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. 21-0887-EL-AIR**
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)))	**Case No. 21-0888-EL-ATA**
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	**Case No. 21-0889-EL-AAM**

POST-HEARING REPLY BRIEF OF WALMART INC.

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<u>POST-HEARING REPLY BRIEF OF WALMART INC.</u>

Walmart Inc. ("Walmart"), by its attorneys, respectfully submits this Reply Brief to the Public Utilities Commission of Ohio ("Commission") to address certain arguments made by the Office of the Consumers' Counsel ("OCC") in their Initial Post-Hearing Brief related to the allocation of base distribution revenues associated with the Stipulation submitted in this case. In addition to the supplemental arguments set forth below, Walmart reiterates and incorporates the arguments from its Initial Post-Hearing Brief, many of which directly address the issues raised by OCC in its Initial Post-Hearing Brief.

I. ARGUMENT

A. The Commission Should Reject OCC's Arguments Concerning the Allocation of Costs to Customer Classes.

OCC offers no legitimate basis to reject the Stipulation because it allocates 64 percent of all base distribution revenues, inclusive of the rate increase set forth therein, to the residential class.[1] Nor is there any evidence to support OCC's claim that the allocation percentage in the Stipulation is not in the public interest and, therefore, fails prong two of the Commission's three-

[11] *See* Joint Ex., pp. 4-5, ¶ 7.

part test. The Commission should reject these arguments by OCC and find that the Stipulation, as a package, benefits customers and the public interest.

1. *The Stipulation properly allocates costs to residential customers in order to gradually reduce subsidies in rates.*

The evidence confirms[2] – and OCC has conceded – that residential customer rates are substantially subsidized by other rate classes.[3] OCC's recommendation to allocate 63.06 percent of total base distribution revenues to the residential class is an express acknowledgment that it is appropriate for the Commission to take steps to reduce the residential subsidy.[4] It is equally undisputed that the Stipulation submitted in this case will, similar to OCC's recommendation, *reduce but not eliminate* this subsidy.[5] Thus, both the OCC recommended allocation and the Stipulation seek to accomplish the exact same thing: gradually moving residential customer rates closer to the cost of service. OCC's argument in opposition to the Stipulation is only that the Stipulation reduces too much of the subsidy. The Commission must reject OCC's argument because they offer no evidence to justify their position.

The sole substantive argument made in support of OCC's lower allocation recommendation is the fact that residential consumers "have been economically ravished by the financial hardships caused by COVID, high inflation, and escalating generating prices."[6] OCC witness Fortney argues

[2] *See* Staff Report, p. 27, Table 1 (reflecting a relative rate of return of 0.59).

[3] *See* Supplemental Testimony in Opposition to the Settlement of Robert B. Fortney ("Fortney Supplemental"), p. 7, lines 1-12 (noting that an allocation of base distribution rates of 63.06 percent "would *gradually* move the Residential Class closer to the cost of service…") (emphasis in original).

[4] *Id.*; *see also* Staff Report, p. 29, Table 4 (noting current base distribution rates allocate 62.56 percent of revenues to the residential class).

[5] *See* Joint Ex., pp. 4-5, ⁋ 7 (allocating 64 percent of distribution revenues to the residential class); *see also* Staff Report, p. 28, Table 3 (noting Staff's proposal to allocate 65 percent of distribution revenues to the residential class) and p. 27, Table 1 (confirming that adoption of Staff's proposed rate of return, which allocated 65 percent of distribution revenues to the residential class, would still result in a relative rate of return of 0.80, *i.e.*, well below a relative rate of return of 1.0).

[6] OCC's Initial Brief, p. 23 (*citing* Fortney Supplemental, p. 6, lines 20-22).

that "[p]ublic policy should recognize [these] hardships in allocating increased revenues."[7] Were the Commission to consider these purely public policy arguments, it would be constrained to conclude that these hardships have not been borne exclusively by residential customers; rather, all customers, including those customer classes that have long subsidized the residential class, have suffered these exact same hardships. Indeed, OCC witness Fortney admitted as much at the hearing in this matter.[8] These hardships, therefore, do not support OCC's arguments for a lower allocation of base distribution revenues to the residential class. Instead, the Commission should adopt the allocation set forth in the Stipulation because it more appropriately balances the impact of these hardships on *all customers*, while reducing the existing subsidy in rates in a gradual manner.

2. *Allocating a lower percentage of base distribution revenues to the residential class as advocated by OCC is not in the public interest.*

OCC suggests that a lower allocation of base distribution revenues to the residential class – retaining a larger subsidy in rates – somehow "is in the public interest."[9] Not only does OCC fail to explain *how* their recommendation is in the public interest, but the argument is incorrect. First, it is important, and consistent with the public interest, that customers receive accurate price signals, which is best accomplished through rates that most closely approximate the cost to serve. Second, it does not benefit the public interest to overly burden commercial and industrial customers with higher-than-necessary rates that are higher solely because they are subsidizing the residential class. OCC fails to explain why their proposal is "in the public interest," and the Commission should reject this argument that lacks any evidentiary support.

[7] Fortney Supplemental, p. 6, lines 22-23.

[8] *See* Walmart Initial Post-Hearing Brief, p. 6.

[9] OCC Initial Brief, p. 23.

B. The Allocation of Base Distribution Revenues Proposed by the Stipulation Does not Violate Any Important Regulatory Principle.

