

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for an)	Case No. 21-887-EL-AIR
Increase in Electric Distribution Rates)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Tariff)	Case No. 21-888-EL-ATA
Approval)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval)	Case No. 21-889-EL-AAM
to Change Accounting Methods)	

**OBJECTIONS TO STAFF REPORT OF INVESTIGATION AND SUMMARY OF
MAJOR ISSUES OF INTERSTATE GAS SUPPLY, INC.**

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I. INTRODUCTION

On October 1, 2021, the Duke Energy Ohio, Inc. (“Duke” or “Company”) filed an application to increase its distribution rates, for tariff approval, and to change its accounting methods (“Application”). The Staff Report of Investigation (“Staff Report”) was filed with the Public Utilities Commission of Ohio (“Commission”) on May 19, 2022, setting forth the Commission Staff’s (“Staff”) findings regarding the Application.

Pursuant to R.C. 4909.19 and Ohio Adm.Code 4901-1-28, Interstate Gas Supply, Inc. (“IGS Energy” or “IGS”) hereby files its Objections to the Staff Report and Summary of Major Issues in the above-captioned matters. IGS Energy reserves the right to contest through cross-examination, testimony, or exhibits any newly raised issues, issues raised by any other party, or any position set forth in the Staff Report that changes prior to the close of the record.

II. BACKGROUND

In its Application, Duke proposes a rate base of \$ 2,068,551,045, and recovery for operating expenses totaling \$ 513,108,842.¹ After review of the filing, the Staff Report recommends a rate base of \$ 2,036,142,926 and operating expenses of \$ 430,695,770.² However, included in the proposed amounts of both Duke and the Staff Report are costs related to the provision of the standard service offer (“SSO”), contrary to Ohio law and policy.³

¹ Duke Ohio Application (October 1, 2021), Schedule A-1, C-1.

² Staff Report at Schedule A-1, C-1.

³ See R.C. 4928.05(A)(1) (“[A] competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963.”);

In Duke's Global Resolution, the Commission ordered "Duke to include in its next rate case application a detailed cost of service study to determine whether, and to what extent, the SSO default service and/or CRES competitive offers are subsidized through base rates."⁴

Despite the Commission's explicit directives, Duke failed to complete a thorough analysis of the costs included in distribution rates. In its application, Duke proposed the Retail Reconciliation Rider (Rider RR) that would reallocate the quantifiable cost related to the provision of SSO generation service and quantifiable costs related to the support of the Customer Choice Program that are currently being recovered from both shopping and non-shopping customers through base distribution rates. However, both Duke and Staff agreed that it would not be reasonable to remove costs related to the provision of SSO from distribution rates.⁵ The costs for Duke to provide its competitive generation service, the SSO, are still unlawfully included in distribution rates. Thus, IGS objects to specific recommendations and failures in the Staff Report regarding the unbundling of those costs.

Similarly, the Staff Report fails to address the mandatory fees incurred by suppliers that are presently avoided by the SSO. By failing to address the income generated by fees paid by all suppliers for day-to-day tasks such as bill-ready fees and customer switching, the Staff Report failed to determine whether Duke is double collecting the expenses for these administrative tasks or whether the SSO is being unlawfully

⁴ *In re Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32, et al. Opinion and Order (Dec. 19, 2018) at 112.

⁵ Staff Report at 41.

subsidized by avoiding similar fees. The fees, and potential lack thereof within the SSO, must be addressed in order to ensure that the playing field shared by Duke and suppliers is level as guaranteed by Ohio law.

Additionally, IGS objects to the Staff Report's recommendation that Duke continue Time-of Day rates (otherwise referred to as time of use or "TOU" rates).

Further, the Staff Report fails to fully recognize the changes in law and policy established in Am.Sub.H.B. No. 6. ("HB 6"). HB 6 authorizes an EDU to enter into agreements with mercantile customers for the purpose of constructing customer sited renewable energy resources.⁶ The law forbids the Commission to authorize the collection of any costs associated with these projects from any other customers.⁷ This includes direct and indirect costs associated with these projects.⁸ However, the Staff Report fails to provide any evidence that these costs were analyzed and removed from distribution rates to prevent the Commission from violating Ohio law.

