 2020, the CEP expenditures grew further still – a 665% increase over the first year of the Program.

[2] Case No. 21-618, Blue Ridge Audit Report (Oct. 14, 2021).

Third, OCC recommended that Blue Ridge's Audit Report should have recommended removing all utility financial performance incentives from Duke's CEP. All financial performance incentives currently included in Duke's CEP rider should not be charged to consumers. OCC pointed out that that utility financial performance incentives benefit only utilities and their employees, such as Duke and its employees, and provide no benefit at all to consumers who pay for them. OCC noted that independent auditors, consultants, and the PUCO itself have recommended removing financial performance incentives in other PUCO proceedings.

Fourth, OCC recommended that the PUCO should identify operation and maintenance ("O&M") savings that are generated as a result of the CEP capital investments. These savings should be passed back to consumers as reductions to the CEP Rider (similar to other capital investment programs). OCC noted that capital asset replacements and improvements under Duke's CEP are very similar to the types of replacements and improvements that were made under Duke's Accelerated Mains Replacement Program ("AMRP") and similar capital investment programs for other gas utilities. The AMRP and other utility capital investment programs recognize that system improvements and replacements generate O&M savings, thus the AMRP Rider and the other utility programs include O&M savings offsets. Therefore, the CEP Rider should include one as well.

Q6. ***CAN YOU BRIEFLY SUMMARIZE OCC'S RECOMMENDATIONS IN OCC'S RESPONSE TO BLUE RIDGE'S SUPPLEMENTAL REPORT WITHDRAWING ADJUSTMENT #7?***

A6. In its initial Audit Report filed on October 14, 2021, among other adjustments, Blue Ridge recommended in Adjustment #7 that costs associated with a certain project should be removed from Duke's proposed CEP revenue requirement calculation. Based on information provided by Duke, the project was not placed into service until April of 2021. The April 2021 date was outside of the 2019 and 2020 years eligible for collection under the CEP Rider in this case. But subsequent to Blue Ridge's initial Audit Report, Duke provided evidence to Blue Ridge, PUCO Staff, OCC, and other intervenors that the initial in-service date for the project in question was incorrect. The project was actually placed into service in October 2020. After verifying that the project had indeed been placed in service in 2020, on November 8, 2020, Blue Ridge filed a Supplement to its initial Audit Report withdrawing Adjustment #7 and recommending certain adjustments to Duke's 2020 CEP revenue requirement as a result of the withdrawal. Included in the recommended adjustments was that Duke's 2020 CEP Rider should be capped at the $9.31 per month rate cap that was adopted in the approved Settlement in Case No. 19-791-GA-ALT.

In OCC's Response to Blue Ridge's Supplemental Report, OCC agreed with Blue Ridge's withdrawal of Adjustment #7. But OCC disagreed that Duke's CEP Rider rate for 2020 could be set at the $9.31 per month rate cap established in the Case

No. 10-791-GA-ALT Settlement. OCC pointed out that Blue Ridge's recommended adjustments to the 2019 CEP revenue requirement reduced the 2019 CEP Rider increase to $6.23 per month. Therefore, the maximum monthly rate that the 2020 CEP Rider could be is $8.93 per month. This is because the PUCO approved Settlement in the 19-791 case provided for a $2.70 cap on the CEP Rider increase for 2020 ($6.23 + $2.70 = $8.93).

Q7. DOES OCC STILL SUPPORT BLUE RIDGE'S RECOMMENDED ADJUSTMENTS TO NET RATE BASE AND OPERATING EXPENSES FOR CALCULATING DUKE'S 2019 AND 2020 REVENUE REQUIREMENTS AND WITHDRAWAL OF ADJUSTMENT #7?

A7. Yes. OCC still supports Blue Ridge's recommended adjustments to Net Rate Base and Operating Expenses for calculating Duke's 2019 and 2020 revenue requirements. And OCC agrees with Blue Ridge's withdrawal of Adjustment #7, except that Duke's 2020 CEP Rider should be capped at no more than $8.93 per month as described above and in OCC's November 8, 2021 Response to Blue Ridge's Supplemental Audit Report.

Q8. IS DUKE'S 2019 AND 2020 CEP SPENDING AN IMPROPER AND UNAUTHORIZED ACCELERATION OF CAPITAL REPLACEMENTS AND EXPENDITURES?

