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

JOINT POST-HEARING BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
THE KROGER CO.

Respectfully submitted,

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I. INTRODUCTION

The Stipulation and Recommendation filed on September 19, 2022 (Stipulation) represents a just and reasonable resolution of the issues related to the application to increase electric distribution rates submitted in the above-captioned cases by Duke Energy Ohio, Inc. (Duke).[1] A large, diverse group of knowledgeable and capable Signatory and Non-Opposing Parties, including the Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger), agreed to either join or not oppose the Stipulation.[2] As such, the Public Utilities Commission of Ohio (Commission) should adopt the Stipulation in its entirety to efficiently and equitably resolve

[1] *See* Joint Ex. 1, Stipulation and Recommendation (Sept. 19, 2022) (Stipulation). *See also* Joint Ex. 2, Corrected Attachment No. 4 to Stipulation.

[2] Commission Staff, Duke, Ohio Partners for Affordable Energy (OPAE), Ohio Energy Group (OEG), the City of Cincinnati, People Working Cooperatively, Inc., Retail Energy Supply Association (RESA), Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart), Interstate Gas Supply, Inc., One Energy Enterprises Inc., Nationwide Energy Partners, LLC, and Citizens Utility Board of Ohio joined the Stipulation as Signatory Parties. OMAEG, Kroger, and ChargePoint, Inc. joined the Stipulation as Non-opposing Parties. Stipulation at 28-32.

numerous complex issues related to Duke's distribution rates in a just and reasonable manner that is in the public interest.

Despite claims by the Office of the Ohio Consumers' Counsel (OCC), the Stipulation is the product of serious bargaining between capable, knowledgeable parties, and, as a package, benefits ratepayers and the public interest, and does not violate any regulatory principle or practice. Significantly, OCC is the only party opposing the Stipulation.[3]

In short, the record evidence in this case demonstrates that the Stipulation satisfies the Commission's three-part test for evaluating stipulations. As such, OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety and issue an order consistent with the recommendations therein.

II. FACTS AND BACKGROUND

Duke filed a prefiling notice for an application to increase its base distribution rates on September 1, 2021 in the above-captioned cases. Subsequently, Duke filed its Application and supporting schedules on October 1, 2021. In its Application, Duke sought a revenue increase of $54.69 million, representing an increase of approximately 10 percent over Duke's test year revenues.[4] As part of this proposed revenue requirement, Duke requested that the Commission grant it a return on equity (ROE) of 10.3 percent, resulting in an overall rate of return (ROR) of 7.26 percent.[5] Duke also proposed allocating 63.06 percent of the overall revenue requirement to the residential rate class.

Moreover, as part of its Application, Duke proposed the continuation and modification of various riders established under its current Electric Security Plan (ESP IV), including its Delivery

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[3] Tr. Vol. II at 308 (Cross Examination of Williams).

[4] Duke Ex. 1, Application at 3.

[5] *Id.* at 4.

Capital Investment Rider (Rider DCI).[6] Duke, however, proposed to significantly increase the annual revenue caps for Rider DCI. Duke proposed a cap of $12 million for the period of July 1, 2022 through December 31, 2022, a cap of $46 million for calendar year 2023, a cap of $75 million for calendar year 2024, and a cap of $40 million for the period January 1, 2025 through May 31, 2025.[7] These proposed caps, if implemented by the Commission, would result in annual rate increases to customers of approximately 5 percent each year for 2023 and 2024.[8] Duke also requested Commission authority to implement a new Community Driven Investment Rider (Rider CDI). Rider CDI would enable Duke to recover the costs for certain projects directly from residents of a local community, bypassing typical recovery mechanisms.[9]

In order to defend their interests and protect themselves and their members, and ultimately their customers, from excessive and unreasonable increases in electric charges and tariff changes, OMAEG and Kroger intervened in the above-captioned cases. OMAEG filed its motion to intervene on November 30, 2021.[10] Kroger filed its motion to intervene on February 2, 2022.[11] The Commission granted all motions to intervene on October 5, 2022.[12]

After reviewing the Application, testimony, workpapers, and discovery,[13] Commission Staff filed its Staff Report on May 19, 2022.[14] Staff recommended a lower revenue requirement

[6] Duke Ex. 1, Application at ¶¶ 11, 16, 17, 20.

[7] Duke Ex. 11, Direct Testimony of Sarah E. Lawler at 14 (Oct. 15, 2021).

[8] *Id*.

[9] Duke Ex. 1, Application at 2.