III. OBJECTIONS TO THE STAFF REPORT

IGS objects to the following specific recommendations or failures in the Staff Report:

A. The Staff Report fails to recommend removal of the costs associated with providing a competitive retail electric service through distribution rates, which is contrary to Ohio law.

Staff recommends the Company continue to collect costs associated with the

⁶ R.C. 4928.47.

⁷ R.C. 4928.47(B).

⁸ *Id.*

provision of the default service offer in distribution rates contrary to Ohio law.⁹ Staff's failure to require Duke to assign and allocate the costs of default service to the generation function results in base distribution rates that are unreasonable and standard service offer rates that are unduly discriminatory. IGS objects because this permits Duke to collect the costs of providing the SSO, a competitive retail electric service, through distribution rates in violation of R.C. 4928.05(A)(1).

The Commission has no authority to regulate or provide compensation to support competitive retail electric service through base distribution rates established under Chapter 4909. Indeed, the General Assembly specifically provided that "a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963." R.C. 4928.05(A)(1). In other words, the Commission cannot authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under 4909.18 – which Duke filed here. The Commission's authority to supervise and regulate the SSO is limited to R.C. 4928. Therefore, the Staff Report's recommended distribution rates, which include costs to provide Duke's competitive retail electric service, are unlawful and too high.

B. The Staff Report fails to recommend that Duke unbundle from distribution rates all costs related to the provision of the SSO.

IGS objects to the Staff Report's acceptance of Duke's Cost of Service Study and its failure to recommend that Duke allocate to the default service/standard service offer

⁹ Staff Report at 41.

(SSO) certain costs proposed for recovery in distribution rates.¹⁰ The Staff Report failed to properly functionalize, classify, or allocate costs associated with the provision of the SSO. This objection also relates to the rate design recommended by the Staff Report, which fails to account for SSO-related costs proposed for recovery in distribution rates.¹¹ The Staff Report failed to propose a rate design/structure through which such unbundled costs should be collected from SSO customers and credited to shopping customers. Failure to allocate these costs to SSO rates violates good ratemaking principles, Ohio law, and State Policy against anticompetitive subsidies and in favor of unbundled and comparable rates.

Many of the costs necessary to support the default service are proposed for recovery in Duke's allowance for operation and maintenance expense or "O&M". These costs are identified and supported in the B-Schedules, C-Schedules, and Exhibit E-3.2 (the cost of service study) attached to the Application. The operation and maintenance expense categories that the Staff Report failed to analyze and allocate to the default service include:

- 1) Call center infrastructure and employees to maintain appropriate customer service for SSO customers;
- 2) Outside and inside legal, regulatory, and compliance personnel to comply with the regulatory rule requirements for the SSO;
- 3) IT employees, infrastructure, and software;
- 4) Office space for employees;

¹⁰ Staff Report

¹¹ Staff Report

- 5) Administrative and human resources staff to support the employees;
- 6) Office supplies;
- 7) Accounting and auditing services;
- 8) Printing and postage to communicate with customers;
- 9) Cash Working Capital.¹²

These categories of cost are mainly identified in the following FERC Accounts: 580, 586, 589, 597, 901-905; 907-916; 920-935.

Additionally, the Staff Report further failed to analyze and allocate to the default service costs embedded in rate base that are necessary to support default service. These costs are proposed in the B-Schedules. The Staff Report failed to analyze or identify costs in these schedules that relate to the provision of SSO service and should therefore be allocated to that service. Such costs include rate base related to the categories of costs identified above, as well as Duke's headquarters in Cincinnati, Ohio.

Each of the aforementioned expenses and investments are necessary to support the SSO. Moreover, each of these services reflect costs that CRES suppliers must incur to support their own rates. Indeed, in addition to these internal costs, CRES providers often must pay Duke additional fees, for example, switching fees and billing fees. Each of these fees are separate and apart from internal costs that CRES providers must incur to make a competitive product available.