A8. Yes. R.C. 4905.22 requires every public utility in Ohio to "furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable."[3] So each and every year Duke is required to furnish necessary and adequate service and facilities whether it has a CEP or not. This was the case in 2013 – the first year of Duke's CEP when Duke spent $21,877,330 on its CEP. And it was the case in 2014 when Duke spent $26,308,530 on its CEP. And it will continue to be the case for 2021 and thereafter.

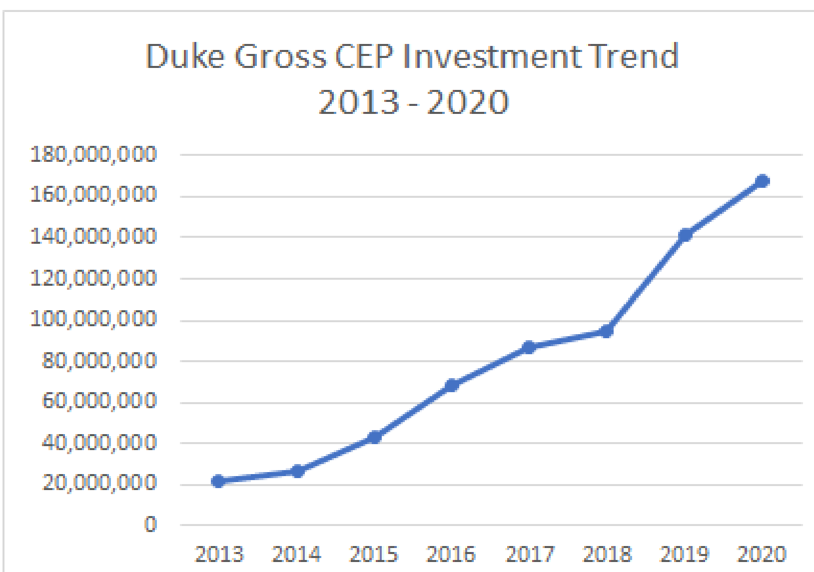
Duke agreed in the approved Settlement in Case No. 19-791-GA-ALT to $1.00 caps on annual CEP Rider increases for residential consumers. These $1.00 annual caps on CEP Rider increases are substantially less than Duke's proposed CEP Rider increases for 2019 and 2020 CEP investments. Duke proposes a $2.92 per month CEP Rider increase for 2019 CEP investments and a $2.70 per month increase (capped at $2.70 by the Case 19-791-GA-ALT Settlement) for 2020 CEP investments. The $1.00 per month cap on CEP Rider increases for 2021 and thereafter represents a 66% *decrease* compared to Duke's proposed 2019 CEP Rider increase and a 63% *decrease* compared to Duke's proposed 2020 CEP Rider increase. This means that Duke believes that it can still meet its statutory obligations to furnish necessary and adequate facilities under its CEP by *reducing* its CEP investment levels for 2021 and thereafter by more than 60%. Such an

[3] Revised Code 4905.22.

enormous difference reveals that Duke 2019 and 2020 CEP spending was neither just nor reasonable.

As OCC pointed out last year in Case No. 19-791-GA-ALT, Duke's CEP gross capital investments increased from $21,877,330 in 2013 (the first year of the Program) to $95,136,703 in 2018 (the final year covered under the 19-791-GA-ALT case) – an enormous 335% increase. In 2019, Duke's CEP expenditures grew even more to $141,494,735, a massive 547% increase over the first year of the CEP. And in 2020, the CEP expenditures grew further still. 2020's total CEP expenditures were $167,271,891 – a truly astounding 665% increase over the first year of the Program. Chart KA-1 below shows the increases in Duke's CEP spending from 2013 through 2020.

Chart KA-1



As Chart KA-1 demonstrates, Duke's CEP spending has increased dramatically. The steep upward curve in spending started to rise noticeably in 2015 when CEP spending increased to $42,817,578 from $26,308,530 – a 63% annual increase. In what appears to be no coincidence, Duke's substantial increase in CEP spending in 2015 and subsequent years corresponds precisely with Duke's completion of its AMRP in 2015. The AMRP was Duke's program that began in 2001 for accelerated replacement of aging bare steel, cast-iron, and other metallic main and service lines in its system. Just as Duke completed its AMRP, its CEP capital spending increased dramatically. This was despite the fact that Duke had the same obligation to provide necessary and adequate facilities in areas covered by the CEP in 2013 as it did in 2015 through 2020 when CEP spending increased so dramatically.