[10] Motion To Intervene Of The Ohio Manufacturers' Association Energy Group (Nov. 30, 2021).

[11] Motion To Intervene and Memorandum of Support of The Kroger Co. (Feb. 22, 2022).

[12] *See* Tr. Vol. I at 12 ("For all parties who filed motions to intervene in this proceeding, we are granting these motions.").

[13] Staff Ex. 1, Staff Report at 7 (May 19, 2022).

[14] *Id*.

increase than that proposed by Duke. More Specifically, Staff recommended a revenue requirement in the range of $1,861,525 to $15,279,698.[15] This represents an increase of 0.33 percent to 2.72 percent over test year operating revenue compared to Duke's requested 10 percent increase.[16] As part of the revenue requirement, Staff recommended a ROE in the range of 8.84 percent to 9.85 percent, resulting in a recommended ROR of 6.52 percent to 7.03 percent.[17]

Moreover, Staff recommended allocating 65 percent of the revenue requirement to the residential rate class.[18] Although Staff noted that its proposal, compared to Duke's would result in "a larger movement towards equalized class rates of return,"[19] it did not recommend allocating the revenue requirement based solely on the cost to serve.[20] The cost-of-service study submitted by Duke found that the residential customer class is responsible for about 69.4 percent of Duke's total distribution costs to serve.[21] As admitted by OCC Witness Fortney, Staff's proposal would still result in residential customers paying a smaller share of the distribution revenue requirement than the residential class' share of the cost to serve residential customers.[22]

Regarding Duke's proposed rider modifications, Staff recommended lower revenue caps for Rider DCI compared to those proposed in Duke's Application.[23] As explained previously,

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[15] Staff Ex. 1, Staff Report at Schedule A-1 (May 19, 2022).

[16] *Id.*at 6.

[17] *Id.*at 18-20.

[18] *Id.*at 28.

[19] *Id.* at 27.

[20] Tr. Vol. IV. at 500-02 (Cross Examination of Fortney).

[21] Duke Ex. 1, Application, Schedule E-3.2. *See also* Tr. Vol. IV at 495 (Cross Examination of Fortney).

[22] Tr. Vol. IV at 501-02 (Cross Examination of Fortney).

[23] Duke Ex. 11, Direct Testimony of Sarah E. Lawler at 14 (Oct. 15, 2021).

these proposed caps, if implemented by the Commission, would result in annual rate increases to customers of around five percent each year for 2023 and 2024.[24]

Instead of Duke's excessive revenue caps, Staff proposed a cap of $17 million for calendar year 2022, prorated for whenever new base distribution rates go into effect, a cap of $34 million for calendar year 2023, a cap of $51 million for calendar year 2024, a cap of $28 million for the period January 1, 2025 through May 31, 2025, and a cap of $0 after May 31, 2025 (the end date of Duke's current ESP IV).[25] Additionally, Commission Staff recommended rejecting the creation of the new Rider CDI.[26]

The Commission issued an Entry on May 20, 2022, directing interested parties to file objections within thirty days pursuant to R.C. 4909.19 and Ohio Adm.Code 4901-1-28.[27] Therefore, in accordance with R.C. 4909.18, R.C. 4909.19, R.C. 1.14, Ohio Adm.Code 4901-1-28, and the Commission's May 20, 2022 Entry, OMAEG, Kroger, and other interested parties submitted objections to the Staff Report on June 21, 2022.

Following months of rigorous negotiations, the Signatory and Non-Opposing Parties submitted the Stipulation on September 19, 2022. The Stipulation resolves all outstanding issues in the above-captioned cases in a manner that is consistent with the Commission's three-part test.

More specifically, a large and diverse group of Signatory and Non-Opposing Parties joined the Stipulation. The Signatory Parties include Commission Staff, Duke, Ohio Partners for Affordable Energy (OPAE), Ohio Energy Group, the City of Cincinnati, People Working Cooperatively, Inc. (PWC), the Retail Energy Supply Association, Walmart, Inc., Interstate Gas

[24] Duke Ex. 11, Direct Testimony of Sarah E. Lawler at 14 (Oct. 15, 2021).

[25] Staff Ex. 1, Staff Report at 10 (May 19, 2022).

[26] *Id.* at 40 (May 19, 2022) ("Notably, it seems to impose an obligation on local ratepayers within the applicable tax district to pay for public investments without proper notice or sufficient opportunity for engagement.").

[27] Entry at ¶¶ 4-5 (May 20, 2022).