All of the costs identified above should be unbundled from Duke's proposed

¹² See Staff Report at 12. Although the Staff Report recommends that Duke should not collect a Cash Working Capital expense, this recommendation does not change the fact that Duke does in fact incur a capital cost to pay auction suppliers. By failing to allocate a cash working capital requirement to the SSO rate, Duke thereby subsidizes this cost through revenue collected through distribution rates.

distribution rates and allocated to the SSO through the Rider RR. Failure to unbundle and allocate SSO-related costs to that service would violate good ratemaking principles, Ohio law, and State Policy against anticompetitive subsidies and in favor of unbundled and comparable rates.

C. The Staff Report's recommendation to not approve and implement the Retail Reconciliation Rider is unlawful and unreasonable.

IGS objects to the Staff Report's agreement with the Company to not approve and implement the Retail Reconciliation Rider (Rider RR). Failure to unbundle these costs from distribution rates is contrary to Ohio law and policy, which prohibits the Commission from using its authority under Chapter 4909 to grant distribution rate-related cost recovery for competitive services. In accordance with the Opinion and Order approved in Duke's Global Stipulation, the Commission directed Duke to differentiate the costs between SSO customers and shopping customers in its next distribution rate case.¹³ The Staff Report recognizes that Duke identified some of these costs in the Application and proposed collection of these costs through the bypassable Retail Reconciliation Rider (Rider RR).

Staff's lack of acknowledgement of Duke's commitment boils down to two conclusions: (1) it did not evaluate the costs of providing the SSO that are currently recovered in distribution rates because Duke did not comply with the Commission's Order; and (2), even if Duke had performed as it should have, the Staff has imposed a policy justification for ignoring Ohio law's prohibition of the recovery of costs related to competitive services through distribution rates.

Of course, neither justification passes muster.

¹³ *In re Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32, et al. Opinion and Order (Dec. 19, 2018).

Ohio law requires the Commission to conduct an investigation of the facts set forth in the application and the attached exhibits. R.C. 4909.19(C). Thus, the purpose of a Staff Report is to perform *an independent* evaluation of the utility's proposal to increase its rates—it is not intended to rely on the exclusive analysis of the utility. If that were the case, there would simply be no statutory obligation or benefit of a Staff Report. Rather than perform an independent evaluation, the Staff Report relied upon the cost of service study conducted by Duke, as well as Duke's evaluation of Duke-related costs proposed for recovery in distribution rates.¹⁴ Thus, the Staff Report failed to appropriately functionalize SSO-related costs to that service. As a result of the Staff Report's failure to conduct this analysis, shopping customers would be residually burdened with SSO-related costs in their distribution rates.

Moreover, the Commission itself anticipated that it would need a complete investigation of Duke's distribution rates in this rate case. The Commission directed "Duke to include in its next rate case application a detailed cost of service study to determine whether, and to what extent, the SSO default service and/or CRES competitive offers are subsidized through base rates."¹⁵

Although absent from the Staff Report is any recommendation to appropriately allocate to the SSO costs that are necessary to support that service, identifying costs associated with the SSO is a relatively straightforward process using generally accepted ratemaking principles. Indeed, through testimony in this proceeding, IGS will present a

¹⁴ See Staff Report at 26.

¹⁵ *In re Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32, et al. Opinion and Order (Dec. 19, 2018) at 112.

thorough analysis of Duke's proposed distribution rates that properly identifies and allocates the costs associated with the SSO to the customers that receive this service. This analysis will demonstrate that Duke must unbundle costs from its distribution rates to ensure its rates are just, reasonable, and lawful.

Unbundling is the removal of costs in distribution rates that are associated with providing the SSO, because the Commission does not have the authority to regulate the Duke's provision of competitive retail electric service¹⁶ through R.C. 4909.18, the distribution ratemaking statute.¹⁷ To identify these costs, the focus should be on the service to which the cost relates. If the cost solely relates to or supports Duke's provision of noncompetitive retail electric distribution service, it is properly proposed in distribution rates.¹⁸ Conversely, if the cost relates to or supports Duke's provision of competitive retail electric service – the SSO – it must be removed from distribution rates.¹⁹ If Duke utilizes a resource or incurs an expense to support both its noncompetitive retail electric distribution service and its competitive retail electric service, removal of the competitive retail electric service costs is accomplished by allocating the cost between the two services, just like a utility allocates the costs associated with an asset if it is utilized by

¹⁶ “[A]n electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, **a standard service offer of all competitive retail electric services** necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.” R.C. 4928.141(A) (emphasis added).

