

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY BRIEF FOR CONSUMER PROTECTION  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

To protect consumers, the Public Utilities Commission of Ohio (“PUCO”) should adopt Office of the Ohio Consumers’ Counsel’s (“OCC”) recommendations regarding Duke’s capital expenditure program (“CEP”) Rider as described in OCC’s initial brief.<sup>1</sup>

The PUCO should adjust Duke’s rate of return based on current market conditions and not based on a rate of return set 13 years ago.<sup>2</sup> The PUCO should implement \$1.00 residential rate caps that were adopted for Duke’s 2021 and going forward CEP investments,<sup>3</sup> and apply these caps to the 2019 and 2020 investments that are being considered in this case.<sup>4</sup>

The PUCO should not allow Duke to charge consumers for the utility’s financial performance incentives benefitting only Duke’s stockholders while providing nothing of

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<sup>1</sup> Initial Brief for Consumer Protection by Office of the Ohio Consumers’ Counsel (“OCC Brief”), Case No. 21-618-GA-RDR (March 10, 2022).

<sup>2</sup> OCC Brief at 4-9.

<sup>3</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-791-GA-ALT Opinion and Order at 18 (April 21, 2021).

<sup>4</sup> OCC Brief at 9-13.

value for consumers.<sup>5</sup> The PUCO should identify the O&M savings that are generated as a result of Duke's CEP spending as reductions to the amount that consumers pay to Duke for its CEP Rider.<sup>6</sup> The PUCO should enforce a maximum cap of \$8.93 per month for Duke's 2020 CEP Rider to comply with the Settlement and PUCO's Order in Case No. 19-791-GA-ALT.<sup>7</sup>

OCC disagrees with the Staff of the Public Utilities Commission ("PUCO Staff") that Duke has not significantly over-earned or under-earned.<sup>8</sup> OCC disagrees with the PUCO Staff<sup>9</sup> and Duke Energy Ohio ("Duke")<sup>10</sup> regarding inclusion of financial performance incentives in the CEP Rider, for reasons explained in OCC's initial brief.<sup>11</sup> OCC agrees with the position of Interstate Gas Supply, Inc. ("IGS") in its brief<sup>12</sup> on this issue.

OCC disagrees with the PUCO Staff position supporting the Blue Ridge Audit Report's ("Auditor") supplemental report recommendation regarding the monthly charge for 2019 and 2020 CEP investments.<sup>13</sup>

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<sup>5</sup> OCC Brief at 13-18.

<sup>6</sup> OCC Brief at 18-21.

<sup>7</sup> OCC Brief at 21-22.

<sup>8</sup> Initial Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief"), Case No. 21-618-GA-RDR (March 10, 2022) at 12.

<sup>9</sup> Staff Brief at 10-11.

<sup>10</sup> Brief in Support of Duke Energy Ohio, Inc.'s Application for Adjustment to the Capital Expenditure Program Rider Rate ("Duke Brief"), Case No. 21-618-GA-RDR (March 10, 2022) at 24.

<sup>11</sup> OCC Brief at 13-18.

<sup>12</sup> Initial Brief of Interstate Gas Supply, Inc. ("IGS Brief"), Case No 21-618-GA-RDR (March 10, 2022).

<sup>13</sup> Staff Brief at 4-5, 8; Staff Ex. 3 (Supplement to Report of Plant-in-Service and Capital Expenditure Program Audit) (November 8, 2021) at 2-3.

Consistent with OCC's brief generally supporting the Auditor's proposed adjustments (except where noted), OCC agrees with the PUCO Staff in its initial brief<sup>14</sup> that the PUCO should adopt the adjustments and recommendations in the Blue Ridge Audit Report.

OCC, the statutory consumer advocate for Duke's more than 410,000 residential gas utility customers, asks the PUCO to adopt OCC's consumer protection recommendations.

## **II. REPLY**

### **A. The PUCO should reject Staff's conclusion that Duke has not significantly over-earned or under-earned because that is irrelevant as Duke and Staff failed to demonstrate the proposed rate of return is just and reasonable.**

Duke has the burden to demonstrate the proposed CEP Rider rates, including the pre-tax rate of return used in setting the CEP Rider rates, are just and reasonable. But both Duke and the PUCO Staff have made no effort to demonstrate the proposed rate of return is just and reasonable. Duke and Staff provided no witness or testimony to support its current actual cost of debt.

