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

INITIAL BRIEF
SUBMITTED ON BEHALF OF THE
STAFF OF PUBLIC UTILITIES COMMISSION OF OHIO

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TABLE OF CONTENTS

PAGE

I. Legal Standard for Stipulation. 1

II. The Stipulation is the product of serious bargaining among capable, knowledgably parties. 2

A. The Stipulation represent a comprehensive compromise of the issues raised by parties with diverse interests. 2

B. The Stipulation addresses many of the objections of all of the parties 2

1. Revenue Requirement 2

2. Rate Base and Operating Income 5

3. ESRR 7

4. Net Metering Rider 8

5. Current Rate TD 8

6. Remote Connect Fee 9

7. Bill Information 10

8. Opt-out Options 11

III. The Stipulation benefits ratepayers and the public interest. 11

IV. The settlement package does not violate any important regulatory principles or practices 13

V. Staff's Recommendation. 13

CERTIFICATE OF SERVICE 14

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I. LEGAL STANDARD FOR STIPULATION.

In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(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?

II. THE STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGABLY PARTIES.

A. The Stipulation represent a comprehensive compromise of the issues raised by parties with diverse interests.

The Stipulation is the product of an open process in which all intervenors were given an opportunity to participate. All parties were represented by experienced and competent counsel, many of whom have participated in numerous regulatory proceedings before the Commission. There were extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests.[1]

The Signatory Parties to the Stipulation are the Staff of the PUCO (Staff), Duke Energy Ohio, Inc. (Duke or Company), Ohio Partners for Affordable Energy, Ohio Energy Group, City of Cincinnati, People Working Cooperatively, Inc., Retail Energy Supply Association, Wal-Mart Stores East, LP and Sam's East, Inc., Interstate Gas Supply Inc., One Energy Enterprises Inc., Nationwide Energy Partners, LLC, and Citizens Utility Board of Ohio.

Chargepoint, Inc., Kroger Co., and Ohio Manufacturers' Association Energy Group do not oppose the Stipulation.

B. The Stipulation addresses many of the objections of all of the parties

1. Revenue Requirement

Given the components of the Stipulation and Recommendation filed in this

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1 David Lipthratt's Prefiled Testimony in Support of the Stipulation, p. 3.

case (Stipulation), Staff believes the revenue requirement is reasonable.[2] After reviewing all parties' objections, Staff has made several corrections and updates resulting in a revenue increase of $22.6 million which Staff deems to be reasonable. See the stipulated Schedule A-1 and the stipulated Schedule C-2.

Embedded within the stipulated revenue requirement are the following adjustments to the Staff Report of Investigation (see David Lipthratt's Prefiled Testimony in Response to Objections to The Staff Report for exhibits mentioned below):[3]

- The Stipulation reflects approximately an additional $2.12 million ($1.75 million allocated to distribution) added to rate base associated with land that was incorrectly recorded as land held for future use; however, was used and useful. See Exhibit B which is the stipulated Schedule B-1.
- The Stipulation reflects the elimination of $509,771 in depreciation expense on leased transportation equipment as it was already accounted for in other operating expenses. The Stipulation also addresses an Excel cell reference issue related to omission of the Envision Center, which increases the depreciation expense by $1,722,248. Lastly, the Stipulation reflects an approximate $1 million reduction in annualized test year depreciation expense associated with these corrections. See Exhibit E for the stipulated Schedule C-3.4.

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2 David Lipthratt's Prefiled Testimony in Response to Objections to the Staff Report, pp. 2-3.
3 *Id.* at 3-5.

- The Stipulation reflects a reduction of approximately $5.9 million of revenue associated with updating the billing determinants to reflect weather normalized actual sales for the twelve months ending March 31, 2022. See Exhibit D for a stipulated Schedule C-3.1.
- The Stipulation reflects a reduction of approximately $0.65 million of miscellaneous revenue associated with updating pole attachment revenue to actuals. See Exhibit D and Exhibit J for a stipulated Schedule C-3.1 and Schedule C-3.22.
- In response to OCC objection B.1, which is discussed in more detail below, the Stipulation reflects approximately an additional $663,114 as result of updating the test year operating expenses using the average of the five-year period of calendar years 2017 through 2021. See Exhibit F for a stipulated Schedule C-3.8.
- The Stipulation reflects a decrease of approximately $4.3 million in labor related test year operating expenses. See Exhibit G for a stipulated Schedule C-3.14.
- The Stipulation reflects approximately an additional $34,469 associated with miscellaneous expenses. See Exhibit H for a stipulated Schedule C-3.20.
- The Stipulation reflects approximately an additional $198,240 associated with out-of-period expenses. See Exhibit I for a stipulated Schedule C-3.21.

