

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

June 21, 2022

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OBJECTIONS TO THE PUCO STAFF’S REPORT OF INVESTIGATION
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

Moderating rates is especially important for consumers now more than ever. Consumers are emerging from a pandemic with financial challenges, energy prices are soaring, inflation is on the rise, and a recession may be looming. The Office of the Ohio Consumers’ Counsel (“OCC”) is the statutory representative of over 657,000 residential consumers of Duke who may have to pay increased rates as a result of this proceeding.¹

On October 1, 2021, Duke Energy Ohio, Inc. (“Duke” or “Utility”) filed an Application to increase its base rates for distribution services by \$54.7 million, which would increase the total amount that consumers pay for electric distribution service by 10%.² However, a typical residential consumer (using 1,000 kWh per month) served by Duke will face a much higher increase. The total monthly base distribution charge will

¹ See R.C. Chapter 4911.

² *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR, et al., Application Vol.1 at 3 (October 1, 2021). (“Application”).

increase from \$37.48³ to \$49.44.⁴ This represents a 32% increase in total base distribution charge. A typical residential consumer using 1,000 kWh per month would pay an additional \$144 per year in base distribution charge. Duke also asked to amend its tariff, add new tariff schedules, and obtain certain accounting authority associated with existing and new riders in connection with the proposed rate increase.

The Staff of the Public Utilities Commission of Ohio (“PUCO”) recommends a lower revenue increase in comparison to that proposed in Duke’s Application. The PUCO Staff recommended a rate increase between \$1.9 million and \$15.3 million that was calculated based on a rate of return of 6.52% to 7.03%, a rate base of \$2,036 million and a current operating income of \$131 million.⁵

OCC supports or does not oppose some of the recommendations in the Report of Investigation (“Staff Report”) filed by the Staff of the Public Utilities Commission of Ohio on May 19, 2022, that benefit consumers. However, the Staff Report falls short of fully protecting consumers in many ways, as explained in the following Objections.

OCC reserves the right to amend and/or supplement these objections if the PUCO Staff changes, modifies, or withdraws its position, at any time prior to the closing of the record, on any issue contained in the Staff Report. Additionally, if the PUCO Staff has indicated that its position on a particular issue is not known at the date of the Staff Report, OCC reserves the right to later supplement these objections once the PUCO

³ The amount is calculated from a current \$6 in Customer Charge and \$0.031482/kWH in energy charge. *See* Application Schedule E-4.1.

⁴ This amount is calculated from \$12 in Customer Charge and \$0.037438/kWH in Energy Charge proposed in the Application. *See* Application Schedule E-4.1.

⁵ *See* Report of Investigation filed by the Staff of the Public Utilities Commission of Ohio (May 19, 2022) (“Staff Report”) at 48, Schedule A-1.

Staff's position is ultimately made known. OCC also reserves the right to file additional expert testimony, produce fact witnesses and introduce additional evidence.

In addition, OCC submits that the lack of an objection in this pleading to any aspect of the Staff Report does not preclude OCC from cross-examination or introduction of evidence or argument regarding issues on which the PUCO Staff changes, modifies, newly raises, or withdraws its position on any issue between the issuance of the Staff Report and the close of the record. Moreover, OCC reserves the right to contest other aspects of Duke's Application not specifically addressed by the Staff Report.

II. SUMMARY OF STAFF REPORT RECOMMENDATIONS SUPPORTED OR NOT OPPOSED BY OCC

OCC supports a number of findings and recommendations in the Staff Report that benefit consumers. OCC also does not oppose certain other positions and adjustments proposed in the Staff Report. These items include, but may not be limited to, the following:

A. Rate Base

- The PUCO Staff correctly removed the entire working capital allowance of \$31,710,429 because Duke's requested allowance for working capital is fundamentally deficient. The failure to include the cash component of working capital results in an allowance for working capital that does not reasonably represent the operating needs of Duke.⁶
- OCC does not oppose the PUCO Staff's removal of the PUCO and OCC assessment fees from the gross revenue conversion factor because there is no direct, causal relationship between the revenues collected by Duke and the amount that Duke is assessed. Additionally, Duke has already included the PUCO and OCC assessment fees in its test year expenses.⁷

⁶ Staff Report at 12.

⁷ Staff Report at 7.

- OCC does not oppose the PUCO Staff's removal of the portion of Silverhawk Electric System Operation facility (\$13,184,293) attributable to distribution service outside of Ohio.⁸
- OCC does not oppose the PUCO Staff's removal of plant-in-service costs of \$1,453,596 related to adjustments to plant-in-service ordered by the PUCO in Duke's previous rate case that had not been fully processed.⁹
- OCC does not oppose the PUCO Staff's exclusion of costs (\$6,494) for meals and flowers that were improperly capitalized or excessive.¹⁰
- OCC does not oppose the PUCO Staff's acceptance of Duke's reduction to plant-in-service of \$30,967,410 as shown in Schedule B-2.2.¹¹
- OCC does not oppose the PUCO Staff's removal of \$1,495,023 from plant-in-service associated with information technology. In addition, OCC does not oppose the PUCO Staff's removal of \$530,545.73 from rate base for software maintenance expense allocation that was miscalculated to plant-in-service balances.¹²
- OCC does not oppose the PUCO Staff reducing plant-in-service by \$188,483 for equipment inadvertently charged to Duke.¹³

B. Operating Income

- The Staff Report correctly removed the \$1,000,000 in expenses related to the proposed public service advertising and customer education campaign.¹⁴

⁸ Staff Report at 9.