Last year in Case No. 19-791-GA-ALT regarding Duke's 2013-2018 CEP spending, OCC expressed a concern that the existence of the CEP has distorted Duke's decision-making. The lack of regulatory lag associated with traditional rate cases has led Duke to *massively* increase its CEP capital expenditures. OCC argued that Duke's massive CEP spending increases represent an improper and unauthorized acceleration of capital replacements and other investments.

Regarding this point, a comparison between Duke AMRP and CEP programs is instructive. Under Duke's AMRP that was authorized in Case No. 01-1228-GA-AIR, Duke was authorized to accelerate its capital spending to replace bare steel and cast-iron mains and service lines. Duke accelerated its capital investments and replacement of the metallic pipelines between 2001 and 2015. This was done to address the specific safety concerns surrounding the corrosion and leak-prone metallic pipelines. In contrast, Duke's capital investments under the CEP do not have such specific safety concerns. Nonetheless, Duke's capital spending under the CEP has continued to increase dramatically. This unapproved and unwarranted acceleration in CEP capital spending leads consumers to pay too much through large annual increases to the CEP Rider and receive too little in improved service or safety.

Q9. WHAT DO YOU RECOMMEND THAT THE PUCO DO TO ADDRESS DUKE'S MASSIVE CEP CAPITAL SPENDING INCREASES IN 2019 AND 2020?

A9. The PUCO should impose the rate caps that were adopted in the approved Settlement in the 19-791-GA-ALT case to those years. CEP investments and associated deferrals in excess of what will cause CEP Rider rates to increase by more than $1.00 per month for residential consumers should not be recoverable through the CEP Rider. The PUCO should apply the $1.00 per month residential rate caps for each year 2019 and 2020 in this case. Any 2019 and 2020 CEP investments and deferrals that exceed the rate caps should be eligible for collection in a future base rate case.

As discussed earlier, rates charged to consumers must be just and reasonable. Duke's CEP was developed as an alternative rate plan under Revised Code 4929.05. Revised Code 4929.05(A)(3) provides that alternative rate plans can only be approved after a natural gas utility has made a showing (and the PUCO finds) that the alternative rate plan is just and reasonable. Similarly, Revised Code 4929.111(C), governing implementation of capital expenditure programs, provides that the PUCO shall approve a capital expenditure program *only* if it finds the program to be just and reasonable. The PUCO stated specifically in its Finding and Order in Case No. 13-2417-GA-UNC (the case initially approving Duke's CEP) that it had "not granted cost recovery for any CEP-related items, and the prudence and reasonableness of the magnitude of Duke's CEP-related regulatory assets and associated capital spending will be considered by the Commission in any future proceedings seeking cost recovery…."[4] The PUCO should find that Duke's massive CEP capital spending increases in 2019 and 2020 were not just and reasonable. It should impose the $1.00 rate caps that were adopted for 2021 and thereafter to Duke's 2019 and 2020 CEP investments being considered in this case.

[4] *In re the Application of Duke Energy Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case No. 13-2417-GA-UNC, Finding and Order at 13 (Oct. 1, 2014).

Q10. OCC RECOMMENDED THAT BLUE RIDGE'S AUDIT REPORT SHOULD HAVE RECOMMENDED REMOVAL OF ALL UTILITY FINANCIAL PERFORMANCE INCENTIVES FROM DUKE'S CEP AND THAT ALL FINANCIAL PERFORMANCE INCENTIVES CURRENTLY INCLUDED IN DUKE'S CEP RIDER SHOULD NOT BE CHARGED TO CONSUMERS. IN THIS CASE, WHAT ARE FINANCIAL PERFORMANCE INCENTIVES?

