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

POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

October 31, 2022

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I. INTRODUCTION

On October 1, 2021, Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) filed its application in these proceedings, seeking a review of its electric distribution base rates (Application).[1]

The Company's Application proposed to adjust electric distribution base rates by approximately $55 million, which equated to an approximate 3.3 percent average increase to a customer's total bill.[2] The Company's Application was driven by nearly $800 million in increased rate base since its last electric distribution base rate proceeding, reflecting investments to enable a more reliable and resilient grid.[3] The Company's Application was based upon a test year that spanned the twelve months beginning April 1, 2021, and ending March 31, 2022, with a date certain of June 30, 2021.[4] The Company's Application also included, but was not limited to, the following components:

- Requested return on equity (ROE) of 10.3 percent;[5]
- A 50.5 percent equity-based capital structure;[6]
- Rolling into base rates and/or resetting of various existing riders, including: (1) the Distribution Capital Investment Rider (Rider DCI), (2) the Electric Service Reliability Rider (Rider ESRR), (3) the Distribution Decoupling Rider (Rider DDR), (4) the Distribution Storm Rider (Rider DSR), (5) the Electric Tax Cuts and Jobs Act Rider (Rider ETCJA), and (6) the Power Future Initiatives Rider (Rider PF);[7]

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[1] Application of Duke Energy Ohio, Inc. (October 1, 2021) (Application) (Duke Energy Ohio Ex. 1.).
[2] Supplemental Testimony of Amy B. Spiller on Behalf of Duke Energy Ohio, Inc., in Support of Settlement (September 22, 2022) (Spiller Supp. Test.) (Duke Energy Ohio Ex. 3), p. 2.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*, p. 3.

- A public information and awareness campaign;[8]
- A Community-Driven Investments Rider (Rider CDI);[9]
- Continued development of the Company's new Customer Connect, Customer Information System;[10]
- Revisions to the Company's Economic Development Tariff;[11]
- Enhancements to the GoGreen Ohio program;[12]
- A fee-free electronic payment program;[13]
- A Retail Reconciliation Rider;[14]
- Street-lighting LED conversions; and[15]
- Revisions to the Residential Time-of-Use rate.[16]

The Application was supported by the testimony of twenty Company witnesses and was subject to nearly seven months of investigation by Staff of the Commission (Staff) and numerous intervening parties[17] that conducted extensive discovery. By Entry dated October 20, 2021, the Commission granted the Company's motion to set the test period and date certain and granted certain waivers.[18] On May 19, 2022, the Staff issued their Report of Recommendations (Staff Report).[19] Consistent

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] The intervening parties were comprised of the following: 1) The Ohio Energy Group (OEG); 2) The Office of the Ohio Consumers' Counsel (OCC); 3) Interstate Gas Supply, Inc. (IGS); 4) One Energy Enterprises LLC (OneEnergy); 5) the City of Cincinnati (the City); 6) Nationwide Energy Partners, LLC (NEP); 7) ChargePoint, Inc. (ChargePoint); 8) Ohio Manufacturers' Association Energy Group (OMAEG); 9) Retail Energy Supply Association (RESA); 10) The Kroger Company (Kroger); 11) Ohio Partners for Affordable Energy (OPAE); 11) People Working Cooperatively, Inc. (PWC); 12) Citizens' Utility Board (CUB-Ohio); and 13) Walmart Inc. (Walmart).
[18] Entry, pp. 5-6.
[19] Staff Report of Investigation (May 19, 2022) (Staff Report) (Staff Ex. 1).

with R.C. 4909.19 and O.A.C. 4901-1-28, objections to the Staff Report were filed by the Company and intervening parties on June 17, 2022, and June 21, 2022, respectively.[20]

On June 28, 2022, by Commission Entry, a prehearing conference was held at the Commission offices, which, among other things, initiated settlement discussions among the parties to explore resolution of these proceedings.[21] On September 19, 2022, a Corrected Stipulation and Recommendation (Stipulation) was filed in these proceedings, which, if approved, will resolve all issues raised herein.[22]

In the months leading up to the filing of the Stipulation, Duke Energy Ohio met with the intervening parties numerous times, both individually and as a group, to discuss the issues raised in these proceedings. To facilitate full participation, settlement discussions occurred in person, virtually, via telephone, and by electronic means. Following comprehensive and exhaustive negotiations, nearly all of the parties to these proceedings reached agreement to resolve the matters raised in the Company's Application. That agreement is contained in the Stipulation, which identifies all agreements, conditions, and terms between and among the parties that have agreed to the Stipulation (the Signatory Parties) and those that have agreed not to oppose the Stipulation (the

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[20] Duke Energy Ohio, Inc.'s Objections to the Staff Report of Investigation and Summary of Major Issues, (June 17, 2022); Objections and Summary of Major Issues of the Retail Energy Supply Association (June 21, 2022); Objections to the Staff Report of the Ohio Energy Group(June 21, 2022); Objections to the Staff Report of Walmart Inc. (June 21, 2022); Objections to the Staff Report of Investigation by Ohio Partners for Affordable Energy (June 21, 2022); One Energy Enterprises Inc.'s Objections to the Staff Report and Summary of Major Issues (June 21, 2022); The City of Cincinnati's Objections to the Staff Report (June 21, 2022); The Citizens' Utility Board of Ohio's Comments and Objections to the Staff Report (June 21, 2022); Objections to the Staff Report of Investigation and Summary of Major Issues on behalf of Interstate Gas Supply, Inc. (June 21, 2022); Objection to the Staff Report on behalf of the City of Cincinnati (June 21, 2022); Objection to the Staff Report by ChargePoint, Inc (June 21, 2022); Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel (June 21, 2022); Objections to the Staff Report on behalf of the Ohio Manufacturers' Association Energy Group (June 21, 2022); Objections to the Staff Report of The Kroger Co. (June 21, 2022).

[21] Entry (May 20, 2022) (ordering a prehearing conference be held on June 28, 2022).

[22] Corrected Stipulation and Recommendation (September 19, 2022) (Stipulation) (Joint Ex. 1). The initial Stipulation and Recommendation was also filed on September 19, 2022, but was discovered that it had inadvertently excluded the identification of the City's counsel. The Corrected Stipulation corrected that typographical error.

Non-Opposing Parties).[23] The Signatory and Non-Opposing Parties (collectively Settling Parties) comprise all but one of the intervening parties to these proceedings and, together, represent all customer classes and various other stakeholder interests, including, but not limited to, competitive suppliers, governmental entities, large chain grocery and retail stores, and Staff of the Commission, which represents all stakeholder interests.

The Office of the Ohio Consumers' Counsel (OCC), the only party opposing the Stipulation, was given a fair opportunity to present its opposition throughout these proceedings and has not demonstrated that the Stipulation, as a total package, is unreasonable, or fails any component of the applicable three-part test described below. The only issue here is whether the totality of the settlement, as a package, is reasonable.[24] The issue is not whether any individual issue or component, on a stand-alone basis, passes the test.[25] The Commission should therefore approve the Stipulation as filed.