¹⁷ “[A] competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963.” R.C. 4928.05(A)(1).

¹⁸ See R.C. 4928.15(A).

¹⁹ “[A] **competitive retail electric service supplied by an electric utility** or electric services company shall **not be subject to supervision and regulation** . . . by the public utilities commission **under Chapters 4901. to 4909., 4933., 4935., and 4963.**” R.C. 4928.05(A)(1) (emphasis added).

multiple service territories.

The costs for Duke to provide its competitive generation service, the SSO, are still unlawfully included in distribution rates. Thus, IGS objects to the Staff Report's failure to recommend Duke implement Rider RR.

- D. The Staff Report fails to address the various fees that CRES providers provide to Duke for performing distribution service functions to determine if Duke is over-recovering its costs for providing those functions and whether the charges are discriminatory.**
- E. The Staff Report fails to recommend that the various fees that are assessed to CRES providers be eliminated or applied equally.**

IGS objects to the Staff Report's failure to address the various fees that CRES providers provide to Duke. Specifically, the fees include the Bill-Ready Fee and Switching Fee.²⁰

It is apparent that anytime a CRES provider needs utility participation to provide a market enhancement or additional product offering, the CRES provider and its customers must pay all associated costs, yet the SSO is continually subsidized by all customers. Duke's bill-ready and switching fees relate to services that should have correlating expenses included in the test year. The Staff Report failed to examine whether Duke is being compensated twice for providing these services and/or recommend that the fees be eliminated.

Moreover, the Staff Report failed to examine whether Duke's switching fee and bill-ready fee is excessive. In the test year expenses, Duke collected \$924,349.²¹ Indeed, the Staff Report failed to examine whether Duke incurs any costs whatsoever to switch a

²⁰ P.U.C.O. 20, Electric Service, Sheet No. 52.6

²¹ Duke Energy Ohio's Response to RESA's Discovery Request, Second Set, RESA-INT-02-003.

customer and/or recommend that the fees be eliminated. In fact, Duke did not provide any evidence that supplier fees are cost-justified. Likewise, the Staff did not investigate the costs underlying supplier fees. IGS objects to the continuation of these discriminatory fees. Further, the Staff Report failed to determine whether Duke is double collecting the expenses for these administrative tasks or whether the SSO is being unlawfully subsidized by avoiding similar fees.

Additionally, requiring a CRES provider and its customer to pay for something that an SSO customer receives at no charge is discriminatory. For example, a CRES provider is assessed a switching fee of \$5 each time a customer is enrolled with the CRES provider.²² However, there is no fee to Duke or the customer each and every time the customer switches to the SSO. Both actions are providing the same service, changing the customer's generation supplier, and both can only be effectuated by one entity, Duke, yet only certain generation suppliers are charged a fee. No compelling reason has been provided for this disparate treatment. Thus, this is an undue and unreasonable preference provided to the SSO in violation of R.C. 4905.35.

This discriminatory treatment further exacerbates the harm from failing to properly unbundle the costs to serve the SSO from distribution rates. Not only are shopping customers paying to support two provisions of generation service, they are also being saddled with fees in which their subsidized neighbors on the SSO are exempt. This is just another example of heads the SSO wins, tails CRES providers and choice customers lose.

²² P.U.C.O. 20, Electric Service, Sheet No. 52.6

- F. The Staff Report fails to recommend that Duke remove the unlawful and unreasonable cost recovery its Time-of Day Rate (Rate TD-CPP) from distribution rates.**
- G. The Staff Report fails to recommend that Duke discontinue its Time-of-Day Rate when there are competitive offers in the marketplace consistent with Commission precedent.**

IGS objects to the Staff Report's recommendation that Duke implement its proposed new tariff, Rate TD-CPP, that is intended to modify and replace its existing time-of-use rate (TOU) for residential distribution service.²³ Ohio law favors competitive markets and solutions.²⁴ Therefore, default service should not be in the role of providing time-differentiated pricing, which would be better provided by the competitive market. Further, placing the utility in the role of providing time-differentiated pricing will diminish customers' incentive to engage with the competitive marketplace.