There is simply no legitimacy to OCC's arguments that the 64 percent allocation set forth in the Stipulation violates the important regulatory principles of gradualism, practicality, equity, or utilitarianism. Before turning to these concepts, it is important to dispel OCC's repeated attempts to confuse the Commission and customers about the practical implications of the allocation percentages proposed under the Stipulation. On no less than five occasions in its Initial Post-Hearing Brief, OCC states that the Stipulation "allocates 92.45 percent of the…increase to the residential class."[10] Similarly, on three additional occasions, OCC argues that "residential customers are allocated an increase which is 147.18% of the average overall increase."[11] While mathematically true, these statements are nothing more than an attempt to distract from the real issue: the ultimate allocation of base distribution revenues. It is undisputed that under the Stipulation only 64 percent of base distribution revenues are allocated to the residential class. As Duke Energy Ohio, Inc. ("Duke Energy" or "Company"), witness Lawler reflected during the hearing, the misleading statistics cited by OCC simply reflect "the math to get you to 64 percent of the total base distribution revenue requirement."[12] For purposes of evaluating the Stipulation, including whether its terms violate any important regulatory principle, the Commission should focus on the total allocation of base distribution revenues (*i.e.*, limited to 64 percent to the residential class), and it should disregard OCC's focus on the percentage allocation of the revenue *increase* proposed in this case.

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[10] OCC Initial Brief, pp. 20, 21, 38, 39

[11] *Id.*, pp. 21, 22, 38.

[12] Hearing Transcript ("Tr."), Vol. I, p. 169, line 25 to p. 170, line 4.

1. *The Stipulation reflects gradualism.*

There is no doubt that the Stipulation is *consistent with* concepts of gradualism. Allocating 64 percent of base distribution revenues to the residential class reduces, but does not eliminate, the existing subsidy. This is the *sine qua non* of gradualism. OCC claims the Stipulation violates principles of gradualism,[13] but it fails to offer a legitimate explanation for how or why it does so.

While OCC is proposing what it characterizes as a "more gradual move of the rates of return for each customer class,"[14] it does not logically follow that OCC's proposal necessarily means that the Stipulation is not consistent with gradualism simply because it allocates a slightly higher percentage of total base distribution revenues to the residential class. The fact that OCC's allocation proposal may be more gradual than the Stipulation does not mean the Stipulation violates principles of gradualism. The Commission should reject OCC's arguments regarding the concept of gradualism because there is simply no evidence that the Stipulation violates this regulatory principle.

Relatedly, contrary to OCC's claims, there is no evidence that the Stipulation will result in rate shock to residential customers.[15] The difference between the OCC allocation recommendation ($16.03 million)[16] and the Stipulation ($21.3 million)[17] is only approximately $5.27 million, less than 1 percent of total base distribution revenues.[18] A claim of rate shock without support for such a claim is nothing more than an unsupported allegation that must be rejected. There is no evidence to show that residential customers will suffer rate shock based on the allocation set forth in the

[13] *See* OCC Initial Brief, pp. 37-39.

[14] *Id.*, p. 38.

[15] *See id.*, p. 39.

[16] *See id.*, p. 23.

[17] *Id.*, p. 2.

[18] *See* Joint Ex. 1, p. 5 (dividing $5.27 million by total revenues of $565.69 million).

Stipulation.

2. *The Stipulation does not violate principles of practicality.*

OCC has confused the record by focusing on the percentage allocations of the rate increase rather than the allocation of total base distribution revenues. OCC has then attempted to leverage that self-created confusion to argue the Stipulation is not "simple, understandable, acceptable to the public or feasibly applied."[19] Contrary to these claims, the Stipulation is simplicity personified and clearly understandable. Residential customers pay less than they should for the distribution service they receive from the Company, and the Stipulation takes steps to address this situation by allocating more costs to residential customers than other classes to better align rates paid with the service provided to each rate class. It is hard to fathom what is impractical or not understandable about this aspect of the Stipulation.

It is also material that both the OCC allocation proposal and the Stipulation *do the same thing*: they apply a larger percentage of the rate increase to the residential class in order to reduce the subsidy in rates. The difference is solely one of magnitude. Under these circumstances, it is non-sensical for OCC to argue that its proposal is perfectly practical, simple, and understandable, but the Stipulation is none of those things. The logic of OCC's argument on this issue fails upon even the slightest scrutiny, and the Commission should reject OCC's claims that the revenue allocation in the Stipulation violates the regulatory principle of practicality.

3. *The Stipulation does not violate principles of equity or utilitarianism.*

According to OCC, equity means fairness, and utilitarianism is a form of equity.[20] Based on the discussion above, it is unclear how the revenue allocation set forth in the Stipulation does

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[19] OCC Initial Brief, p. 39.

[20] *Id.*, p. 40.

not support the concepts of fairness and equity. Under the terms of the Stipulation, steps are being taken to reduce the subsidy that exists in rates. Even if the Commission adopts the Stipulation in its entirety, however, other rates classes will continue to subsidize residential customer rates to the tune of millions of dollars. The Stipulation takes reasonable steps to address subsidies in a manner that is gradual and fair to all customer groups, including the residential class. It is fair to ask residential customers to pay their fair share of the costs the Company incurs to serve them. There is no doubt that the Stipulation does not violate the regulatory principles of either equity or utilitarianism, and the Commission should reject OCC's arguments on this issue.

II. CONCLUSION

For all the reasons set forth above, Walmart Inc. respectfully requests that this Commission adopt the Stipulation in its entirety and without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Reply Brief of Walmart Inc., was served by electronic mail, upon the following Parties of Record on this 14th day of November, 2022.

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