Supply Inc., One Energy Enterprises Inc., Nationwide Energy Partners, LLC, and Citizens Utility Board of Ohio (CUB Ohio).[28] Chargepoint, Inc., OMAEG, and Kroger joined the Stipulation as Non-Opposing Parties.[29] As previously mentioned, only OCC opposes the Stipulation.[30]

The Stipulation recommended a settlement package that provides significant benefits for ratepayers and the public interest and complies with Ohio law and Commission regulations. The Stipulation recommended a total revenue increase of $22.6 million,[31] far below Duke's proposed increase. This revenue requirement is based on a proposed ROE of 9.5 percent, resulting in a total ROR of 6.86 percent.[32] Of that increase, in order to move base distribution rates closer to Duke's cost of service, the Stipulation also recommended allocating 64 percent of the revenue requirement to the residential customer class.[33]

The Stipulation further recommended Rider DCI revenue caps lower than those proposed by Duke in its Application. The Stipulation recommended a revenue cap of $20.7 million for calendar year 2022, prorated by month for when new base rates established in this proceeding go into effect.[34] The Stipulation recommended a revenue cap of $39.1 million for calendar year 2023, which may be increased by an additional $2.4 million to $41.5 million for 2023 if Duke achieves a System Average Interruption Duration Index (SAIDI) score of 117 in 2022.[35] The Revenue Cap

[28] Stipulation at 27-31. *See also* Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 3-4 (Sept. 22, 2022).

[29] Stipulation at 32. *See also* Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 4 (Sept. 22, 2022).

[30] Tr. Vol. II at 308 (Cross Examination of Williams).

[31] Stipulation at ¶ III.B.1.

[32] *Id.* at ¶ III.B.2.

[33] *Id.* at ¶ III.B.7.

[34] *Id.* at ¶ III.C.1.a.

[35] *Id.*

amounts for 2023 will be prorated by month should new base rates not go into effect until 2023.[36] The Stipulation recommended a revenue cap of $57.4 million for calendar year 2024, which may be increased by an additional $2.4 million to $59.8 million for 2024 if Duke achieves a SAIDI of 117 in 2023 but does not achieve a SAIDI of 117 in 2022.[37] This amount may be further increased by a total of $4.8 million to $62.2 million for 2024 if Duke achieves a SAIDI of 117 for both 2022 and 2023.[38] Finally, the Stipulation recommended a revenue cap of $31.6 million for 2025;[39] however, if Duke Energy Ohio achieves a SAIDI of 117 in only one year between 2022 and 2024, the cap will be $32.6 million; if Duke achieves a SAIDI of 117 in two of the years between 2022 and 2024, the cap will be $33.6 million; and if Duke achieves a SAIDI of 117 in all three years, this amount may be increased $34.6 million.[40] As part of the Stipulation, Duke also agreed to withdraw its new Rider CDI proposal.[41]

Following the submission of the Stipulation, the parties to the above-captioned cases submitted supplemental testimony, and participated in an evidentiary hearing beginning on October 4, 2022, and concluding on October 11, 2022. The Commission directed interested parties to submit initial post-hearing briefs by October 31, 2022.

III. ARGUMENT

The record evidence presented at the evidentiary hearing in these proceedings clearly demonstrates that the Stipulation satisfies the Commission's three-part test for evaluating settlements, and therefore, should be adopted. Any two or more parties to a Commission

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[36] Stipulation at ¶ III.C.1.a.

[37] *Id*.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.* at ¶ III.C.10.

proceeding may enter into a stipulation concerning the proposed resolution of some or all of the issues in a proceeding.[42] While a stipulation does not bind the Commission,[43] the Commission may place substantial weight on the terms of the stipulation when issuing a decision on the case.[44]

The Commission uses a three-part test to determine if it should adopt the recommendations from a stipulation. As part of its evaluation, the Commission considers:[45]

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?

In this case, all of the capable, knowledgeable parties participated in a number of settlement meetings, over the course of several months, where the parties engaged in negotiations regarding the Application. These settlement meetings ultimately led to the Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding in a way that benefits ratepayers and the public interest, and does not violate any important regulatory principle or practice. The weight of the evidence presented by the parties demonstrates that the Stipulation satisfies the Commission's three-part test, and should be adopted by the Commission in its entirety.

A. The Stipulation is the product of serious bargaining among knowledgeable, capable parties.

When considering whether the parties are capable and knowledgeable, the Commission acknowledges that the parties to a proceeding are in the best position to evaluate their own best interests and costs, and "expects that parties to Settlement negotiations will bargain in support of

[42] Ohio Adm.Code 4901-1-30(A).