IGS further objects to the Staff Report's failure to recommend that Duke calculate TOU rates based upon actual market prices without recovery through distribution rates. Duke has specifically indicated that the cost to administer TOU rates are recovered through distribution rates.²⁵ Generation service is competitive under Ohio law.²⁶ R.C. 4928.05(A)(1) prohibits the Commission from exercising Chapter 4909 to regulate competitive retail electric services. The Commission cannot authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under R.C. 4909.18.²⁷ Therefore, recovery of costs through distribution rates would provide

²³ Staff Report at 22-23.

²⁴ R.C. 4928.02

²⁵ Duke Response to Staff Interrogatory 81-008

²⁶ R.C. 4928.03

²⁷ *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896, ¶ 26.

TOU rates with an unlawful and unreasonable subsidy.

Additionally, IGS objects to Staff's failure to provide a condition that terminates the availability of Rate TD-CPP upon market development of a TOU rate. The Commission has determined that the EDUs should offer pilot time-differentiated rates only for so long as it takes for the market to develop and for a reasonable number of CRES providers to begin offering this service.²⁸ The Commission has approved time of use rates for electric distribution utilities, including Duke in its most recent rate case, but has held that approval of a TOU rate is conditioned on the development of competitive service offerings.²⁹ Therefore, IGS argues that Staff's failure to conform the rate to the Commission's precedent is unlawful and unreasonable.

H. The Staff Report's recommendation to approve Rate RTP is unlawful as regulating competitive services is outside the scope of the Commission's authority in a distribution rate case.

In its Application, Duke proposed a voluntary program, Real Time Pricing (Rate RTP) for non-residential customers (Rate DS, DP, or TS). Rate RTP would allow customers to manage their electric costs by shifting load.³⁰ Staff supported Rate RTP with modifications to rates.³¹

IGS objects to the Staff's recommendation to approve Rate RTP because the Commission has no authority to regulate or provide compensation to support competitive retail electric service through base distribution rates established under Chapter 4909.

²⁸ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding & Order (Mar. 26, 2014) at 37-38.

²⁹ *In re Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 17-32, et al. Opinion and Order (Dec. 19, 2018); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 16-481-EL-UNC, et al. (Grid Modernization Case), Opinion and Order (July 17, 2019)

³⁰ Duke Application, Schedule E, P.U.C.O. 19, Electric Service, Sheet No. 90.10

³¹ Staff Report at 38.

Indeed, the General Assembly specifically provided that “a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963.” R.C. 4928.05(A)(1). In other words, the Commission lacks authority to authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under 4909.18. The Commission’s authority to supervise and regulate Rate RTP is limited to R.C. 4928. Therefore, the Staff Report’s recommended rates for RTP are unlawful.

I. The Staff Report fails to examine whether there are direct or indirect costs associated with customer sited renewable energy resources in the proposed distribution rates.

IGS objects to the Staff Report’s failure to determine whether Duke is proposing to collect any direct or indirect costs associated with customer sited renewable energy resources through distribution rates, in violation of R.C. 4928.47. Specifically, R.C. 4928.47(B) requires that any direct or indirect costs associated with customer-sited renewable energy resources must be paid for solely by the utility and the mercantile customer or group of mercantile customers. The Commission is expressly prohibited from authorizing the EDU to collect these costs from any other customers.

The failure to track and strip the cost of customer solicitations from distribution rates would permit Duke to subsidize its generation business through non-competitive distribution rates contrary to Ohio law. There is no evidence in the Staff Report that these costs have been examined and excluded from distribution rates, which creates the firm possibility that the Commission could unknowingly authorize rates that improperly collect costs for these projects from non-participating customers.

J. The Staff Report's recommendation to allow the Company to expand the GoGreen program is unlawful and unreasonable as it allows Duke to participate in the competitive market for renewable energy credits (RECs).