The Staff's conclusion in its brief that its review of Duke's profitability as part of Duke's annual filing verifies that Duke has not significantly over-earned or under-earned is irrelevant in this proceeding and should not be considered by the PUCO.<sup>15</sup> As OCC pointed out in our brief,<sup>16</sup> the Staff Report's Financial Earnings Review is a review of the *overall* profitability of Duke and other local distribution companies (locally and

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<sup>14</sup> Staff Brief at 4.

<sup>15</sup> Staff Brief at 12.

<sup>16</sup> OCC Brief at 8-9.

nationwide).<sup>17</sup> The Financial Earnings Review is not a review of the earnings contributed by the Capital Expenditure Program to Duke's overall earnings.<sup>18</sup>

Even if Duke did not significantly over-earn or under-earn over the last three years, as PUCO Staff asserts<sup>19</sup> (an assertion with which we do not agree), this does not mean the pre-tax rate of return of 9.16% used in calculating the CEP charge is just and reasonable. The 3-year average median allowed profit (return on equity) of 7.94% nationwide and the profits (return on equity) earned by Ohio local distribution companies shown in the Staff Report further demonstrates that the 9.84% profits (return on equity) proposed by Duke for its CEP Charge is unjust and unreasonable.

The PUCO can and should re-set the pre-tax rate of return for CEP investments based on consideration of public interest (such as protecting consumers from unjust and unreasonable rates charged by a regulated utility) and sound regulatory principles.<sup>20</sup>

Duke's last rate case was resolved more than nine years ago (in 2013). Market conditions have changed. The PUCO should protect Duke's 410,000 residential gas consumers against charges for inflated profits and debt costs that do not reflect the actual market conditions for return on equity or Duke's true cost of debt. The PUCO should adopt a pre-tax rate of return, as recommended by OCC witness Dr. Daniel J. Duann and explained in OCC's brief, of no higher than 8.29%.<sup>21</sup>

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<sup>17</sup> OCC Brief at 8; OCC Ex. 1 (Duann Direct Testimony) at 15-16.

<sup>18</sup> *Id.*

<sup>19</sup> Staff Brief at 12; Staff Ex. 2 at 4-5; OCC Brief at 8.

<sup>20</sup> OCC Brief at 6; *See*, OCC Ex. 1 (Duann Direct Testimony) at 6.

<sup>21</sup> OCC Brief at 8; OCC Ex. 1 (Duann Direct Testimony) at 3-4.

**B. Duke’s financial performance incentives currently included in Duke’s CEP Rider should be removed and not charged to consumers, and Recommendation 6 allowing for “monitoring” of incentives and compensation should be rejected.**

OCC agrees with the arguments in the initial brief of IGS regarding financial performance incentives<sup>22</sup> and also explained in OCC’s initial brief.<sup>23</sup> The PUCO has found in previous cases that a utility’s financial performance incentives should not be collected from a utility’s customers because they benefit the utility and shareholders only.<sup>24</sup> There is thus ample precedent for removing financial performance incentives currently included in Duke’s CEP Rider so that they will not be charged to consumers, and the PUCO should do so here.

The Auditor’s Recommendation 6 is that the “capitalization and recovery of stock-based and earnings-based incentive compensation should be monitored to ensure the amount recovered does not significantly increase.”<sup>25</sup> Duke accepts the Auditor’s recommendation if PUCO Staff will monitor the incentive compensation as part of the annual audit scope.<sup>26</sup> But as Staff observes, the amount of stock-based and earning-related incentive compensation that is capitalized and included in the CEP appears to be increasing.<sup>27</sup> Unfortunately, “monitoring” stock-based and earnings-related compensation

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<sup>22</sup> IGS Brief at 1-10.

<sup>23</sup> OCC Brief at 13-18.

<sup>24</sup> *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 (January 21, 2009), Entry on Rehearing at 4-5 (February 2, 2011); *In re Duke Energy Ohio, Inc.*, Case No. 15-534- EL-RDR, Opinion and Order at 20, 44-45 (October 26, 2016); *In re Duke Energy Ohio, Inc.*, Case No. 16-664-EL-RDR/17-781-EL-RDR, Finding and Order at ¶ 16 (May 15, 2019); *In re Duke Energy Ohio, Inc.*, Case No. 18-397-EL-RDR, Finding and Order at ¶ 17 (July 31, 2019).

<sup>25</sup> Staff Ex. 1 at 36; 75.

<sup>26</sup> Duke Brief at 24; Staff Brief at 11.

