

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**BRIEF IN SUPPORT OF DUKE ENERGY OHIO, INC.'S
APPLICATION FOR ADJUSTMENT TO THE CAPITAL
EXPENDITURE PROGRAM RIDER RATE**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	2
III.	ISSUES FOR COMMISSION CONSIDERATION.....	6
IV.	LAW AND ARGUMENT	9
A.	Adjustment 3 of the Audit Report is unsupported, inappropriate, and a significant departure resulting in millions of dollars of unrecoverable costs per year for the Company.....	9
a.	<i>Blue Ridge’s finding that the Stipulation in the Rider CEP Case included agreement as to a particular depreciation offset computation is misguided and unsupported by the rest of the Stipulation.</i>	10
b.	<i>The calculation of the depreciation offset for Columbia Gas is inapposite as it was the product of an explicit, stipulated term, unlike the present matter.</i>	13
c.	<i>The Company would not have agreed to the static depreciation offset formula now advanced by Blue Ridge had one been proposed in the Stipulation negotiations.</i>	15
B.	The Cost of Removal adjustment in Adjustment 6 is unreasonable, punitive, and confiscatory.....	19
C.	The Commission should set aside Adjustment 8 and allow recovery of the full purchase price by the Company.....	20
D.	The Commission should disregard Adjustment 9 in the Audit Report because the Company complied with its Capitalization Guidelines in continuing to accrue AFUDC.....	21
E.	The Commission’s consideration of Adjustment 11 should be tied to its treatment of Adjustments 1 through 10, particularly Adjustment 3.....	22
F.	The Company concurs with the Recommendations set forth by Blue Ridge, except for Recommendation 5, and with clarification regarding Recommendation 6.	23
a.	<i>Audit Report Recommendation 5 should be disregarded or replaced with the Company’s suggestion.</i>	23
b.	<i>Audit Report Recommendation 6 is acceptable, if the intent is that the audit process will be used to monitor incentives for recovery in CEP.</i>	24
V.	CONCLUSION.....	24

I. INTRODUCTION

In this proceeding, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) requests Commission approval of adjustments to the rates and charges for its Capital Expenditure Program (CEP) Rider based upon CEP investments and deferrals for the years 2019 and 2020. The Company engaged in meaningful discussion with parties, but was unable to reach a resolution regarding the Blue Ridge Consulting Services, Inc. (Blue Ridge) Audit Report (Audit Report), even though the Company is willing to accept and adhere to more than half of the adjustments and recommendations proposed by Blue Ridge. Those adjustments and recommendations to which the Company cannot agree, however, are those that represent a departure from industry standards and are unsupported by the auditor's report, Staff testimony in this case (or lack thereof), and the factual record of the Company's prior CEP proceedings. Most significantly, Blue Ridge promotes its version of a calculation of the depreciation offset proposed by Duke Energy Ohio in the underlying application which, if adopted by the Commission, would represent a significant departure from the history of Case No. 19-791-GA-ALT (Rider CEP Case), and the agreements established by Stipulation therein. Adoption of that calculation methodology would result in millions of dollars in unrecoverable costs to the Company, based upon little to no evidence in support of Blue Ridge's reasoning for such losses.

For reasons explained more fully below, the Commission should adopt Duke Energy Ohio's recommendations as it relates to contested issues in the Audit Report and reject Blue Ridge's Adjustments 3, 6, 8, 9, and 11 and Recommendation 5.

II. FACTUAL AND PROCEDURAL BACKGROUND

Ohio Revised Code (R.C.) 4929.111 authorizes a natural gas company to file an application with the Commission to implement a CEP. By Application dated December 20, 2013, in Case No. 13-2417-GA-UNC, *et al.*, Duke Energy Ohio sought authorization to implement a CEP in accordance with R.C. 4909.18 and 4929.111 and for accounting approval to defer certain costs.¹ By Finding and Order dated October 1, 2014 (Deferral Order), the Commission approved Duke Energy Ohio's request for accounting authority to capitalize post in-service carrying costs (PISCC) on program investments for assets placed in service but not yet reflected in rates; defer depreciation expense and property tax expense directly attributable to the CEP; and establish a regulatory asset to which PISCC, depreciation expense, and property tax expense are deferred for future recovery in a subsequent proceeding.² In the same Deferral Order, Duke Energy Ohio was authorized to accrue deferrals under the CEP until the accrued deferrals, if included in the Company's residential service rates, would cause residential customers' rates to increase by more than \$1.50 per month.³ Additionally, the Commission noted that the prudence and reasonableness of Duke's CEP-related regulatory assets and associated capital spending would be considered in any future proceedings seeking cost recovery, at which time the Company would be asked to provide information regarding the expenditures for the Commission's review.⁴

On May 3, 2019, Duke Energy Ohio filed an Application to establish an alternative rate plan and new CEP program rider adjustment mechanism (Rider CEP) (Rider Application).⁵ The

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

² *Id.*, Finding and Order (Oct. 1, 2014), p. 8.

³ *Id.* at pp. 9-12.

⁴ *Id.*

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation*, Case No. 19-0791-GA-ALT, Application (May 3, 2019).

Rider Application and supporting testimony explained that, although the Company had not yet reached the previously established \$1.50 deferral cap, it was seeking recovery for incremental capital investments from January 1, 2013, through December 31, 2018.⁶ The proposed Rider CEP would allow the Company to collect the amounts accrued under the CEP Deferral and a return on and of the underlying CEP capital assets. It would also permit the Company to continue its CEP Deferrals and recovery process for new assets placed into service.⁷ On April 21, 2021, the Commission authorized the Company to implement a new alternative rate plan and create the Rider CEP to recover historic and ongoing CEP costs and CEP deferrals (CEP Investment) from January 1, 2013, through December 31, 2018.⁸ In so doing, the Commission modified and approved a stipulation and recommendation (the Stipulation) that resolved all of the issues related to Duke's application for an alternative rate plan to establish Rider CEP for recovery of its CEP Investment.⁹ The Stipulation also provided that the Company would file annual applications to update the Rider CEP rates each year and that the first application, which the Commission is now considering, would cover the CEP assets placed in service and the related CEP regulatory assets from January 1, 2019 through December 31, 2020.¹⁰ Further, the Stipulation required that Staff or its designee conduct a review of Duke's annual application to update the Rider CEP rates.¹¹

⁶ *Id.* at pp. 1, 2

⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation*, Case No. 19-0791-GA-ALT, Application (May 3, 2019) at p. 2.