In its Application, Duke seeks to expand the GoGreen program to sell RECs on behalf of commercial customers. Currently, the voluntary program allows customers to purchase GoGreen units (including the purchase of RECs) under Rider GP. The proposed change would allow customers not on Rate RS and Rate DM to negotiate a REC price other than the rate established in the Rider.³² Staff reviewed the changes to the GoGreen Program and recommended approval.³³

IGS objects to Staff's recommendation as Duke is prohibited from providing noncompetitive retail electric service and a non-electric product or service, unless it does so as part of a Commission-approved corporate separation plan, citing R.C. 4928.17. The sale of renewable energy credits is a competitive service. Additionally, the Commission has no authority to regulate or provide compensation to support competitive retail electric service through base distribution rates established under Chapter 4909. Indeed, the General Assembly specifically provided that "a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation . . . by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963." R.C. 4928.05(A)(1)." In other words, the Commission lacks authority to authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under 4909.18. The Commission's authority to supervise and regulate the GoGreen Program is limited to R.C. 4928. Therefore, Staff's

³² Duke Ohio Application (October 1, 2021), Schedule E-1.

³³ Staff Report at 41.

recommendation to approve the expansion of the GoGreen program is unlawful and unreasonable in a distribution rate case.

K. Duke's application fails to remove incentive compensation from base rates in opposition to Commission precedent.

Duke had previously agreed to include a credit in the DCI Rider to reflect the estimated revenue requirement impact of capitalizing the portion of employee incentive compensation attributable to achievement of financial goals.³⁴ In the Staff Report, Staff notes that Duke did not include this credit to base distribution rates in its Application. Staff recommended an adjustment to remove from base distribution rate base the amount of incentive compensation attributable to financial performance metrics capitalized from June 1, 2016, through the date certain. Staff states that this adjustment reduces rate base by \$2,352,669.³⁵

IGS objects to Duke's inclusion of incentive compensation in distribution base rates. Longstanding Commission policy prohibits utilities from charging ratepayers for financial incentives. The Commission has previously determined that "to the extent that a public utility awards financial incentives to its employees for achieving financial goals, shareholders are the primary beneficiary and, therefore, that portion of the incentive compensation should not be recovered from ratepayers."³⁶ On several occasions, the

³⁴ *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., Opinion and Order at 37 (December 19, 2018).

³⁵ Schedule B-2.2.

³⁶ *In the Matter of the 2016 Review of the Distribution Investment Rider Contained in the Tariff of the Ohio Power Company; In the Matter of the 2017 Review of the Distribution Investment Rider Contained in the Tariff of the Ohio Power Company*, Consolidated Case Nos. 17-38-EL-RDR and 18-230-EL-RDR, Opinion and Order at ¶47 (Jun. 17, 2020).

Commission has excluded financial performance incentives from utility expense after it determined that those costs were correlated with the utility's bottom line.³⁷ The policy supporting those decisions is clear: Financial inducements distributed to utility employees for achieving financial goals only serve the interests of the utility's shareholders and provide no benefit to the consumers who pay for those charges. Therefore, IGS objects to Duke's failure remove incentive compensation from distribution base rates consistent with Commission precedent.

L. The Staff Report fails to consider the imprudent management policies and practices associated with Duke's customer information system ("CIS") conversion, and in doing so, fails to recommend a corresponding reduction to Duke's return on equity.

IGS objects to the Staff Report's failure to recommend a reduction of Duke's proposed rate of return in response to the operational and administrative challenges that Duke's conversion to its "Customer Connect" customer information system ("CIS") has imposed on competitive retail electric suppliers and the customers those entities serve. Duke recently implemented sweeping changes to its CIS less than three full months after it filed an application seeking of a waiver of several rule provisions impacting competitive retail electric suppliers and their customers.³⁸ In its Order approving Duke's application, the Commission noted that by filing the application so close to the planned implementation of the CIS conversion Duke "provided Staff, suppliers, and other affected stakeholders with little time to prepare for or evaluate the Company's plans."³⁹

³⁷ See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to Its Energy Efficiency and Demand Response Programs*, Case Nos. 16-664-EL-RDR et al., Finding and Order at 6 (May 15, 2019); *In the Matter of the Application of Duke Energy Ohio, Inc. for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to Its Energy Efficiency and Demand Response Programs*, Case No. 18-397-EL-RDR, Finding and Order at 5 (Jul. 31, 2019)

