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 REPLY MEMORANDUM TO MEMORANDA CONTRA DUKE ENERGY OHIO'S MOTION TO STRIKE SPECIFIC INTERVENOR OBJECTIONS TO STAFF REPORT

I. INTRODUCTION

Pursuant to Ohio Adm.Code 4901-1-12, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) responds to the memoranda contra Duke Energy Ohio's objections (Objections) to the May 19, 2022 Staff Report of Investigation (Staff Report), filed in the above captioned cases on July 8, 2022, by the Retail Energy Supply Association (RESA), The Ohio Manufacturers' Association Energy Group (OMAEG), the Ohio Consumers' Counsel (OCC), One Energy Enterprises Inc. (One Energy), Interstate Gas Supply, Inc. (IGS), and the City of Cincinnati (the City) (collectively, the Intervenors).

On October 1, 2021, the Company filed an application to increase its distribution rates, for tariff approval, and to change its accounting methods (Application). The Public Utilities Commission of Ohio (the Commission) Staff (Staff) prepared and issued the Staff Report. Pursuant to R.C. 4909.19, Objections to the Staff Report were submitted by the Company on June 17, 2022,

and by other parties, including the Intervenors, on June 21, 2022. The Company moved to strike certain Intervenor objections on June 30, 2022, and the Intervenors each filed a memorandum contra the motion to strike on July 8, 2022. This brief serves as the Company's reply to these memoranda contra.

II. REPLY TO INTERVENORS' MEMORANDA CONTRA

The Company replies to each Intervenor's memorandum contra below and reiterates its position that each Intervenor objection discussed below should be stricken.

A. Reply to RESA's Memorandum Contra

a. RESA Objections 5 and 6: Supplier Charges and Switching Fees

RESA's objections 5 and 6 are improper backdoor efforts to reopen the Company's supplier tariff,[1] which is not at issue in this proceeding. These charges are not at issue in this proceeding. All such charges has been approved by the Commission in separate proceedings and has not been presented for approval in this proceeding contrary to RESA's argument. The Company properly *deducted* this revenue from its revenue requirement for electric distribution rates to avoid any double recovery. Paradoxically, RESA is attempting to invoke a clear separation of the Company's revenue requirement for this proceeding and revenue from separate sources to argue that it may re-litigate the supplier tariff in this proceeding. It may not.

None of the authority cited by RESA supports its position, which—if accepted—would effectively eviscerate the boundaries between distribution rate proceedings and all other proceedings affecting the Company's revenue before the Commission. *In the Matter of Application of the Toledo Company for Authority to Amend and Increase Certain of Its Rate and Charges for*

[1] P.U.C.O. Electric No. 20, Sheet No. 52.6

Electric Service, Case No. 95-299-EL-AIR Opinion and Order (April 11, 1996), is plainly distinguishable. There, the Commission held that the utility's partial service tariff was at issue, and could be altered, in a case concerning the utility's full service tariff. The Commission's reasoning was that the partial service tariff "use[d] the demand charge found in the full service tariff to calculate the monthly billing charge for supplemental power and back-up demand." *Id*. at p. 83. The two were inextricably connected, and thus had the required nexus. As RESA acknowledges, the result was the same in *Indus. Energy Consumers v. Pub. Util. Comm*. 63 Ohio St. 3d 551, 554 (1992) ("The rates in the partial service rider are based upon the rates established in the full service tariff . . . By seeking an increase in full service rates in its application, the company necessarily sought to increase partial service rates, and thus placed the latter at issue.").

In contrast, the tariff that RESA seeks to amend stands wholly separate from the rates the Company has put at issue in this proceeding. No rate approvals the Company is seeking in the present proceeding will have a direct effect on how the CRES tariff operates. RESA may only raise its complaints in a proceeding at which CRES tariffs are at issue.

Additionally, RESA did not state its Objection 5 with sufficient specificity. The Commission's quintessential example of an insufficiently specific objection is that "the staff incorrectly calculated test year labor expenses." *In the Matter of the Application of the Cincinnati Gas & Elec. Co. for an Increase in Its Rates for Gas Serv. to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Entry (July 15, 1996). RESA's Objection 5 is that Staff did not determine if the rates for supplier charges are cost based. RESA makes no specific claim that such rates are not cost-based, much less stating or illustrating how they are not. Objection 5 is an even more vague criticism than the example the Commission holds out as inadequate. It is therefore not sufficiently specific and should be stricken.

B. Reply to OMAEG's Memorandum Contra

a. OMAEG Objection 5: Distribution Reliability

While OMAEG now suggests that this objection "relates to the failure of the Staff Report to address one or more specific items" in accordance with Ohio Adm.Code 4901-1-28, OMAEG instead objected in its objections to the alleged failure of *the Company's Application* to address one or more specific items. Staff properly used the Staff Report to address items outlined in the Application; Staff did not—and should not, contrary to OMAEG's argument—use the Staff Report to perform an ad hoc review of an applicant's entire business model. While the objection may be specific, it addresses an item not contemplated or proposed for modification or approval in the Company's Application and is, therefore, not appropriate for an objection to the Staff Report under Ohio Adm.Code 4901-1-28. OMAEG's issue is with what the Company did and did not include as part of its Application—*not* with the Staff Report.

OMAEG also attempts to support its contention that this objection is related to distribution ratemaking by citing a slew of irrelevant items. For one, OMAEG presumably references the recent outages experienced by Ohio customers in American Electric Power (AEP) territory when it states that "recent outages on multiple distribution systems in Ohio . . . may have been prevented by increased distribution reliability." Not only is this conjecture on OMAEG's part, but these outages are also irrelevant to the case at issue: these outages did not involve the Company and occurred well after the test period and filing of the Application. This demonstrates OMAEG's improper motives in making this objection—to use an objection as a vehicle for peddling OMAEG's own "proposals" related to distribution reliability. This is not the appropriate use of another utility's distribution rate case. Further, these proposals were not the subject of—or even referenced in—the Company's Application in this base rate case, and it was not in error for Staff not to include

them as part of the Staff Report analysis. Further, what proposals may have been accepted due to another utility's operations, when those operations are not the Company's, is irrelevant.

Despite this, OMAEG makes a very tenuous connection between the Company's Application and the distribution reliability issues that OMAEG raised in its objections: OMAEG suggests that the Company put distribution reliability issues at issue simply by filing the Application. OMAEG's only support for this is a very general statement that Ohio law permits the Commission "to review any of an applicant's rules and regulations which in any manner could be applied in charging the new rates"—from a fifty year old case, no less. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n of Ohio*, 42 Ohio St.2d 403, 420 (1975). Under OMAEG's reasoning, a utility that files a rate case based on a defined set of changes and proposals is subject to an intervenor's unqualified right to question *any* proposal or business practice within the applicant's entire business structure. This is an absurd interpretation of the scope of a rate case and the Commission's authority. Regardless, the Company did not put the information related to this objection of OMAEG at issue. If OMAEG members have a concern with Duke Energy Ohio's reliability, the appropriate redress is to file a complaint case before the Commission.

OMAEG effectively objects to Staff not reading OMAEG's mind and preemptively adopt its "proposals" which have no mention or reference in the Application. These "proposals" are a settlement position, at best, not the proper subject of the Application or Staff Report. The Company therefore reiterates its position that this objection should be stricken.

C. Reply to OCC's Memorandum Contra

a. OCC Objection 5: Gains on Property Sales

As the Company explained in its motion to strike, it is improper to consider any gains—and likewise, any losses—incurred by the Company for property sales outside of the test year. This

includes consideration of the property sales, going back to 2016, that OCC's Objection 5 seeks to improperly bring into this proceeding. In its memorandum contra, OCC does not dispute the merits of the Company's position in any way. Accordingly, there is no basis to deny the Company's motion to strike this objection and exclude from the hearing any evidence concerning property sales outside of the test year.

b. <u>OCC Objection 26: Billing Comparison</u>

As explained in the Company's motion to strike, OCC's recommendation that the Company conduct additional data analysis or provide additional data to consumers has no relevance to the determination of appropriate electric distribution rates. In response, OCC claims that Staff's failure to address OCC's suggestions does not render OCC's objection irrelevant. That misstates the Company's argument. The objection is not irrelevant because the Staff did not address it. Rather, the Staff did not address OCC's recommendations because they concern an irrelevant subject.

OCC offers no explanation of why its proposal is relevant to the issues before the Commission. While OCC invokes the Staff Service Monitoring and Enforcement Department (SMED) Customer Service Audit, this portion of the Staff Report pertains to whether "the overall customer service practices and practices and policies of [the Company] . . . generally comply with the applicable rules and regulations set forth by the Commission." Staff Report at p. 45. There is no dispute that the Company is not required under current rules to take the actions OCC wants. As such, this section of the Staff Report does not make relevant OCC's proposal for data reporting that the rules do not require. In addition, neither the Staff Report nor any rule or regulation suggest that it is permissible to transform a ratemaking case into an open forum for any proposal that an Intervenor contends is "for the benefit of customers."

Finally, OCC relies on R.C. 4928.02(A) to support its claim that the Commission may consider these issues. R.C. 4928.02(A) provides that it is State policy to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service." But R.C. 4928.02(A) does not negate or override the specific statutory and regulatory limits on the permissible scope of ratemaking proceedings. OCC cites no section of R.C. Chapter 4909, which governs the fixation of rates, in support of its claim that the Commission has the authority to do what OCC is requesting in this objection, or that it is relevant to a ratemaking proceeding.

c. OCC Objection 27: Consumer List Opt-Out Option

OCC's defense of this objection is unconvincing. Again, OCC relies primarily on the SMED Customer Service Audit. Again, OCC provides no basis for its contention that just because Staff assessed the Company's compliance with existing rules and regulations, OCC may interject issues—in this case, consumer options to opt-out of having account information included on consumer lists for CRES provider—that it contends relate to customer service, but are not required by rules or regulations and clearly do not affect electric distribution rates.

The issue is not, as OCC suggests, whether the objection relates to a topic mentioned in the Staff Report. The issue is that an objection must satisfy the overriding requirement that the subject proceeding may not "extend to matters not put in issue by the applicant and not related to the rates which are the subject of the application." *Cleveland Elec. Illuminating Co.*, 42 Ohio St. 2d at 420. OCC's objection violates this rule and should therefore be stricken.

d. OCC Objection 28: Data Privacy

OCC objected to the Staff Report's evaluation of the Company's Data Privacy Policy (Policy), and the Company moved to strike this objection because, among other reasons, this

objection provides no specificity about what flaws, if any, there are with the Company's Policy. The Policy was publicly filed with the Company's Application. If OCC believes there are any substantive deficiencies with the Policy, it was required to identify them, in detail, so the Company could reasonably respond to the criticism, and so the Commission can assess the merits of OCC's position. OCC does not dispute that it failed to do this. It may not force Staff to expend time and resources looking for problems that OCC merely speculates might exist.

Similarly, this objection is not relevant because it relates only to a perceived shortcoming in Staff's approach to the Staff Report—that is, Staff's analysis of the Policy. To meet the relevancy threshold, an objection must address a substantive issue for the Commission to decide. This objection is neither specific nor relevant.

e. <u>OCC Objection 29: Consumer Protections</u>

This objection, on its face, asks the Commission to require money transfers from the Company to its customers. That is something the Commission does not have the authority to require. Once again, OCC relies exclusively on R.C. 4928.02, which is a general statement of state policy, and not a grant of authority to the Commission. And, once again, OCC noticeably cites no section of R.C. Chapter 4909, which governs the determination of rates.

Further, ordering a cash transfer would be a cut-and-dry example of an impermissible regulatory taking. The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. OCC is transparent that it is seeking to take money from the Company and give it to others to alleviate economic pressure brought about by "inflation increases [that] affect[] various products and services, and financial issues that resulted from the pandemic, and the potential for recession, among other things." These are general societal problems to be addressed by the federal and state legislatures, not the Commission.

Because the objection is outside of the scope of what is permissible in this proceeding, it cannot be relevant.

f. OCC Objection 16: Riders

OCC states that "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 additional reasons why they should not be approved." Despite OCC's professed confusion, it is quite clear that this objection is, in effect, a legal argument intended to support the Staff Report. Both OCC and Staff believe the Rider CDI and the Rider RR should not be approved in this proceeding. The Company disagrees, but the Staff Report has already identified this as a dispute to be litigated and resolved during the proceeding. Accordingly, OCC's undeveloped claim about the alleged illegality of the riders accords with Staff's conclusion and therefore is not a proper objection.

g. OCC Objection 20: Convenience Fees

On the issues that are within the scope of this proceeding, OCC agrees with the Staff Report. Specifically, OCC acknowledges that both it and Staff do not believe convenience fees should be considered costs to provide and recoverable by the Company. OCC is thus not objecting to, but endorsing, Staff's position, which is not an appropriate subject for an Objection.

Where OCC and the Staff diverge is on issues *outside* the scope of the proceeding. OCC's primary objection to the Staff Report is that the Staff Report "failed to recommend that Duke make every available effort with its authorized vendors to reduce the level of the convenience fees charged to consumers." As the Company explained in its motion to strike—and as OCC recognizes in this objection—the fees about which OCC is complaining are not charged or received by the Company. However, these fees are paid by consumers directly to third-party vendors that are not

parties to this proceeding. The Commission cannot order these third-party vendors to eliminate the fees. Thus, this component of the objection is not relevant or proper. For the foregoing reasons, the entire objection should be stricken.

D. Reply to One Energy's Memorandum Contra

a. One Energy Section 2, Rates and Tariffs, Objection 9: Miscellaneous Tariff Issue – Subject to Refund

First, One Energy does not respond to the Company's motion to strike this objection for lack of specificity. One Energy offers a limited response to the Company's claim that this objection is not specific, as required by Ohio Adm.Code 4901-1-28, and makes no argument as to why this objection *is* specific. Thus, One Energy fails to address the substance of the Company's motion.

Regardless, One Energy also misrepresents the nature and language of R.C. 4905.32. One Energy cites R.C. 4905.32 for the proposition that "public utilities (like Duke [Energy Ohio]) do not have to refund improper charges unless the Ohio legislature changes the law or a utility's tariff specifically provides for a refund." R.C. 4905.32 in part prevents a utility from providing a refunds to customers that are not provided to other *similarly-situated* customers:

> No public utility shall refund or remit directly or indirectly, any rate, rental, toll, or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility *except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service*.

One Energy fails to acknowledge this "like-for-like refunding" provision when arguing that Staff should require the Company to include a statement regarding customer refunds in *all* riders and tariffs. One Energy's narrative is therefore misleading and would misapply relevant code requirements.

Likewise, One Energy cites *In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates* Case Nos. 20-1651-EL-AIR, *et al.*

to suggest that it should be able to proceed with its objection here because it was allowed to proceed with it in that case. First, the Company is not bound by another utility's decision to not move to strike One Energy's objection in a separate case. Second, One Energy misrepresents what occurred in that case. In fact, One Energy cites to the Testimony of Staff Witness Craig Smith, but in doing so fails to acknowledge that Mr. Smith and Staff expressly *disagreed* with One Energy's claim that a blanket refund provision be required in the subject utility's riders and tariffs:

> Q. One Energy objects to the Staff Report failure to include a general Refund provision in all riders and tariffs. How does Staff respond?
>
> A. Staff disagrees. Staff believes a blanket "subject to refund" provision is inappropriate, rather refund provisions should be limited to individual riders or specific charges.

In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates Case Nos. 20-1651-EL-AIR, *et al.*, Testimony in Response to Objections to the Staff Report of Craig Smith at p. 18. If One Energy wants to bind the Company to another utility's failure to move to strike this objection, then One Energy should also recognize that Staff has already addressed this objection and expressly disagreed with it.

b. <u>One Energy Section 1 Objection: Rejecting Duke's Filing</u>

In its memorandum contra, One Energy merely repeats its claims that the Application was riddled with "glaring accounting failures," but nothing in its response to the Company's motion to strike justifies this objection. Instead, One Energy uses this portion of its response to elaborate on its general philosophy related to investor-owned utilities. This response is not meaningful, and does not support the rejection of an entire Application that has already been accepted as complete.

Further, what One Energy does not address is that as a distributed-generator of energy, it is in direct competition with companies like Duke Energy Ohio. One Energy seeks to compete with Duke Energy Ohio's electric distribution service in Ohio, and One Energy's objections and

memorandum contra reflect this. As such, One Energy is not using its filings to support Ohio energy consumers—it is using the Company's rate case and the Commission-prescribed process to derive a competitive benefit to the detriment of the Company.

One Energy links its response to this objection to its response related to Section 2, Objection 1 of its objections filing, and the Company will do the same. The Company therefore incorporates the narrative set forth under this objection and response to the following narrative, and vice versa.

c. <u>One Energy Section 2, Objection 1: Need for Full Review by Financial Auditor in Light of Material Errors</u>

Here, One Energy cites Commission precedent from extreme outlier cases to suggest that a full independent audit of the Company's books and records should have been required by Staff in the Staff Report. For instance, the Commission's requiring appointment of a receiver in *In the Matter of the Review of Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC*, Case No. 17-1534-HC-UNC was related to the utility's risk of insolvency. In stark contrast, the Company made simple accountancy errors of the type that are effectively inevitable in the complex realm of ratemaking (as evidenced by errors in Staff's own Report, for example), making precedent like *Youngstown Thermal* inapplicable.

Even more, utilities like the Company are subject to continual audits simply for distributing electricity in Ohio. For example, many of the riders at issue in the Application are subject to an annual audit and review. As such, One Energy's desire for an additional, "comprehensive" audit is unnecessary, fails to acknowledge the Commission's and Staff's year-round diligence related to utility audits, and would waste Commission and Staff resources.

Regardless, the Company proactively corrected any errors identified in its Application, and even clarified many errors in the Staff Report that otherwise would have benefited the Company.

For example, One Energy cites "improper accounting of an admittedly retired asset . . . which was not removed from plant-in-service," but the Company disclosed in its response to STAFF-DR-69-001 that this land was inadvertently disclosed as plant held for future use. The Company reiterated this in its Objections. Not only were the minor accounting errors made in the Company's Application correctable, they were in fact corrected by the Company as soon as it became aware of them. One Energy does not acknowledge this. Thus, for a number of reasons, a separate audit of the Company's books and records is unnecessary and inappropriate.

d. <u>One Energy Section 2, Rates and Tariffs, Objection 2: Installation of Meters</u>

Like many of One Energy's objections and responses in its memorandum contra, One Energy attempts to use the objection process to inappropriately insert its separate agenda into another utility's rate case. As the Company stated in its motion to strike, the fact remains that this objection is not related to or placed at issue in the Application, and Staff therefore properly did not address it in the Staff Report. The purpose of objections is not to make suggestions of anything that one utility would like to see in another's tariff.

Moreover, One Energy's statement that "[the Company] contends that its tariff . . . is not relevant to this case" entirely misstates the Company's position in its motion to strike. The Company instead stated that "[t]he Staff Report did not and *was not required to address the Company's tariff as it relates to the installation of meters, as the installation of meters is not related to setting electric distribution rates*." (emphasis added). One Energy has misleadingly reframed the Company's position.

Finally, One Energy asserts that its objection is made on its own and the Company's customers' behalf. However, customers who have a position with respect to this matter should intervene on their own behalf. Furthermore, it is essentially hearsay for One Energy to simply

assert that it is specifically objecting on behalf of any or all of the Company's customers. One Energy is not the proper representative of the Company's customers. One Energy has not identified a single customer or class of customers for which it purports to represent. Nor, has One Energy demonstrated that it is a customer of the Company. Indeed, One Energy's own website describes itself as an "industrial power company" that "builds, owns, and operates major electrical infrastructure for industrial energy users on their side of the meter…"[2] Clearly, One Energy's interests in these proceedings are its own.

e. <u>One Energy Section 2, Objections 4, 5, and 6: Riders DIR, EEPC, and GP</u>

One Energy again reframes the Company's arguments related to One Energy's objections related to Riders DIR, EEPC, and GP. Contrary to One Energy's assertion, the Company does not broadly state that its tariff as it pertains to distribution rates is not a relevant or integral part of this rate proceeding. Indeed, the portions of the Company's tariff that the Company is seeking to modify are certainly relevant to this proceeding. But One Energy suggests that the *entirety* of an applicant's tariff is placed at issue when an applicant files for an increase in distribution rates. One Energy plainly states that "Duke [Energy Ohio] (by its filings in this case) ha[s] made its tariff an integral part of this proceeding."[3] This is patently false.

The Company has not proposed changes to its tariff as it relates to the riders referenced by One Energy, so the Company has not placed those riders at issue. One Energy cannot use the fact that the Company has proposed modifications to certain portions of its tariff as a green light to raise *any* issue One Energy sees with the Company's tariff, whether referenced in the Application or not. There is no corresponding effect on consumers related to items not proposed to be changed

[2] https://oneenergy.com/ last visited July 13, 2022.
[3] One Energy's Memorandum Contra at p. 6.

in the Application. One Energy's argument to the contrary is in conflict with Commission practice and rate case principles.

f. <u>One Energy Section 2, Objection 5: Rider EEPC – East Central Area Reliability Council (ECAR) Reference</u>

Here, One Energy creates a new issue with the Company's Application and motion to strike: that Rider EEPC contains a reference to ECAR. However, as noted above, Rider EEPC is *not* proposed for modification in the Company's Application or the Staff Report. Beyond this, he Company will not dignify this with a lengthy response, in part because it is not relevant to or referenced in the Company's Application or motion to strike, and in part because One Energy's language is more inflammatory and unprofessional than productive to resolving this case.

g. <u>One Energy Section 2, Objection 10: CRES Provider Registration/Credit Requirements</u>

"The entirety of [the Company's] tariff is at issue in the case. Period." This is the essence of One Energy's position in this case; One Energy can repeat this sentiment as frequently as it desires, but that does not make it true. The fact remains that the Company has not placed the entirety of its tariff at issue in this case. The Company filed its Application with a defined set of proposed modifications to its tariff, relevant to distribution rates, and those are the items at issue in this proceeding. While One Energy may prefer to be able to object to or put at issue the entirety of the Company's tariff, One Energy offers no support for this concept. Moreover, this is plainly not the purpose of a rate case or the objections process.

h. <u>One Energy Section 2 Objection: Management Operations Review</u>

One Energy appears incredibly concerned with the Company's not providing "evidence . . . establishing wage parity," but, once again, fails to provide any evidence showing there is actually a concern, nor why this is necessary or relevant to a distribution rate case. One Energy states that

the issue of wage parity is "immediate and pressing," but does not clarify how. Wage parity may indeed be a pressing societal issue, but it is not pressing in reference to any distribution rate case, much less this one. In fact, in response to a similar argument by One Energy in *In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates* Case Nos. 20-1651-EL-AIR, *et al.*, Staff stated the main components of a distribution rate case:

> Q. One Energy objects that Staff did not review salary gender and race parity, such as whether the Company has a wage gap based on gender (or race). One Energy proposes that the Commission should adjust downward [the applicant's] rate of return as a challenge to do better and continue to prioritize its diversity, equity and inclusion efforts. Please respond.
>
> A. Staff did not perform an analysis regarding salary gender and race parity. *Staff has reviewed the application and issued comments and recommendations on the two main components of a rate case: (1) determination of the revenue requirement and (2) determination of the rate structure.*

Testimony in Response to Objections to the Staff Report of David M. Lipthratt at p. 27 (emphasis added). Staff addressed those two components here; an additional review of management and operations related to wage parity was neither necessary nor relevant to this case.

Finally, even if a wage parity analysis were relevant to a distribution rate case, the Company performs well. Specifically, the representation of women employees under the Duke Energy Corporation (Duke Energy) umbrella is reasonable. Indeed, Duke Energy's statistics for women employees keep pace with or surpass the 24 percent threshold cited by One Energy. According to Duke Energy's Sustainability Report Workforce Performance Metrics,[4] over 27

[4] Workforce Performance Metrics, Duke Energy (last visited July 12, 2022), available at: https://sustainabilityreport.duke-energy.com/social/workforce-performance-metrics/.

percent of vice president and higher roles and 30 percent of chief officer roles are held by women. Duke Energy's own Chief Executive Officer—Lynn Good—is a woman.

Regardless of these statistics, and even if One Energy's allegations of wage disparity were supported, One Energy's claim that one group of employees—because of their gender alone—should have their wages and salaries *reduced* to be on par with another gender-group of employees is inappropriate at best. This is not how wage gap studies or measures are approached. In reality, the solution (if one were needed) would be to increase the lesser-paid group's wages and salaries, which in turn would increase the Company's revenue requirement. One Energy does not address this outcome, as it has an interest in the Company being assigned a limited revenue requirement rather than increasing it. But the fact remains that if One Energy were in fact correct, it should result in an increased revenue requirement for the Company.

Ultimately, however, the issue is not appropriately before the Commission, for the reasons set forth above. One Energy's identified objections should each be stricken for the reasons set forth in the Company's motion to strike and this reply.

E. Reply to IGS's Memorandum Contra

a. IGS Objection 11: Incentive Compensation

IGS asserts that this objection is proper because there is a "sufficient nexus to issues not addressed in the [A]pplication and those that are expressly put in issue." But IGS once again fails to recognize that its issues with Duke Energy Ohio's Application are not appropriate for an objection to the Staff Report. While Ohio Adm.Code 4901-1-28(B) allows for an objection that relates to the "failure of the [Staff Report] to address one or more specific items," IGS did not frame its objection related to incentive compensation as an objection to the Staff Report. Instead, IGS's objection statements are all limited to actions of the Company, not Staff:

- "*Duke's application* fails to remove incentive compensation from base rates in opposition to Commission precedent." (emphasis added).

- "IGS objects to *Duke's inclusion of incentive compensation* in distribution base rates." (emphasis added).

- "IGS objects to *Duke's failure remove incentive compensation* from distribution base rates consistent with Commission precedent." (emphasis added).

There is a distinction between objecting to the Staff Report's failure to address a given issue and objecting to an action by the applicant with which the intervenor disagrees. This objection falls under the latter and should therefore be stricken.

b. IGS Objection 13: Rider CDI

Ohio Adm.Code 4901-1-28(B) provides the standard for objections:

> Any party may file objections to a report of investigation . . . . Such objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items.

While IGS gets part of this regulation correct (insofar as objections must relate to the Staff Report), IGS misses the other operative portion of this regulation: that a party must file *objections* to a report of investigation. Objections, by definition, express opposition. Objections do not express agreement. Yet IGS agrees with Staff's position that Rider CDI should be rejected. This is not an objection at all, and it should accordingly be stricken.

F. Reply to the City's Memorandum Contra

a. City Objection 2: Federal Funds

The City is incorrect that this objection notes the failure of the Staff Report to address a specific item. The Staff Report specifically "recommends that the Commission continue the requirement for the removal of *all* capital costs that are recovered elsewhere by Duke to ensure no double recovery of these costs is occurring." Staff Report at p. 10 (emphasis added). The Staff Report does not exclude—and thus does not fail to address—*any* capital costs recovered

elsewhere, including as a result of any federal legislation. The Staff Report recommends precisely what the City is seeking in this objection. The City's objection is purely semantic. Accordingly, this objection fails to meet the minimum requirements for a proper objection to the Staff Report and should be stricken.

b. <u>City Objection 3: Rider DCI</u>

In its memorandum contra, the City seeks to salvage this improper objection by rewriting it. The Staff Report recommended certain rate caps on Rider DCI. In this objection, as filed, the City explained that it "supports Staff's effort to keep this rider in check." Now the City contends that it does not in in fact support the rate caps, although it does not explain what other Staff efforts to keep Rider DCI in check it is supporting. Instead, the City now states that it "objects to the Staff Report for proposing Rider DCI rate caps without addressing whether Duke has the legal authority in this rate case to increase rate caps set in the ESP proceeding." Although the City's objection initially noted that the Staff Report did not consider the Company's legal authority for rate caps on Rider DCI, the City did not present any argument or explanation for *why* that is not permissible. Thus, the City's revised objection—which now appears to be solely that there is no legal basis for *any* Rider DCI rate raps and that none should be included at all—is entirely non-specific and improper on that basis.

The City's revised objection is also improper for an additional reason. The Commission's Order in Case No. 17-032-EL-AIR, *et al.*, among other things, established the Company's current base rates and the existing caps in Rider DCI. As part of its approval of Rider DCI, the Commission approved a stipulation, of which the City was a signatory party. That Stipulation provided, in pertinent part:

> The Company shall file at least one base electric distribution rate case application on or before May 31, 2024. *If the Company files a base electric distribution rate*

> *case earlier than May 31, 2024, the revenue caps for Rider DCI will be adjusted to reflect the updated rate case and Rider DCI will continue until May 31, 2025, unless otherwise extended by the Commission.* If the Company does not file a base electric distribution rate case application by May 31, 2024, the Rider DCI rate and associated revenue caps will be set to zero on June 1, 2024. Rider DCI shall be updated quarterly and subject to annual audit at the Commission's discretion.[5]

The City's argument, now, that Rider DCI cannot be adjusted in the context of a base rate proceeding, is disingenuous at best and, at worst, a direct violation of its agreement in the Stipulation approved by the Commission of which it is a Signatory Party.

For these reasons, the City's objection is quite different from the objections of OMAEG and The Kroger Co. (Kroger),[6] which the City claims are comparable. The Company disagrees with the views of OMAEG and Kroger on this issue, but their objections at least take the affirmative position that there is insufficient legal basis for the Company's request and cite specific statutory sections which they claim support their views. Further, if the City believes its objection is so similar to those of OMAEG and Kroger, it should be satisfied that the issues will be heard by the Commission on account of those objections, and there is no prejudice to the City by striking its objection.

c. <u>City Objection 5: Residential Rates</u>

This objection states only a "concern" about the proposed energy charge for Rate RS. The City unpersuasively argues that the objection should not be stricken because the City need only specify an objection, not a solution. Regardless of whether or not the City is required to offer an alternative rate level, it must at a minimum identify some alleged reason why the requested rates

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[5] *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, paragraph 116 (Dec. 19, 2018)(citing the Stipulation and Recommendation filed as Jt. Ex. 1 at 10-13)(emphasis added).

[6] Kroger has also intervened in this proceeding and timely filed objections to the Staff Report. Kroger's objections are not addressed here, as the Company did not move to strike any of Kroger's objections.

are not appropriate under the applicable statutory and regulatory provisions. In other words, it cannot simply state that it believes the conclusions of the Company and Staff are wrong—it must explain why. Even the Commission's examples of improperly vague objections—"the staff incorrectly calculated test year labor expense" and "the staff unreasonably determined rate case expense"—are much more specific than the City's unsupported objection to the proposed Rate RS. *In the Matter of the Application of the Cincinnati Gas & Elec. Co. for an Increase in Its Rates for Gas Serv. to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Entry at 1 (July 15, 1996). Accordingly, this objection should be stricken.

d. <u>City Objection 8: Distribution Operations and Reliability</u>

The City does not dispute that this objection, as filed, related only to complaints about certain individualized services provided to the City by the Company. In a change of direction, the City argues in its memorandum contra that this objection is sufficiently relevant to this distribution rate proceeding because the Commission has authority in a rate proceeding to "consider the efficiency, sufficiency, and adequacy of the facilities provided and services rendered by the public utility." But the City's objection to the Staff Report has nothing to do with how the alleged service deficiencies (which the Company denies) should be considered for the purposes of setting rates. The City is not, for example, seeking that a particular rate reduction be imposed. Rather, the City objected to Staff's decision not to "support more advanced notice for essential utility facilities . . . , assistance with backup power supply, and better contacts during an emergency situation." *Id*. The requested relief has nothing to do with distribution rates.

Furthermore, the City is incorrect that an objection to the Staff Report is the appropriate method of raising the City's service complaints. As stated in the Company's motion to strike, such issues are properly addressed in a formal complaint case. The authority cited by the City confirms that the Company's position is correct, and that this objection should be stricken.

III. CONCLUSION

For the reasons provided above, Duke Energy Ohio respectfully reiterations its request that the Commission grant its motion to strike the specified objections of the Intervenors.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Duke Energy Ohio, Inc.'s to Memoranda Contra Duke Energy Ohio's Motion to Strike Specific Intervenor Objections to Staff Report was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15th day of July, 2022, via e-mail.

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Summary: Reply Duke Energy Ohio, Inc.'s Reply Memorandum To Memoranda Contra Duke Energy Ohio's Motion To Strike Specific Intervenor Objections To Staff Report electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Kingery, Jeanne W. and Akhbari, Elyse Hanson and Vaysman, Larisa and Elizabeth M. Brama