⁸ Opinion & Order Modifying and Approving the Stipulation and Recommendation (April 21, 2021).

⁹ The Commission subsequently clarified that decision in its June 16, 2021 Entry on Rehearing in Case No. 19-791-GA-ALT, in response to an application for rehearing filed by the Company. In its Entry, and over objection from the OCC, the Commission found that "any projected shortfall attributable to the delay in the recovery of the authorized revenue requirement for 2020 deferrals and investments may be collected through the CEP Rider's reconciliation and true-up mechanism; that any such shortfall is not subject to the rate caps set forth in the Stipulation; and that any such shortfall should be reflected in the Company's application to be filed no later than March 31, 2022." Prior to the issuance of the Commission's Entry on Rehearing, and to avoid any additional delay, the Company filed the underlying application to adjust Rider CEP rates for recovery of 2019 and 2020 CEP deferrals.

¹⁰ Opinion & Order Modifying and Approving the Stipulation and Recommendation (April 21, 2021).

¹¹ *Id.*

In accordance with the Commission's Opinion and Order,¹² on April 23, 2021, Duke Energy Ohio filed the underlying Application to adjust Rider CEP for recovery of CEP deferrals based upon a test year beginning January 1, 2019 and ending December 31, 2019. Regarding Rider CEP rates going into effect in May 2022, Duke Energy Ohio's application is based upon a test year beginning January 1, 2020, and ended December 31, 2020, with a date certain of December 31, 2020.¹³ On May 5, 2021, the Commission issued an Entry directing Staff to issue a request for proposal (RFP) for the audit services necessary to assist the Commission with the audit of Duke's CEP for the period of January 1, 2019 to December 31, 2020. On May 26, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene.¹⁴ Likewise, on July 9, 2021, Interstate Gas Supply, Inc. (IGS) filed a motion to intervene in the underlying matter.¹⁵ By Entry issued September 13, 2021, the Commission granted the motions for intervention filed by OCC and IGS (collectively, the Intervening Parties).¹⁶

On June 2, 2021, the Commission issued an Entry selecting Blue Ridge to conduct the audit services associated with the Commission's review.¹⁷ And on October 14, 2021, Blue Ridge filed its audit report analyzing Duke's Rider CEP, with a supplement to the audit report filed by Blue Ridge on November 8, 2021 (Audit Report Supplement). In its reports, Blue Ridge identified eleven adjustments and seven recommendations specific to the CEP. The Staff of the Public Utilities Commission of Ohio (Staff) filed its review and recommendation (Staff Report) on October 22, 2021, which noted full acceptance of the Blue Ridge Audit Report, followed by a

¹² Included with the Company's Application were the Direct Testimony and Exhibits of Jay Brown. The Company has since filed the Supplemental Direct Testimony and Exhibits of Jay Brown (January 18, 2022).

¹³ *In the Matter of the Application of Duke Energy Ohio, Inc.* (April 23, 2021) at p. 2.

¹⁴ Motion to Intervene by Office of the Ohio Consumers' Counsel and Memorandum in Support (May 26, 2021).

¹⁵ Motion to Intervene and Memorandum in Support of Interstate Gas Supply, Inc. (July 9, 2021).

¹⁶ Entry Granting Intervention (September 13, 2021).

¹⁷ Entry Selecting Blue Ridge Consulting Services, Inc. as Auditor (June 2, 2021).

subsequent Supplement to Staff's Review and Recommendation filed on November 8, 2021 (Staff Report Supplement), which again adopted the changes set forth in the Audit Report Supplement in total, without additional commentary.¹⁸ In the Staff Report, Staff additionally reviewed Duke's financial filings and found that Duke Energy Ohio had not significantly over or under-earned for the evaluation period, and therefore recommended adoption of the Company's application for the Rider CEP with the modifications identified by Blue Ridge in the Audit Report.¹⁹

Pursuant to the Procedural Schedule set forth by the Commission in a December 16, 2021 Entry, the Company submitted the supplemental testimony of Jay P. Brown, setting forth its responses to the Audit Report, Supplement to the Audit Report, Staff Report, and the Comments of OCC and IGS.²⁰ OCC submitted the direct testimonies of Kerry J. Adkins and Daniel J. Duann, Ph.D on January 25, 2022.²¹ IGS abstained from submitting direct testimony pursuant to the procedural schedule. Staff also chose not to file testimony in support of its recommendation.

After the submission of direct testimony and recommendations, the parties agreed to waive cross-examination of the witnesses, stipulated to the admission of the parties' exhibits, and indicated that a hearing was no longer necessary.²² In lieu of hearing, the underlying briefing followed, pursuant to a schedule set forth by the Commission on February 7, 2022.²³

Of the eleven adjustments set forth by Blue Ridge in the Audit Report, the Company concurs with five: Adjustments 1, 2, 4, 5, and 10.²⁴ Regarding the seven recommendations made

¹⁸ Staff Review and Recommendation in the Matter of Duke Energy Ohio, Inc., for Approval of its Annual Capital Expenditure Program Rider Rat Adjustment (*October 22, 2021*).

¹⁹ *Id.* at p. 4-5.

²⁰ Supplemental Testimony of Witness Jay P. Brown on Behalf of Duke Energy Ohio, Inc. (Brown Supp. Test.) (January 18, 2022).