As a result of these adjustments, there were flow through impacts associated with taxes and uncollectible expenses.[4] Additionally, the Signatory Parties have modified the recommended rate of return.[5]

OCC's Objection 2 asserts that the Staff Report did not adjust the annual revenue cap for the Distribution Capital Investment Rider (Rider DCI) to reflect Duke's failure to meet its minimum Public Utilities Commission of Ohio (PUCO) required reliability standards. Such an adjustment would be inappropriate. In Case No. 17-1263-EL-SSO, Rider DCI caps were set for years 2018 through 2025. In only two of those years were cap amounts dependent on Duke meeting their reliability goals, 2019 and 2020.[6] Duke met their reliability goals in both years. From years 2021 through 2025, the Rider DCI cap amounts were not tied to reliability standards from the prior year.[7] Staff does not believe Duke should be penalized in their caps in the instant case for a reliability metric that the original Rider DCI caps were not tied to.[8]

2. Rate Base and Operating Income

In response to OCC's Objection 3, the Stipulation reflects a reduction of approximately $663,114 as a result of using the average of the five-year period of calendar years 2017 through 2021.[9]

The Stipulation addresses OCC's Objection 4 consistent with Staff past

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[4] Id.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 6.

practices and Commission rulings in prior rate cases. During the course of the investigation, the Company provided information that indicated portions of the incentive compensation programs were based on stock-based compensation and financial metrics such as earnings per share (EPS) and portions were based on operations and safety metrics.[10] The Staff Report removed incentive compensation based on stock-based compensation and financial metrics in order to create a reasonable balance for allocating costs associated with incentive compensation between ratepayers and shareholders.[11] This is consistent with Staff past practices and Commission rulings in prior rate cases.

Regarding Staff's adjustment to rate base, Staff removed the capitalized financial incentives that were reflected as an offset to the revenue requirement in Rider DCI, pursuant to the Commission's Order in the Company's previous rate case.[12] This adjustment was based on the portion of incentive compensation attributable to financial performance.[13] In addition, Staff adjusted capitalized incentive compensation attributable to financial performance to both general and common plant accounts using the same methodology used in the Company's Rider DCI filings for the distribution plant accounts.[14]

OCC's objection 5 asserts that the Staff Report did not reflect gains on the disposition of property. However, Staff believes that whether or not ratepayers

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10 *Id.* at p. 7, Staff Data Request 4, Attachments F and G.
11 *Id.* at p. 7.
12 *Id.*
13 *Id.*
14 *Id.*

should receive gains on disposition of property should be evaluated on a case-by-case basis. OCC has not sufficiently demonstrated the need to reflect the gains in the revenue requirement in this case. Further, the Stipulation proposes that the gains on disposition of property be approved as proposed in the Company's Application. Staff believes that the Stipulation represents a fair and reasonable compromise of issues raised among the signatory parties. Therefore, Staff recommends that no modifications to the Stipulation be made regarding this issue.

With regard to OCC's objection 6 concerning the removal of costs and fees related to the Board of Directors, Staff acknowledges that it did not consider the issue during its investigation.[15] However, the Stipulation proposes that the Board of Directors costs issue be approved as proposed in the Company's Application.[16] Staff believes that the Stipulation represents a fair and reasonable compromise of issues raised among the signatory parties.[17] Therefore, Staff recommends that no modifications to the Stipulation be made regarding this issue.

3. ESRR

In Objection 23, OCC objects that Staff did not consider the necessity of the Electric Service Reliability Rider (ESRR) and did not propose new spending caps for the rider. Staff does not agree. The Commission approved the ESRR, with spending caps, as part of Duke's most recent ESP case, Case No. 17-1263-EL-SSO. The ESRR

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15 *Id.* at 8.
16 *Id.*
17 *Id.*

provides an important benefit to ratepayers because it allows Staff to audit all of Duke's vegetation management expenses for prudence.[18] While the Staff Report does not speak to the necessity of the ESRR, Staff supports its continuation.[19]

4. Net Metering Rider

OCC objects that the Staff Report failed to recommend Duke be required to file an ATA application to update the Net Metering Rider. As a provision of the Stipulation in this case, the Company has agreed to file an application to update its net metering tariff in an ATA filing within 30 days of approval of the stipulation.[20]

5. Current Rate TD

The OCC objected to the Staff Report by claiming the PUCO Staff should have directed Duke to maintain the current Rate TD as an option for those consumers already on it to maintain continuity and serve the policy purposes set forth in R.C. 4928.02(D). OCC has mischaracterized the transition plan proposed as part of the Application, which was further clarified through discovery responses.[21]

Generally, Staff believes it is appropriate to review and update the tariffs for distribution services during the distribution rate case process.[22] Through the proposed Rate TD-CPP, and the modifications reflected in the Joint Stipulation and Recommendation filed in this case, the Company will maintain a time-of-use rate for

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[18] *Id.* at 9.
[19] *Id.*
[20] Craig Smith's Prefiled Testimony in Response to Objections to the Staff Report, p. 5.
[21] Krystina Schaefer's Prefiled Testimony in Response to Objections to the Staff Report, p. 3.
[22] *Id.*

residential distribution services in support of the state policy defined in R.C. Section 4928.02(D).[23]

Further, as described in the Direct Testimony of Company witness Bruce L. Sailers, "[u]pon the implementation of Rate TD-CPP, Rate TD will be closed to new participation. Customers then on Rate TD will have the option to transition to Rate TD-CPP or stay on Rate TD."[24] Staff believes this is a reasonable approach to transition the customers that are interested in taking service under Rate TD-CPP.[25] Staff further encourages the Company to coordinate the customer communications for those customers currently on Rate TD with the Commission Staff. In addition, the Company confirmed that a formal filing, either through a future distribution rate case (EL-AIR) or an application for tariff approval (EL-ATA) would be made before Rate TD is cancelled and withdrawn, so the OCC would have an opportunity to intervene and provide comments in that future docket.[26] Therefore, Staff believes that the basis for OCC's objection has been sufficiently addressed and resolved in the current case.