II. <u>SUMMARY OF THE STIPULATION</u>

The Stipulation resolves all of the matters set forth in the Company's Application, as well as several other issues that were raised by the Signatory Parties and Non-Opposing Parties.[26] The Stipulation determines the Company's revenue requirement deficiency by an agreed-upon total revenue requirement of $578.1 million, exclusive of riders, which results in an increase of $22.6

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[23] The Signatory Parties include: 1) Duke Energy Ohio; 2) Staff of the Commission; 3) the City; 4) OEG; 5) OPAE; 6) PWC; 7) RESA; 8) Walmart; 9) IGS; 10) One-Energy 11) NEP; and 12) CUB-Ohio. The Non-Opposing Parties include: 1) OMAEG; 2) Kroger; and 3) ChargePoint.

[24] *See In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, *et al.*, Opinion and Order (March 31, 2016) ("AEP . . . filed a settlement stipulation with the Commission. As a result, while the legal standard of review still requires that the utilities bear the burden of proof, the true test for legality . . . is the three-part stipulation test established by this Commission and upheld by the Supreme Court of Ohio.") (Concurring Opinion of Commissioner Asim Z. Haque, pp. 1-2).

[25] *See In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates,* Case No. 20-585-EL-AIR, *et al.,* Opinion and Order ¶ 131 (Nov. 17, 2021) ("We emphasize that the Commission must evaluate the benefits of the Stipulation as a package and each provision of the Stipulation need not provide a direct and immediate benefit to ratepayers and the public interest.").

[26] Stipulation (Joint Ex. 1).

million in electric distribution revenues.[27] The settled-upon capital structure of 50.5 percent equity and 49.5 percent long-term debt is the Company's as-filed, actual capital structure on June 30, 2021.[28] The stipulated ROE is 9.5 percent.[29] And, the agreed-upon depreciation rates are those proposed in the Company's Application, but as modified in the Staff Report.[30]

The Settling Parties negotiated a rate design allocation of the agreed-upon base distribution revenues of 64 percent to residential customers and 36 percent to non-residential customers.[31] The billing determinants are based upon the test year actual weather normalized sales, except for lighting rates, which will use the billing determinants in the Company's Application. The Settling Parties have agreed upon the following customer charges:[32]

- Rates Residential Service (RS), Optional Residential Service with Electric Space Heating (ORH), Time of Day, and Critical Peak Pricing (TD-CPP) $8.00 per bill;
- Rate Residential 3-Phase (RS3P) $10.50 per bill;
- Rate Optional Time of Day (TD) $17.50 per bill;
- Rate Residential Service- Low Income (RSLI) remains $2.00 per bill;
- Rate Secondary Distribution Service -Small (DM) $12 per bill for single-phase service and $24 per bill for three-phase service;
- Rate Service at Transmission Voltage (TS) $197 per bill; and
- All other non-residential customer charges as proposed in the Company's Application;

[27] *Id.*, p. 2.
[28] *Id.*, p. 3
[29] *Id.*
[30] *Id.*, p. 4. *See also* Staff Report (Staff Exhibit 1), pp. 14, 62-65 (Schedule B-3.2).
[31] *Id.*, pp. 4-5.
[32] *Id.*, pp. 5-6.

The Settling Parties have agreed to longer amortization periods for deferrals than what the Company originally proposed,[33] as well as to revisions to several of the Company's tariffs and riders, including, but not limited to:

1. Revising the caps on the Company's Rider DCI based in part upon achieving a newly established annual System Average Interruption Duration Index (SAIDI) metric through May 2025,[34] as follows:

    - For 2022, the DCI revenue cap will be $20.7 million;[35]
    - For 2023, the DCI revenue cap will be up to $41.5 million based upon meeting SAIDI target; $39.1 million;[36]
    - For 2024, the DCI revenue cap will be up to $62.2 million based upon meeting prior years' SAIDI targets;[37] and
    - For the five-month period ending May 2025, the DCI revenue cap will be up to $34.6 million based upon meeting prior years' SAIDI targets;[38]

2. Revisions to the Company's Rider ESRR to adjust the baseline amounts in base rates as proposed and allow for a true-up for overrecovery of actual vegetation management expense as compared to base rates in addition to the existing true-up

[33] Second Supplemental Direct Testimony of Sarah E. Lawler on Behalf of Duke Energy Ohio, Inc. in Support of Settlement (September 22, 2022) (Lawler 2nd Supp. Test) (Duke Energy Ohio Ex. 12), p. 14.
[34] Stipulation (Joint Ex. 1), pp. 7-9.
[35] *Id.* [P]rorated by month for when new base rates established in this proceeding go into effect.
[36]*Id.* The cap for 2023 is $39.1 million, which may be increased by an additional $2.4 million to $41.5 million for 2023 if, in 2022, Duke Energy Ohio achieves a SAIDI of 117.
[37] *Id.* The cap for 2024 is $57.4 million. This amount may be increased by an additional $2.4 million to $59.8 million for 2024 if Duke Energy Ohio achieves a SAIDI of 117 in 2023 but does not achieve a SAIDI of 117 in 2022. This amount may be increased by a total of $4.8 million to $62.2 million for 2024 if, in 2022 and 2023, Duke Energy Ohio achieved a SAIDI of 117 for both years.
[38] *Id.* The cap for 2025 will be $31.6 million. If Duke Energy Ohio achieves a SAIDI of 117 in only one year between 2022 and 2024, the DCI Revenue cap for the five-month period ending May 2025 will be $32.6 million. If Duke Energy Ohio achieves a SAIDI of 117 in two of the years between 2022 and 2024, the DCI Revenue cap for the five-month period ending May 2025 will be $33.6 million. This amount may be increased to a Rider DCI Revenue cap of $34.6 million if Duke Energy Ohio achieves a SAIDI of 117 in every year between 2022 and 2024.

for underrecovery, as filed in the Company's Application and recommended by Staff;[39]

3. Revisions to the baseline amounts included in base rates for the Company's Rider DSR;[40]

4. Resetting of the baseline in the Company's Rider DDR;[41]

5. Withdrawal of the proposed fee-free electronic payment proposal;[42]

6. Withdrawal of the proposed Rider CDI;[43]

7. Approval of changes to the Company's Economic Development Rider (Rider DIR);[44]

8. Withdrawal of proposed changes to the Company's GoGreen program;[45]

9. Implementation of a revised Time of Day/Critical Peak Pricing tariff (Rate TD-CPP);[46] and

10. Changes regarding street lighting.[47]

In addition, the Stipulation resolves issues raised by the Commission Staff and intervening parties during the course of these proceedings, which resolution would not be possible absent this settlement. These additional terms produce additional benefits for both residential and non-residential customers, low-income interests, and competitive retail electric service (CRES) providers. These benefits include, but are not limited to:

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39 *Id.*, p. 9. *See also* Staff Report (Staff Exhibit 1), p. 41.
40 *Id.*, pg. 9.
41 *Id.*, p. 9.
42 *Id.*, p. 10.
43 *Id.*, p. 13.
44 *Id.*
45 *Id.*
46 *Id.*, p. 14.
47 *Id.*, pp. 15, 21-23.