<sup>27</sup> Staff Brief at 10.



included in the CEP is an insufficient solution. Stock-based and earnings-related compensation provides no benefit to consumers who will pick up the tab and should not be included in the CEP for all of the reasons identified by OCC in its comments, testimony, and brief, and further explained by IGS in its brief.

OCC agrees with IGS that the auditor in Case No. 19-791 concluded that the cost of Duke's stock-based compensation program is unrecoverable because those costs are "incurred to improve the Duke Energy financial performance for the benefit of shareholders, not to improve customer service or meet other regulated utility service requirements."<sup>28</sup> In fact, the independent audit company retained by the PUCO to audit Duke's previous CEP application specifically recommended removing financial performance incentives from the CEP Rider for the 2013 through 2018 period.<sup>29</sup>

In this current case, the Auditor offered no opinion as to whether Duke's earnings-based and stock-based incentives in its CEP application in this case are properly recoverable. OCC agrees with IGS that there is no evidence in the record to distinguish the financial performance incentives in the 19-791 case from those at issue here.<sup>30</sup> If the Auditor in this case had reviewed Duke's application on the financial performance incentives independently, instead of looking at them solely in the context of the Settlement, the Auditor likely would have arrived at the same conclusion as the Auditor

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<sup>28</sup> IGS Brief at 4; IGS Energy Ex. 1 (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 ("Larkin Audit Report") (May 11, 2020) at 9-9; *see also* OCC Brief at 14-15.

<sup>29</sup> *Id.*; *See*, IGS Energy Ex.1 at 9-9; OCC Brief at 14-15.

<sup>30</sup> IGS Brief at 5-6.

in Case No. 19-791 did. (That is, that Duke's financial performance incentives are tied to its bottom line and therefore should not be recovered from ratepayers.)<sup>31</sup>

OCC also agrees with IGS<sup>32</sup> (and also raised in OCC's Brief)<sup>33</sup> that Duke's argument<sup>34</sup> that it is authorized to recover the financial performance incentives at issue in *this* case due to the Settlement approved by the PUCO in Case No. 19-791 fails. That Settlement was submitted for the sole purpose of resolving that case, which placed an emphasis on the CEP expenditures and related assets for the five-year period described in Duke's application. This case, however, is a fully litigated case. And the PUCO has found in previous cases that a utility's financial performance incentives should not be charged to a utility's customers.<sup>35</sup>

The propriety of removing financial performance incentives from capital investment programs has been recognized in other cases and should be recognized in this case as well.<sup>36</sup>

The amount of financial performance incentives included in Duke's 2019 and 2020 CEP revenue requirement is a knowable value that should be removed. Consistent with its practice in numerous cases, the PUCO should require Duke to remove the

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<sup>31</sup> See, IGS Brief at 6.

<sup>32</sup> IGS Brief at 3.

<sup>33</sup> OCC Brief at 13-14.

<sup>34</sup> IGS Brief at 3-5; Duke Energy Ohio Ex. 3 at 19.

<sup>35</sup> *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 (January 21, 2009), Entry on Rehearing at 4-5 (February 2, 2011); *In re Duke Energy Ohio, Inc.*, Case No. 15-534- EL-RDR, Opinion and Order at 20, 44-45 (October 26, 2016); *In re Duke Energy Ohio, Inc.*, Case No. 16-664-EL-RDR/17-781-EL-RDR, Finding and Order at ¶ 16 (May 15, 2019); *In re Duke Energy Ohio, Inc.*, Case No. 18-397-EL-RDR, Finding and Order at ¶ 17 (July 31, 2019).

<sup>36</sup> *Id.*

financial performance incentives from its CEP so that they cannot be charged to consumers.

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.

Here, the PUCO should find that Duke's massive CEP capital spending increases in 2019 and 2020 were not just and reasonable. Not providing for an O&M savings offset in the CEP Rider is not just and reasonable. Charging consumers for utility employee financial performance incentives is not just and reasonable. Adopting an outdated and inflated rate of return is not just and reasonable. Duke's capital expenditure program is not just and reasonable and should not be allowed under Revised Code 4929.05(A)(3) and Revised Code 4929.111(C).

The PUCO should reject Recommendation 6 (that Duke's financial performance incentives be "monitored" to ensure the amount doesn't significantly increase) and instead direct Duke to remove all stock-based and earnings-related performance incentives from its CEP Rider.<sup>37</sup>

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<sup>37</sup> See, IGS Brief at 3; OCC Brief at 13-18.