²¹ Direct Testimony of Kerry J. Adkins and Direct Testimony of Daniel J. Duann, filed on January 25, 2022.

²² Entry (February 7, 2022).

²³ *Id.*

²⁴ Per its Audit Report Supplement, Blue Ridge withdrew Adjustment 7 following the submittal of additional information by the Company, which Blue Ridge reviewed and incorporated into its Audit Report Supplement.

by Blue Ridge in its Audit Report and Audit Report Supplement, the Company concurs with five: Recommendations 1 through 4 and Recommendation 7. The Company also conditionally concurs with Recommendation 6.²⁵

Though Duke Energy Ohio and Staff concur regarding more than half of the adjustments and recommendations identified by Blue Ridge in its Audit, a stipulation was not reached in this case. There remain fundamental issues with Blue Ridge's Audit assessment to be considered by the Commission, particularly Blue Ridge's determination that the parties came to an agreement on how the depreciation offset should or would be calculated in future filings as part of the Stipulation entered in Duke's CEP Case No. 19-0791-GA-ALT (the CEP Case), as set forth in Adjustment 3. The remaining issues for consideration are identified, and addressed, below.

III. ISSUES FOR COMMISSION CONSIDERATION

The Company and Staff are in concurrence regarding the five adjustments and five recommendations identified above, along with Adjustment 7, which was withdrawn by Blue Ridge and should be disregarded by the Commission in its consideration of the Company's Application.

The following five adjustments and one recommendation remain in dispute between the Company and Staff and require resolution by the Commission. These Adjustments and Recommendation are the focus of the Company's Initial Brief:

- **Adjustment 3: Depreciation Offset.** Based upon Blue Ridge's belief that the Stipulation filed November 16, 2020 in Duke Energy Ohio's CEP Case included an agreement between the Company and Staff to a particular computation methodology for the depreciation offset, Blue Ridge recommends that the

²⁵ As set forth in testimony from Company witness Jay Brown regarding Recommendation 6 addressing Duke's Kellogg Training Center (Kellogg), which is located in Ohio but used to train employees from both Ohio and Kentucky, the Company agrees with Blue Ridge's recommendation that usage of Kellogg be tracked according to the user and their jurisdiction, and that those statistics be used to offset revenue for non-jurisdictional users (*i.e.*, Kentucky), as long as Blue Ridge intended to recommend that the issue be included in the standard annual audit scope, as it has been in the prior two audits. This approach would avoid duplicity—and the Company agrees with the recommendation if this was the auditor's intent.

computation of the beginning balance of the depreciation offset be “restored,” resulting in increases to the depreciation offset and decreases in rate base by \$24.19 million, \$28.35 million, and \$31.90 million in 2018, 2019, and 2020, respectively. Blue Ridge’s assertion, however, that the parties came to an agreement on how the depreciation offset should be calculated in future filings in Duke’s CEP Case should be disregarded. There is no evidence that there was an agreement in that case regarding the calculation of the depreciation offset, nor could there have been, as the Company would not have agreed to the proposal now advanced by Blue Ridge for calculation of the depreciation offset.

- **Adjustment 6: Non-CEP Plant.** Blue Ridge found, and the Company concurs, that the project for a collapsed sewer main at East Works Propane Gas Plant should not have been included in the Rider CEP. However, Blue Ridge incorrectly states that the adjustment reduces gross plant by \$572,944 and reversed Cost of Removal of \$46,567. The Cost of Removal adjustment of \$46,567 should not be included in this adjustment, however, as these are costs that are not in Rider CEP. Adjusting to remove costs that are not in the rider is unreasonable and punitive, and the Commission should disregard this subpart of Adjustment 6.
- **Adjustment 8: Necessary Land Acquisition.** Blue Ridge recommended a reduction to plant of \$95,000, representing its opinion that the Company purchased land above fair market value. This adjustment does not account for the fact that the property in question was necessary for the continued delivery of safe and reliable natural gas service to customers *and* was not for sale at the time its acquisition was required. It is not unreasonable to pay a premium to acquire land that is not for sale in order to induce the owner to negotiate a sale—moreover the price was settled in the free market, and acquisition of the land in question was crucial to avoid unreasonable delays and protracted condemnation proceedings.
- **Adjustment 9: Allowance for Funds Used During Construction (AFUDC).** Blue Ridge recommended a reduction to plant of \$57,000 to remove the 10 months that AFUDC was accruing while work was not being performed. However, the Company complied with its Capitalization Guidelines and continued to accrue AFUDC because monthly charges continued to be charged to the project over the

course of the delays, indicating that work was being done. Blue Ridge reviewed the Capitalization Guidelines and found that Duke Energy Ohio's policies and procedures were adequate and not unreasonable.²⁶ The Commission should therefore reject this adjustment.

- **Adjustment 11: CEP Assets Removed to Stay Below Residential Rate Cap.** In Adjustment 11, Blue Ridge argued that, if Adjustments 1 through 10 (some of which are notably in dispute) are implemented by the Commission, the Company would be "comfortably below" the residential rate caps for 2019 and 2020, and therefore recommended the full restoration of the qualified CEP investments previously removed by the Company in its Table 12 of the Application. The Company agrees with this adjustment to restore qualified CEP investments *only if* the Commission accepts the proposed audit Adjustments in 1 through 10, particularly Adjustment 3. However, if Adjustment 3 is accepted over these objections, Adjustment 11 would be necessary to allow full recovery of qualified CEP investments for 2019 and 2020.
- **Recommendation 5: Estimated In-Service Dates.** Blue Ridge recommended that the Company establish a procedure that requires major non-blanket project changes in estimated in-service dates be documented and an explanation provided to Senior Management, and that this process become part of the actual to budget project variance analysis and explanations. As further detailed below, however, this recommendation would result in significant tracking and documentation, while offering next to no benefit to customers. It should be rejected by the Commission.