1. Commitments to partner with low-income interests on future energy efficiency and demand side management programs;[48]
2. Continuation of existing weatherization programs included in base electric distribution rates;[49]
3. Coordination agreements between the Company and the City regarding the City's future investments in street lighting and new technologies; enhanced communication with outages impacting the City's water district facilities and facility relocations; and stability in franchise fees, with the resolution of the franchise issue including a commitment from the City to use a portion of the franchise fee to fund low-income weatherization and bill assistance programs for qualifying City residents;[50]
4. Adjustments to various fees for CRES providers, eliminating the End-Use Customer Enrollment/Switching Fee and the Customer Usage Request Charges, and reducing the fee for the Pre-Enrollment End Use Customer Information List, thereby reducing costs for CRES providers;[51]
5. Initiation of collaboration for evaluating supplier consolidated billing;[52]
6. Tariff clarifications for power brokers;[53]
7. Withdrawal of the Company's proposed Retail Reconciliation Rider (Rider RR) and a process to address a change in law related to a mandate to separate default service costs from distribution rates, should one come to pass;[54]

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[48] *Id.*, p. 16.
[49] *Id.*, pp. 24-25.
[50] *Id.*, pp. 21-25.
[51] *Id.*, pp. 10-11.
[52] *Id.*, pp. 18-21.
[53] *Id.*, pp. 17-18.
[54] *Id.*, pp. 11-13.

8. Agreement to keep the Company's Field Collection Charge at current levels;[55] and
9. Modifications to the Company's residential tariffs to clarify that, at a residential customer's request, the Company will waive late fees one time in a twelve-month period.[56]

The Stipulation, many months in the making, was the result of lengthy and serious negotiations and represents a fair, reasonable, and comprehensive resolution of all issues raised by both the Signatory Parties and the Non-Opposing Parties. It is a compromise reached by a diverse cross-section of Duke Energy Ohio's customers, stakeholders, and Staff. The provisions of the Stipulation are designed to work in tandem with one another to create a logical and meaningful regulatory framework and complete resolution. The provisions are interwoven so that, as a package, the Stipulation delivers benefits that will provide customers, the Company, and the public interest with value. The value concepts are immediate and meaningful for customers and the Company. The issue now before the Commission is whether this Stipulation, as a total settlement package, is reasonable and should be approved in accordance with a well-established, three-part test.

III. <u>THE STIPULATION SATISFIES THE COMMISSION'S THREE-PART TEST</u>

A. <u>The Standard of Review</u>

Ohio Administrative Code (O.A.C.) 4901-1-30(A) authorizes parties to Commission proceedings to enter into a stipulation, providing that "[a]ny two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding."[57] "The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission

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[55] *Id.*, p. 13.
[56] *Id.*, p. 15.
[57] O.A.C. 4901-1-30(A).

proceedings."[58] The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted.[59] Although not binding on the Commission, the terms of a stipulation are "accorded substantial weight" by the Commission.[60] In considering the reasonableness of a stipulation, the Commission has used the following three-part test:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2. Does the settlement, as a package, benefit ratepayers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?[61]

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities and affirmed that the Commission may place substantial weight on the terms of a stipulation.[62] As explained below, the record supports that the Stipulation satisfies the three-part test.

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[58] *See, e.g.*, *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand, p. 3 (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.*, Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records,* Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

[59] *See, e.g., In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates,* Case No. 20-585-EL-AIR, *et al.,* Opinion and Order ¶ 95 (Nov. 17, 2021).

[60] *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, *citing City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

[61] *Id.*

[62] *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Public Util. Comm.* Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992).

B. <u>The Stipulation Is a Product of Serious Bargaining among Capable, Knowledgeable Parties.</u>

1. <u>The settlement process encouraged serious bargaining among all Parties to the underlying case.</u>

The evidentiary record in these proceedings is replete with evidence of serious bargaining. As an initial matter, the settlement process allowed for robust discussion of issues among the parties. The settlement discussions occurred over many months, beginning June 28, 2022, with regular meetings occurring "almost weekly"[63] to address the numerous issues raised in these proceedings. While the initial meeting was "in person," subsequent settlement discussions occurred virtually, with all parties invited to these large group meetings.[64] Additionally, the Company offered to meet with individual parties to discuss their specific issues or concerns related to settlement and, if an agreement was reached, that provision was brought to the remaining parties for further input, discussion, and consideration.[65] All parties, including the sole party opposing the Stipulation, had the opportunity to express their opinions during the negotiation process.[66]

2. <u>The settlement terms demonstrate that serious bargaining occurred.</u>

a. The stipulated revenue requirement increase is significantly lower than was requested in the Company's Application.

The final terms of the settlement are prima facie evidence that serious bargaining occurred. The Stipulation details the numerous revenue adjustments and other terms and conditions that were negotiated to arrive at the final settlement package. The agreed-upon revenue requirement increase is 59 percent lower than what the Company initially proposed in its Application.[67] Likewise, the settled-upon ROE of 9.5 percent is significantly lower than what the Company requested[68] and,

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[63] Lawler 2nd Supp. Test (Duke Energy Ohio Ex. 12), p. 24.
[64] *Id.*
[65] *Id.*
[66] *Id.*, pp. 24-25.
[67] Spiller Supp. Test (Duke Energy Ohio Ex. 3), p. 9.
[68] Application (Duke Energy Ohio Ex. 1), Vol. I, p. 4; seeking a 10.3 percent return on equity.

although within the Staff's recommended range for a reasonable return, is nonetheless thirty-five basis points below Staff's highest point.[69] Furthermore, it is significantly lower than the Company's currently-authorized ROE of 9.84 percent.[70] Company witness Sarah Lawler's Second Supplemental Testimony details the numerous adjustments agreed upon in the Stipulation that resulted in the final revenue requirement.[71] While some of those adjustments were in the Company's favor, the vast majority were not, and served to reduce the Company's revenue deficiency. These adjustments are explained by Ms. Lawler in her Second Supplemental Testimony and summarized in Attachment SEL-1 to Ms. Lawler's Second Supplemental Testimony. These adjustments are evidence of the serious bargaining that occurred.[72]

The Company agreed to many of the adjustments recommended in the Staff Report, including, but not limited to, the following: 1) removal of $1 million for public advertising;[73] 2) five-year deferral amortization instead of the proposed three years;[74] 3) removal of financial related and stock-based capitalized incentives from rate base;[75] 4) removal of materials and supplies inventory from rate base; and 5) reduction of $1.8 million related to the Company's Electric System Operations Facility.[76] Additionally, several other adjustments were negotiated to a compromised middle-ground among the settling parties, also serving to reduce the Company's revenue deficiency. These included, but were not limited to: 1) using actual test year billing determinants instead of the forecasted test year billing determinants proposed by the Company or the actual calendar year 2021 billing determinants recommended by Staff, resulting in a $7.7

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[69] Staff Report (Staff Ex. 1), pg. 20; recommending a range between 8.84 and 9.85 percent.
[70] *See 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, ¶ 257 (December 19, 2018).
[71] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), pp. 7-15.
[72] *Id.*, Attachment SEL-1.
[73] *Id.*, p. 13
[74] *Id.*, p. 14.
[75] *Id.*, p. 15.
[76] *Id.*

million reduction in the Company's requested increase;[77] 2) a reduction of $5.4 million in incentive compensation expense;[78] and 3) a $0.1 million decrease in the revenue requirement related to FERC Account 912.[79]

The stipulated increase in the Company's revenue requirement of $22.6 million results in an average increase of only 1.4 percent on a total customer bill, with residential customers experiencing an approximate 2.5 percent increase on their total bill, and non-residential customers seeing an approximate 0.3 percent increase.[80] Consequently, the negotiations resulted in an overall lower increase to customers' bill for electric distribution service and a slightly different allocation of the increase than what was initially proposed. This bargaining was serious, effective, and required extensive negotiation and effort by the settling parties.

b. Stipulated Rider DCI caps are lower than proposed in the Application and are connected to a reliability metric.