A10. In a May 15, 2015 Finding and Order in Case Nos. 16-664-EL-RDR and 17-781-EL-RDR, the PUCO defined financial performance incentives as including "performance awards, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and/or other financially motivated incentives tied to the Company's bottom line" (2016 Recovery Case, Staff Review and Recommendation Sept. 11, 2018)."[5] Regarding charging consumers for financial performance incentives, the PUCO concluded: "While not all of the performance goals may be explicitly tied to financial objectives, they are correlated with Duke's bottom line and meeting shareholder interests (See e.g. 2016 Recovery Case, Duke Comments, att. A at 40, Oct. 11, 2018). Thus, the Commission finds Staff appropriately excluded these expenses."[6]

Based on this PUCO Finding and Order, financial performance incentives are essentially any financial inducement to utility employees for achieving stock

[5] *See* PUCO May 15, 2019 Finding and Order in Case Nos. 16-664-EL-RDR and 17-781-EL-RDR at pages 5-6 describing financial performance incentives.

[6] *Id.*

price, earnings, or other financial goals that benefit only utility shareholders and provide no benefit to consumers who are asked to pay for them. Such financial performance incentives include (but are not limited to) cash, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and any other performance incentives awarded to utility employees for attainment of financial performance goals or targets.

Q11. HAS THE PUCO SET FORTH ANY POLICIES OR EXPRESSED AN OPINION ON UTILITY COLLECTION OF FINANCIAL PERFORMANCE INCENTIVES FROM CONSUMERS?

A11. Yes. The PUCO has spoken a number of times regarding utility collection from consumers of financial performance incentive costs. In its June 17, 2020 Opinion and Order in Case No. 19-791-GA-ALT, the PUCO explained 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 be recovered from ratepayers."[7] Similarly, in Case No. 07-551-EL-AIR, the PUCO found that 20% of FirstEnergy's short-term incentive compensation expense should be removed from rates because incentive pay based upon achieving financial goals should be

---

[7] *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*, Case No. 19-791-GA-ALT; *see also 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 (June 17, 2020) (citing expense rider and rate cases).

the responsibility of shareholders.[8] The PUCO also disagreed with FirstEnergy that incentive pay based upon achieving financial goals aligns the interests of shareholders and consumers because only shareholders benefit.[9] In Case No. 09-391-WS-AIR involving Ohio American Water, the PUCO found that 40 percent of Ohio American's incentive compensation plan was related to financial goals and therefore could not be charged to consumers.[10] But notably, the PUCO also found that the remaining 60 percent of the incentive compensation plan was not tied to Ohio American's financial goals and was therefore recoverable as proper operating expenses.[11] Thus the PUCO drew a direct distinction between recoverable employee incentives (those that benefit consumers and shareholders) and nonrecoverable incentives for achieving financial performance goals (those that benefit only shareholders).

In Case No. 15-534-EL-RDR involving a Duke rider, the PUCO found that its Staff's recommendations regarding Duke financial performance incentives should be adopted.[12] Specifically, the PUCO determined that $409,096 in operations and maintenance costs identified by Staff as tied to achievement of financial

---

[8] *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 07-551-EL-AIR, et al., Opinion and Order at 17(Jan. 21, 2009), Entry on Rehearing at 4-5 (Feb. 2, 2011).

[9] *Id.*

[10] *In re Ohio American Water Co.*, Case No. 09-391-WS-AIR, Opinion and Order (May 5, 2010) at 20-22, Entry on Rehearing at 11-12 (June 23, 2010).

[11] *Id.*

[12] *In re Duke Energy Ohio, Inc.*, Case No. 15-534- EL-RDR, Opinion and Order at 20, 44-45 (Oct. 26, 2016).

performance targets were inappropriately expensed and should be deducted from Duke's rider in that case.[13] Similarly, in Case Nos. 16-664-EL-RDR and 17-781-EL-RDR described above, the PUCO found that financial incentives include "performance awards, restricted stock units, executive incentives, earnings per share, shareholder returns, stock purchases, and/or other financially motivated incentives tied to the Company's bottom line."[14] And although not all of the performance goals may be explicitly tied to financial objectives, they were correlated with Duke's bottom line and meeting shareholder interests.[15] Because of this, the PUCO found that these expenses should be excluded from charges on consumers.[16] And, in Case No. 18-397-EL-RDR, the PUCO adopted Staff's recommendation to exclude incentive pay tied to financial goals in another Duke rider case.[17]

Q12. DOES DUKE'S CEP RIDER APPLICATION IN THIS CASE INCLUDE FINANCIAL PERFORMANCE INCENTIVES THAT WILL INCREASE THE CEP RIDER CHARGES THAT CONSUMERS WILL PAY?