6. Remote Connect Fee

Staff acknowledges that it did not conduct a review of the remote reconnect fee in this case.[27] Generally, Staff investigates tariffs in a proposed application when

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[23] R.C. 4928.02: "It is the policy of this state to do the following throughout this state: . . . (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure."

[24] Direct Testimony of Bruce L. Sailers on Behalf of Duke Energy Ohio, Inc., Page 20. (10/15/21).

[25] Krystina Schaefer's Prefiled Testimony in Response to Objections to the Staff Report, p. 4.

[26] STAFF-DR-81-017.

[27] Barbara Bossart's Prefiled Testimony in Response to Objections to the Staff Report, p. 4.

the Company proposes modifications.[28] The Stipulation proposes that the Reconnection Fee issue be approved as proposed in the Company's Application.[29] Staff supports the Stipulation.

7. Bill Information

OCC claims in its Objection No. 26, that the Staff Report fails to require Duke to provide shopping customers' billing information to show a comparison to what they would pay under a standard service offer (SSO). OCC also claims that Staff failed to perform an analysis of the customer contacts information that it collects and the supplier rate information on the Energy Choice website to determine if improvements to Duke's Choice Program are necessary to help consumers reduce their energy cost.

Staff disagrees. The bill format rules in Ohio Adm.Code 4901:1-10-33 require billing determinants to be on the bill, which includes consumption data, i.e. usage. In addition, the customer's Price to Compare (PTC) language, which includes the rate, is required to be on the bill. The customer can multiply the current bills usage by the PTC rate to determine what the customer would have paid for that month if the customer was served by the SSO tariff service. Regarding the analysis of customer complaints and supplier rates shown on the Energy Choice website, Staff did not consider such as analysis as part of its review for Duke's electric rate case.[30] Staff

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28 *Id.*
29 *Id.*
30 *Id.* at 5.

does not have a position on whether or not such analysis would help determine if improvements to Duke's Choice Program is necessary.[31]

8. Opt-out Options

OCC's Objection No. 27 claims that the Staff Report failed to recommend that Duke provide consumers with more options to opt-out of having their personal account information included on eligible customer lists provided to CRES providers.

Staff disagrees. Duke is required to include a bill message on customer's bills quarterly to inform customers that they have the option to opt out of including their customer specific information on the eligible customer list provided to CRES providers. Customers can call or write Duke to opt out, as required by Ohio Adm.Code 4901:1-10-24(F)(4), or to go to Duke's website and opt on or off the eligible customer list.[32] While not required by rule, Duke does provide this additional option to customers on its website.[33]Staff believes that having these three options available provides customers with sufficient options.[34]

III. THE STIPULATION BENEFITS RATEPAYERS AND THE PUBLIC INTEREST.

The Stipulation results in a just and reasonable resolution of the matters pending in these Commission dockets. Included in this reasonable resolution is a revenue requirement that benefits ratepayers, through a balanced approach by

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31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.*

recognizing some of the objections to the Staff Report of Investigation raised by intervening parties, rejecting some of the objections, and considering alternative approaches.[35] Additionally, the following are some of the key benefits of the Stipulation:[36]

- The stipulated revenue increase of $22.6 million is lower than the $54.7 million increase requested by Duke in its application.
- The stipulated rate of return of 6.86 percent is lower than the 7.26 percent requested by Duke in its application. Additionally, the stipulated return on equity of 9.5 percent is lower than the 10.3 percent requested by Duke in its application.
- Establishes a $8.00 customer charge for Duke's residential customers, which is lower than the $12.00 customer charge requested in Duke's Application.
- Removes incentive compensation from both operating and maintenance and rate base attributable to stock-based compensation and financial performance of the Company.
- Continuation of Duke's Delivery Capital Investment Rider (Rider DCI) which allows for the Company to make the investments necessary to maintain safe and reliable service.

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35 David Lipthratt's Prefiled Testimony in Support of the Stipulation, p. 5.
36 *Id.*

IV. THE SETTLEMENT PACKAGE DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLES OR PRACTICES.

The Stipulation does not violate any important regulatory principle or practice.[37]

V. STAFF'S RECOMMENDATION.

The Stipulation represents a fair, balanced, and reasonable compromise of the issues in this proceeding. Staff believes that the Stipulation satisfies all of the Commission's criteria for adoption of settlements, and it is Staff's recommendation the Commission issue an order approving the Stipulation.

Respectfully submitted,

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[37] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Initial Brief** has been served upon the following parties this 31st day of October 2022.

/s/ Robert Eubanks
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