The Company's Application supported an increase to its existing Rider DCI caps, which currently reflect an increase in annual electric distribution revenues of approximate $18.7 million, and equate to a four percent growth in electric distribution base revenues per year .[81] The Company explained that this increase to existing caps was needed to accommodate the increased level of investments necessary to continue providing safe and reliable electric service, meet current reliability targets, and address the increased cost pressures that have arisen since the initial caps were established.[82] The Company's Application proposed an increase to those established caps for

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[77] *Id.*, p. 10.
[78] *Id.*, pp. 11-12.
[79] *Id.*, pp. 12-13.; Staff recommended a reduction of $2.7 million of expense in account 912. The Company demonstrated that the majority of this expense was for large account management, call center, and customer online portal maintenance and should have been coded to Account 908 or 910.
[80] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), pp. 8, 22.
[81] *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, ¶ 113 (December 19, 2018).
[82] Direct Testimony of Sarah E. Lawler on Behalf of Duke Energy Ohio, Inc. (October 15, 2021) (Lawler Direct Test.) (Duke Energy Ohio Ex. 11), pp. 13-14.

calendar years 2023 and 2024.[83] The proposal was based on the revenue need for the Company to recover its necessary distribution investments in those years through Rider DCI and approximated a five percent growth in base distribution revenues per year. The Staff Report, however, recommended revised caps that were not only below what the Company requested in these proceedings, but at levels below those previously established, *i.e.*, the $18.7 million per year that had been approved in Case No. 17-0032-EL-AIR, *et al.*[84] Staff's recommendation equated to approximately a 3 percent annual increase in base distribution revenues ($17 million per year), translating to $17 million prorated in 2022, $34 million for 2023, $51 million for 2024, and $28 million for the first five months of 2025.[85]

The Stipulation resolves the disputed cap issue with newly negotiated Rider DCI caps that are lower than what the Company supported in its Application,[86] slightly higher than what the Staff recommended,[87] and now tied to achieving a new SAIDI reliability metric.[88] Presently, the Company's annual Rider DCI caps are not contingent upon achieving any reliability-based metrics.[89] Nor did Staff propose such a nexus between reliability and recoverability in its Staff Report.[90] The final stipulated caps and the inclusion of a reliability-based incentive tied to achievement of a SAIDI metric were the result of negotiations, appearing for the first time in the

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[83] *Id.* The Company requested a cap of: 1) $12 million for 2022, prorated based upon the Commission's anticipated Order in these proceedings; 2) $46 million for calendar year 2023; 3) $75 million for calendar year 2024; and 4) $40 million for the five months ending May 31, 2025.
[84] Staff Report (Staff Ex. 1), p. 10.
[85] *Id.*
[86] Lawler Direct Test. (Duke Energy Ohio Ex. 11), p. 14.
[87] Staff Report (Staff Ex. 1), p. 10.
[88] Stipulation (Joint Ex. 1), pp. 7-9
[89] *See 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, ¶ 113(December 19, 2018) (The Company's Rider DCI, as approved in 2018, included caps tied to achieving SAIFI and CAIDI metrics for calendar years 2019 and 2020, but not for subsequent years.).
[90] Staff Report (Staff Ex. 1), p. 10.

record of these proceedings by way of the filed Stipulation.[91] These terms were made possible as a result of the serious bargaining that occurred in arriving at a comprehensive settlement package.

c. The allocation of the revenue requirement is squarely between the allocation proposed by the Company and the allocation recommended by Staff.

The settled revenue requirement allocation was also derived through serious bargaining among the parties. The Company's Application proposed an allocation of the total revenue requirement based upon approximately 63 percent to the residential customer classes and approximately 37 percent to the non-residential classes.[92] As Ms. Lawler explained: "And for quite some time, we have had a subsidy where non-residential customers are paying more than they otherwise would, and residential customers are paying less than they otherwise would in terms of the true cost of service."[93] The Company's cost of service model actually would have supported a larger allocation for the residential class than the Company proposed, if the Company had suggested elimination of 100 percent of the residential rate subsidy that currently exists.[94] The Staff Report recommended a 65 percent allocation to the residential classes, slightly more being allocated to residential ratepayers than what the Company proposed in its Application.[95]

Following thorough negotiations, the Signatory and Non-Opposing Parties arrived at a 64 percent allocation of the total revenue requirement to the residential class, as set forth in the Stipulation. This allocation is squarely between the amounts proposed in the Company's Application and those recommended in the Staff Report.[96] Thus, the Stipulation does not eliminate any of the existing rate subsidy for residential customers.[97] The Stipulation maintains the subsidy

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[91] Stipulation (Joint Ex. 1), pp. 7-9.
[92] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), p. 16.
[93] Transcript Vol. I, pp. 192-193.
[94] *Id*.
[95] Staff Report (Staff Ex. 1), Table 3, p. 28.
[96] Stipulation (Joint Ex. 1), pp. 4-6.
[97] Transcript Vol. I, p. 193.

for residential customers, such that all customers experience only a small, measured, and gradual increase in rates.[98] Notwithstanding the allocation of the total revenue requirement among customer classes, the total settled revenue requirement produces, in the aggregate, an average 1.4 percent increase on the total customer bill (including generation, transmission, and distribution charges), with the average residential customer experiencing an approximately 2.5 percent increase to their total bill.[99] The resolution of the question of allocation demonstrates the serious bargaining that occurred in arriving at a balanced settlement package.

d. Fixed customer charges and rate design reflect meaningful departures from the Application.

The Stipulation provides resolution to diverging positions regarding a reasonable level of customer charges that were negotiated among the settling parties. Company witness Bruce Sailers's Second Supplemental Testimony supports the stipulated customer charges that were negotiated among the Signatory and Non-Opposing Parties.[100] Many of these charges, particularly as they relate to the residential classes, are lower than what the Company proposed and what was supported by the Company's cost of service study filed in support of its Application in these proceedings. Likewise, many of these charges differ from what was recommended in the Staff Report. Importantly, the Stipulation provides for no change to Rate RSLI, applicable to qualifying low-income customers, and only a modest $2.00 increase to rates RS, ORH, and TD-CPP for single phase Residential Service.[101]

Similarly, the customer charges for non-residential customers were resolved via the Stipulation. Non-residential customers taking service on Rate DM will see a $12 customer charge for single-phase service and a $24 charge for three-phase service, consistent with the Staff Report's

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[98] *Id.*
[99] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), p. 22.
[100] Lawler Direct Test. (Duke Energy Ohio Ex. 11), p. 5.
[101] Stipulation (Joint Ex. 1), pp. 5-6.

recommendation.[102] The customer charge for Rate TS will be $197. All other customer charges are as proposed in the Company's Application.[103] The remaining authorized revenue requirement is captured in the "energy charges to meet the agreed-upon revenue requirement."[104] This demonstrates the serious bargaining that occurred among the interested stakeholders in reaching the final settlement package embodied in the Stipulation.[105]

e. Other tariff provisions demonstrate negotiation and resolution of issues raised.