For the reasons set forth below, the Company asks that the Commission reject and/or modify the Adjustments and Recommendation identified above and accept and adopt the Adjustments and Recommendations upon which Staff and the Company agree in resolving Duke Energy Ohio's application to adjust Rider CEP rates for recovery of 2019 and 2020 CEP deferrals and expenditures.

²⁶ See Audit Report at p. 41.

IV. LAW AND ARGUMENT

Though the Company can agree to a number of the adjustments and recommendations set forth in the Audit Report, those addressed below cannot be agreed to by Duke Energy Ohio and are not sufficiently supported by the record in the underlying matter. Duke Energy Ohio urges the Commission to review the arguments below and adopt its position as it relates to these adjustments and recommendations.

A. Adjustment 3 of the Audit Report is unsupported, inappropriate, and a significant departure resulting in millions of dollars of unrecoverable costs per year for the Company.

By far the most significant adjustment in the Audit Report is Adjustment 3, related to the calculation of the depreciation offset. If adopted by the Commission, Adjustment 3 would result in the Company unexpectedly being unable to recover millions of dollars each year, until the resolution of the Company's next rate case. Blue Ridge's Adjustment 3 argues that the Company's position in calculating the depreciation offset is:

inconsistent with the intent of the deprecation offset and recommends that the computation be restored to the one approved in Case No. 19-791-GA-ALT. While the Company's rationale would prevail in a traditional base rate case model, it does not apply under alternative ratemaking paradigms, such as in this situation. The depreciation offset is a theoretical construct that the signatory parties negotiated to balance the interests of the Company and customers. Without Staff's consent and the Commission's approval, Blue Ridge views the modified computation to be non-compliant with the Stipulation and Recommendation. Restoring the approved computation increases the depreciation offset and decreases rate base by \$24.19 million, \$28.35 million, and \$31.90 million in 2018, 2019, and 2020, respectively.²⁷

However, as set forth in the Supplemental Testimony of Duke Energy Ohio witness Jay P. Brown, Blue Ridge's Adjustment 3, addressing the depreciation offset, is unsupported, inappropriate, and should be disregarded by the Commission for three main reasons. First, Blue Ridge bases its adjustment on a belief that the stipulation filed in the Rider CEP Case (Rider CEP

²⁷ Audit Report at 31-32.

Stipulation) included an express agreement upon a particular computation methodology; however, the Stipulation is entirely silent as to the depreciation offset; it did not dictate a particular method of calculation. Second, Blue Ridge bases its adjustment upon the depreciation offset utilized in the Rider CEP of Columbia Gas of Ohio, Inc. (Columbia)—but that situation and stipulation are inapposite. Columbia expressly agreed to the depreciation offset proposed by Staff in Case No. 17-2022-GA-ALT, and the calculation was expressly incorporated into a stipulation in that case. While reasonable in the Columbia case, Columbia’s agreement does not mandate any certain outcome in the underlying Duke Energy Ohio case. Finally, a static, never-changing formula, as recommended by Blue Ridge, not only was not the agreed-upon formula in the Company’s CEP Stipulation (there was no agreed-upon formula), but the Company would not have agreed to include such a proposal in the Stipulation had it been proposed as an express term.

For all these reasons, and those further outlined below, the Commission should not adopt Adjustment 3 from the Audit Report. The Commission should set aside Adjustment 3.

a. Blue Ridge’s finding that the Stipulation in the Rider CEP Case included agreement as to a particular depreciation offset computation is misguided and unsupported by the rest of the Stipulation.

Blue Ridge bases its proposed adjustment to the depreciation offset on a belief that the Stipulation filed on November 16, 2020, in the Rider CEP Case included agreement among the parties as to a particular computational methodology. Instead, the Stipulation is silent as to the computation of the depreciation offset, and for good reason. The calculation of a depreciation offset was not a product of negotiations in the CEP Stipulation, as Blue Ridge assumes. The depreciation offset was originally included in the Company’s Rider CEP Case application and was not the product of the Stipulation negotiations. The audit report and staff report in that case only

opine on the reasonableness of the methodology. They do not adopt or mandate any one computational method that is to be used in every subsequent application.

The fact that the depreciation offset calculation was not an agreed-upon, negotiated term in the Stipulation is further supported by the fact that the Stipulation contains multiple examples of *other* instances where the Company and Staff *did* expressly agree to formula changes. There is no reason why this key calculation would be left out of consideration, when other negotiated calculations were so expressly accounted for. For example, on page 3 of the Stipulation, the parties agreed that:

The Rider CEP monthly rate will be set for the revenue requirement associated with CEP assets placed in service and the related CEP regulatory asset for the period January 1, 2013 through December 31, 2018 per the table below:

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

These are the rates calculated in the Larkin & Associates Audit Report dated May 11, 2020 excluding adjustments to earnings-related incentives, which will continue to be capitalized, and included in Rider CEP as further described herein.

As demonstrated in this example, the explicit language of the Stipulation specifies the rates charged and dates of the assets included in those charges. And the Company went on to comply with the implementation of those rates, per the Stipulation.²⁸

²⁸ See Notice of Intent to Implement filed on behalf of Duke Energy Ohio, Inc. in Case No. 19-791-GA-ALT (April 22, 2021).

Further, another example of an explicit agreement on the calculation of a specific element of Rider CEP is incorporated on page 6, section 7 of the Stipulation, which again states:

With regard to the incremental revenue, the Signatory Parties acknowledge that the incremental revenue offset shall be calculated in accordance with the formulas adopted in the CEP Deferral Cases, and shall use a baseline of current annual bills issued as of the date certain in this case December 31, 2018.

There is clear, concise, irrefutable language regarding how the Company is to calculate the incremental revenue offset, creating no confusion as to whether the incremental revenue offset was a negotiated part of the Stipulation.

Finally, also on page 6 of the Stipulation, section 8, the agreement states that “Rider CEP will be calculated using the most recent available annual bills issued.” Yet again, this statement demonstrates an explicit agreement between the parties on the calculation of a specific element of Rider CEP.