A12. Yes. In Case No. 19-791-GA-ALT, the PUCO's retained independent auditor Larkin & Associates recommended that the cumulative amounts of earnings-and

---

[13] *Id.*

[14] *In re Duke Energy Ohio, Inc.*, Case No. 16-664-EL-RDR/17-781, Finding and Order at ¶ 16 (May 15, 2019).

[15] *Id.*

[16] *Id.*

[17] *In re Duke Energy Ohio, Inc.*, Case No. 18-397-EL-RDR, Finding and Order at ¶ 17 (July 31, 2019).

stock-based compensation totaling $775,173 (after factoring in the related depreciation, accumulated depreciation, and ADIT) for the period 2013 through 2018 be removed from the CEP Rider. OCC concurred and recommended that the financial performance incentives be removed from the CEP Rider. But the PUCO disagreed and determined that "inclusion of these incentives in Duke's CEP Rider is not unreasonable." [18] There is nothing in the record in this case to indicate that Duke changed its practices and voluntarily removed financial performance incentives from the CEP Rider calculations for 2019 or 2020.

Q13. HOW DO FINANCIAL PERFORMANCE INCENTIVES IN DUKE'S CEP RIDER HARM CONSUMERS?

A13. Including financial performance incentives in Duke's CEP Rider harms consumers because it causes them to pay more under the CEP Rider than they would otherwise pay. And the increase in what consumers would pay is just to fund payments to Duke's employees for achieving financial performance targets that benefit only Duke's shareholders.

PUCO retained independent auditors in other cases have described the consumer harm from including financial performance incentives in charges on consumers very well. For example, in its audit report in Case No. 19-791-GA-ALT

[18] PUCO O&O in 19-791 (Apr. 21, 2021) at 40.

recommending removing financial performance incentives from Duke's CEP, Larkin & Associates stated:

> the basis for our recommendation is that incentive compensation expense that is tied to a utility's financial performance should not be borne by ratepayers. Specifically, the portion of incentive compensation expense that is directly attributable to meeting financial performance goals, such as net income or earnings per share, is not properly recoverable from ratepayers for several reasons. First, if the financial goals are set properly, achieving the necessary performance should be self-supporting. That is, measures that achieve additional cost savings, improves sales, or otherwise improves financial results of the Company should provide the income necessary to fund the awards. Second, the payouts for financial goal achievement can be distinguished from incentive compensation that is measured for improving the quality of service, efficiency, or safety goals. Finally, the incentive to improve financial performance is not necessarily consistent with ratepayers' interests.[19]

In the same report, Larkin & Associates further concluded that:

> The cost of these stock-based compensation programs is incurred to improve the Duke Energy financial performance for the benefit of

[19] *See* Case No. 19-791-GA-ALT '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' by Larkin & Associates ("Case No. 19-791 Larkin Audit Report" (May 11, 2020) at 9-9.

> shareholders, not to improve customer service or meet other regulated utility service requirements. In fact, the objectives of maximizing shareholder value on the one hand and minimizing costs to ratepayers on the other hand, are generally opposed to each other. In addition, the hypothetical stock performance pursuant to the performance shares should not be considered expense for ratemaking purposes because dividends are considered in the determination of the required return on common equity and stock performance is a component of shareholder return."[20]

Similarly, another independent auditor retained by the PUCO in Case No. 21-619-GA-RDR (a CEP investment rider case involving Dominion Energy Ohio that is nearly identical to this case), Blue Ridge determined that financial performance incentives included in Dominion's proposed CEP Rider "rewards behavior that promotes the interest of shareholders"[21] and that "excessive focus on increasing profitability and share price growth can harm customers."[22] Therefore, Blue Ridge recommended an adjustment to remove certain financial performance incentive from Dominion's CEP plant-in-service balance. Blue Ridge maintained that "these charges are neither a direct nor indirect charge associated with the

[20] *Id.*

[21] Case No. 21-619-GA-RDR, Blue Ridge Audit Report at 30.