The Stipulation provides resolution of a multitude of tariff language and process issues raised in these proceedings. The negotiations resolved some of these issues as proposed in the Company's Application, others as recommended by the Staff Report, and some as part of a negotiated compromise between parties. The Stipulation recommends resolution of these miscellaneous tariff issues as follows:

- Rider ESRR – The Stipulation recommends that the Company's proposal to modify Rider ESRR be approved as described in the Staff Report and that the amount of vegetation management expense included in base rates be $22.5 million.[106]
- Rider DSR – The Stipulation recommends that the Company's proposal to reset Rider DSR and to recover or refund incremental operations and maintenance expense (O&M) associated with major storms above or below the amount in base rates be approved. The amount of major storm expense included in base rates is $3.8 million, the average of calendar years 2017 through 2021.[107]

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[102] Staff Report (Staff Ex. 1), Table 7, p. 32.; Staff recommended $12.11 and $24.21, respectively. For ease of administration, this was rounded down to $12 and $24 respectively.
[103] Stipulation (Joint Ex. 1), p. 6.
[104] *Id.*
[105] *See* Discussion *infra*., p. 5 for the other customer charges negotiated.
[106] *Id.*, p. 9.
[107] *Id.*

- Rider DDR – The Stipulation recommends that the Company's proposal to adjust Rider DDR to reflect the updated billing determinants and baseline distribution base revenues in these proceedings be approved.[108]
- Rider DIR – The Stipulation recommends that the Company's proposal to modify Rider DIR be approved, as supported by the Staff Report.[109]
- Rider ETCJA – The Stipulation provides that Rider ETCJA will be updated to reflect results of any federal tax laws, as may be ordered by the Commission in the future.[110]
- Rate TD-CPP and Rate TD – The Signatory Parties agree and the Non-Opposing Parties do not oppose that the Company's Rates TD-CPP and TD be approved, as modified through discovery in these proceedings. These modifications include tariff language changes to remove references to electric vehicle (EV) pilots, to explain conditions regarding the unavailability of these rates for customers without an advanced meter, to clarify terms regarding cancellation of the service, to ensure access for testing and replacements of smart meters, to commit to keep the TD-CPP rider values for Riders RC and RE the same as Rate RS, and to clarify the continued availability of Rate TD.[111]
- Certified Supplier Tariffs – The Stipulation provides that, within thirty days of approval of the Stipulation without material modification, Duke Energy Ohio shall file to amend Sheet No. 52 in its PUCO No. 20 tariff to: (1) eliminate the End-use Customer Enrollment/Switching Fee ($5.00 per switch), (2) eliminate the Customer

[108] *Id.*
[109] *Id.*, p. 13.
[110] *Id.*, p. 10.
[111] *Id.*, p. 14.

Usage Request Charges ($6.00 for one month of electronic Interval Meter Data and $7.50 for twelve months of electronic Interval Meter Data), and (3) reduce from $150 to $50 the Pre-Enrollment End-use Customer Information List Fee.[112] The elimination of these fees in items (1) and (2) will eliminate the need to conduct any cost study for these costs as was previously agreed to as part of the settlement approved in Case No. 20-666-EL-RDR.[113]

- Miscellaneous Charges – The Stipulation resolves issues related to the miscellaneous charges in the Company's tariffs, as the Signatory Parties agreed that the Company will not increase its current $15.00 field collection charge, as was recommended in the Staff Report, with other miscellaneous charges adjusted as included in the Company's Application.[114]
- Tariff Clarifications for Power Brokers – The Stipulation commits the Company to update its Supplier Tariff, PUCO No. 20 such that Power Brokers meeting certain qualifications will be exempt from certain application and credit provisions within the Company's Choice participation program.[115]
- Street Lighting Service – As recommended in the Staff Report, the Company agrees to withdraw requested clarifying language relating to vegetation management from the following tariffs: Outdoor Lighting Service (Rate OL), Street Lighting Service for Non-Standard Units (Rate NSU), Private Outdoor Lighting for Non-Standard Units (Rate NSP), Street Lighting Service - Overhead Equivalent (Rate SE),

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[112] *Id.*, p. 11. These specific fees are now unnecessary following the Company's implementation of its new Customer Information System, which utilizes electronic data interchange transactions to perform this function. As explained by Ms. Lawler, the elimination of these fees going forward results in the reclassification of approximately $700,000 in miscellaneous revenues to base distribution revenues, thus acting as a credit to the base distribution revenue requirement. *See also* Lawler 2nd Supp Test. (Duke Energy Ohio Ex. 12), pp. 9-10.
[113] Stipulation (Joint Ex. 1), pp. 10-11.
[114] *Id.*, p. 13.
[115] *Id.*, pp. 17-18.

Unmetered Outdoor Lighting Service (Rate UOLS), Outdoor Lighting Equipment Installation (Rate OL-E), and LED Outdoor Electric Lighting Service (Rate LED).[116]

- Late Payment Charges – The Stipulation provides that Staff's recommendation to change the Company's current late-payment charging process not be adopted and, in return, the Company agrees to include a provision in its residential tariffs that provides that "at a residential customer's request, the Company will waive a late payment charge where the current charge is the only late payment charge levied in the most recent twelve-month period."[117]
- Miscellaneous Tariff Revisions – The Company agreed, as part of the negotiations in these proceedings, to make certain clarifications requested by Staff, as follows: 1) that the Company will accept payments by mail, 2) that an MDM Certified Meter Indicator and the MDM Meter Certification Date should be added to the Pre-enrollment End-use Customer Information List, and 3) that separately metered structures on residential premises not used for commercial purposes are "eligible for the residential rate."[118]

Many of these tariff change provisions could only be accomplished through serious negotiations. The number of issues addressed in the Stipulation, particularly when including the numerous other tariff provisions resolved by negotiation, demonstrates the seriousness of the bargaining that occurred in these proceedings.

[116] *Id.*, p. 15; *see also* Staff Report (Staff Ex. 1), p. 24.
[117] Stipulation (Joint Ex. 1), p. 15.
[118] *Id.*, pp. 15-16.

f. The Company's withdrawal of proposals also demonstrates that serious bargaining occurred.