⁹ Staff Report at 8.

¹⁰ Staff Report at 9.

¹¹ Staff Report at 8.

¹² Staff Report at 8-9.

¹³ Staff Report at 9.

¹⁴ Staff Report at 16.

- The PUCO Staff correctly removed labor and non-labor expenses associated with Demonstrating and Selling, a reduction of \$2,706,172¹⁵, and the related payroll tax expense of \$101,481¹⁶.
- The PUCO Staff correctly reduced Duke's requested amortization of vegetation management from \$2.33 million to \$1.4 million annually and the recommendation of a five-year amortization period.¹⁷
- OCC does not oppose the PUCO Staff decreasing test year revenue by \$6,109,912, including elimination of unbilled revenue, adjusting test year revenue to reflect actual billing determinants, accepting the Company's test year billing determinants related to lighting service, and adjusting other revenue associated with pole and line attachments.¹⁸
- OCC does not oppose the PUCO Staff removing various rider revenues and expenses that result in an increase in revenue of \$16,765,993 and increase in expense of \$384,546.¹⁹
- OCC does not oppose the PUCO Staff adjusting the rate case expense to \$50,067 by increasing amortization to 5 years (from 3 years proposed by Duke) and reflecting actual miscellaneous expenses.²⁰
- OCC does not oppose the PUCO Staff reducing depreciation expense by \$2,258,480 to reflect the PUCO Staff's recommended depreciable plant-in-service.²¹
- OCC does not oppose the PUCO Staff increasing operating expenses by \$367,427 (after removing Duke's requested amount of \$417,975) to remove customer deposit interest expenses on balances held less than six months.²²

¹⁵ Staff Report at 15.

¹⁶ Staff Report at 16.

¹⁷ Staff Report at 16.

¹⁸ Staff Report at 13.

¹⁹ Staff Report at 13.

²⁰ Staff Report at 13.

²¹ Staff Report at 14.

²² Staff Report at 14.

- OCC does not oppose the PUCO Staff reducing tax expense by \$2,115,719 based on latest available rates and valuation percentages.²³
- OCC does not oppose the PUCO Staff accepting Duke's calculation of interest expense for federal income tax purposes, reducing operating income by \$1,468,821.²⁴
- OCC does not oppose the PUCO Staff's acceptance of Duke's flow through operating income increase of \$111,761 related to Ohio Excise Tax Rider.²⁵
- OCC does not oppose the PUCO Staff's and Duke's reduction of test year expenses by \$957,943 by eliminating non-jurisdictional operating expenses.²⁶
- OCC does not oppose the PUCO Staff's increase of test year expenses by \$232,283 by annualizing PUCO/OCC assessments to latest level.²⁷
- OCC does not oppose the PUCO Staff increasing operating income by \$164,551 by adjusting test year uncollectible accounts expense to reflect the PUCO Staff's annualized revenue.²⁸
- OCC does not oppose the PUCO Staff and Duke reflecting annualized level of CAT expense, increasing test year expenses by \$182,170.²⁹
- OCC does not oppose the PUCO Staff decreasing annualized wages by \$480,765. The PUCO Staff adjusted test year operating income by calculating the latest 12 months of salaries and wages using April 2021 through March 2022 data for labor and unproductive labor. PUCO Staff calculated a three-year average for premium pay and overtime pay.³⁰

²³ Staff Report at 14.

²⁴ Staff Report at 14.

²⁵ Staff Report at 14-15.

²⁶ Staff Report at 15.

²⁷ Staff Report at 15.

²⁸ Staff Report at 15.

²⁹ Staff Report at 15.

³⁰ Staff Report at 15.

- OCC does not oppose the PUCO Staff’s increase in test year pension and benefits by \$856,674, including the removal of SERP and other services for executives.³¹
- OCC does not oppose the PUCO Staff and Duke removing \$1,432,916 related to elimination of the Electric Service Reliability Rider (“ESRR”) revenue and expenses.³²
- OCC does not oppose the PUCO Staff and Duke removing \$9,147 of customer connect expenses.
- OCC does not oppose the PUCO Staff removing \$34,469 of miscellaneous expenses associated with dues to inappropriate organizations.

C. Rates and Tariffs

- The Staff Report correctly recommended reducing the customer charge for the proposed Optional Time of Day Rate with Critical Peak Pricing for residential service (“Rate TD-CPP”) to be consistent with the customer charge under Rate RS. OCC further supports the elimination of the provision regarding repayment of savings if customers do not remain on TD-CPP for the full term.³³
- The Staff Report correctly recommended to maintain the current \$15 field collection charge.³⁴
- The Staff Report correctly recommended to moderate the magnitude of the proposed increase in the Residential Service Low Income (“RSLI”) customer charge to \$2.44.³⁵

D. Riders, Deferral Request, and Other Matters

- The Staff Report correctly recommended the denial of Duke’s request to implement the Community Driven Investment Rider (“Rider CDI”). Duke has requested to implement this new rider 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 within

³¹ Staff Report at 16.

³² Staff Report at 16.

³³ Staff Report at 22.

³⁴ Staff Report at 26.

³⁵ Staff Report at 35.

the Company's service territory would be able to propose projects that could be eligible for cost recovery through Rider CDI.³⁶ The OCC supports the denial of Rider CDI. However, OCC objects to the Staff Report's failure to consider the illegality of the Rider CDI as an additional reason why the Rider CDI should not be approved.

- The Staff Report correctly recommended the denial of Duke's proposed new rider, Retail Reconciliation Rider.³⁷ This rider is to reallocate costs between Standard Service Offer generation service customers and Competitive Retail Electric Service ("CRES") customers.

III. OBJECTIONS TO THE STAFF REPORT

The PUCO Staff, in its Staff Report, should have made additional recommendations or revised some of its recommendations to protect Duke's consumers from unlawful, unjust, and unreasonable rates. OCC requests that, pursuant to R.C. 4909.19, R.C. 4909.15 and other authority, the PUCO adopt the following Objections to the Staff Report when determining how much Duke's consumers should pay for electric distribution service and rider charges.

A. Revenue Requirement

- 1. Objection No. 1: The Staff Report harms consumers by proposing a revenue requirement for base rates and other charges to Duke's consumers, that are unjust and unreasonable under R.C. 4909.15 and other authority.**

OCC objects to the recommended revenue increase set forth on the PUCO Staff's Schedule A-1. The PUCO Staff's proposed revenue increase is based on the use of an inappropriate and incorrect rate base, operating income (including revenues and expenses), and rate of return. OCC objects to each component of the Staff Report's

³⁶ Staff Report at 40.

³⁷ Staff Report at 41.

Schedule A-1, including the rate base, operating income, and rate of return, to the extent they are impacted by OCC's specific objections (explained below) to the PUCO Staff's calculation of the recommended revenue increase and total revenue requirement.

2. Objection No. 2: The Staff Report harms consumers by failing to adjust the annual revenue cap for the Delivery Capital Investment ("DCI") Rider to reflect Duke's failure to meet its minimum PUCO required reliability standards in 2021.

OCC objects because the PUCO Staff recommended DCI annual revenue caps that are too high.³⁸ The PUCO Staff recommended a \$17 million DCI annual revenue cap for 2022 (prorated for whenever new base rates go into effect), \$34 million for 2023, \$51 million for 2024, and \$28 million for the first five months of 2025.³⁹ However, the PUCO Staff should have recommended lower DCI revenue caps that reflect Duke's failure to meet the PUCO required reliability standards in 2021 or thereafter.

The PUCO previously approved a settlement among Duke, the PUCO Staff, and other parties in Duke's last distribution rate case, which established annual revenue caps for the DCI Rider based in part on incentives for Duke to meet certain specified minimum reliability performance standards between 2018 and 2025.⁴⁰ However, Duke failed to meet its minimum reliability performance standard as measured by a System Average Interruption Frequency Index ("SAIFI") of 0.83 in 2021. Thus, consumers should not be required to pay for reliability improvements under the DCI Rider now or in the future when Duke fails to meet the minimum reliability performance standard.

³⁸ Staff Report, at 10-11.

³⁹ Staff Report at 10.

⁴⁰ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.*, Case 17-32-EL-AIR, Opinion and Order (December 19, 2018) at 39.

B. Rate Base and Operating Income

1. Objection No. 3: The Staff Report harms consumers by adopting Duke's method of calculating normalization of major event day distribution storm recovery expense.

OCC objects to the Staff Report because it adopted Duke's use of an average of the years 2016 through 2020 to calculate the normalization of major event day distribution storm recovery expense.⁴¹ The Staff Report unreasonably increased test year expense by \$780,780.⁴² Because the costs for the years from 2017 through 2021 are more recent, they can be expected to be more reflective of costs likely to be incurred during the rate effective period going forward. For this reason, the most current expenses should be used. Further, in calculating this average distribution storm recovery expense, Duke used the as-filed costs rather than the approved costs from the PUCO's September 23, 2021 Finding and Order in Case No. 21-165-EL-RDR.⁴³ The calculation of this expense should be updated to use the most recent 5 year of data and the approved cost from the Order in Case No. 21-165-EL-RDR⁴⁴.

2. Objection No. 4: The Staff Report harms consumers, under R.C. 4909.15 and other authority, by not removing all short-term incentive compensation expense from operating expenses and rate base.

OCC objects that the PUCO Staff did not remove all short-term incentive compensation expenses from operating expenses. The PUCO Staff removed incentive compensation amounts related to financial metrics, advertising for new business, and

⁴¹ Staff Report at 14.

⁴² *Id.*

⁴³ See WPC-3.8a.

⁴⁴ *In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Storm Rider*, Case No. 21-165-EL-RDR, et al., Finding and Order (September 23, 2021).

limited availability to a few highly compensated individuals.⁴⁵ However, the short-term incentive plan rewards all employees, bases awards on group goals, and has a financial goal that if not met, results in no awards paid. Such expenses are not necessary costs associated with rendering utility service to consumers for the test period, under R.C. 4909.15(A)(4). Shareholders should shoulder these costs of the short-term incentive plan. The plan fails to provide employees with sufficient incentive to greater effort. As Duke's incentive compensation plan fails to provide incentive for greater effort from employees, the entire short-term incentive amount should be removed.

In addition, the PUCO Staff should have removed all capitalized short-term incentive plan costs from rate base. The Staff Report removes capitalized incentive compensation related to the achievement of financial goals from June 1, 2016 through the date certain from rate base.⁴⁶ For the reasons discussed above, Duke's short-term incentive plan fails to provide sufficient incentive to employees to make greater efforts in providing utility service to consumers and the PUCO Staff should remove all capitalized short-term incentive plan costs from rate base.

3. Objection No. 5: The Staff Report harms consumers by failing to reflect gains on the disposition of property.

OCC objects that the PUCO Staff has not reflected gains on sale of property. Duke received \$1,440,850 of gains on sale of property from 2016 until the present. Consumers pay through utility rates and charges a return on and of plant in rate base. Along with the burden, consumers should receive the benefit. As such, any gains that come from the disposition of this property that was paid for by consumers should be

⁴⁵ Staff Report at 15.

⁴⁶ Staff Report at 9.

returned to consumers. If gains that have occurred from the disposition of this property in each of the years 2016 through 2021 are not reflected in the adjusted test year Duke will keep these funds to the detriment of consumers.

4. Objection No. 6: The Staff Report harms consumers by failing to remove costs and fees related to the Board of Directors.

OCC objects to the Staff Report because it fails to make an adjustment to remove the costs (such as compensation, transportation, lodging, and meals) for Duke's Board of Directors. Duke and its shareholders are the primary beneficiaries of the Board of Directors and thus, consumers should not be forced to pay for all of the costs. OCC recommends that 75% of board of directors' costs should be removed.

C. Rate of Return

1. Objection No. 7: The Staff Report harms consumers by proposing an excessive rate of return that will result in unjust and unreasonable charges to consumers in violation of R.C. 4909.15(A)(2) and other authority.

The Staff Report recommends a rate of return in the 6.52 to 7.03 percent range.⁴⁷ OCC objects to the Staff Report because it contains a proposed rate of return for Duke that is not fair and reasonable. The PUCO Staff used data and a methodology that are inconsistent with current capital market conditions, recognized financial analysis, and established regulatory principles and state policies. Instead, OCC recommends a rate of return of 6.53% or lower, which will result in a fair and reasonable rate of return to be charged to consumers.

⁴⁷ Staff Report at 18.

2. Objection No. 8: The Staff Report harms consumers by proposing profits (“cost of common equity” or “ROE”) that are not fair and reasonable under current market conditions and the business and financial risks of Duke. This will result in excessive rates and charges to consumers in violation of R.C. 4909.15.

The Staff Report recommends a cost of common equity (profit) in the 8.84 to 9.85 percent range.⁴⁸ OCC objects to the Staff Report because it contains a proposed cost of equity for Duke that is not fair and reasonable. The PUCO Staff used data and a methodology that are inconsistent with current capital market conditions, recognized financial analysis, and established regulatory principles and state policies. Instead, OCC recommends a cost of equity or profit of 8.95% or lower, which is a fair and reasonable profit for Duke charged to consumers for providing the electric distribution services.

3. Objection No. 9: The Staff Report harms consumers by developing a rate of return based on a capital structure that is not more reflective of the capital structures of other publicly held electric distribution companies. This will result in excessive rates and charges to consumers in violation of R.C. 4909.15.

The Staff Report used a capital structure of 49.5 percent debt and 50.5 percent equity as of date certain, which is the same as the one proposed by Duke.⁴⁹ OCC objects to the Staff Report because this proposed capital structure is not more reflective of the capital structure of other publicly held electric distribution companies. OCC proposes to use a capital structure of 50% debt and 50% equity.

⁴⁸ Staff Report at 19-20.

⁴⁹ Staff Report at 18.

4. **Objection No. 10: The Staff Report harms consumers by not proposing a lower rate of return (than that applicable to the base distribution rates) for setting rider charges. Duke's business and financial risks associated with these riders are lower than those associated with the base distribution rates.**

The Staff Report should have proposed (but it did not) a lower rate of return applicable to riders such as the Delivery Capital Investment Rider and Electric Service Reliability Rider. Duke is assured of collecting charges from consumers under these riders on an accelerated basis and typically with less rigorous review as compared to a rate case proceeding. Accordingly, there is less risk to Duke with respect to the collection of costs under these riders. The reduced risk associated with Duke's riders should be reflected in a lower rate of return used to develop rider charges to consumers.

5. **Objection No. 11: The Staff Report harms consumers by developing a cost of equity based on its selected proxy group that results in an imprecise measurement of the required returns on equity and an excessive Return on Equity that is not fair and reasonable to charge consumers in violation of R.C. 4909.15.**

OCC objects to the Staff Report's selection of comparable companies for the estimation of the required return on equity. The PUCO Staff selected a group of 12 companies. This could overstate the risks to Duke, which would result in an excessive estimation of the return on equity that is unfair and unreasonable to charge to consumers per R.C. 4909.15.

6. **Objection No. 12: The Staff Report harms consumers by applying an unreasonable risk-free rate in its Capital Asset Pricing Model ("CAPM"), which will lead to excessive rates and charges to consumers than are not fair and reasonable as required by R.C. 4909.15.**

OCC objects to the Staff Report's selection of risk-free rate in the CAPM model. The PUCO Staff used the forecasted yield of 30-year U.S. Treasury Bonds based on the

average of Blue Chip consensus Forecasts. The use of forecasted interest rate does not reflect the current capital market condition and tends to over-estimate the risk-free rate applicable in the CAPM. By using a higher than reasonable risk-free rate, this will result in a significantly higher estimate of Return on Equity and excessive charges to customers that are not fair and reasonable in violation of R.C. 4909.15.

7. Objection No. 13: The Staff Report harms consumers by developing a cost of equity that uses a risk premium of 7.15 percent in the CAPM model, which will lead to too-high rates and charges to consumers than are fair and reasonable per R.C. 4909.15.

OCC objects to the Staff Report's selection of the risk-premium rate of 7.15% in the CAPM.⁵⁰ The PUCO Staff used a historical equity risk premium as published in the SBBI 2021 Annual Yearbook. The use of this historical risk premium rate does not reflect the current capital market condition or investor expectation and tends to over-estimate the risk premium applicable in the CAPM. By using a higher than reasonable risk premium rate, this will result in a significantly higher estimate of cost of equity and too-high charges to customers that are not fair and reasonable per R.C. 4909.15.

8. Objection No. 14: The Staff Report harms consumers by developing a cost of equity that uses the historical Gross National Product ("GNP") growth rate in its Discounted Cash Flow ("DCF") model. This will lead to excessive rates and charges to consumers than are not fair and reasonable in violation of R.C. 4909.15.

OCC objects to the Staff Report's selection of the historical GNP growth rate as the expected long-term dividend growth rate in the model of DCF.⁵¹ The PUCO Staff used a non-constant growth DCF model which requires an estimate of long-term earnings

⁵⁰ Staff Report at 19.

⁵¹ Staff Report at 19-20.

growth rate. The PUCO Staff is correct in assuming the long-term growth rate to be the growth rate of the overall economy.

However, the PUCO Staff used the average GNP growth rate of 6.23% for the period of 1929-2020, which is too high for the expected future GNP growth rate.⁵² The PUCO Staff's long-term growth rate assumption ignores the fact that the GNP/GDP growth rate has declined over the last several decades and the expected long-term growth rate has been considerably lower. As a result, the PUCO Staff's DCF model overestimates the ROE and will lead to charging consumers an unfair and unreasonable rate of return under R.C. 4909.15.

9. Objection No. 15: The Staff Report harms consumers by inappropriately increasing the rate of return and the cost of common equity by allowing an adjustment for equity issuance and other costs, resulting in an excessive rate of return that is not fair and reasonable under R.C. 4909.15.

OCC objects to the PUCO Staff's inclusion of an equity issuance and other costs to the PUCO Staff's estimate of cost of common equity.⁵³ The inclusion of these costs is not supported by sound regulatory principles. Even if an adjustment for equity issuance and other costs were allowed, the Staff Report inappropriately increased the cost of common equity by using a hypothetical and generic issuance cost factor of 3.5%. The Staff Report has not explained why this generic issuance cost factor is reasonable or why it should be applied in this proceeding.

In addition, there is no demonstration in the Staff Report that Duke is likely to incur these costs soon or the magnitude of these costs. The addition of arbitrary and

⁵² Staff Report, Schedule D-1.17.

⁵³ Staff Report at 20.

unproven equity issuance and other costs will unfairly and unreasonably increase the cost of gas services to Columbia's customers, in contradiction of R.C. 4909.15.

D. Rates and Tariffs

1. Objection No. 16: The Staff Report harms consumers by failing to recommend that Duke be prohibited from modifying its existing riders or proposing new riders as part of this base distribution rate case.

The Staff Report should have stated that Duke is not permitted to modify riders that were approved as part of Duke's current electric security plan. Single-issue ratemaking is not permitted in base rate cases like this one. Nothing in R.C. Chapter 4909 allows the PUCO to engage in single-issue ratemaking in this case. And because the PUCO is a creature of statute, it cannot exercise authority beyond that explicitly permitted under R.C. Chapter 4909.

In its application, Duke sought to modify certain riders that were approved in its most recent electric security plan case. This includes riders like the Delivery Capital Investment Rider, Electric Service Reliability Rider, Development Incentive Rider, and GoGreen Ohio Rider.⁵⁴ Duke also proposed to implement two new riders, the Community Driven Investment Rider and the Retail Reconciliation Rider.⁵⁵ The Staff Report should have stated that riders cannot be modified unless and until Duke files its next electric security plan case. In addition, even though the Staff Report recommends denial of the two new riders, it should consider the illegality of the two new riders (Community Driven Investment Rider and the Retail Reconciliation Rider) as an additional reason why they should not be approved.

⁵⁴ Staff Report at 40-42.

⁵⁵ Staff Report at 40-42.

2. Objection No. 17: The Staff Report harms consumers by not recommending a fair and reasonable distribution (allocation) of revenue by customer class if the PUCO grants a revenue increase.

The OCC objects to the Staff Report's allocation of 191.7% (or \$15,573,962) of the proposed increase of \$8,121,044 to the Residential Class, while at the same time proposing revenue decreases to all the other classes, except for the GSFL Class.⁵⁶ This proposed amount of revenue increase to Residential Class is unjust, unreasonable and excessive and could cause rate shock to consumers. The Staff Report should have recommended using Duke's proposed distribution of the revenue increase which gradually moves the rates of each class towards the cost of service.

3. Objection No. 18: The Staff Report harms consumers by recommending a residential customer charge of \$7.32 because it's too high and improperly includes carrying charges for line transformers.

The OCC objects to the Customer Charge for Residential Class proposed in the Staff Report. While OCC concurs with the PUCO Staff's use of a minimally compensatory methodology to calculate the Residential Customer Charge, OCC objects to the PUCO Staff's inclusion of a carrying charge on the plant account 368, Line Transformers.⁵⁷ A minimally compensatory formula should not include a carrying charge on Line Transformers. If the carrying charge on Line Transformers is removed, the residential customer charge based on the minimally compensatory methodology should be no higher than \$5.66.

⁵⁶ Staff Report at 28, Table 3.

⁵⁷ Staff Report at 30, Table 5.

4. Objection No. 19: The Staff Report harms consumers by failing to recommend that the \$10 Remote Reconnection Fee proposed by Duke be reduced to \$0 because Duke has not justified the proposed charge.

OCC objects that the Staff Report failed to recommend that the Remote Reconnection Fee be reduced to \$0 until such a time as applicant can provide documentation justifying a \$10.00 charge. Duke has the burden of demonstrating the proposed Remote Reconnection Fee is just and reasonable and is a cost to the utility of rendering public utility service for the test period. It has failed to do so. The PUCO Staff should have recommended the Remote Reconnection Fee be reduced to \$0.

5. Objection No. 20: The Staff Report harms consumers by failing to recommend that Duke make every available effort with its authorized vendors to reduce the level of the convenience fees charged to consumers. The PUCO should ideally prohibit charging convenience fees to consumers.

The OCC objects to the Staff Report because it failed to recommend that Duke make every available effort with its authorized vendors to reduce the level of the convenience fees charged to consumers. Duke proposed that convenience fees for credit and debit cards, as well as for walk-in customers no longer be charged to the consumer but rather be included in base rates. The PUCO Staff recommends that convenience fees continue to be charged to the customer and not included in base rates.⁵⁸ OCC agrees that convenience fees should not be charged to consumers through base rates. However, the PUCO Staff should take action to require Duke to work with vendors to reduce these costs to consumers. Convenience fees should not be permitted to be charged to

⁵⁸ Staff Report at 24.

consumers. This could be accomplished through Duke's shareholders paying the convenience fees or vendors ending the convenience fees.

6. Objection No. 21: The Staff Report harms consumers by failing to recommend that Duke be required to file an Application for Tariff Approval ("ATA") to update the Net Metering Rider.

OCC objects to the Staff Report because it did not recommend that Duke be *required* to update its Net Metering Rider. OCC agrees with the PUCO Staff that Net Metering Sheet No. 48 Rider NM, regarding net metering has not been updated for compliance with the most recent changes in Ohio Administrative Code Section 4901:1-10-28. However, the Staff Report merely noted that Duke had indicated an update in an upcoming ATA filing.⁵⁹ But that is insufficient and unclear. The PUCO Staff should specifically direct Duke to update Rider NM within a certain time period.

7. Objection No. 22: The Staff Report harms consumers by failing to recommend that Duke be required to continue offering the current Time of Day rate ("Rate TD") as a default Time of Use ("TOU") rate.

OCC objects that the Staff Report did not recommend that Duke be required to continue offering the current Rate TD as a default TOU rate. Duke has proposed to offer a new TOU-Critical Peak Pricing rate and indicated that at some time in the future they might withdraw the current TOU rate.⁶⁰ The PUCO Staff should have directed Duke to maintain the current Rate TD as an option for those consumers already on it to maintain continuity and serve the policy purposes set forth in R.C. 4928.02(D).

⁵⁹ Staff Report at 41.

⁶⁰ Staff Report at 22.

E. Riders

- 1. Objection No. 23: The Staff Report harms consumers by failing to consider if there is a need for contractor vegetation management spending that exceeds the \$22.5 million that it recommends be included in base rates. In addition, the Staff Report harms consumers by failing to recommend spending caps for any additional vegetation management costs that exceeds the \$22.5 million that can be collected through the Electric Service Reliability Rider (“ESRR”).**

The PUCO Staff recommended approval of Duke’s proposal to include \$22,505,088 of test year contractor vegetation management O&M expenses in base rates.⁶¹ Currently \$10,720,877 of contractor vegetation management expenses are included in base rates and up to \$10,000,000 can be included in the ESRR. The PUCO Staff recommends approval of any contractor vegetation management costs that exceed the \$22,505,088 being collected from customers through the ESRR. The Staff Report should have considered if it is reasonable and prudent to allow for contractor vegetation management spending above the \$22.5 million it recommends including in base rates. And the PUCO Staff failed to investigate whether the spending is a necessary cost to the utility of rendering public utility service for the test period.

And to the extent the PUCO Staff concluded that there was a need, the Staff Report harmed consumers by not recommending any spending cap for money that can be collected from customers through the ESRR.

⁶¹ Staff Report at 41.

2. **Objection No. 24. The Staff Report harms consumers by failing to provide a current evaluation of the Rider UE-GEN (Uncollectible Expenses) to determine if changes are needed in Duke's Purchase of Accounts Receivable ("PAR") program to protect consumers from paying unjust and unreasonable competitive retail electric supplier charges.**

The Staff Report in Duke's last distribution rate case recommended that an audit be performed of Duke's Purchase of Accounts Receivable ("PAR") program to verify that only authorized marketer charges are purchased through the PAR program. Under the PAR program, uncollected marketer charges are included for collection from customers through the Uncollectible Expense – Generation Rider ("UE-GEN"). The Staff Report should have included a current evaluation of the Duke PAR and UE-GEN to verify that sufficient protections exist to protect Duke customers from paying unauthorized marketer charges in the Rider UE-GEN.

F. Service Monitoring and Enforcement

1. **Objection No. 25: The Staff Report harms consumers by failing to perform any analysis of Duke's failure to meet its minimum PUCO required reliability standards in 2021 and/or to assess the effectiveness of additional reliability spending consumers are paying for through the Delivery Capital Investment ("DCI") Rider and the Electric Service Reliability Rider ("ESRR").**

Ohio Revised Code 4928.11 requires the PUCO to prescribe specific minimum distribution standards for service quality, safety, and reliability requirements for non-competitive retail electric service. OCC objects to the Staff Report's failure to perform an analysis regarding Duke's inability to meet its minimum reliability performance standards in 2021 and the cost effectiveness of reliability programs paid for by Duke consumers. The Staff Report provided a table that compared Duke's reliability

performance against its PUCO required reliability standards for 2018, 2019, and 2020.⁶² However, the table did not include Duke's reliability performance during its test year in 2021 compared with its reliability standard.⁶³

Ohio Revised Code 4905.22 requires an electric utility to provide the necessary and adequate service and facilities to provide safe and reliable service for consumers. An analysis of Duke's 2021 reliability shows that consumers experienced more outages and less reliable service than required under the PUCO standards. Under the PUCO standards, Duke consumers should experience on average fewer than 0.83 outages annually. But Duke's consumers were experiencing on average 0.91 outages annually in 2021 – almost 10% more outages than required under the PUCO standards.

The Staff Report should have examined the effectiveness of programs (funded through the DCI rider) that are intended to improve reliability to recommend any needed improvements. Also, the Staff Report should have examined the number of outages caused by vegetation to determine the just and reasonableness of the additional tree-trimming costs that consumers are paying for through the ESRR.

⁶² Staff Report at 44.

⁶³ Staff Report at 6. The test year was April 1, 2021 through March 31, 2022.

2. **Objection No. 26: The Staff Report harms consumers because it fails to require Duke to provide shopping customers' billing information to show a comparison to what they would pay under a standard service offer. The Staff Report also fails to perform an analysis of the consumer contact information that is collected through its call center, and the supplier rate information it collects on the Energy Choice Ohio website to determine if improvements in Duke's Choice Program are necessary to help consumers reduce their energy costs.**

OCC objects to the Staff Report because it does not recommend requiring Duke to provide informative "shadow billing" information to residential shopping customers. The Staff Report should have proposed, for the benefit of customers, that Duke's bills be modified to show residential shopping customers what they paid to their marketer and what they would have paid that month had they been on the standard service offer. Ohio Revised Code 4928.02(A) requires the availability of adequate, safe, efficient, nondiscriminatory, and reasonably priced retail electric service. Having the costs for the standard service offer provided on the bill helps shopping consumers determine if they are receiving reasonably priced retail electric service. This information has been beneficial to consumers in other utilities, including Duke's Ohio natural gas affiliate.

OCC also objects to the failure of the Staff Report to perform an analysis of the information that the PUCO call center collects from Duke consumers and the supplier rate information it collects on the Energy Choice Ohio website to recommend improvements to help consumers save on their energy costs. For example, there were approximately 200 contacts from consumers involving the Ohio Choice Program,⁶⁴ likely from consumers seeking to reduce their energy costs. In addition, the PUCO Comparing Energy Choices website includes many marketer offers being available for Duke

⁶⁴ *Id.*

consumers that exceed the rates consumers would pay under the Duke Standard Service Offer (“SSO”).

At a minimum, the Staff Report should have recommended an enhanced price to compare message on shopping customer bills showing what the supply charges would have been for the month had they been on the Duke SSO. Furthermore, the Staff Report should have recommended that Duke provide the PUCO Staff and OCC with shadow billing reports that show, over a several year period, the aggregate costs that shopping customers paid for electricity as compared to what customers would have paid under the SSO.

3. Objection No. 27: The Staff Report harms consumers by failing to recommend that Duke provide consumers with more options to opt-out of having their personal account information included on eligible customer lists provided to competitive retail electric service (“CRES”) providers.

The OCC objects to the Staff Report’s failure to recommend that consumers be provided multiple ways to opt-out of having their personal information included on eligible customer lists provided to CRES providers. Consumers should be able to opt-out telephonically, through a written request, through Duke’s website, and through online account resources made available to consumers. Consumers should be able to easily prevent having their personal Duke account information provided to marketers or others.

4. Objection No. 28: The Staff Report potentially harms consumers by failing to evaluate the sufficiency of Duke's Data Privacy Policy in protecting consumers' personal information from unauthorized or inadvertent disclosure.

The Staff Report describes a review it performed of the Duke Data Privacy Policy.⁶⁵ However, the Staff Report provided no analysis of the sufficiency of the Data Privacy Policy in protecting consumer information from unauthorized or inadvertent disclosure. This assessment is especially important given the policy implications of potentially expanding the customer information that can be made available to third parties.

5. Objection No. 29: The Staff Report fails to protect Duke's consumers by not proposing adequate consumer protections, including bill-payment assistance for energy justice and equity, that can make electric services more affordable for all consumers and protect at-risk, low-income, working poor, and fixed-income senior Ohioans from potential loss of electric services.

OCC objects to the absence of adequate and reasonable consumer protections in the Staff Report. Those protections include but not are limited to disconnection moratoria and increased bill-payment assistance funded by Duke shareholders to help low-income, at-risk, working poor consumers, and seniors on fixed incomes avoid being disconnected from electric service for non-payment. Existing programs available to Duke consumers will not do enough to protect low-income consumers from the harms of increased fixed monthly customer charges including rider charges. This program is especially needed now given that consumers are subject to soaring energy prices, inflation increases

⁶⁵ Staff Report at 46.

affecting various products and services, and financial issues that resulted from the pandemic, and the potential for recession, among other things.

Accordingly, the PUCO should order Duke to offer a \$4.5 million bill-payment assistance program, at shareholder expense. The funds shall be distributed by Duke within three years of the PUCO's initial Order in this case or such longer period as is necessary to disburse all funds. Program eligibility would be for low-income, at-risk, fixed-income seniors, and working-poor Ohioans. Program terms would be resolved between Duke and OCC. Through reporting and other means, Duke will make the program completely transparent to OCC and the PUCO.

IV. CONCLUSION

To protect consumers from paying unjust and unreasonable rates, OCC respectfully requests that the PUCO adopt OCC's recommendations as set forth in these objections and in the supporting testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Objections was served by electronic transmission upon the parties below this 21st day of June 2022.

/s/ Angela O'Brien
Angela O'Brien
Counsel of Record

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

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Case No(s). 21-0887-EL-AIR, 21-0888-EL-ATA, 21-0889-EL-AAM

Summary: Objection Objections to the PUCO Staff's Report of Investigation by
Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward
on behalf of O'Brien, Angela D.