[22] *Id.*

performance of work"[23] and that "they represent a benefit to only a select group of employees."[24]

These auditor recommendations confirm that financial performance incentives included in utility riders benefit only utility shareholders and employees – not the consumers that pay for them. Consumers are harmed because they end up paying higher CEP Rider rates than they should but receive nothing of value in return.

Q14. WHAT DO YOU RECOMMEND REGARDING FINANCIAL PERFORMANCE INCENTIVES INCLUDED IN DUKE'S CEP RIDER IN THIS CASE?

A14. I recommend that the PUCO direct Duke to work with PUCO Staff to identify and remove from the revenue requirement for both 2019 and 2020 all financial performance incentives. And I recommend that, consistent with its practice in the numerous cases described above and independent auditor recommendations, the PUCO should order that Duke may not include financial performance incentives of any kind in future CEP Rider cases.

[23] *Id.*

[24] *Id.*

Q15. CAN YOU EXPLAIN WHY OCC RECOMMENDED THAT THE PUCO SHOULD IDENTIFY OPERATION AND MAINTENANCE ("O&M") SAVINGS THAT ARE GENERATED AS A RESULT OF THE CEP CAPITAL INVESTMENTS AND PASS THESE SAVINGS BACK TO CONSUMERS AS REDUCTIONS TO THE CEP RIDER AS IS DONE IN SIMILAR CAPITAL INVESTMENT PROGRAMS?

A15. Yes. Duke's CEP provides for replacing and improving older infrastructure and making capital investments to comply with pipeline safety requirements and improve operations. But these investments also should result in operation and maintenance ("O&M") expense savings that should be passed on to consumers through an offset to the CEP Rider charges. This would be similar to the way that operation and maintenance savings resulting from capital replacements reduce other utilities' infrastructure replacement riders.

Duke's CEP includes replacement and improvement of the same categories and types of pipelines and infrastructure that is replaced in many infrastructure replacement programs. Those programs include O&M savings offsets. Duke's CEP should include these savings as well. Replacing and improving similar pipelines and related infrastructure under the CEP allows Duke to avoid monitoring, maintenance, and repair of aging infrastructure that should generate O&M savings. Similarly, the Compliance/Operations category involves capital investment to improve pipeline integrity among other things. This CEP investment too should generate additional O&M savings.

Blue Ridge's Audit Report specifically identifies more than $107 million in system replacements and improvements and almost $43 million for service line replacements in 2019 and 2020.[25] These replacements and improvements are very similar to the types of replacements and improvements that were made under Duke's AMRP. The AMRP recognized that system improvements and replacements would generate O&M savings. The AMRP Rider included an O&M savings offset. The CEP Rider should too.

The O&M savings generated as a result of the CEP capital investments should be recognized as reductions to the amount that customers pay to Duke for its CEP Rider. Reducing the CEP Rider by the O&M savings will recognize that the capital investments that Duke made in 2019 and 2020 and going forward will be paid for by consumers through the CEP Rider. And the operational improvements that these investments are said to produce will enable Duke to save O&M costs. But these are costs that are still built into the original base rates that consumers are paying, base rates that do *not* reflect O&M cost savings. Thus, Duke's proposal, which does not reflect the O&M savings in the CEP Rider, will allow Duke to reap an undeserved windfall at consumers' expense. The PUCO has adopted an approach of recognizing O&M savings by offsetting charges to

[25] Blue Ridge Audit Report, Table 19: List of Major Additions or Replacements Placed In-Service in 2019 and 2020 (total of projects involving infrastructure replacement and total of projects involving service line replacements).

consumers in other infrastructure replacement programs. It should do so as well for the consumers who will pay the CEP Rider.

Q16. REGARDING O&M SAVINGS FOR DUKE'S CEP, WHAT SPECIFICALLY DO YOU RECOMMEND THAT THE PUCO SHOULD DO?

A16. To protect consumers, the PUCO should adopt an approach similar to what it did for other infrastructure replacement programs. The PUCO should direct Duke to form a collaborative group comprised of Duke, PUCO Staff, OCC, and other interested stakeholders to identify the specific expenses and related expense accounts that will be reduced as aging infrastructure is replaced and new capital investments are made. And, again patterned after the approach taken in similar infrastructure programs, Duke and the collaborative group should develop baseline spending levels for the identified expense categories based on spending levels built into the base rates set in Duke's last rate case. Expense reductions compared to the baselines resulting from the CEP capital replacements and investments would then reduce the revenue requirement in annual CEP Rider applications.