As part of the settlement package, the Company agreed to withdraw several proposals from its Application. These concessions were made as part of the settlement negotiations leading to the final Stipulation. These concessions include:

- The Company is withdrawing Rider CDI, an alternative funding opportunity for community- desired investments in the electric distribution system.
- The Company is withdrawing the "fee free" electronic payment proposal, which would have eliminated the third-party administration fees assessed at the point of sale to process electronic payment methods (credit card, debit card, electronic check, etc.). Today, customers wishing to pay their utility bill by one of those electronic methods are assessed a service charge of $1.50 by the processing agents. The Company had proposed to consider that fee a cost of service and recover the actual costs through its uncollectible riders, instead of having the customer pay the fee directly.
- The Company is withdrawing its proposed modifications to the GoGreen Tariff.
- The Company is withdrawing Rider RR, which was included in the Company's Application at the direction of the Commission, and was designed to reallocate quantifiable costs related to either the provision of standard service offer generation service or the support of the customer choice program.[119]

These Company proposals were supported by some of the settling parties and opposed by others in these proceedings. By withdrawing these proposals, the Company is foregoing its opportunity

[119] Application (Duke Energy Ohio Ex. 1), Vol. I, pp. 2-3.

to have these issues heard by the Commission at this time. Again, this concession was made through the serious bargaining of the Signatory and Non-Opposing Parties.

g. Other terms and conditions demonstrate serious bargaining.

The negotiations that gave rise to the Stipulation resulted in several other terms and conditions that provide benefits to customers, parties to these proceedings, and other stakeholders. Many of these terms and conditions would not be possible had serious bargaining not occurred. For example, while the Stipulation resulted in the Company withdrawing Rider RR, it also produces an agreed-upon path should there be a change in law that requires the reallocation of quantifiable costs related to either the provision of standard service offer generation service or the support of the customer choice program. Via the negotiated, stipulated terms, the Company agrees to proactively file an application before the Commission to address such a change in law, with all parties reserving their rights to support or oppose the separation of default service costs from base distribution revenues.[120] Such a detailed process would not otherwise be possible absent a settlement. Similarly, the Company is agreeing to a process for the consideration of supplier consolidated billing issues that are currently embroiled in another proceeding currently pending before the Commission.[121] The Stipulation provides an agreed-upon collaborative process for interested stakeholders to vet the merits of supplier consolidated billing, and a path for the Commission to consider these issues independently and not within another proceeding that is intertwined with multiple other issues.[122] Again, these terms and conditions were made possible through the serious bargaining that occurred in achieving the pending settlement.

Additionally, the inclusion of provisions addressing the treatment of the franchise fee with the City and various coordination commitments demonstrates the seriousness of bargaining that

[120] Stipulation (Joint Ex. 1), pp. 12-13.
[121] *Id.*, pp. 18-21.
[122] *Id.*

occurred. As the Commission is aware, the Company pays a franchise fee to the City and this fee has been included in the Company's base rates "for decades upon decades."[123] As Staff witness David Lipthratt describes, this franchise fee is "not out of line of what [Staff has] typically seen."[124] In this Stipulation, the Company agreed to a quarterly fixed fee based upon the amount included in the as-filed test year revenue requirement,[125] and the City committed to dedicate a portion of that back to Duke Energy Ohio's residential customers through a City-administered program that provides bill assistance, weatherization, and energy efficiency programs.[126] This commitment by the City was only possible through the serious negotiations that occurred. The City was not otherwise under any obligation to use any of these franchise funds in such a manner.

Likewise, the various coordination and collaboration commitments between the Company and certain Signatory Parties demonstrate the seriousness of bargaining that occurred. For instance, the Company agreed to coordinate with the City on projects of interest to the City (*e.g.*, asset relocation, street lights, and Smart City Technology), to engage in a collaborative process to examine supplier consolidated billing with IGS and RESA, and to coordinate with OPAE and CUB-Ohio on potential new energy efficiency offerings that may be available in the future.[127] These commitments were of interest to those parties, were not included in the Company's Application, and were negotiated as part of the complete settlement package.

3. **<u>The Stipulation is a product of serious bargaining by capable and knowledgeable parties.</u>**

The capability and knowledge of the settling parties is indisputable. OCC's own witness conceded that fact:

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[123] Transcript Vol III, p. 425.
[124] *Id.*
[125] Stipulation (Joint Ex. 1), pp. 24-25.
[126] *Id.*
[127] *Id.*, pp. 16, 18-24.

Q. Mr. Williams, are there parties to this settlement that you would identify as, in general, incapable or not knowledgeable?

A. Not as I sit here and look at the group.[128]

The Stipulation represents an agreement of settlement between a diverse group of capable and knowledgeable parties, all of whom were represented by counsel having significant experience before the Commission. The interests represented by the Signatory Parties or Non-Opposing Parties include those of Staff, residential customers (the City, OPAE, PWC, and CUB-Ohio), low-income customers (OPAE and PWC), large non-residential consumers (OEG), commercial consumers (OMAEG), some of the largest grocery chains in the United States (Kroger and Wal-Mart), competitive suppliers and brokers (IGS, RESA, and OneEnergy), and others. The Settling Parties together represent a cross-section of all Duke Energy Ohio's customer classes. Moreover, as this Commission has previously held, the Commission "Staff impartially represents the interests of all stakeholders."[129] Each of these parties regularly participates in proceedings before the Commission and has significant experience in regulatory matters. All participants, including OCC, were provided an opportunity to express their concerns and raise issues, with those issues being thoroughly reviewed and resolved during negotiations that culminated in the final Stipulation package.[130]

Despite clear Commission precedent to the contrary, OCC nevertheless attempts to re-write the requirements of this test component by positing that the Stipulation should be rejected because it "is not a product of serious bargaining between capable and knowledgeable parties representing

[128] Transcript, Vol. II, p. 243.

[129] *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR, *et al.*, Opinion and Order, pp. 20-21 (September 7, 2016).

[130] *See generally* Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), pp. 24-26; discussing the settlement discussion process in these proceedings.

a diversity of interests"[131] and "there is no consumer advocate dedicated to representing broad interest of all residential consumers that signed this Settlement."[132]

OCC's argument is deficient in at least two respects. First, the diversity of interests is not part of the first prong of the three-part test. And second, while the Commission occasionally does consider the diversity of support in a contested Stipulation, OCC's definition of "diversity" is distorted. OCC's weak proclamation of a lack of diversity is an attempt to argue that the Stipulation is deficient simply because it is actively opposed by OCC. Such a position is unsupportable and is contrary to clear Commission precedent. The Commission has repeatedly rejected the contentions that any one class of customers (or any party) can effectively veto a stipulation and that the agreement of OCC (or any party) as a signatory party is a requirement in order to satisfy the first prong of the test.[133]

Nevertheless, the record clearly shows that the Settling Parties represent a diverse set of interests, including, but not limited to, commercial[134] and industrial consumers,[135] governmental entities and utilities,[136] low-income residential advocates,[137] competitive suppliers and brokers,[138] and other residential interests.[139] In fact, OCC witness James Williams himself conceded under cross examination that the City represents interests that include low-, middle-, and high-income

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[131] Supplemental Testimony in Opposition to the Settlement of James D. Williams (September 29, 2022) (Williams Supp. Test) (OCC Ex. 3) p. 5.
[132] *Id.*, p. 7.
[133] *See, e.g., In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Extend and Increase Its Infrastructure Replacement Program*, Case No. 16-2422-GA-ALT, Opinion and Order, ¶ 70 (Jan. 31, 2018); *In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019*, Case No. 16-743-EL-POR, Opinion and Order, ¶ 61 (Nov. 21, 2017); *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order, p. 18 (Feb. 2, 2005).
[134] OMAEG, Kroger, and Walmart.
[135] OEG.
[136] The City.
[137] OPAE, PWC, and the City.
[138] RESA, IGS, and OneEnergy.
[139] The City, CUB-Ohio, and Staff.

residential customers.[140] Therefore, all aspects of residential consumer interests are represented by at least one Signatory Party. Claims to the contrary are meritless.