**C. The Auditor's new rate for 2020 for residential consumers, accepted by PUCO Staff and Duke, is incorrect because it doesn't take into account the residential rate cap; therefore, Adjustment 11 should be rejected.**

The PUCO Staff supports an incorrect residential rate cap for CEP investments for 2020 that is above the cap established in the Settlement.<sup>38</sup> In its supplemental report, the Auditor recommends a monthly charge to residential consumers of \$6.23 for 2019 and \$9.31 for 2020 CEP investments.<sup>39</sup> The 2020 number is an incorrect amount. The Auditor's adjustments to the 2019 cap means that the 2020 cap cannot be \$9.31. In the Settlement allowing Duke's charges, the PUCO set a cap on what Duke could charge residential consumers.<sup>40</sup> Duke's residential charges for these expenditures were capped at increases of \$2.92 (for 2019) and \$2.70 (for 2020).<sup>41</sup> The Auditor's supplemental recommendation reflects a higher increase (\$.38 more) for 2020 than permitted under the Settlement and PUCO Order.<sup>42</sup>

The Auditor's recommended monthly CEP charge for 2020 is above the cap that the PUCO ordered to limit increases for residential consumers. Accepting the auditor's recommendation of a \$6.23 monthly CEP charge for 2019 for purpose of argument, the *most* the 2020 monthly charge can be is \$8.93 (\$6.23+\$2.70).<sup>43</sup> It cannot be \$9.31, as the Auditor has recommended and PUCO Staff has accepted. The PUCO should reject its

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<sup>38</sup> Staff Brief at 4, 8. (Duke accepts the adjustment on its face but ties it to other adjustments, Duke Brief at 22).

<sup>39</sup> Staff Brief at 4, 8; *See*, Staff Ex. 3 (Supplement to Report of Plant-in-Service and Capital Expenditure Program Audit) (November 8, 2021) at 2-3, Table 3.

<sup>40</sup> Case No. 19-791-GA-ALT, Opinion and Order (April 21, 2021) at para. 83; *see also* Settlement at 4.

<sup>41</sup> *Id.*

<sup>42</sup> OCC Brief at 21-22; *see*, Case No. 21-618-GA-RDR, *Consumer Protection Response to Audit Report Supplement and Staff Review and Recommendation Supplement by Office of the Ohio Consumers' Counsel* (November 18, 2021).

<sup>43</sup> OCC Brief at 21-22; *see*, OCC Ex. 2 (Adkins Direct Testimony) at 6-7.

Staff's recommendation to adopt the Auditor's new recommendation to give Duke more money at consumer expense. Since the recommendation exceeds the limit in the Settlement and in the PUCO's Order,<sup>44</sup> Adjustment 11 should be rejected.

To protect consumers, the 2020 cap on Duke's CEP charges should be enforced by the PUCO, to prevent a higher charge to consumers. The PUCO Staff's support of the auditor's recommendation to allow Duke to charge consumers above the cap is wrong.<sup>45</sup> Duke is already proposing to charge consumers more than is reasonable for its CEP, based on a too-high rate of return and for financial incentives for employees that do not benefit consumers.

- D. To protect consumers, the PUCO should adopt the Auditor's adjustments to rate case depreciation offset (Adjustment 3), CEP plant balances (Adjustments 6, 8, and 9), estimated in-service dates (Recommendation 5), unitization backlog (Recommendation 7).**
- 1. Despite Duke's claims to the contrary, the Auditor correctly used the depreciation offset methodology from Case No. 19-791 in Adjustment 3.**

Duke argues against the Auditor's Adjustment 3,<sup>46</sup> where the Auditor found that Duke's position in calculating the depreciation offset is inconsistent with the intent of the depreciation offset. The Auditor recommends that the computation be restored to the one approved in the Settlement authorizing Duke's CEP, Case No. 19-791-GA-ALT. Duke objects because the Settlement is silent as to the depreciation offset and that there was not an agreed-upon formula.<sup>47</sup> But Duke did agree to the formula that was used to calculate the rates stemming from the PUCO-approved Settlement in the 19-791 case. It is Duke

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<sup>44</sup> Case No. 19-791-GA-ALT, Opinion and Order (April 21, 2021) at para. 83; *see also* Settlement at 4.

<sup>45</sup> Staff Brief at 4, 8.

<sup>46</sup> Duke Brief at 9-19.

<sup>47</sup> Duke Brief at 9-10.

that appears to be experiencing buyer's remorse and is seeking to change what was agreed to. The PUCO should not permit it to do so.