[43] Ohio Adm.Code 4901-1-30(E).

[44] *Office of Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125-26 (1992).

[45] *Id.*

their own interest in deciding whether to support a stipulation."[46] There is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory.[47]

In fact, the Commission has specifically rejected "the notion that the Stipulation was not the result of compromise merely because of the number of participants in the case, or the fact that they negotiated matters in a manner favorable to their respective interests."[48] Additionally, the Commission "has often stated that no single party is afforded veto power under the first part of the three-part test."[49] "Nowhere in the analysis of the reasonableness of a stipulation is the Commission required to determine that the stipulation contains OCC's signature."[50] OCC Witness Williams acknowledged that the Commission does not afford OCC singular veto power over settlements.[51]

Various witnesses submitted testimony demonstrating on the record that a large and diverse group of knowledgeable and capable parties participated in an extensive bargaining process that ultimately resulted in the Stipulation. As noted by Staff Witness Lipthratt:

> [t]he 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

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[46] *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (Dec. 30, 2020).

[47] *Id*.

[48] *See In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Plan to Modernize its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Opinion and Order at ¶ 47 (June 16, 2021).

[49] *In the Matter of the Application of Duke Energy, Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-791-GA-ALT, Opinion and Order at ¶ 50 (Apr. 21, 2021) ("In a case like this one where the only parties are the utility company, Staff, and OCC – is that OCC would have a veto right. Consistent with our prior practice, we again decline to afford a single party the ability to sink a settlement agreement merely by withholding its signature.").

[50] *In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-Out Service Tariff*, Case No. 14-1158-EL-ATA, Second Entry on Rehearing at ¶ 12 (Feb. 1, 2017);

[51] Tr. Vol. II at 306-08 (Cross Examination of Williams).

> parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests.[52]

The Stipulation ultimately resolved "all of the issues with nearly every party, and includes agreement by representatives of every stakeholder group."[53] Signatory and Non-Opposing Parties representing various stakeholders "includes [Staff], who represents all interests, large industrials, medium non-residential and commercial customers, retail customers, competitive suppliers, low-income interests, brokers and energy service providers, and the City of Cincinnati, who represents both non-residential and residential customers."[54] As Duke Witness Sailers testified, "[t]he balancing of interests is apparent insofar as the settlement produces a lower overall revenue requirement from what [Duke] requested," which will result in reductions in rates customers will ultimately pay as compared to those proposed in Duke's Application.[55] "This shows that the settlement is the product of serious bargaining."[56]

Duke Witness D'Ascendis testified during the hearing that "13 of 14 [parties to the case] either accepted [the Stipulation] or didn't oppose it, and that would be the product of give and take between those parties or negotiations."[57] The witness further noted that the parties "represent various stakeholders, and because they represent those various stakeholders," the settlement of this case as recommended by the Stipulation would involve the entire public interest.[58] OCC Witness

52 Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 3 (Sept. 22, 2022).

53 Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 3 (Sept. 22, 2022); *see also* Tr. Vol. I at 170-72 (Cross Examination of Sailers).

54 *Id.*

55 Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 3 (Sept. 22, 2022).

56 *Id.*; *see also* Tr. Vol. I at 170-72 (Cross Examination of Sailers).

57 Tr. Vol. II at 216 (Cross Examination of D'Ascendis).

58 *Id*.

Williams acknowledged that each of the parties to the proceeding, and to the Stipulation, appears to be capable and knowledgeable.[59]

Indeed, Signatory Parties to the Stipulation include numerous groups that represent residential customers. Commission Staff balances the interests of various stakeholders, including residential customers.[60] The City of Cincinnati represents residential and non-residential customers who reside within the City.[61] OPAE advocates for weatherization and energy assistance programs for low income customers.[62] CUB Ohio "is a nonprofit, nonpartisan consumer watchdog that advocates for residential and small business utility customers."[63] OCC Witness Williams acknowledged that "[f]or decades, the Citizens Utility Board has fought for cheaper bills, reliable service, transparency, consumer rights, and clean healthy energy, helping consumers to save billions of dollars."[64] Nevertheless, OCC seems to attempt to purport that OCC is the sole representative of residential customers. OCC Witness Williams testified that:

> The Settlement appears be largely an agreement between the PUCO Staff and Duke. The Settlement suffers from the major problem that afflicts the PUCO Settlement process. The Utility dangles money in front of parties that desperately need money, and those parties sign the Settlement in exchange for the money.[65]

This argument fails for several reasons. First, this statement is inherently self-contradictory. The OCC Witness attempts to argue that the Stipulation is largely between Duke

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[59] Tr. Vol. II at 243 (Cross Examination of Williams).