C. **The Stipulation, as a Package, Benefits Ratepayers and Is in the Public Interest**.

The Stipulation is a comprehensive settlement package that benefits ratepayers and is in the public interest. The Stipulation, if approved without material modification, produces a complete resolution of all issues raised in these proceedings among the Signatory Parties. The benefits to rate payers and the public interest are numerous and obvious. All customers benefit from a lower overall revenue requirement than what was initially requested, and a lower, agreed-upon ROE than what was requested and what is currently authorized for the Company.

As previously described herein, the Stipulation produces a significantly smaller rate increase—a 59 percent reduction—compared to what the Company requested in its Application. In her Second Supplemental Testimony, Ms. Sarah Lawler details the various adjustments that were negotiated to arrive at the final settled revenue requirement.[141] In total, the Stipulation produces a small increase to customers, approximately 1.4 percent on average across customer classes, with residential customers seeing an approximate 2.5 percent increase. This lower, agreed-upon revenue requirement is a benefit to customers. Likewise, the Stipulation provides for new annual caps to the Company's Rider DCI adjustments that are lower than what the Company requested.[142] In testimony, Staff witness David Lipthratt also recognized the continuation of Rider DCI, "which allows for the Company to make the investments necessary to maintain safe and

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[140] Transcript Vol. II, pp. 265-266.
[141] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), pp. 7-16, and Second Supplemental Attachment SEL-1.
[142] Stipulation (Joint Ex. 1), pp. 7-9; *See also In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service,* Case No. 17-1263-EL-SSO, *et al.,* Opinion and Order, pp. ¶¶ 116, 202, 294 (December 19, 2018).

reliable service," as a benefit to the public interest.[143] Moreover, the Stipulation introduces a new SAIDI-based reliability metric to incentivize the Company to maintain its reliability in order to maximize recovery of its distribution-related investments.[144] Presently, Rider DCI does not contain such an incentive for the remaining years between 2022 and 2025, and such incentives will directly benefit customers and the public interest. Additionally, via negotiation, the Company has agreed to modify its tariff to waive initial late fees for residential customers. All residential customers will benefit from this negotiated amendment to the Company's tariffs to incorporate a waiver of a residential customer's first late fee during a twelve-month period, upon request.[145]

Similarly, the Stipulation includes several provisions that benefit low-income residential customers. The Stipulation continues annual funding for two low-income weatherization programs, and an energy efficiency and bill assistance program managed independently by two of the Signatory Parties.[146] As detailed by Ms. Lawler in her Second Supplemental Testimony, "the Stipulation includes numerous benefits directed towards customers and the public interest."[147] For example, "the Stipulation provides for continued funding for low-income weatherization through two programs, one administered by PWC," and the second, which "includes bill assistance and energy efficiency that is administered by the City of Cincinnati."[148] Moreover, "the Company has agreed to not increase the fixed customer charge for low-income customers, no increase to its field collection charge, and a modest overall increase for residential customers."[149] Continuing bill assistance programs provides direct benefits to the low-income customers who take advantage of these funds. Support for low-income customers, and their continued access to these programs, is

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[143] Prefiled Testimony in Support of the Stipulation of David M. Lipthratt (September 22, 2022) (Lipthratt Test. in Support of Stipulation) (Staff Ex. 8), p. 5.
[144] Stipulation (Joint Ex. 1), pp. 7-9.
[145] *Id.*, p. 15.
[146] *Id.*, pp. 16, 24-25.
[147] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), p. 27.
[148] *Id.*
[149] *Id.*, pp. 27-28.

certainly in the public interest, as is the overall modest rate increase to residential and all customer classes embodied by the Stipulation. The Stipulation resolves that there will be no increase to the low-income customer charge, which had been proposed for an increase in both the Company's Application and the Staff Report.[150]And the Company agrees to partner with OPAE to explore the feasibility of energy efficiency programs and for both OPAE and CUB-Ohio to join the Company's energy efficiency collaborative.[151]

As also detailed by Ms. Lawler in her Second Supplemental Testimony, the Stipulation contains several provisions that will also further the competitive retail electric service market in the Company's service territory. The Stipulation reduces costs to CRES providers by eliminating the End-Use Customer Enrollment/Switching Fee and the Customer Usage Request Charges in the Company's Certified Supplier Tariff and initiating a collaborative to discuss supplier consolidated billing.[152] Additionally, the Stipulation provides clarification that eases credit requirements for power brokers.[153] As explained by Mr. Sailers in his Second Supplemental Direct Testimony, these "enhancements to the competitive market in Duke Energy Ohio's territory . . . make supplier and broker participation easier and less costly," thus enhancing the competitive market, and benefitting the public interest.[154]

Finally, the public interest is benefitted by a utility being able to have sufficient funds to provide safe, reliable, and reasonable service. As detailed by Company witness Amy Spiller in her Supplemental Direct Testimony, "this Stipulation provides certainty to Duke Energy Ohio and, if approved without material modification, will allow the Company sufficient revenues to continue

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[150] Staff Report (Staff Ex. 1), p. 31.
[151] Stipulation (Joint Ex. 1), p. 16.
[152] *Id.*, pp. 10-11 and 18-21; *see also* Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), p. 28.
[153]), *Id.*, p. 17.; *see also* Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), p. 28.
[154] Second Supplemental Direct Testimony of Bruce L. Sailers on Behalf of Duke Energy Ohio, Inc. in Support of Settlement (September 22, 2022) (Sailers 2nd Supp. Test.) (Duke Energy Ohio Ex. 10), p. 4.

to provide safe, reliable and necessary electric distribution service."[155] As Ms. Spiller further explains, and as detailed by other Company witnesses, "[a]ll stakeholders and customers benefit from an electric utility that is able to operate with sufficient revenues to cover its ongoing costs of operations and receives a reasonable opportunity to earn a return on its invested capital."[156] At the foundation of this is the utility's ability to be financially sound, having strong credit metrics, and have access to capital markets, particularly in tightening markets during periods of inflation. Company witness Christopher Bauer explains in his Supplemental Testimony that this settlement is consistent with Duke Energy Ohio's financial targets[157] and will enable the Company to achieve its financial strength and credit objectives,[158] to produce sufficient funds from operations to maintain credit ratings,[159] and to have adequate access to capital markets.[160] These benefits are key to the continued fiscal health of the Company and to the Company's ability to provide secure, safe, and consistent service to the customers that it serves.