The Auditor is correct. There was a process in place used to calculate the depreciation offset and determining the rates in the Case No. 19-791 Settlement. And that process was ultimately adopted by the PUCO when it approved the Settlement. And that process is what Blue Ridge audited against. Duke is after the fact attempting to modify the process that was originally in place and that was approved by the PUCO when it adopted the settlement.

Since there was already a depreciation offset methodology process, there would be no need to specify the mechanics in the Settlement, likely because PUCO Staff was the only other signatory besides Duke. And Staff likely never envisioned Duke unilaterally attempting to change the process that the PUCO approved when it approved the Settlement. OCC agrees with Staff's position that the 19-791 Settlement "is silent on the depreciation offset because [signatories] deemed the calculation put forward by the Company in Case No. 19-791-GA-ALT to be reasonable. Accordingly, there was no point of disagreement to be negotiated nor a need to specifically state such in the Settlement."<sup>48</sup> The PUCO approved the Settlement with an existing methodology for determining the depreciation offset.

If Duke wanted to change what was adopted in the 19-791 case, then it must prospectively file an application with the PUCO for authority to do so. And it should beforehand obtain Staff's agreement so as to avoid violation of the terms of the

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<sup>48</sup> *Id.* at 6.

Settlement. According to the Staff,<sup>49</sup> Duke does not have Staff's agreement at this point. Duke should not be permitted to unilaterally change the Settlement.

A depreciation offset methodology was used in Case No. 19-791 and a Settlement was reached between Staff and Duke. The Auditor is entirely correct that there was an agreement among the parties as to a particular computational methodology. And that agreement was adopted by the PUCO. Contrary to Duke's argument,<sup>50</sup> Duke cannot unilaterally without authorization modify the processes and procedures that were in place at the time the Settlement was agreed to. The Auditor must audit Duke's CEP to standards.

The Auditor properly compared Duke's method for determining the depreciation offset with the process that was used when the PUCO approved the Settlement. OCC agrees with the Staff recommendation that the PUCO approve Audit Adjustment 3, the adjustment to the depreciation offset.<sup>51</sup>

**2. Duke has not shown that gross plant and cost of removal costs are not part of the CEP and therefore the Auditor was correct in removing them from the Rider (Adjustment 6).**

PUCO Staff avers that Duke has not proven that both the gross plant and the cost of removal costs for a propane sewer main at the East Works Propane Gas Plant are not part of the CEP.<sup>52</sup> While Duke concurs that an adjustment to reduce gross plant is appropriate, the utility disputes the cost of removal component, claiming that it is not in

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<sup>49</sup> Staff Brief at 5.

<sup>50</sup> Duke Brief at 9-11; 15-19.

<sup>51</sup> Staff Brief at 5-6.

<sup>52</sup> Staff Brief at 6-7.

Rider CEP.<sup>53</sup> OCC agrees with Staff that Duke was required to prove that the cost of removal costs are not reflected in the proposed CEP Rider. Duke did not, therefore the Auditor's original recommendation should be adopted. Duke's CEP was approved as an Alternative Rate Plan under R.C. 4925.05. R.C. 4929.05(B) expressly states that "The applicant (in this case Duke) shall have the burden of proof under this section." Duke did not meet its burden of proof, therefore the cost of removal reversal included in the Auditor's Adjustment should be adopted.

**3. Despite Duke's claims to the contrary, the Auditor correctly removed an acquisition premium for land paid above fair market value (Adjustment 8).**

Duke claims that a higher than market price purchase price was warranted for land for the Blue Rock Station project because the utility had to negotiate with the property owner to induce him to sell the property.<sup>54</sup> However, PUCO Staff notes that Duke had a viable alternative to paying a premium for the land (i.e., condemning the land and taking it via eminent domain).<sup>55</sup> Staff avers that Duke's consumers should not be required to pay a premium for land acquisition and that the Auditor's recommended adjustment should be adopted.<sup>56</sup> OCC concurs. If Duke is permitted to simply pass on cost premiums to consumers through increased rates it would never have an incentive to aggressively negotiate to lower costs that will ultimately be paid for by consumers. Duke can negotiate sweetheart deals at will and then simply pass on the added costs to

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<sup>53</sup> Duke Brief at 20.

<sup>54</sup> Duke Brief at 20-21.

<sup>55</sup> Staff Brief at 7-8.

<sup>56</sup> *Id.*



consumers. Consumers should not be required to pay above fair market value for land that Duke acquired, especially considering that Duke had a viable alternative.