[60] Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 2 (Sept. 22, 2022); Tr. Vol. II at 267 (Cross Examination of Williams).

[61] Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 2 (Sept. 22, 2022); Tr. Vol II at 266 (Cross Examination of Williams).

[62] Tr. Vol. II at 260 (Cross Examination of Williams); OCC Ex. 3, Supplemental Testimony of James D. Williams at 7 (Sept. 29, 2022); Duke Ex. 17, OPAE Website.

[63] Duke Ex. 16, CUB Ohio Website at 1; Tr. Vol. II at 258 (Cross Examination of Williams).

[64] Duke Ex. 16, CUB Ohio Website at 2; Tr. Vol. II at 259 (Cross Examination of Williams).

[65] OCC Ex. 3, Supplemental Testimony of James D. Williams at 5 (Sept. 29, 2022).

and Staff, but then argues that Duke settled the case by incentivizing other parties. Nonetheless, at the evidentiary hearing, the OCC Witness acknowledged that he has not communicated with any of the other parties as to their reasoning or motives for joining the stipulation.[66] The OCC Witness also admitted that Duke did not offer monetary payments to either Commission Staff or any of the commercial and industrial customers.[67] Moreover, the OCC Witness stated that various parties with "competing self-interests" participated in the settlement, which offered a variety of perspectives.[68]

OCC Witness Williams also argues that "no consumer advocate dedicated to representing" residential customers signed the Stipulation.[69] Again, this argument is simply false. First, the Signatory and Non-Opposing Parties to the Stipulation *do* represent diverse interests, including residential interests. Commission Staff, OPAE, CUB Ohio, PWC, and the City of Cincinnati all represent residential customers, and they all signed the Stipulation.[70] Second, as explained above, there is no diversity requirement for the first prong of this test. Third, even if there were a diversity requirement, the focus on this test is on the bargaining process.[71] While OCC ultimately chose not to sign the Stipulation, it participated extensively in the bargaining process.[72] OCC Witness

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[66] Tr. Vol. II at 304-05 (Cross Examination of Williams); *id.* at 239-40 (witness admits he cannot speak for other parties).

[67] Tr. Vol. II at 304-05 (Cross Examination of Williams).

[68] OCC Ex. 3, Supplemental Testimony of James D. Williams at 8 (Sept. 29, 2022); Tr. Vol. II at 269 (Cross Examination of Williams).

[69] OCC Ex. 3, Supplemental Testimony of James D. Williams at 7 (Sept. 29, 2022).

[70] Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 2 (Sept. 22, 2022); Tr. Vol. II at 258-60, 266-67 (Cross Examination of Williams); OCC Ex. 3, Supplemental Testimony of James D. Williams at 7 (Sept. 29, 2022); Duke Ex. 16, CUB Ohio Website at 1; Duke Ex. 17, OPAE Website at 2.

[71] *See In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Plan to Modernize its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Opinion and Order at ¶ 47 (June 16, 2021); *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (Dec. 30, 2020).

[72] *See* Tr. Vol. II at 269-70 (Cross Examination of Williams).

Williams noted that the OCC "team frequently met and had discussions about the settlements," and that he "provided input back through the team to the settlement process."[73]

Moreover, participation in the settlement bargaining process by groups representing residential customers, such as Commission Staff, OPAE, CUB Ohio, the City of Cincinnati, and OCC, resulted in several terms of the Stipulation which are favorable to residential customers, including a smaller movement towards cost of service than originally recommended by Commission Staff[74] and a lower residential customer charge than proposed by Duke.[75] Ultimately, the Stipulation recommended an allocation of the revenue requirement to the residential customer class that is lower than that recommended in the Staff Report, and significantly lower than the residential customer class's share of Duke's total cost of service.[76]

As such, the Stipulation results from a fair and open bargaining process between a large and diverse group of knowledgeable and capable parties. While there is no requirement that the parties represent diverse interests to satisfy this prong, the Signatory and Non-Opposing Parties do in fact represent diverse and competing interests, which resulted in a number of perspectives being considered during the months-long bargaining process. As such, the Stipulation satisfies the first prong of the Commission's three-part test.

B. The Stipulation, as a package, benefits ratepayers and the public interest.

When analyzing the benefits to ratepayers and the public interest, the Commission will evaluate the stipulation as a whole, rather than focusing on individual provisions. In describing the second prong of the three-prong test, the Commission has determined that, "[t]he question

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[73] Tr. Vol. II at 242-43 (Cross Examination of Williams).