IV. CONCLUSION

Q17. DOES THIS CONCLUDE YOUR TESTIMONY?

A17. Yes. However, I reserve the right to incorporate new information that may subsequently become available through outstanding discovery or otherwise, or to supplement my testimony in response to testimony filed by the PUCO Staff or other parties to this case.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Direct Testimony of Kerry J. Adkins on Behalf of Office of the Ohio Consumers' Counsel* was served via electronic transmission to the persons listed below on this 25th day of January 2022.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

Robert.eubanks@ohioAGO.gov
michael.nugent@igs.com
bethany.allen@igs.com
evan.betterton@igs.com
joe.oliker@igs.com

Jeanne.kingery@duke-energy.com
Larisa.vaysman@duke-energy.com
Rocco.Dascenzo@duke-energy.com

Attorney Examiner:

Matthew.sandor@puco.ohio.gov

Testimony of Kerry J. Adkins
Filed at the Public Utilities Commission of Ohio

1. *In the Matter of the Complaint and Appeal of the Cleveland Electric Illuminating Company from Ordinance 21-1994 of the Council of the City of Garfield Heights, Ohio Passed March 10, 1994, entitled "An Emergency Ordinance to Establish and Fix a Schedule of Rates, Terms and Conditions for Electric Service Being Provided by the Cleveland Electric Illuminating Company to its Electric Customers in the City of Garfield Heights, Ohio,* Case No. 94-578-EL-CMR (March 20, 1995).

2. *In the Matter of the Application of The Toledo Edison Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service,* Case No. 95-299-EL-AIR (January 22, 1996).

3. *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service,* Case No. 95-300-EL-AIR (January 22, 1996)

4. *In the Matter of the Conjunctive Electric Guidelines Proposed by Participants of the Commission Roundtable on Competition in the Electric Industry,* Case No. 96-406-EL-COI (February 10, 1998).

5. *In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify Its Existing Alternative Generation Supplier (AGS) Tariff Sheet No. G8.,* Case No. 03-2341-EL-ATA (September22, 2004)

6. *In the Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom.,* Case No. 06-1443-TP-UNC (February 7, 2007).

7. *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio to Adjust Its Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge and Related Matters,* Case No. 09-458-GA-UNC (October 14, 2009)

8. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges,* Case No. 11-2776-GA-RDR (August 10, 2011).

9. *In the Matter of Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters.,* Case No. 11-5843-GA-RDR (April 27,2012)

10. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges,* Case No. 12-1423-GA-RDR (August 28, 2012).

11. *In the Matter of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates,* Case No. 12-1682-EL-AIR (March 20, 2013).

12. *In the Matter of Duke Energy Ohio, Inc., for an Increase in Gas Rates.,* Case No. 12-1685-GA-AIR (April 22, 2013).

13. *In the Matter of the Application of Duke Energy Ohio Inc., for Approval of an Alternate Rate Plan Pursuant to Section 4929.05, Revised Code, for an Accelerated Service Line Replacement Program,* Case No. 14-1622-GA-ALT (November 6, 2015).

14. *In the Matter of the Application of Northeast Natural Gas Corp. for an Increase in Gas Distribution Rates,* Case No. 18-1720-GA-AIR (July 25, 201Q).

15. *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 (July 31, 2019).

16. *In the Matter of the Commission's Investigation into PALMco Power OH, LLC d/b/a Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance,* Case No. 19-957-GE-COI (September 4, 2019).

17. *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio re: Implementation of the Tax Cuts and Jobs Act of 2017,* Case No. 18-1908-GA-UNC (September 10, 2019).

18. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates,* Case No. 14-375-GA-RDR (Confidential) (October 8, 2019).

19. *In the Matter of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of an Alternative Form of Regulation*, Case No. 19-468-GA-ALT (September 11, 2020).

20. *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*, Case No. 19-791-GA-ALT (January 13, 2021).

21. *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Authority to Adjust Its Capital Expenditure Program Rider Charges*, Case No. 21-619-GA-RDR (September 14, 2021).