**4. Despite Duke's claims to the contrary, the Auditor properly removed over 10 months of AFUDC when little to no work was performed (Adjustment 9).**

The Auditor showed that the SCADA Install Deodorizer Heat project continued to accrue AFUDC over 10 months when little to no work was performed. Duke appears to acknowledge that there were delays in the project.<sup>57</sup> And after reviewing the cost details and supporting workpapers for the project, the Auditor found only \$13,000 was charged to the project for materials, inventories, and stores (i.e., no labor); more than 80% of the charges were for AFUDC. The Auditor is correct that AFUDC should be suspended during protracted project delays. Otherwise, Duke could be incented to start a project and then let it sit idle for months just to collect AFUDC.

OCC concurs with PUCO Staff's support<sup>58</sup> of the Auditor's proposed adjustment. Clearly only \$13,000 charged for material, inventories, and stores with no charges to labor or other accounts demonstrating active work shows that the project had a protracted idle period where AFUDC should not have accrued.

**5. The Auditor's recommendation that major non-blanket project changes in estimated in-service dates should be documented as modified by PUCO Staff (Recommendation 5).**

The Auditor recommends that Duke establish a procedure that require major non-blanket project changes in estimated in-service dates to be documented. Each change

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<sup>57</sup> Duke Brief at 21 ("...as monthly charges continued to be charged to the project over the course of the delays...").

<sup>58</sup> Staff Brief at 7-8.

should be explained, and that information should be provided to senior management.<sup>59</sup>

Duke claims that adoption of Recommendation 5 would result in too much additional tracking and documentation, and that the documentation should only apply to projects over ten million dollars.<sup>60</sup> PUCO Staff recommend that the PUCO adopt Recommendation 5 with the clarification that “major non-blanket projects” should be defined as non-blanket projects over \$500,000.<sup>61</sup>

OCC supports Staff’s recommendation that “major non-blanket projects” should be defined as non-blanket projects over \$500,000. Staff’s proposed \$500,000 threshold for determining when procedures requiring major non-blanket project changes to have estimated in-service dates to be documented is reasonable. It strikes an appropriate balance between Duke’s claimed administrative burdens and proper oversight of projects and the ability to determine whether the projects are being managed and completed efficiently. OCC recommends that the PUCO adopt the Auditor’s recommendation as modified by Staff.

**6. The Auditor’s recommendation that the over-12-month work orders be unitized should be modified as recommended by the PUCO Staff (Recommendation 7).**

The Auditor recommends that while the emphasis should be to unitize the over-12-month work orders, Duke should explore auto-unitizing blanket work orders to reduce the backlog.<sup>62</sup> PUCO Staff recommends that the PUCO order Duke to do more than just

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<sup>59</sup> Staff Brief at 9; Blue Ridge Report at 36.

<sup>60</sup> Duke Brief at 23.

<sup>61</sup> Staff Brief at 9-10.

<sup>62</sup> Staff Brief at 11; Blue Ridge Report at 36.

“consider” what it would take to auto-unitize blanket work orders, and instead develop a plan or explain why auto-unitization is not viable.<sup>63</sup>

OCC agrees with Staff that Duke should be required to do more than just "consider" implementing an auto unitization process for blanket work orders. The PUCO should order Duke to either timely implement an auto-unitization process for blanket work orders or timely propose a viable alternative plan to promptly work off the unitization backlog and ensure timely unitization going forward. Either plan (the auto-unitization plan or Duke's alternative plan) should include a timetable for implementation of the plan, an explanation how the plan will address the unitization backlog and ensure timely unitization going forward, goals/milestones with anticipated dates, and description of how the plan will be evaluated.

### **III. CONCLUSION**

To protect Duke’s residential consumers, the PUCO should adopt the recommendations identified in OCC’s briefs. The PUCO should adopt a lower rate of return reflecting current market conditions. The PUCO should set the same \$1.00 residential rate caps for the 2019 and 2020 CEP as are already provided for 2021 and going forward. The PUCO should not allow Duke to charge consumers for the utility’s financial performance incentives benefitting stockholders. The PUCO should identify the O&M savings that are generated as a result of Duke’s CEP spending as reductions to the amount that customers pay to Duke for its CEP Rider. Finally, to prevent unjust charges to consumers, the 2020 cap on Duke’s CEP charges should be enforced by the PUCO.

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<sup>63</sup> Staff Brief at 11.

The PUCO should protect consumers by implementing these consumer protection recommendations.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 31<sup>st</sup> day of March 2022.

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

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