[74] *See* Tr. Vol. IV at 501-02 (Cross Examination of Fortney).

[75] Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 5 (Sept. 22, 2022).

[76] Tr. Vol. IV at 501-02 (Cross Examination of Fortney).

before the Commission is not whether there are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest."[77] Through several months of serious bargaining, "through a balanced approach by recognizing some of the objections to the Staff Report of Investigation raised by intervening parties, rejecting some of the objections, and considering alternative approaches," the parties reached a "just and reasonable resolution of the matters pending" in this proceeding as a package.[78]

The Stipulation contains many benefits for customers. First, the Stipulation results in a lower revenue increase than that requested by Duke.[79] Duke had requested an increase of $54.6 million, and the Stipulation recommended an increase of only $22.6 million.[80] This is a decrease of more than 50 percent. This revenue requirement decrease also results from a significantly lower ROR of 6.86 percent and ROE of 9.5 percent, compared to Duke's proposed ROR of 7.26 percent and ROR of 10 percent.[81] As noted by Duke Witness Sailers, a significantly lower distribution revenue requirement benefits customers as it "corresponds to reductions in the rates customers will ultimately pay."[82]

This overall rate reduction significantly benefits customers across all rate classes. As OCC Witness Fortney admitted at the evidentiary hearing, all customer classes have been harmed by

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[77] *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020).

[78] Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 4 (Sept. 22, 2022).

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 3 (Sept. 22, 2022); *see also* Tr. Vol. I at 170-72 (Cross Examination of Sailers).

economic hardships caused by high inflation, escalating generation prices, and the COVID-19 pandemic.[83] The Commission should consider these economic hardships when setting rates.[84] By reducing the overall rates customers will pay, the Stipulation benefits ratepayers across all customer classes who are currently facing these hardships.

Moreover, as discussed above, the Stipulation also recommended revenue caps for Rider DCI that are significantly lower than the revenue caps proposed by Duke in its Application.[85] Again, these lower revenue caps benefit ratepayers and the public interest as a whole by lowering total rates that will be paid by customers. Lower revenue caps are more reasonable in that they provide a more meaningful check on overspending. If customers are required to continue to pay Rider DCI,[86] more reasonable revenue caps will help to prevent Duke from overcharging customers for excessive spending. Like a lower revenue requirement, caps in general and the stipulated lower caps benefit customers across all customer classes by lowering "the rates customers will ultimately pay."[87]

In addition to lowering the overall rates paid by customers, the new caps proposed by the Stipulation impose an additional reliability metric based on System Average Interruption Duration Index (SAIDI), which was not present in previous versions of Rider DCI or in Duke's Application.[88] This new metric will slightly increase the revenue caps for each year only if Duke

[83] Tr. Vol. IV at 478-79, 503-505 (Cross Examination of Fortney).

[84] *Id.*

[85] Stipulation at ¶ III.C.1.a; Duke Ex. 11, Direct Testimony of Sarah E. Lawler at 14 (Oct. 15, 2021).

[86] *See* Stipulation, fn.2 (Regarding Rider DCI, "Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger) do not support but agree not to oppose Section III.C.1. of the Stipulation taking into consideration the Stipulation as a package. OMAEG's and Kroger's non-opposition shall not be relied upon in any other forum or proceeding.").

[87] Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 3 (Sept. 22, 2022); *see also* Tr. Vol. I at 170-72 (Cross Examination of Sailers).

[88] Tr. Vol. II at 281-82 (Cross Examination of Williams).

meets certain reliability benchmarks, although in either case it will be lower than the caps initially proposed by Duke.[89] As noted by Duke Witness Hesse, "[t]he new SAIDI metric added by the Stipulation creates an additional target for the Company to achieve," while also maintaining existing System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) benchmarks.[90] This provision should benefit customers as a whole by financially incentivizing Duke to improve its reliability performance. Any reliability improvements will benefit customers across all customer classes.

OCC Witnesses Williams and Fortney attempt to argue that the Stipulation does not benefit residential customers, and thus, should be rejected by the Commission.[91] However, OCC's witnesses only considered whether specific benefits to residential customers occur. The test is whether the Stipulation benefits ratepayers as a whole, not whether the Stipulation specifically benefits a particular customer or class of customers.[92]

Nonetheless, despite OCC's claims, the Stipulation *does* actually benefit residential customers in numerous ways. In addition to lowering the overall revenue requirement and lowering the Rider DCI revenue caps, the Stipulation recommended a customer charge of $8.00 for the residential class, compared to the $12.00 proposed by Duke.[93] Staff Witness Lipthratt noted that "the customer charge is an important regulatory principle and is vital in consideration in setting

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[89] Duke Ex. 11, Direct Testimony of Sarah E. Lawler at 14, 21 (Oct. 15, 2021).