The Stipulation is devoid of any examples of similar language, figures, or calculations associated with the depreciation offset which could demonstrate that it was in fact a negotiated term of the Stipulation. If such language had been proposed, negotiated, or included, it would certainly be present. Blue Ridge asserts in the Audit Report that the depreciation offset calculation methodology should be “be restored to the one approved in Case No. 19-791-GA-ALT.”²⁹ However, beyond its conclusory statement that “the signatory parties negotiated” the depreciation offset in the Stipulation, the plain language of the Stipulation (and examples above) does not

²⁹ Audit Report at 31.

demonstrate that that was in fact the case.³⁰ Put more simply, “restoration” of a nonexistent term is not possible.³¹

In its Review and Recommendation, filed October 22, 2021, Staff merely adopts Blue Ridge’s Adjustment 3, but sheds no light on the question of whether Staff believes the depreciation offset to have been established in the CEP Stipulation. And because Staff did not likewise file direct testimony per the procedural schedule in this case, Staff provided no additional information or support for Blue Ridge’s position related to the calculation of the depreciation offset. Staff did not comment upon why other terms and calculations in the Stipulation were specifically addressed—while the depreciation offset was not. Nor did Staff differentiate why the depreciation offset was not subject to the same specifications and treatment, or what Staff’s understanding of that negotiated Stipulation was.

Mr. Brown’s Direct and Supplemental Testimony (and corresponding exhibits) provide the only evidence to address the details of the Stipulation and the fact that the depreciation offset was not an expressly negotiated term. As such, Adjustment 3 should be disregarded and set aside by the Commission, and the calculation in the Company’s Application at Schedule 11 should be adopted.

b. The calculation of the depreciation offset for Columbia Gas is inapposite as it was the product of an explicit, stipulated term, unlike the present matter.

In support of its adjustment to the Company’s proposed depreciation offset in Schedule 11, Blue Ridge relies almost exclusively on a case brought by Columbia Gas of Ohio, Inc. (Columbia)

³⁰ See, e.g., *E. Ohio Gas Co. v. Akron*, 81 Ohio St. 33, 33, 90 N.E. 40, 41 (1909) (finding that where a “contract is entirely silent as to a particular matter, the courts will exercise great caution not to include in the contract, by construction, something which was intended to be excluded.”).

³¹ *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 2011-Ohio-2720, ¶ 1, 129 Ohio St. 3d 397, 397, 953 N.E.2d 285, 286 (“When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties. As a matter of law, a contract is unambiguous if it can be given a definite legal meaning.”).

Case No. 19-0791-GA-ALT.³² This reliance, however, is misguided. In the Stipulation for the Columbia case, Columbia explicitly agreed to the depreciation offset proposed by Staff in its Staff Report.³³ Staff recommended, and Columbia agreed, that:

The offset will be calculated by taking the rate case plant in service less non-IRP Retirements. Accrual rates should then be applied to this net plant to derive an annual depreciation expense. This will accumulate each year and be used to offset the CEP rider's provision for accumulated depreciation.³⁴

Duke Energy Ohio, as set forth in Schedule 11 to its Application, did not use the same formula in its Application—which formula was not a previously agreed-upon term of the CEP Stipulation. Instead, as set forth in Company Witness Brown's testimony, the Company's starting point for calculating the depreciation offset was total depreciation expense from the Company's FERC Form 2 filings for each year of 2013 through 2018.³⁵ From those amounts, the Company's formula subtracted:

- (1) Rider AMRP depreciation expense,
- (2) Rider AU depreciation expense, and
- (3) Production depreciation expense.³⁶

While both Columbia's and Duke Energy Ohio's approaches are reasonable, and indeed the Commission did find the Duke Energy Ohio Stipulation in question to be reasonable,³⁷ the methodology employed by the Company is not precluded because of the terms negotiated and stipulated to by Columbia in their CEP case. The terms in the Columbia case were simply not

³² Audit Report at 31.

³³ *In the Matter of the Application of Columbia Gas of Ohio Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 17-2022-GA-ALT, Staff Report and Recommendation (September 14, 2018) at p. 8.

³⁴ *Id.*

³⁵ Brown Supp. Test. at 10:14-15.

³⁶ Brown Supp. Test. at 10:14-21.

³⁷ Opinion & Order Modifying and Approving the Stipulation and Recommendation (April 21, 2021).

incorporated into Duke Energy Ohio's case. The Columbia case therefore does not control, or even inform, the outcome in the underlying case. It is apples to oranges. Put differently, the existence of the Columbia computational methodology does not mean that Duke Energy Ohio's computation is inappropriate or unreasonable, and vice versa. The difference here is that Blue Ridge, and Staff in its wholesale adoption of the Blue Ridge Audit Report, have not supported their position as it relates to Duke Energy Ohio, even if the Columbia calculation is reasonable and set forth in express terms in the Columbia case.

c. The Company would not have agreed to the static depreciation offset formula now advanced by Blue Ridge had one been proposed in the Stipulation negotiations.

As detailed in Mr. Brown's direct and supplemental testimony, there are two reasons why the Company would not have agreed to freezing the formula; *i.e.*, to only back out depreciation expense related to Rider AU, Rider AMRP, and production, as the adoption of Blue Ridge's Adjustment 3 would require.

First, in its calculation of the depreciation offset, the Company has excluded production and common plant from rate base in Rider CEP. In the Rider CEP Case, the depreciation offset originally included a line item to exclude production-related depreciation expense from the depreciation offset. The methodology, which was found reasonable by both Staff and the auditor in that case, was that if production-related plant was not being included in the Rider CEP rate base, it did not make sense to include it in the depreciation offset.³⁸ Through the audit process in the Rider CEP Case, the Company realized that it had inadvertently neglected to back out common-related depreciation expense from the depreciation offset, as detailed by Mr. Brown in his Supplemental Testimony.³⁹ In response to the audit findings in the Rider CEP Case, the Company

³⁸ Opinion & Order Modifying and Approving the Stipulation and Recommendation (April 21, 2021) at p. 4.

³⁹ Brown Supp. Test. at 11:4-7.

corrected its error in the present case by removing common-related depreciation expense.⁴⁰ It is reasonable to remove common-related depreciation expense for the same reason Duke Energy Ohio removes production-related depreciation expense: the Rider CEP rate base does not include common assets, therefore, the depreciation offset should also not include depreciation expense for assets that are not included in the rate base.⁴¹

Based upon the calculation and the Company's understanding, as detailed above, the Company would not have agreed to freezing the formula, because the methodology found reasonable by Staff in the Rider CEP Case, if required to remain static, would result in the Company essentially double-counting depreciation expenses related to CEP assets in future filings.⁴² As acknowledged by Blue Ridge in the Audit Report, "the Company's starting point for calculating the depreciation offset was total depreciation expense from the Company's FERC Form 2 filings for each year[.]"⁴³ Since the Company stopped deferring CEP-related depreciation in May of 2021, the Company's FERC Form 2 total depreciation expense will now include depreciation on CEP plant in service.⁴⁴ The Company *already* backs out CEP-related depreciation expense from rate base in Schedule 1, Line 4 of its annual filings. As explained by Mr. Brown, if the Company is forced into a static, never-changing formula for the depreciation offset (as Blue Ridge contends is not only necessary, but previously *agreed to* by the Company), the "same depreciation related to CEP included in Schedule 1, Line 4, will be included in Schedule 1, Line 5, effectively overstating the Accumulated Provision for Depreciation on Line 7 of the same schedule. This was never the Company's intent when the depreciation offset was proposed. The

⁴⁰ See Schedule 11 to Brown Supp. Test.

⁴¹ Brown Supp. Test. at 11:4-10.

⁴² Brown Supp. Test. at 11:15-18.

⁴³ Audit Report, p. 31.

⁴⁴ Brown Supp. Test. at 11:18-22.

Company had always intended to modify the formula as necessary to ensure that the depreciation offset is reasonable and just.”⁴⁵

Second, the Company would not have agreed to explicit language limiting changes to the to the formula calculating the depreciation offset because the Company had already agreed to (and negotiated) caps for 2019 and 2020.⁴⁶ The calculation of those caps, from the Company’s perspective, already incorporated the change to back out depreciation expense related to common assets from the depreciation offset.⁴⁷ As stated by Mr. Brown in his Supplemental Testimony, “the basis for the cap in 2019 included the very change to the depreciation offset formula that is at issue in [the underlying] audit.”⁴⁸ This assertion is additionally supported by three pieces of evidence, set forth by Mr. Brown in his testimony, Attachment JPB-1, and the Rider CEP Case:

- (1) Through a data request response in the Rider CEP Case, the Company provided an estimate of the 2019 Rider CEP calculation. A copy of schedules 1 and 11, which were included from that data request, is attached to Mr. Brown’s Supplemental Testimony at Attachment JPB-1. The calculation shown in response to the data request in question included the *exact* change that Blue Ridge contends was never agreed to.
- (2) On Schedule 11 (in Attachment JPB-1) the depreciation offset is calculated by removing common-related depreciation in Line 4. The Company used the information in that data request in its evaluation of the caps in the Stipulation. If any language in the Stipulation or in the Commission’s order in the Rider CEP Case had indicated that the calculation methodology for depreciation offsets would be static, the Company would have understood that it did not have a real opportunity to recover those costs. Had that been the

⁴⁵ Brown Supp. Test. at 12: 4-9.

⁴⁶ Opinion & Order Modifying and Approving the Stipulation and Recommendation (April 21, 2021) at p. 23-24.

⁴⁷ Brown Supp. Test. at 12:12-15.

⁴⁸ Brown Supp. Test. at 12:16-17.

understanding that the Company had, certainly it would have been raised as a major issue in the Rider CEP Case.

(3) Finally, Company Witness Martin P. Petchul provided direct testimony in the Rider CEP Case regarding the 2019 cap:

Because the Company had already made these investments while this matter was pending before the Commission, it was reasonable to negotiate Rider CEP revenue requirement caps at a level that reflected an opportunity for the Company to recover its costs, particularly when the Company had not yet reached the initial \$1.50 deferral cap that was initially established.

Based upon this testimony, which reveals the state of mind of the Company at the time these calculations were considered, it is clear that the Company believed it had negotiated the 2019 cap at a level that reflected the opportunity for the Company to recover its full costs, as long as those costs were deemed prudent and reasonable in a future audit (the very audit we are evaluating in the underlying matter). Staff, and the Intervening Parties, have offered no testimony or explanation to the contrary, outside the Blue Ridge Audit Report, which does not account for or address these points.

If any language in the Stipulation or in the Commission's order in the Rider CEP Case had indicated that the calculation methodology for depreciation offset would be static, the Company would have clearly understood that it did not have a real opportunity to recover those costs. This is by far the most significant adjustment in the Audit Report. If adopted, Adjustment 3 would result in the Company being unable to recover nearly three million dollars per year, each year, until the Company's next natural gas base rate case is filed and resolved.