Since the CIS conversion, IGS and its customers have been adversely impacted by a variety of issues (i.e., inaccurate customer billing information, missing or incomplete historical usage information; etc.). Although IGS has devoted approximately 4,600 employee hours across its IT, Operations, and Billing departments thus far to update its systems and to address issues associated with the conversion, many supplier-related issues remain unresolved. Duke's failure to address and resolve supplier-related issues in a timely and complete manner not only increased IGS's internal labor costs significantly, but also served as a general source of frustration for many of the customers that IGS serves. IGS and other suppliers have voiced these concerns during ongoing stakeholder sessions in which Staff was a participant. Staff, therefore, should be keenly aware that Duke acted imprudently in the development and implementation of its CIS conversion.

In the context of establishing rates, the Commission is authorized to review the practices of the utility and to require performance incentive metrics. R.C. 4909.152. To that end, Ohio law requires that the Commission not only consider "the management policies, practices, and organization of the public utility[.]" but also that it disallow "such operating and maintenance expenses . . . incurred by the utility through management policies or administrative practices that the commission considers imprudent." R.C. 4909.154.

The mismanagement of Duke's CIS conversion should result in a reduction of Duke's return on equity. Given the time, expense, and frustration that IGS and other suppliers have absorbed in an ongoing effort to comply with the CIS conversion, Duke

should be required to compensate suppliers by eliminating all supplier-related fees. Because the Staff Report failed to include either recommendation, IGS objects.

M. The Staff Report fails to reject Duke proposed new rider, Community Driven Investment Rider (Rider CDI) on the basis that riders cannot be created in a rate case consistent with Commission precedent.

In its application, Duke proposed a new rider, Community Driven Investment Rider (Rider CDI). Rider CDI will be used to recover the costs of certain distribution system investments made pursuant to requests from local communities. As proposed, cities, townships, villages, and other types of municipal corporations would be able to propose projects that could be eligible for cost recovery through Rider CDI, including: 1) Distribution system infrastructure improvement to support smart city technologies, such as enhanced poles and conduit; 2) Distribution system undergrounding and beautification projects; 3) Distribution system improvements to support electric vehicle (EV) adoptions; and 4) LED light conversions.³⁸

While Staff recommended the Commission deny Duke's request to implement Rider CDI it fails to acknowledge Commission precedent that disallows the creation of a rider within a distribution rate case. The Commission has previously held that "R.C. 4909.18 does not authorize the creation of rate adjustment clauses. The Commission is a creature of statute and may exercise no jurisdiction beyond that conferred by statute. Unless authorized by statute, rate adjustment clauses cannot be created in a distribution rate case."³⁹ Duke's proposed CDI Rider is a rate adjustment clause that cannot be

³⁸ Staff Report at 40; Direct Testimony of Timothy J. Duff, Page 6.

³⁹ *In re Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO (ESP I), *In the Matter of the Application of Dayton Power and Light Co. for an Increase in its Distribution Rates*, Case Nos. 15-1832-EL-AIR, et. al (September 26, 2018) Citing *Pike Natural Gas Co. v. Pub. Util. Comm.*, 68 Ohio St.2d 181, 183, 429 N.E.2d

created in a distribution rate case. IGS objects to Staff's failure to acknowledge Commission precedent when evaluating riders in a distribution rate case.

IV. SUMMARY OF MAJOR ISSUES

The major issues in this case will be:

- (1) Whether an EDU may subsidize the cost of providing the SSO through distribution rates.
- (2) The appropriate amount of costs to unbundle from distribution rates and allocate to default service, as well as the appropriate credit to shopping customers.
- (3) Whether the various fees that CRES providers provide to Duke for performing distribution service functions are appropriate.
- (4) The appropriate consideration of the direct and indirect costs associated with customer sited renewable energy resources.
- (5) Is the failure to conform a proposed time of day rate to Commission precedent unlawful and unreasonable?

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this *Objections to the Staff Report and Summary of Major Issues* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on June 21, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties listed below.

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Summary: Objection to the Staff Report electronically filed by Mr. Evan F. Betterton
on behalf of Interstate Gas Supply, Inc.