[90] Duke Ex. 7, Supplemental Testimony of Jeffrey Hesse at 8-9 (Sept. 22, 2022).

[91] OCC Ex. 3, Supplemental Testimony of James D. Williams at 8 (Sept. 29, 2022) ("No. In my opinion, the Settlement does not benefit *residential* consumers and the public interest.") (emphasis added); Tr. Vol IV at 504-05 (Cross Examination of Fortney).

[92] Tr. Vol IV at 504-05 (Cross Examination of Fortney).

[93] Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 5 (Sept. 22, 2022).

rates."[94] The Stipulation also provides additional funding for weatherization, energy efficiency, and bill payment assistance to residential customers.[95]

Additionally, by rejecting Duke's proposal to create the new Rider CDI,[96] the Stipulation will protect customers from unregulated recovery and spending that may have resulted from the implementation of that Rider.[97] Furthermore, by settling the case, and avoiding full litigation, the Stipulation benefits ratepayers and the public interest through administrative economy.[98] Avoiding a fully litigated rate case prevents extensive legal costs, including those incurred by Duke, which are passed on to customers.

Overall, the Stipulation results in significantly lower rates for customers than the revenue requirement and tariff changes that Duke proposed in its Application. The Stipulation will balance these interests with providing Duke a reasonable return and sufficient cash flows to provide safe and reliable service to customers moving forward.[99] The Stipulation further incentivizes Duke to improve reliability for customers across all rate classes. As such, the Stipulation, as a package, benefits customers and the public interest, and satisfies the second prong of the Commission's three-part test.

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[94] Tr. Vol. III at 442 (Cross Examination of Lipthratt).

[95] Tr. Vol. II at 248 (Cross Examination of Williams); OCC Ex. 3, Supplemental Testimony of James D. Williams at 6 (Sept. 29, 2022); Stipulation at 24.

[96] *Id.* at ¶ III.C.10.

[97] *See* Staff Ex. 1, Staff Report at 40 (May 19, 2022) ("Notably, it seems to impose an obligation on local ratepayers within the applicable tax district to pay for public investments without proper notice or sufficient opportunity for engagement.").

[98] Tr. Vol. II at 221-22 (Cross Examination of D'Ascendis).

[99] Duke Ex. 5, Supplemental Testimony of Christopher Bauer at 10 (Sept. 22, 2022).

C. The Stipulation does not violate any important regulatory principles or practices.

When determining whether a stipulation violates any important regulatory principle or practice, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.[100] The Stipulation does not appear to contain any provisions that run contrary to Commission precedent. As Commission Staff Witness Lipthratt explained, based on Staff's "experience, involvement in this proceeding, and review of the Stipulation…it does not violate any important regulatory principle or practice."[101]

The Stipulation complies with Commission principles and practice concerning rate allocations and cost of service principles. As Staff noted in its Staff Report, the current allocation of Duke's distribution revenue requirement among customer classes is significantly misaligned with Duke's current cost to serve those classes. Duke's cost-of-service study submitted as part of its Application demonstrated that the residential customer class is responsible for 69.4 percent of Duke's total distribution costs.[102] However, the residential customer class currently pays only about 62.56 percent of Duke's distribution base rates.[103] This represents a misalignment of the costs necessary to serve the residential class versus other customer classes. In its Application, Duke proposed allocating only 63.06 percent of the base distribution revenue requirement to the

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[100] *See, e.g., In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 79 (Dec. 30, 2020) (Where the stipulating parties had "presented adequate justification for the Commission to uphold the precedent" and "no argument presented by opposing Intervenors [convinced] the Commission to change or revise this practice," the Commission adopted the stipulation.).

[101] Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 5 (Sept. 22, 2022).

[102] Duke Ex. 1, Application, Schedule E-3.2. *See also* Tr. Vol. IV at 495 (Cross Examination of Fortney).

[103] Staff Ex. 1, Staff Report at 28 (May 19, 2022).

residential customer class.[104] In order to mitigate this issue, Staff recommended allocating 65 percent of new base distribution rates to the residential customer class.[105]

Although he did not perform his own cost-of-service study,[106] OCC Witness Fortney attempted to argue that Staff "proceeds to ignore its own guidelines and allocate the revenue increase based solely on cost of service."[107] This is incorrect as Staff's proposal also complied with the principle of gradualism. As Witness Fortney admitted at the evidentiary hearing, Staff "did not recommend going to the full cost of service."[108] Staff could have recommended allocating even more of the rate increase to the residential customer class to move the revenue requirement allocation more closely towards the cost to serve.[109] Even under Staff's proposal, the revenue requirement allocation will not be a direct match with the cost to serve, and residential customers will still pay a lower share of the total revenue requirement than their share of the cost to serve.[110] The Stipulation further complies with the principle of gradualism by allocating only 64 percent of the revenue requirement to the residential customer class, which is lower than both the cost to serve the customer class, and the allocation initially recommended by Staff.[111]

Moreover, the Stipulation benefits customers by lowering the total bill impacts proposed in Duke's Application. As stated by OCC Witness Fortney, the Commission should prevent "'rate-shock' to consumers" by avoiding "sudden high bills that are unaffordable."[112] OCC Witness

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[104] Staff Ex. 1, Staff Report at 28 (May 19, 2022).

[105] *Id.*

[106] Tr. Vol. IV at 490 (Cross Examination of Fortney).

[107] OCC Ex. 6, Direct Testimony of Robert B. Fortney at 6 (Sept. 2, 2022).

[108] Tr. Vol. IV at 501 (Cross Examination of Fortney).

[109] *Id.*

[110] *Id.*

[111] *Id.* at 502.

[112] OCC Ex. 7, Supplemental Testimony of Robert B. Fortney at 10 (Sept. 29, 2022).

Williams testified that it "is [an] important regulatory principle that every public utility must charge 'just, reasonable' rates."[113] The Stipulation serves these principles and practices, across all customer classes by reducing "the rates customers will ultimately pay."[114] By decreasing the total revenue requirement increase and implementing more reasonable revenue caps for Rider DCI, the Stipulation avoids rate shock and promotes just and reasonable rates across customer classes.

The Stipulation also satisfies various regulatory principles and practices related to Ohio's policy towards retail electric service, as specified in R.C. 4928.02. By reducing the rate increase, preventing rate shock, and addressing cost shifting between customer classes, the Stipulation promotes "the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."[115] Additionally, by applying meaningful revenue caps and reliability requirements to Duke's cost recovery through Rider DCI, as well as eliminating Rider CDI, the Stipulation "[encourages] 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;"[116] and "[provides] coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates."[117] Moreover, by limiting the cost shifting between classes there is a

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[113] OCC Ex. 3, Supplemental Testimony of James D. Williams at 15 (Sept. 29, 2022), *citing* R.C. 4905.22.

[114] Duke Ex. 10, Second Supplemental Testimony of Bruce L. Sailers at 3 (Sept. 22, 2022); *see also* Tr. Vol. I at 170-72 (Cross Examination of Sailers).

[115] R.C. 4928.02(A).

[116] R.C. 4928.02(D).

[117] R.C. 4928.02(J).

closer alignment of the cost allocation with the cost to serve, which "[facilitates] the state's effectiveness in the global economy."[118]

Overall, the Stipulation serves a variety of important regulatory principles and practices. The Stipulation more closely aligns the revenue requirement allocation with Duke's cost of service, reduces the rate increase and bill impacts, and aligns with the State policy as enumerated in R.C. 4928.02. As such, record evidence demonstrates that the Stipulation satisfies the third prong of the Commission's three-part test.

IV. CONCLUSION

Record evidence presented at the evidentiary hearing demonstrates that the Stipulation filed on September 19, 2022 satisfies the Commission's three-part test for evaluating Stipulations. A large, diverse group of capable, knowledgeable parties, including representatives of residential customers, participated in a fair and open settlement process to negotiate the Stipulation. The Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding, serves the public interest by reducing any rate increase, promoting distribution reliability, and avoiding the costs of a fully litigated rate case. By avoiding rate shock, aligning revenue requirement allocation with cost of service, and promoting State policy pursuant to R.C. 4928.02, the Stipulation complies with important regulatory principles and practices. Arguments to the contrary by OCC, the only party opposing the Stipulation, have no merit and should be rejected.

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[118] R.C. 4928.02(N).

As such, the weight of the evidence presented by the parties demonstrates that the Stipulation satisfies the Commission's three-part test for evaluation stipulations. Therefore, OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety.

Respectfully submitted,

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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 also is being served via electronic mail on October 31, 2022 upon the parties listed below.

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