As can be seen by the number and significance of the issues resolved by the Stipulation, and by the diversity of the various parties agreeing to the Stipulation or agreeing not to oppose the Stipulation, this Stipulation is the best path forward for customers and all parties to the Stipulation. It is not required that each and every provision of a Stipulation must benefit each and every stakeholder. Indeed, the Commission's own three-part test requires the Commission to weigh a settlement as a total package, factoring in whether it is a product of serious bargaining. Here, given the number of issues resolved, some in the Company's favor and many in the favor of customers, the settlement package is reasonable and strikes an appropriate balance of benefits to customers,

155 Spiller Supp. Test. (Duke Energy Ohio Ex. 3), pp. 12-13.
156 *Id.*, p. 13.
157 Supplemental Testimony of Christopher R. Bauer, on Behalf of Duke Energy Ohio, Inc., in Support of Settlement (September 22, 2022) (Bauer Supp. Test.) (Duke Energy Ohio Ex. 5), p. 10.
158 *Id.*, p. 11.
159 *Id.*, p. 12.
160 *Id.*, pp. 13-14.

shareholders, and the overall public interest. The Commission should adopt and approve the Stipulation as filed by the parties.

D. <u>The Stipulation Package Does Not Violate Any Important Regulatory Principle or Practice.</u>

The Stipulation, as a complete settlement package, does not violate any important regulatory principle or practice. Ms. Spiller testified to her belief that it complies with all relevant and important principles and practices.[161] Mr. Lipthratt agreed, stating in testimony in support of the Stipulation that "[b]ased on my experience, involvement in this proceeding, and review of the Stipulation, Staff concludes that it does not violate any important regulatory principle or practice."[162] Ms. Lawler echoed these other witnesses: "This Stipulation provides certainty to all stakeholders by resolving these proceedings in a fair and balanced way. The Stipulation resolves the Company's revenue deficiency to enable it an opportunity to recover its reasonable costs to continue providing safe, reliable, and reasonable electric distribution service."[163]

The Stipulation advances important regulatory and ratemaking principles, such as cost causation, gradualism, and avoidance of unreasonable cross-subsidies, and overall results in a smaller increase to customers than what was initially requested.[164] The agreed-upon revenue increase is significantly smaller than what the Company requested in its Application, resulting in a much smaller increase to customers.[165] The Company's Application and requested rate increase was supported by a full cost of service study that allocated costs in a reasonable manner and consistent with the principles of cost causation.[166] The smaller negotiated increase and the allocation methodology agreed to in the Stipulation is also consistent with the principles of cost

[161] Spiller Supp. Testimony (Duke Energy Ohio Ex. 3) pp. 11-12.
[162] Lipthratt Test. in Support of Stipulation (Staff Ex. 8), p. 5.
[163] Lawler 2nd Supp. Test. (Duke Energy Ohio Ex. 12), p. 26.
[164] *Id.*, p. 27.
[165] *Id.*, pp. 26-27.
[166] *Id.*, p. 26; *see also* Application (Duke Energy Ohio Ex. 1), Vol. 10, Schedules E-3.2, E-3.2a, and E-3.2b, pp. 30-89.

causation, which prioritizes the assignment of costs to the entity or group of entities that cause the cost on the system. This smaller increase is also consistent with the principle of gradualism, which favors smaller increases over time in lieu of a single large increase, which could produce rate shock.[167] "The final settlement does not result in any unreasonable cost subsidies between rate classes," and "the 1.4 percent increase to an average customer will not produce rate shock."[168] In fact, this percentage increase is lower than the rate of compounded annual inflation experienced since the Company's last electric distribution base rate increase, which went into effect in 2019.[169] And as explained by Company witness Dylan D'Ascendis:

> The Stipulated ROE, and Capital Structure and resulting Rate of Return are lower than what was recommended by me in these proceedings, but remain within the range of my analysis, albeit the lower end. The resulting ROE and Rate of Return are consistent with similarly situated electric distribution utilities and the agreed upon components are in line with recent regulatory decisions across the Country. Empirical analysis supports the end result reached in the Stipulation, and . . . no important regulatory principles or practices are violated.[170]

The record evidence and a review of the Stipulation's terms demonstrate that the Stipulation meets the third prong of the three-part test.[171] The Stipulation supports and promotes the regulatory principles upon which the Commission relies and should be adopted as filed.

IV. **CONCLUSION**

For all of the reasons above, the Commission should approve the Stipulation without modification. The settlement contained therein was the product of many months of serious bargaining by the parties to the underlying proceedings. The Stipulation package provides numerous and significant benefits to customers and is in the public interest. It does not violate any important regulatory principle or practice. Accordingly, it satisfies the Commission's long-

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[167] *Id.*, p. 26.
[168] *Id.*, p. 26.
[169] *Id.*, pp. 26-27.
[170] Second Supplemental Testimony of Dylan W. D'Ascendis on Behalf of Duke Energy Ohio, Inc. in Support of Settlement (September 22, 2022) (D'Ascendis 2nd Supp. Test.) (Duke Energy Ohio Ex. 15), p. 22.
[171] *Id.*, pp. 26-28.

standing three-part test. The resolution of these complex and long-pending issues is a significant benefit to Duke Energy Ohio's customers and its shareholders.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Rocco O. D'Ascenzo
Rocco O. D'Ascenzo (0077651)
(Counsel of Record)
Deputy General Counsel
Jeanne W. Kingery (0012172)
Associate General Counsel
Larisa M. Vaysman (0090290)
Senior Counsel
Elyse H. Akhbari (0090701)
Senior Counsel
Duke Energy Business Services LLC
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45202
(513) 287-4320 (telephone)
(513) 287-4385 (fax)
Rocco.dascenzo@duke-energy.com
Jeanne.kingery@duke-energy.com
Larisa.vaysman@duke-energy.com
Elyse.akhbari@duke-energy.com

Elizabeth M. Brama (0101616)
Kodi J. Verhalen (0099831)
TAFT STETTINIUS & HOLLISTER LLP
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Phone: (612) 977-8400
Fax: (612) 977-8650
ebrama@taftlaw.com
kverhalen@taftlaw.com

Willing to accept service via email
Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 31st day of October, 2022, upon the persons listed below.

/s/ Rocco O. D'Ascenzo
Deputy General Counsel

Robert.eubanks@OhioAGO.gov
Werner.margard@OhioAGO.gov
Shaun.Lyons@OhioAGO.gov
ambrosia.wilson@occ.ohio.gov
angela.obrien@occ.ohio.gov
john.finnigan@occ.ohio.gov
connor.semple@occ.ohio.gov
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
Michael.nugent@igs.com
Evan.betterton@igs.com
Stacie.cathcart@igs.com
mwarnock@bricker.com
kherrnstein@bricker.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
jlang@calfee.com
gwhaling@calfee.com
sfranson@calfee.com

dromig@nationwideenergypartners.com
dborchers@bricker.com
dparram@bricker.com
kruffin@bricker.com
bojko@carpenterlipps.com
wygonski@carpenterlipps.com
fdarr2019@gmail.com
paul@carpenterlipps.com
rdove@keglerbrown.com
nbobb@keglerbrown.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
mmcdonnell@dickinsonwright.com
trent@hubaydougherty.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com

Attorney Examiners:
matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov