BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates	)))	Case No. 21-887-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval	)))	Case No. 21-888-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods	)))	Case No. 21-889-EL-AAM

DUKE ENERGY OHIO, INC.'S OBJECTIONS TO STAFF REPORT OF INVESTIGATION AND SUMMARY OF MAJOR ISSUES

On May 19, 2022, the Rates & Analysis Department and the Service Monitoring and Enforcement Department (jointly, Staff) of the Public Utilities Commission of Ohio (the Commission) filed its Staff Report of Investigation (the Staff Report) in the above proceedings. Pursuant to R.C. 4909.19, O.A.C. 4901:1-28, and the Attorney Examiner's Entry dated May 20, 2022, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) submits the following Objections to the Staff Report (Objections) and a summary of major issues in which the Company specifically identifies areas of controversy with respect to findings, conclusions, or recommendations contained in the Staff Report, or the failure of the Staff Report to address certain items. Duke Energy Ohio reserves the right to supplement or modify these Objections in the event Staff makes additional findings, conclusions, or recommendations or otherwise modifies its position with respect to any finding, conclusion, or recommendation contained in the Staff Report.

The Company further reserves the right to contest issues that are newly raised between the filing of the Staff Report and the closing of the record in these proceedings.

OBJECTIONS TO THE STAFF REPORT

REVENUE REQUIREMENT

(1) Amount of Staff's Proposed Revenue Requirement. Duke Energy Ohio objects to Staff's recommendation to reduce Duke Energy Ohio's requested revenue increase to a range of $1,861,525 to $15,279,698, or 0.33 percent to 2.72 percent, over test year operating revenue. Staff's proposed revenue increase significantly understates the magnitude of the revenue requirement to which Duke Energy Ohio is entitled and that Duke Energy Ohio supported through its Standard Filing Requirements. As more specifically described in the following objections, Staff's recommended reductions in the Company's requested increase result from unreasonable, unlawful, and erroneous adjustments that would yield rates that are insufficient to provide Duke Energy Ohio with just compensation or an opportunity to earn an adequate return for providing safe, necessary, adequate, and reliable electric service for its customers.

RATE BASE

(2) Plant in Service.

a. Electric System Operations (ESO) Facility. Duke Energy Ohio objects to Staff's calculation methodology in determining a reduction to plant-in-service of $13,184,293 to account for the ESO Facility's distribution-related service to Duke Energy Kentucky. The calculation methodology used by Staff is incorrect. Staff's adjustment was derived by removing 12.184 percent of the total plant-in-service balance for the ESO Facility. But as noted by Staff in the Staff Report, the Company's allocation factors already removed the portion of the facility attributable to transmission service. Therefore, the proper adjustment is obtained by first applying the transmission-distribution allocation, *then* applying the reduction associated with the ESO Facility's distribution-related service to Duke Energy Kentucky (12.184 percent). This results in a reduction to gross plant-in-service of $10,888,331, which properly allocates the ESO Facility's distribution-related service to Duke Energy Kentucky based on total *distribution*, not total/gross plant-in-service. This calculation methodology also mirrors the transmission rate recovery through the Federal Energy Regulatory Commission (FERC) formula Open Access Transmission Tariff (OATT) rate process and ensures the total asset is allocated consistently to prevent any over- or under-recovery on the asset.

Additionally, Staff miscalculated the accumulated depreciation associated with this adjustment. Staff calculated accumulated depreciation of $589,868, which represents a calculated accumulated depreciation of the total distribution portion of the full asset. Staff failed to then allocate only 12.184 percent of this amount to Kentucky. The correct accumulated depreciation should be $71,869. As a result, the net impact of this adjustment should be $10,816,462.

The Company agrees, in this case only, that the reduction to rate base for the ESO Facility (when calculated correctly) is a reasonable method to determine the reduction to the revenue requirement associated with the distribution-related service to Duke Energy Kentucky. However, the Company objects to using this method going forward. Going forward, Duke Energy Ohio will directly charge Duke Energy Kentucky for the distribution-related services performed at the ESO Facility for Duke Energy Kentucky. In future rate cases, Duke Energy Ohio's rate base will include the total net book value of the ESO Facility, and the revenues received from Duke Energy Kentucky will offset the revenue requirement. This is consistent with the methodology that Duke Energy employs for all shared assets.

b. Capitalized Incentive Compensation. The Company also objects to the recommendation that capitalized incentive compensation attributable to financial performance metrics be removed from base distribution rates. The Company's agreement to a stipulation in a prior rate case is not relevant and has no precedential value in this proceeding.[1] Staff provides no other justification for its recommendation. The Company's compensation policy and these employee incentives reflect the appropriate cost of providing fair, reasonable, market-competitive compensation to Company employees and are not more than necessary to attract and retain the Company's workforce. These incentives and costs are appropriately included within capital assets as per generally accepted accounting principles (GAAP) and the Company's capitalization guidelines. These costs were recorded to plant additions appropriately. Further, as discussed below, the Company objects to the Staff's recommendations regarding recovery of incentive compensation, whether capitalized or expensed.

c. Plant Inappropriately Classified as Held for Future Use. The Company further objects to Staff's failure to capture in its Staff Report the fact that in discovery in this proceeding, the Company disclosed that certain assets were inadvertently classified as Plant Held for Future Use and therefore inadvertently excluded from rate base. Specifically, in STAFF-DR-69-001, the Company disclosed that it had acquired land at

[1] In fact, by its own terms, the Company's stipulation as part of its last rate case is not precedential: "Except for purposes of enforcing the Stipulation or establishing that its terms and conditions are lawful, neither the Stipulation nor the information and data contained therein or attached hereto shall be cited as precedent in any proceeding for or against a Signatory Party, if the Commission approves this Stipulation." *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Stipulation and Recommendation at 27 (April 13, 2018). This stipulation was adopted in its entirety by the Commission. *See* Case No. 17-32-EL-AIR, et al., Opinion and Order at ¶ 328.

7600 Colerain Avenue in Hamilton County, Ohio, on which the Colerain Operations Center was built. The Company noted that the purchase of this land was inadvertently disclosed as Plant Held for Future Use but should be included in rate base. The Staff Report therefore should have noted the same and increased rate base by $2,120,000.

(3) **Depreciation—Depreciation Reserve, Depreciation Accrual Rates, and Depreciation Expense.** Duke Energy Ohio objects to the adjustment of the depreciation reserve and depreciation expense to the extent it also objects to the Staff Report regarding Plant in Service, as noted earlier in these Objections.

Duke Energy Ohio also objects to Staff's calculation of depreciation on the transportation assets in general plant. Because depreciation of these assets is accounted for in other operating and maintenance expenses related to the use of the assets, including that same depreciation in Schedule B-3.2 doubly accounts for depreciation of these assets in the revenue requirement. This erroneously increases depreciation expenses by $509,771.

Duke Energy Ohio further objects to Staff's Plant Investment (Column D) calculations in rows 16 through 27 of Common Plant, as contained in Schedule B-3.2 of Staff's Microsoft Excel model. This column contains incorrect Microsoft Excel cell formula links that are pulling data from the wrong source data for plant investments, which erroneously decreased depreciation expenses by $1,722,248. Staff's model should be corrected for this error.

Duke Energy Ohio also objects to the recommendation in the Staff Report that the Company submit a depreciation study for all electric distribution accounts within the next five years. Depreciation studies are inappropriate outside of a rate case. Staff makes no recommendation as to how these new depreciation rates will be updated in customer rates when the depreciation study is complete, nor does Staff indicate how the costs of the depreciation study will be recovered. Since the Company cannot predict whether it will file another rate case related to electric distribution rates in the next five years, a depreciation study should not be required as a matter of course, absent a mechanism to adjust depreciation expense and recover the costs of such a study. Moreover, Duke Energy Ohio, as an electric distribution utility, is subject to an annual significantly excessive earnings test. To date, the Company has not reached a level of earnings considered to be significantly excessive. Therefore, a singular review of depreciation-related expense would be inappropriate, as it would focus on a single component of rates to the exclusion of all other costs of providing service.

OPERATING INCOME

(4) Current Adjustments—Annualized Revenue, Schedule C-3.1.

a. Test Year Billing Determinants. Duke Energy Ohio objects to Staff's use of the Company's actual billing determinants from calendar year 2021 to calculate the Company's revenue to the exclusion of the approved test year data and submitted actual and forecast data to support that test year. The forecast is a reasonable approximation of expected ongoing billing determinants. The test year for this case is April 1, 2021 through March 31, 2022, *not* January 1, 2021 through December 31, 2021, as the Staff Report and revenue adjustment in this instance suggests. The Commission approved the use of this test year by Entry dated October 20, 2021 in these proceedings. It is unclear why Staff arbitrarily used calendar year billing determinants for certain items and not for others. All billing determinants should be based on the Company's confirmed test period.

If the Commission determines it appropriate to adjust for actuals at all, then the period for which any update should be made is the Company's approved test year. And any adjustment for actuals should likewise include weather normalization updates. Use of artificially high or low billing determinants resulting from hotter or colder than normal weather conditions does not result in normal expected ongoing revenue requirements on which base rates should be calculated. Weather normalized test period billing determinants are more reasonable and appropriate.

Thus, if the Commission disagrees with the Company's proposal in the Application for its forecasted billing determinants, the Company proposes that the Commission adopt approved test year actual weather normalized billing determinants for all determinants other than lighting determinants (as the Company agrees with Staff's use of lighting billing determinants). If adopted, current revenues, not including Other Miscellaneous Revenues, are $542,593,403, compared to Staff's $548,488,883. If, however, the Commission agrees with Staff's proposal and uses calendar year 2021 actuals, the Commission should adopt 2021 actuals proposed by the Company for classes other than lighting to better reflect actual sales and customers in each season and block structure. If adopted—which the Company does not recommend—current revenues not including Other Miscellaneous Revenues are $547,789,815, compared to Staff's $548,488,883.

b. Pole Attachment Revenues. Duke Energy Ohio also objects to Staff's adjustment to annualize revenues based on test year pole attachment revenues. The Company proposes an adjustment of $294,718 to increase pole attachment revenues in the Company's Schedule E-4 from $3,185,375 to $3,480,093. The Company believes that Staff erred in their calculations. First, Staff began by using pole attachment revenues from 2020 ($3,171,897) but should have used actual test year revenues for this calculation ($3,086,882). Next, Staff used a test year pole attachment revenue of $1,988,254, but the Company's proposed test year pole attachment revenues—as provided in the Company's Schedule E-4—is appropriate for this calculation ($3,185,375). Finally, Staff did not reduce total test year pole attachment revenues to account for the 5.87% of revenues associated with transmission revenues which are included as an offset to the revenue requirement in the Company's FERC formula OATT. The sum of test year actual revenues and the pole attachment tariff increase should be reduced by 5.87% (($610,232 + $3,086,882)(1-0.0587)), a reduction Staff did not apply. This results in total test year revenues of $3,480,093. The difference between this value and the Company's proposed E-4 is $294,718, not Staff's proposed adjustment in Schedule C-3.22 of $1,793,875. The proper adjustment is therefore $294,718.

(5) Rate Case Expense, Schedule C-3.3. Duke Energy Ohio objects to Staff's proposed adjustment to the amount of rate case expense included in the Company's revenue requirement, and to the use of a five-year amortization period to determine the Company's increase to base rates. First, Staff's proposal to adjust rate case expenses from $960,000 to $250,335 to reflect the "actual amount of miscellaneous expenses received as of the filing of the Staff Report" does not accurately reflect the likely rate case expenses that the Company will incur in this proceeding, particularly given the number of issues raised in the Staff Report that will need attention. The Company appreciates, however, that Staff recommends Commission review of the most recent rate case expense information before issuing its final order, and the Company will submit its most recent information regarding its rate case expense as a late filed exhibit.

Second, the Company's use of a three-year amortization period to determine an increase to base rates of $320,000 is appropriate because carrying costs were not included in the Company's calculation. Five years would only be reasonable if carrying costs are included. The longer the amortization period, the longer the Company loses the time value of money associated with carrying these costs until they are recovered through rates.

(6) **<u>Annualized Depreciation Expense, Schedule C-3.4.</u>** Duke Energy Ohio objects to Staff's adjustment to the depreciation expense. The Company incorporates the objection narratives provided in Sections (2) and (4) above as if fully set forth herein.

(7) **<u>Property Tax Adjustment, Schedule C-3.6</u>.** Duke Energy Ohio objects to Staff's adjustment to test year expense based on property taxes on plant-in-service as of June 30, 2021, to the extent it also objects to the Staff Report regarding Plant in Service, as noted earlier in these Objections. The Company incorporates the objection narrative provided in Section (2) above as fully set forth herein.

(8) **<u>Interest Expense Deductible, Schedule C-3.7</u>.** Duke Energy Ohio objects to Staff's adjustment to the interest expense deductible to the extent it also objects to the Staff Report regarding adjustments to Rate Base, as noted earlier in these Objections. The Company incorporates the objection narratives provided in Sections (2) and (4) above as if fully set forth herein.

(9) **<u>Adjust Uncollectible Expense, Schedule C-3.12</u>.** Duke Energy Ohio objects to Staff's adjustment to test year uncollectible accounts expense to the extent it also objects to the Staff Report regarding adjustments to annualized revenues, as noted earlier in these Objections. The Company incorporates the objection narrative provided in Section (4) above as if fully set forth herein. Staff's inappropriate adjustments to annualized revenues has the effect of likewise inappropriately impacting the uncollectible expense, which is based on adjusted test year revenues. As a result, Staff's uncollectible accounts expense adjustment of $164,551 is incorrect, as the incorrect revenue increase has a corresponding impact on uncollectible expense.

(10) **<u>Annualize Commercial Activities Tax, Schedule C-3.13</u>.** Duke Energy Ohio objects to Staff's adjustment to test year commercial activities tax expense to the extent it also objects to the Staff Report regarding adjustments to annualized revenues, as noted earlier in these Objections. The Company incorporates the objection narrative provided in Section (4) above as if fully set forth herein. Staff's inappropriate adjustments to annualized revenues have the effect of likewise inappropriately impacting the commercial activities tax, which is based on adjusted test year revenues. As a result, Staff's commercial activity tax adjustment of $182,170 is incorrect, as the incorrect revenue increase has a corresponding impact on commercial activity tax expense.

(11) Annualize Test Year Wages, Payroll Taxes, and Pension and Benefits, Schedule C-3.14.

a. Incentive Compensation. Duke Energy Ohio objects to Staff's adjustment to remove certain incentive compensation based on financial metrics such as earnings per share, advertising for new business, and limited availability to a few highly compensated individuals. Staff also fails to use properly adjusted incentives, and incorrectly categorizes stock-based compensation as being associated with financial metrics.

Staff also provides no substantive support or justification for removing these legitimate costs of providing electric service to customers and ignores the importance of these incentives as an important component of the Company's overall compensation. The Company's short-term and long-term incentive compensation is necessary to provide market-based compensation to Duke Energy Ohio employees, including those at the highest level of the Company, who are working on behalf of customers. These costs are part of a prudent overall compensation policy that benefits customers by enabling the Company to attract, retain, and motivate the employees needed to efficiently and effectively provide electric service to customers.

Further, Staff did not use adjusted incentives included in the test year when calculating the disallowance for incentive compensation. Because this is a distribution rate case, the adjusted incentives allocate Administrative & General (A&G) operating and maintenance accounts between distribution and transmission. The transmission portion is recovered in the Company's FERC formula OATT. Excluding the allocation of the A&G operating and maintenance incentive compensation generates a mathematical error of $888,098.

Staff also errs in proposing to reduce the Company's recovery of certain stock-based compensation on the grounds that they are related to financial metrics. First, the issuance of restricted stock units (RSUs) to employees has nothing to do with the financial results of the Company. The RSUs, which vest over a three-year period, are part of a total compensation package designed to attract and retain highly talented leaders, with the RSU portion of their compensation package issued in a currency of stock instead of cash. The extent to which RSUs vest depends on continued employment and not achievement of a financial metric. Performance shares are also part of a market-competitive total compensation package. Eligible employees must generally continue their employment with Duke Energy for a three-year period to earn a payout and the number of performance shares that participants ultimately earn is tied to Duke Energy's long-term performance. Second, while 75 percent of performance shares are based on financial metrics (50 percent to earnings per share and 25 percent to total shareholder return), Staff provides no substantive support or justification for removing these legitimate costs. Third, 25 percent of performance shares are based on a safety goal related to Total Incident Case Rate, or TICR, which measures the number of occupational injuries and illnesses per 100 employees, including staff augmentation workers.

Finally, Staff eliminated 100 percent of the cost of incentives recorded as "Exec Short Term Incent." Executives participate in the same short-term incentive (STI) plan as other employees, with slight differences in how metrics are allocated. For example, executives have 20 percent of their STI allocated to individual performance metrics versus team metrics. As with other incentive pay, the executive STI is an important part of the total compensation package for executives, and Staff does not provide support for their exclusion.

Staff also does not justify its adjustment to expenses it deems to relate to "advertising for new business." The Staff Report seems to indicate that the Company's customer satisfaction goal (CSAT) is "advertising for new business." This is not true. CSAT measures the degree to which customers have a favorable perception of a given product or service provided by the Company and is included in the incentive program to keep customers central to all that the Company does. CSAT does *not* generate new business and should not be removed from operating income as "advertising for new business."

If the Commission determines it appropriate to remove certain incentive compensation based on financial metrics, then $3,347,105 is the appropriate amount based on the objections above.

b. FERC Account 912. Duke Energy Ohio further objects to Staff's adjustment to test year operating income Staff derived by removing both labor and non-labor expenses associated with FERC Account 912 (Demonstrating and Selling). These costs pertain to customer account management, which is a legitimate function necessary to provide distribution service and is appropriate for inclusion in the Company's base rates. For example, the labor necessary for large account management for Ohio as well as low-income account management is accounted for here. Additionally, the labor necessary to support web and other online access for customers to review and pay their bills, review usage reports, report outages, start and stop service, etc. is recorded to this account. These are fundamental activities that all benefit Ohio customers.

Duke Energy Ohio objects to Staff's adjustment to payroll tax test year expense based on the labor adjustment associated with FERC Account 912 (Demonstrating and Selling), as noted in the prior Objection.

If the Commission determines it appropriate to disallow labor expense associated with FERC Account 912, then the disallowance should be based on the known labor for the 12 months from April 2021 through March 2022 which was used in the Staff's labor adjustment. The Staff's adjustment of $2,706,172 is based on the labor included in the adjusted test year. The adjustment should be $2,401,134 which is based on the labor for the 12 months from April 2021 through March 2022 which is the basis for the Staff's labor adjustment. The Staff's payroll tax adjustment based on labor in FERC Account 912 will also be impacted.

c. Executive Benefits. The Company also objects to Staff's adjustment to test year operating income to remove Executive Benefits, including Duke Energy Ohio's Supplemental Executive Retirement Plan (SERP) as well as other services. Staff's comment that SERP is a form of nonqualified retirement plan specific to highly compensated individuals does not state a justification for excluding a legitimate and appropriate benefit provided to Company employees as part of an overall prudent rewards package necessary to attract and retain individuals supporting the provision of electric distribution service to customers.

(12) **Vegetation Management Amortization, Schedule C-3.15.** Duke Energy Ohio objects to the recommendation in the Staff Report to use a five-year amortization period for the Company's $7,000,000 in vegetation management expenses. The Company's use of a three-year amortization period is appropriate because carrying costs for the deferred $7,000,000 in 2019 vegetation management costs were not included in the deferral granted in Case No. 19-1771-EL-AAM. As such, the longer the amortization period, the longer the Company loses the time value of money associated with carrying these costs until they are recovered through rates.

(13) **Public Service Advertising and Customer Education, Schedule C-3.19.** Duke Energy Ohio objects to the Staff Report's removal of expenses related to public service advertising and customer education from operating expenses. Staff provides no explanation for eliminating these expenses from operating expenses, which will in turn deprive customers of the benefits of the program. Customers expect and deserve to be informed about the Company's efforts to improve reliability, public safety, and the customer experience with the company, including continued education regarding Customer Choice. Effective customer communication is the only way to provide the necessary and relevant information that customers want and need about their electric service, and the additional $1,000,000 is a necessary expense related to performing this work.

(14) **Miscellaneous Expenses, Schedule C-3.20.** Duke Energy Ohio objects to Staff's adjustment to remove expenses associated with dues to a number of organizations. Staff suggests removal of expenses related to organizations "that were determined not to be appropriate to include for ratemaking purposes," but the Staff Report fails to provide any rationale for stating the dues are not appropriate for ratemaking. The Company seeks recovery of dues related to these organizations, which support both its ability to provide electric service to customers and to be trusted by active members of the community which it serves, and such dues are appropriately included in rates.

(15) **Out of Period Expenses, Schedule C-3.21.** Duke Energy Ohio objects to Staff's disallowance of $198,240 in test year expenses as out of period expenses. Staff makes an asymmetrical assumption that certain expenses incurred before the beginning of the test period but paid in the test period cannot be included in the Company's operating income but did not make a corresponding adjustment to include expenses incurred in the test period but not paid by the end of the actual portion of the test period (June). Additionally, Staff makes a flawed assumption that the expenses incurred before the test period which were paid in April were not accrued in March. Removing these expenses from the test year in this asymmetrical and flawed manner unreasonably reduces the revenue requirement. Moreover, Staff's justification for this adjustment is irreconcilable with Staff's own use of actual billing determinants from calendar year 2021, which includes months prior to the approved test period.

(16) **Pole Attachment Revenue, Schedule C-3.22.** Duke Energy Ohio objects to the Staff Report adjustment to test year pole attachment revenues. The Company incorporates the objection narrative provided in Section (4) above as if fully set forth herein.

(17) **Miscellaneous Flow-Through Model Adjustments.** In addition to the adjustments mentioned above, Duke Energy Ohio further objects to the effect of these adjustments as they impact and flow through the revenue requirement model used by Staff. Each of the aforementioned adjustments directly impacts other expenses in the model, including pensions and benefits, payroll taxes, jurisdictional federal and state income taxes, and various income and other tax calculations. Adjustments made and corrected must be carried through the revenue requirement models in a proper manner to accurately reflect the Company's operating expenses and ultimate revenue requirement.

RATE OF RETURN

(18) **Return on Equity (ROE).** Duke Energy Ohio objects to the rate of return on common equity (ROE) used by Staff in its cost of capital analysis because Staff's methodology is flawed, uses an arbitrary mix of data from historical and current time periods, and arbitrarily fails to use methods applicable in other recent Commission proceedings.

a. **Timing of Market Data in Staff's Analysis.** Duke Energy Ohio further objects to the timing of data used in the Staff Report's ROE analysis; specifically, the use of calendar year 2021. The Staff Report was provided on May 19, 2022, approximately five and a half months after its ROE analysis. As such, the Staff's ROE recommendation does not reflect current and expected market conditions. For example, since December 31, 2021 (the spot date of Staff's ROE analysis), the Fed Funds rate[2] increased from 0.00 percent to 0.25 percent to 0.75 percent to 1.00 percent, and 30-year Treasury bonds have increased from approximately 2.00 percent to approximately 3.00 percent. A reasonable assumption would be that data as of April 29, 2022 would have been available to Staff in time to deliver their analyses before the Staff Report's filing date of May 19, 2022. Using data available on April 29, 2022, results of the Staff Capital Asset Pricing Model (CAPM) and Discounted Cash Flow (DCF) analysis would be 9.72 percent and 9.54 percent, respectively.

[2] The Fed Funds rate is the rate at which the Federal Reserve suggests commercial banks borrow and lend their excess reserves for each other overnight.

Table 1: Comparison of Staff CAPM and DCF

	Staff Report	Staff Report Using Data Available April 29, 2022
CAPM	8.92%	9.72%
DCF	9.53%	9.54%
Average	9.22%	9.63%

Using Staff's 100-basis-point range of uncertainty,[3] the cost of equity estimate becomes 9.13 percent to 10.13 percent. Adding Staff's adjustment factor for issuance and other costs (1.01329) results in a baseline cost of common equity recommendation of 9.25 percent to 10.27 percent. Incorporating this data confirms the Company's proposed ROE of 10.30 percent.

Table 2: Comparison of Staff ROE model results and Recommendation

	Staff Report	Staff Report Using Data Available April 29, 2022
CAPM	8.92%	9.72%
DCF	9.53%	9.54%
Average	9.22%	9.63%
100-Basis-Point Range	8.72% - 9.72%	9.13% - 10.13%
Issuance Expense Factor	1.01329	1.01329
Baseline ROE Recommendation	8.84% - 9.85%	9.25% - 10.27%

b. Inconsistency with ROE Models used by Staff in Other Staff Reports and Lack of a CE Review. In Case Nos. 21-0595-WW-AIR and 21-0596-ST-AIR, Staff used the capital asset pricing model (CAPM), the discounted cash flow (DCF) model, and a comparable earnings review (CE Review). In these cases, Staff's CE Review focused on the returns earned in the prior completed calendar year from two groups of companies: one

[3] Staff Report, at 20.

group from various industries and the second group specific to only utility industries. Staff then averaged these three models to arrive at its ROE.

For Duke Energy Ohio, Staff only employed an estimate that used the CAPM and DCF model, wholly ignoring a CE Review. In doing so, Staff calculated a range for ROE of 8.84 percent to 9.85 percent, reflecting these errors in methodology and data application. The Company identified an ROE range applicable to its utility proxy group of 9.72 percent to 11.72 percent, and the Company-specific ROE range of 10.06 percent to 12.06 percent, with the recommended ROE for the Company at 10.30 percent.

Duke Energy Ohio objects to the inconsistent ROE analysis of Staff's Report as compared to the Staff report concerning Aqua Ohio, Inc. (Aqua Ohio) in Case Nos. 21-595-WW-AIR and 21-596-ST-AIR. Specifically, Staff excluded a CE Review from its analysis here, which it did not do in the above-cited cases. In Case Nos. 21-595-WW-AIR and 21-596-ST-AIR, Staff selected two additional comparable risk groups and used their earned returns for 2020 as a gauge for Aqua Ohio's ROE, which is consistent with the corresponding risk standard embodied in the *Hope* and *Bluefield* Supreme Court cases. The first comparable risk group was selected by requiring that the company had the same Safety™ Rank[4] and Financial Strength[5] rating as Essential Utilities, Inc., Aqua Ohio's parent company, and a Beta coefficient (beta) between 0.65 and 1.35. The second comparable risk group was selected by requiring that the company be considered a utility

[4] Defined as a measure of the total risk of a stock relative to the approximately 1,700 stocks covered by Value Line. It is derived from a stock's Price Stability rank and from the Financial Strength rating of a company. Source: Value Line.
[5] Defined as a measure of a company's balance sheet health and financial condition.

under *Value Line*.[6] The result of the CE review was then equally weighted with Staff's CAPM and DCF results to form Staff's recommended range.[7]

If Staff performed its CE Review in this case (i.e., selecting one risk-comparable group using Duke Energy Corporation's Safety™ Ranking, Financial Strength ranking, and a beta between 0.65 and 1.35, and another risk comparable group consisting of utilities, then reviewing their earned returns on equity for 2021, the ROE range would increase and confirm the Company's proposed ROE.

Consistent application of Staff methodologies (and employing the CAPM, DCF model, and CE Review) to the test year data increases Staff's range of ROEs to 9.80 to 10.99 percent, with the Company's recommended ROE of 10.30 percent right in the middle of this range. This underscores the reasonableness of Duke Energy Ohio's requested 10.30 percent ROE.

c. Market Risk Premium. Duke Energy Ohio objects to Staff's use of only one measure of the market risk premium (MRP) in its CAPM analysis. Relying on a single MRP measure is inconsistent with other facets of Staff's cost of common equity analysis, in which they rely on multiple models and growth rate estimates. As discussed on page 15 of the Direct Testimony of Witness D'Ascendis, the use of multiple models adds reliability and accuracy. Given Staff's reliance on *Value Line* in selecting its proxy group, for growth rates in its DCF model, and betas in its CAPM, Staff should have also looked to additional data from *Value Line* in estimating additional MRPs.

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[6] Utility as defined by Staff is based on industry groups consisting of: Electric Utility (East, Central, West), Natural Gas Utility, Water Utility, and Telecom Utility.

[7] A report by the Staff of the Public Utilities Commission of Ohio, *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges for its Water Works Service*, Case Number 21-595-WW-AIR, February 11, 2022, at 8.

d. Empirical CAPM (ECAPM). Duke Energy Ohio objects to Staff's non-consideration of the empirical CAPM (ECAPM) in its CAPM analysis, despite the fact that numerous tests of the CAPM have confirmed the ECAPM's validity as discussed on pages 31 through 33 of Witness D'Ascendis's Direct Testimony. Incorporating the ECAPM model, a more robust ERP estimate of 9.00 percent, and the projected risk-free rate of 2.74 percent, results in an average CAPM/ECAPM result of 10.71 percent. Using data as of April 29, 2022, the average CAPM/ECAPM result would be 11.12 percent.

e. Size Adjustment. Duke Energy Ohio objects to Staff not including a size adjustment to reflect the unique risks facing the Company as compared to the proxy group. Regarding a size adjustment, as noted in Witness D'Ascendis's Direct Testimony, Duke Energy Ohio's smaller size relative to the proxy group indicates greater relative business risk for the Company. Smaller companies are less able to cope with significant events, such as those affecting revenues or expenses, and the adverse impacts of those events. As discussed at length in Witness D'Ascendis's Direct Testimony, size has been shown to be material to risk and Staff should have incorporated an adjustment of at least 0.15 percent to reflect this risk in its ROE estimate[8]

f. Credit Risk Adjustment. Duke Energy Ohio objects to Staff not including a credit risk adjustment to reflect the Company's riskier Moody's bond rating of Baa1 compared to the average bond rating of their proxy group. As discussed on pages 10 and 11 of Witness D'Ascendis's Direct Testimony, similar bond ratings reflect similar total risk between companies or groups of companies (excluding size). Because Duke Energy

[8] Direct Testimony of Dylan W. D'Ascendis, at 41.

Ohio's bond rating is riskier than Staff's proxy group, the riskier bond rating needs to be reflected in the Company's ROE.

RATES AND TARIFFS

(19) Real Time Pricing Program (Rate RTP). Duke Energy Ohio objects to the recommendation in the Staff Report to exclude Rate RTP—specifically, the Energy Delivery Charge—from adjustment based on the final approved revenue requirement. While Staff clarifies that calculated tariff charges should adjust for the final Commission approved revenue requirements, Staff leaves the Rate RTP Energy Delivery Charge unchanged for those changes in revenue requirements. Instead, Staff recommends acceptance of the Company's proposed RTP Energy Delivery Charges. Rate RTP Energy Delivery Charges are calculated using the revenue requirement inputs from the Cost of Service Study (COSS), similar to many other charges. While the Company supports Staff's clarification that final charge calculations be based on the Commission's final approved revenue requirements, this should also include the Rate RTP Energy Delivery Charges.

(20) Optional Time-of-Day Rate with Critical Peak Pricing for Residential Service (Rate TD-CPP). Duke Energy Ohio objects to the statement in the Staff Report that the availability of Rate TD-CPP is contingent on the implementation of the Company's new billing system (Customer Connect) in the first half of 2023. This system was implemented in April 2022, and Rate TD-CPP is estimated to be available to customers in 2023 pending approval by the Commission. Duke Energy Ohio Witness Sailers' Direct Testimony notes that the plan is to implement the rate structure in Customer Connect upon approval and set rider values for Rate TD-CPP in rider proceedings as they occur. Rate TD-CPP will not be available to customers until all applicable rider values for the rate have been established.

Next, Duke Energy Ohio objects to the recommendation in the Staff Report that the reference to the EV pilot be removed from Rate TD-CPP because it is pending approval in a separate docket. If the reference to the EV pilot is removed and the Commission approves the referenced EV pilot separately, tariffs would not separate managed charging incentives in the proposed EV pilot from the pricing signal provided by Rate TD-CPP. If customers are permitted to participate in both programs, a form of double compensation could accrue to the participant. Under the managed charging pilot, the customer could receive an incentive to move EV charging to off-peak periods under Rate TD-CPP before it is known whether the customer would have moved their EV charging based on the price signal provided by Rate TD-CPP. The Company therefore requests the proposed reference to the EV Pilot remain in the tariff sheet.

Finally, Duke Energy Ohio objects to the recommendation in the Staff Report that the provision for repayment of savings if the customer early terminates enrollment in Rate TD-CPP be eliminated as a term of enrolling in Rate TD-CPP. The Staff Report asserts that those amounts are instead eligible for recovery by the Company though the decoupling rider, Rider DDR. The Company noted in its response to STAFF-DR-081-009 that if a customer early terminates participation in Rate TD-CPP, a cancel/rebill process will adjust revenues collected from the customer. Staff's suggestion is to forego the cancel/rebill process and allow the customer to retain the savings from partial initial term participation. But the Company has designed Rate TD-CPP in this way to prevent gaming of the seasonal provisions embedded in the dynamic Rate TD-CPP. The repayment term and condition of enrollment eliminates the incentive a customer may have to enroll in the rate with the intention of returning to their previous rate before the summer season. Removing the provision creates the possibility that any seasonal savings that are experienced by the customer are transferred to other residential customers through Rider DDR instead of being paid by the participant.

(21) **Electric No. 19 Sheet No. 60.19 Rate SL – Street Lighting Service Regarding General Conditions.** Duke Energy Ohio objects to the recommendation in the Staff Report that the tree trimming and vegetation management responsibility for lighting customers that is not necessary for reliability purposes be denied. Staff has incorrectly concluded that this is a new responsibility for customers. It is not. Witness Sailers' Direct Testimony discusses clarifying language regarding vegetation management around lighting fixtures. This testimony indicates the Company manages vegetation for the reliability of the Company's distribution system but does not manage vegetation that is obstructing light from a light fixture if that obstruction has no impact on the reliability of the distribution system. Even if this were a new service, Staff does not explain why that would warrant denial, and provides no other support for recommending denial of this tariff change. The Company requests approval of this language.

(22) **Convenience Fees.** Duke Energy Ohio objects to the recommendation in the Staff Report that customers continue to be directly charged convenience fees for using credit and debit cards, electronic checks, and pre-paid cards. Staff provides no basis for this recommendation. Convenience fees are charged by the processing companies and individual customer fees are one of the top frustrations expressed by customers when paying their utility bill. Charging individual customers such fees directly for using credit and debit cards, electronic checks, and pre-paid cards to pay their utility bill, as opposed to including fee amounts in the overall cost of service or in the Company's uncollectible expense rider as was proposed in the Company's filing, creates a customer payment experience different from virtually all other products or services that consumers purchase every day. Further, these convenience fees should be treated as a cost of serving customers and recovered through rate mechanisms to allow access to all residential customers, not just those who are willing to pay the incremental processing charge. The Company's proposal to include these costs in its uncollectible expense rider is reasonable and should be approved. Additionally, Duke Energy Ohio objects to the extent the Staff Report recommends that the required walk-in payment fees be paid directly by the customer and suggests the Company made this proposal in its initial filings. The Company did not propose any change in the collection of walk-in payment fees in its primary filing materials.

(23) Non-Payment—Disconnection and Reconnection, Sheet No. 26. Duke Energy Ohio objects to the Staff Report recommendation to deny the Company's proposed field collection charge increase from \$15 to \$60. This recommendation is unreasonable, as the \$15 charge is insufficient to cover the costs incurred. The Company performed and provided the results of new studies to show that this service—where a Company employee arrives at the customer's premises to disconnect service and provides the customer with a means to avoid disconnection—is akin to reconnection service. Thus, it is reasonable to base the cost of this service on reconnection service, which results in a \$60 charge. However, if the Commission determines that it is unreasonable to use the same time duration to perform a reconnection for the Field Collection service, then the Company suggests it is reasonable to use the average travel time to the customer site to perform a disconnection, 28 minutes, as the basis for the Field Collection charge. The resulting charge using this input is 0.47 hours (i.e., 28 minutes / 60 minutes) times \$123.17 per hour (i.e., fully loaded labor rate). This equates to \$57.48, which the Company recommends rounding to \$55.00.

(24) Customer Charges—Residential Customer Charges. Duke Energy Ohio objects to the recommendation in the Staff Report that residential customer charges be calculated according to the minimally compensatory methodology. Staff states that it accepts the Company's

COSS as reasonable and uses the customer component information to guide suggested customer charges for non-residential customers, but the residential customer charges deviate from this position. Staff states that it uses the minimally compensatory calculation methodology because "[the Company] has proposed to shift a significant portion of the fixed demand costs into the customer charge," and recommends that the "current rate design methodology be maintained until sufficient customer demand data is available." Staff's suggestion is inconsistent and unclear. If Staff is suggesting using demand charges for the residential rate design, the Company would support this recommendation. But it is unclear what data is not available that compels Staff to use the minimally compensatory method to perform the calculations. Further, Staff does not challenge the Company's use of the minimum system method to define customer-related costs. Using a different customer component method without challenging the Company's minimum system method in the COSS for residential customers is arbitrary. The Company therefore supports the residential customer charges as proposed in its application and objects to Staff's recommendations based on use of the minimally compensatory method.

(25) <u>Customer Charges—Non-Residential Customer Charges</u>. Duke Energy Ohio objects to Staff's reduction to Service at Transmission Voltage (Rate TS) of 30.41 percent. For Rate TS, the current rate design to collect distribution-related costs from transmission served customers is to divide the revenue requirement by the number of bills, resulting in the collection of the distribution revenue requirement from the customer charge for transmission customers. This design is used because the distribution-related revenue requirements are essentially metering and billing costs for transmission served customers. Maintaining this rate design, the Company recommends that the Rate TS customer charge equal the Commission-approved revenue requirement divided by the number of bills for Rate TS. Staff's reduction recommendation denies the Company the ability to collect the Rate TS allocated revenue requirement absent an increase in the volumetric charge; an increase which Staff does not recommend.

(26) **Late Payment Charges.** Duke Energy Ohio objects to Staff's recommendation that late-payment fees only be charged once. Staff's recommendation results in a disparate treatment between other jurisdictional utility late-payment policies and results in inconsistency between the Company's natural gas and electric service. Duke Energy Ohio did not request a change to its late payment fee policy, which has been in place since at least Case No. 91-410-EL-AIR from May 1992. Staff did not previously provide analysis as to why a change is necessary. The current late-payment policy, whereby late fees are incurred on the total amount on successive bills when not paid timely, encourages on-time payment. Moreover, the Company's tariff is similar, if not identical, to other electric and natural gas utilities regulated by the Commission. The Company should not be required to change the late-fee payment process that has been in place for at least thirty-years, and that is being followed by other jurisdictional utilities.

RIDERS

(27) **Cap on Delivery Capital Investment Rider (Rider DCI).** Duke Energy Ohio objects to Staff's recommendation to reduce the Company's proposed annual revenue caps on Rider DCI to $17 million for 2022 (prorated for whenever new base distribution rates go into effect), $34 million for 2023, $51 million for 2024, and $28 million for the first five months of 2025, and $0 after May 31, 2025 (the end date of the Company's current Standard Service Offer). Staff notes that its recommended revenue caps are based on the base distribution revenues that Staff recommends in this case, rather than the base distribution rates proposed by Duke Energy Ohio. The Company objects to Staff's adjustments to the Company's base distribution rates and revenues. The Company likewise objects to the resulting impacts to the Rider DCI annual revenue caps. Further, Staff's claim that the Company's recommended revenue cap percentage of base distribution rates with Staff's adjustments exceeds the Commission's previously stated maximum growth rate does not paint the full picture. It fails to moderate the rate to account for the more than five years since its adoption.

In addition, whereas the Company's proposed caps are based on its estimated capital expenditures that enable the Company to provide safe, reliable service and to meet reliability targets, Staff's caps are based on a three percent per year revenue growth target. Staff's approach is arbitrary and deficient in three respects: 1) it ignores the capital investment necessary to achieve the Company's reliability targets; 2) Staff made no corresponding change in reliability targets; and 3) Staff's recommendation is less than currently approved caps, which allow a four percent per year revenue growth. If Staff's arbitrary revenue growth target is agreed to by the Commission, the Company will be required to file unnecessary rate cases to recover investments made to achieve reliability targets. This will negatively impact the Company's customers.

Staff also inappropriately relies on Case No. 13-2385-EL-SSO for support in recommending rejection of the Company's proposed annual revenue caps. The holding cited by Staff addresses a different utility's proposals and was limited to that utility's case.[9] The Commission did not make any similar finding for Duke Energy Ohio here. Moreover, in the case cited by Staff, that utility's cap was calculated differently than that of Duke Energy Ohio's Rider DCI. More generally, the distribution-capital-related riders for each of the electric distribution

[9] In the case cited by Staff, the Commission made a fact-specific determination related to the subject utility's proposed caps. *See In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No 13-2385-EL-SSO, Fourth Entry on Rehearing at 51 (November 3, 2016) ("Finally, in examining AEP Ohio's methodology and calculation of the DIR annual revenue caps, the Commission notes that the Company increases total base distribution revenues by three percent, each year, and then multiplies the total base distribution revenues by three percent to determine the minimum cap level for the DIR. *The Commission finds that AEP Ohio's method to determine the DIR annual revenue caps is inappropriate*, as base distribution revenues rise and fall from year to year. Thus, *AEP Ohio's method and the resulting DIR annual revenue caps* that the Company proposes would essentially ensure that the Company's total distribution revenues grow by at least three percent every year.") (emphasis added).

utilities in Ohio are not the same. The individual utilities' riders are based on different calculation methodologies (e.g., some use historical data, base their calculations on projected data, have different roll-over provisions impacting the calculation, and/or include more FERC accounts than others). Because the individual distribution capital-related riders are not identical, it is inappropriate to use another utility's non-binding decision here as justification for setting Rider DCI caps, particularly given the vast array of different methodologies used to calculate these riders and other stipulated reliability targets. Moreover, if the Commission intended to establish a state-wide policy for rider-related increases, the appropriate mechanism would be through either the legislative process or administrative rulemaking process, and not through a single utility's rate-proceeding where impacted parties were denied due process and an opportunity to be heard.

Duke Energy Ohio also objects to Staff's alternative proposal to the Company's proposed annual true-up for over- and under-recovery of Rider DCI. While Staff suggests capping the true-up at $2,000,000, either over or under the Company's yearly revenue cap, Staff does not expand on the consequence if the Company over- or under-recovers greater than $2,000,000. This proposal suggests that the Company can set rates with such incredible accuracy that over- or under-recovery greater than $2,000,000 is impossible. While the Company always aims to set rates consistent with the approved cap, recoveries are subject to a number of conditions that vary year to year and are outside the Company's control, and Staff both fails to recognize this in proposing its alternative and fails to account for (or mention) any potential consequences of its recommendation.

(28) <u>Community Driven Investment Rider (Rider CDI)</u>. Duke Energy Ohio objects to the recommendation in the Staff Report that the Company's request to implement Rider CDI be denied. Municipalities/townships will follow their public process for passing resolutions and ordinances for entering into these projects and into a contract with the Company. Governmental agencies have public notice obligations for passage of resolutions and ordinances through open meetings. Then, the Company and the governmental entity will proceed with a filing before the Commission. Customers will therefore have two opportunities for engagement: once before the governmental entity and then again before the Commission. Further, Staff provides no support for its "belie[f] that some type of payment or financing plan could be made available by the Company for communities to achieve a similar outcome," and sheds no light on why or how such a plan would have similar effects to Rider CDI. The Company has expanded on the numerous benefits that Rider CDI will provide to customers and communities within the Company's service area, and Staff has done nothing to disprove this.

MANAGEMENT AND OPERATIONS REVIEW

(29) Tracking of Complaints and Calls. Duke Energy Ohio objects to the recommendation in the Staff Report that the Company review its tracking of complaints and calls to identify if more specific coding systems are needed to better track the underlying cause of the complaint and/or call. The Company already tracks, codes and logs calls and complaints to identify potential trends and to enable actions to avoid similar complaints in the future. Staff discussed nothing that would demonstrate any trends or areas of customer concern that could have been identified and rectified through different tracking approaches.

SUMMARY OF MAJOR ISSUES

Duke Energy Ohio objects to the Staff Report in several areas related to the Company's revenue requirement, rates, riders, charges and fees, and operational matters. Overall, Staff's proposed revenue increase in the range of $1,861,525 to $15,279,698 (0.33 to 2.72 percent) over test year operating revenue drastically understates the magnitude of the revenue requirement to which the Company is entitled. The major issues and sub-issues to which the Company objects are summarized below, without limitation:

(1) Staff's overall recommendation with respect to the amount of Duke Energy Ohio's revenue increase.

(2) Staff's valuation of Duke Energy Ohio's rate base and used and useful assets for providing retail electric distribution service to customers, including but not limited to Staff's calculations of and adjustments to plant-in-service (including the ESO Facility, capitalized incentive compensation, and classification of Colerain Operations Center); and depreciation reserve, depreciation accrual rates, and depreciation expense.

(3) Staff's adjustments to the level of annualized revenue considered for ratemaking, including test year billing determinants and pole attachment revenues.

(4) Staff's other adjustments to the operating expenses allowed for ratemaking purposes, including but not limited to rate case expense; annualized depreciation expense; property taxes; interest expense deductible; uncollectible expense; commercial activities tax; test year wages, payroll taxes, and pension and benefits (including incentive compensation, FERC Account 912, and executive benefits); vegetation management activities; public service advertising and customer education; miscellaneous expenses; out of period expenses; pole attachment revenue; and miscellaneous flow-through model adjustments.

(5) Staff's recommended rate of return on equity to be used in determining the Company's allowable rate of return on rate base.

(6) Staff's rates and tariffs analysis, including but not limited to recommended adjustments pertaining to Rate RTP, Rate TD-CPP, Street Lighting Service Regarding General

Conditions, convenience fees, non-payment of disconnection and reconnection fees, residential customer charges, non-residential customer charges, and late payment charges.

(7) Staff's recommendations related to Rider DCI caps.

(8) Staff's recommendation related to Rider CDI.

(9) Staff's recommendation that the Company review its tracking of complaints and calls received.

Dated: June 17, 2022

Respectfully submitted,
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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 17th day of June, 2022, upon the persons listed below.

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