Importantly, Blue Ridge's Audit Report and Supplement do not state that removing Common-related depreciation was inappropriate or unreasonable from a rate-making standpoint. To the contrary, Blue Ridge states in its Audit Report that the Company's rationale would indeed

prevail in a base rate case analysis.⁴⁹ Why does this matter? Because the *only* evidence that Blue Ridge bases its entire assessment of the depreciation offset upon is its belief that the depreciation offset formula was a negotiated part of the Stipulation. This belief, however, is debunked above. The 2019 cap was negotiated, and that cap provided the Company a fair opportunity to recover its 2019 costs.⁵⁰ The Commission must ask: Why would the Company have ever agreed otherwise, given its demonstrated understanding of the process? There is zero evidence to suggest that the parties agreed to a static, unchanging formula. There is irrefutable evidence that the Company believed it had negotiated a cap that incorporated the change—and as Company Witness Brown asserts, “it would have made no sense to exclude common assets from Rider CEP but not to exclude the associated depreciation expense.”⁵¹ The Company included the change in the underlying Application, and the Commission should approve this methodology to give the Company a fair opportunity to recover the costs it negotiated in the Stipulation. Moreover, Staff, Blue Ridge, and the Intervening Parties offer the Commission no reasoning by which to counter the Company’s understanding, testimony, and arguments above. The Commission must reject Adjustment 3 and allow the Company’s methodology proposed in the underlying Application to control.

B. The Cost of Removal adjustment in Adjustment 6 is unreasonable, punitive, and confiscatory.

The Company agrees with Blue Ridge’s Adjustment 6, but for one aspect – the Cost of Removal. Adjustment 6 argues:

Non-CEP Plant: V9197—East Works Propane Sewer Main. The project was for a collapsed sewer main at East Works Propane Gas Plant. Blue Ridge found, and the Company concurs, that it should not have been included in the Rider CEP. The adjustment reduces gross plant by \$572,944 and reverses Cost of Removal of \$46,567.

⁴⁹ Audit Report at p. 31.

⁵⁰ Opinion & Order Modifying and Approving the Stipulation and Recommendation (April 21, 2021) at p. 23-24.

⁵¹ Brown Supp. Test. at 14:12-14.

The Company does not dispute that it inadvertently included the project V9197-East Works Propane Sewer Main in its filing, even though the Company has historically removed Production and Common related plant from its CEP deferral and rider.⁵² Therefore, the Company concurs with Blue Ridge's proposed reduction in gross plant by \$572,944. However, the Company cannot agree with Blue Ridge's proposed Cost of Removal adjustment of \$46,567. There, Blue Ridge is recommending removal of costs that are not actually in Rider CEP. Adjusting to remove costs that are not a part of Rider CEP would have an unreasonable result, in addition to being punitive and confiscatory. The Commission should set aside this aspect of Adjustment 6—removing costs that are not actually in Rider CEP serves no purpose and is not based upon sound principles of logic.

C. The Commission should set aside Adjustment 8 and allow recovery of the full purchase price by the Company.

Adjustment 8 addresses land purchased by the Company for the Blue Rock Station-AW1379 (the Blue Rock Station). The Company purchased the land for \$255,000, which Blue Ridge adjudges to be above a fair market value of \$160,000. As a result, Blue Ridge recommended a reduction to plant of \$95,000, or the difference between the purchase price and “fair market value.”

The Company cannot agree with this adjustment, as it overlooks and oversimplifies the realities of land acquisition for Duke Energy Ohio, and companies like it. As set forth by Company Witness Brown in his Supplemental Testimony, the property upon which the Blue Rock Station was required to be located was not even for sale at the time the Company was able to negotiate a purchase price. The Company had to negotiate with the property owner to induce him to sell the property. In such situations, it is not unreasonable to pay a premium to acquire land that is not even listed for sale and has no indication that its owner would be willing or interested in disposing

⁵² Brown Supp. Test. at 14:22-23.

of that property. This is the reality of many property purchases that the Company is tasked with undertaking for the purposes of location, project success, or safety. It is not unreasonable to pay a premium to acquire land that is not for sale to inspire the current owner to part with that property. Moreover, the purchase price was negotiated and settled in the free market, and the price paid was necessary to acquire the land and avoid unreasonable delays through a lengthy condemnation proceeding.⁵³ The installation of the Blue Rock Station was necessary for the continued delivery of safe and reliable natural gas service to customers, who would see a benefit from its construction (and subsequently the acquisition of the parcel upon which it was constructed).

The full purchase price was required for the timely acquisition of the Blue Rock Station property, and the cost included in the rider is reasonable to include in rates. The Commission should allow full recovery of the purchase price.

D. The Commission should disregard Adjustment 9 in the Audit Report because the Company complied with its Capitalization Guidelines in continuing to accrue AFUDC.

Adjustment 9 in the Blue Ridge Audit Report should be set aside. Adjustment 9 recommends a reduction to plant of \$57,000, representing removal of 10 months that AFUDC was accruing “while little to no work was being performed” to install odorizer heat at P7988 STA 436 SCADA.”⁵⁴ In support of this Adjustment, Blue Ridge states that the Company had significant gaps in work and “continued to accrue AFUDC.”⁵⁵ However, in accruing AFUDC, the Company complied with its Capitalization Guidelines, as monthly charges continued to be charged to the project over the course of the delays, indicating that work was in fact being done.⁵⁶ Blue Ridge reviewed the very same capitalization guidelines as part of its audit process, and found that Duke

⁵³ Brown Supp. Test. at 16:1-2.

⁵⁴ Audit Report at 41.

⁵⁵ *Id.*

⁵⁶ Brown Supp. Test. at 16:7-9.

Energy Ohio's policies and procedures were adequate and not reasonable as it relates to this very point.⁵⁷ Staff has offered no counterpoint to this finding, nor has Blue Ridge, aside from its opinion in Adjustment 9 that a reduction is recommended. Because the charges in question at P7988 STA 436 SCADA were part of the Company's Capitalization Guidelines, which guidelines the Company complied with and followed, and Blue Ridge found to be reasonable, the Commission should reject Adjustment 9.

E. The Commission's consideration of Adjustment 11 should be tied to its treatment of Adjustments 1 through 10, particularly Adjustment 3.

For the reasons set forth above, the Company urges the Commission to decline to adopt Adjustment 3, and the other Adjustments discussed previously. However, if the Commission does not set aside Adjustment 3 (and other corresponding Adjustments), the Company agrees with Blue Ridge's Adjustment 11. Adjustment 11 deals with CEP assets removed to stay below the residential rate cap. Blue Ridge states that "[a]fter reflecting the impact of Adjustments #1-10, the Company is comfortably below the residential rate cap of \$6.61 and \$9.31 for 2019 and 2020, respectively . . . [therefore] Blue Ridge recommends the full restoration of the qualified CEP investments the Company removed" per Table 12 of the Company's Application.

If the Commission accepts Adjustment 3, it would be necessary to restore qualified CEP investments previously removed by the Company in order that the stipulated caps would allow full recovery of the qualified CEP investments for 2019 and 2020. If, instead, the Commission agrees with the Company that Adjustment 3 should be disregarded for all of the reasons set forth above, then Adjustment 11 would no longer be needed, and should be set aside.

⁵⁷ Brown Supp. Test. at 16:9-11.

F. The Company concurs with the Recommendations set forth by Blue Ridge, except for Recommendation 5, and with clarification regarding Recommendation 6.

a. Audit Report Recommendation 5 should be disregarded or replaced with the Company's suggestion.

The Company does not agree with or recommend adoption of Audit Report Recommendation 5. Recommendation 5, as written, would result in a significant amount of additional tracking and documentation, while realizing next to no benefit to customers or information that could drive decision making efficiencies for the Company. Recommendation 5 deals with estimated in-service dates. Blue Ridge recommended that the Company establish a procedure that requires major non-blanket project changes in estimated in-service dates to be documented.⁵⁸ Blue Ridge recommends that each change should be “explained, and that information should be provided to Senior Management . . . [and] [t]his process should also become part of the actual to budget project variance analysis and explanations.”⁵⁹ Though this recommendation may sound innocuous at first glance, it is not. Tracking every change of an in-service date for projects, irrespective of size or importance of the project, is not useful to senior management and would result in information overload, putting pressure and resources toward already-strained systems with more reporting and documentation requirements.⁶⁰ Moreover, the concept of “change of in-service date” is not developed enough to be instructive or useful.

The Company posits that a better recommendation would be to track projects over ten million dollars, since larger projects have a more significant impact when their in-service dates shift or change. The utility of inundating senior management with information about every smaller project is not helpful. Those issues can be managed at lower levels more efficiently, and more

⁵⁸ Audit Report at p. 36.

⁵⁹ *Id.*

⁶⁰ Brown Supp. Test. at 17:13-17.

cost effectively. Blue Ridge's Recommendation 5, while sounding useful in theory, is not as simple in practice.

b. Audit Report Recommendation 6 is acceptable, if the intent is that the audit process will be used to monitor incentives for recovery in CEP.

In Recommendation 6 Blue Ridge recommended that the “capitalization and recovery of stock-based and earnings-related incentive compensation should be monitored to ensure the amount recovered does not significantly increase [over previous amounts].” The Company agrees with this recommendation insofar as Blue Ridge intends that Staff will monitor incentives included for recovery in CEP, by including the issue in the standard annual audit scope, as it has been included in the last two audits. If, however, Blue Ridge intends that the Company is to monitor these charges separate and apart from the annual audit process, there is little to no value in duplicating the work that is already done in the annual audit process—and this recommendation should be disregarded. Moreover, Blue Ridge does not note in Recommendation 6 that the very recommendation it makes regarding monitoring of incentive compensation is already done in the annual process.

V. CONCLUSION

For the reasons identified above, the Commission should adopt Duke Energy Ohio's recommendations and clarifications and:

- Reject Adjustment 3, as there was no prior agreement as to the calculation of the depreciation offset, and the proposed depreciation offset calculation in the underlying matter is reasonable and just;
- Reject Adjustment 6 so far as Blue Ridge's proposed Cost of Removal adjustment of \$46,567 is concerned;

- Reject Adjustment 8 and allow for recovery of the purchase price and fair market value of the Blue Rock Station property;
- Reject Adjustment 9, as the Company complied with its previously approved Capitalization Guidelines in accruing AFUDC in the months in question;
- Accept Adjustment 11 if, and only if, Adjustments 1 through 10 are adopted by the Commission (which for the foregoing reasons, they should not be);
- Reject Recommendation 5, and if anything, substitute the Company's recommendation that only major projects be reported for changes to in-service dates;
- And clarify Recommendation 6 to ensure that Blue Ridge intended to recommend that Staff continue to incorporate monitoring of incentive compensation recovery in its annual audit process—as it has previously done over the prior two audits.

Dated: March 10, 2022

Respectfully submitted,
DUKE ENERGY OHIO, INC.

/s/ Elyse H. Akhbari
Rocco O. D'Ascenzo (0077651)
Deputy General Counsel
Jeanne W. Kingery (0012172)
Associate General Counsel
Larisa M. Vaysman (0090290)
Senior Counsel
Elyse H. Akhbari (0090701)
Senior Counsel
Duke Energy Business Services LLC
139 E. Fourth Street, 1303-Main P.O. Box
961 Cincinnati, Ohio 45201-0960
(614) 222-1334
Rocco.DAscenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.Vaysman@duke-energy.com
Elyse.Akhbari@duke-energy.com

(Willing to accept service via email)

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing pleading was served by electronic mail upon the following individuals on March 10, 2022:

/s/ Elyse H. Akhbari

Robert.eubanks@OhioAGO.gov

Michael.nugent@igs.com

Joe.oliker@igs.com

Evan.betterton@igs.com

Amy.botschner.obrien@occ.ohio.gov

William.michael@occ.ohio.gov

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/10/2022 4:51:51 PM

in

Case No(s). 21-0618-GA-RDR

Summary: Brief Brief in Support of Duke Energy Ohio, Inc.'s Application for Adjustment to the Capital Expenditure Program Rider Rate electronically filed by Dianne Kuhnell on behalf of Rocco D'Ascenzo and Duke Energy Ohio, Inc. and Kingery, Jeanne W. and Akhbari, Elyse H. and Vaysman, Larisa M.