

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application)	
of Duke Energy Ohio, Inc. for an)	Case No. 22-507-GA-AIR
Increase in Natural Gas Rates)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval)	Case No. 22-508-GA-ALT
of an Alternative Form of Regulation)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Tariff)	Case No. 22-509-GA-ATA
Approval)	

In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval)	Case No. 22-510-GA-AAM
to Change Accounting Methods)	

**DUKE ENERGY OHIO, INC.'S
MOTION TO STRIKE SPECIFIC INTERVENOR OBJECTIONS TO STAFF REPORT**

Pursuant to O.A.C. 4901-1-12, O.A.C. 4901-1-27(B)(4), (B)(7)(b), and (B)(7)(d), and O.A.C. 4901-1-28(B), Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) respectfully moves to strike objections to the Staff Report of Investigation (Staff Report) regarding the application in the above captioned cases by Ohio Energy Group (OEG), People Working Cooperatively, Inc. (PWC), Retail Energy Supply Association (RESA), Interstate Gas Supply, Inc. (IGS), and the Ohio Consumers' Counsel (OCC) (collectively, the Intervenors). Specifically, the Company moves to strike the following objections filed by the Intervenors on January 20, 2023:

OEG Objection 1: Class Allocation.

PWC Objection 1: Shareholder Funding for Low-Income Residential Weatherization Assistance

RESA Objection 1: The Staff Report erred in including in rate base any costs associated with Duke's new customer information system (called Customer Connect), in recommending recovery of any Customer Connect costs, and in recommending Duke be granted authority to seek recovery in a future proceeding because Customer Connect was not used and useful as of the date certain, and was/is not used and useful.

RESA Objection 2: The Staff Report erred in including in the rate of return any valuation that included Customer Connect because Customer Connect was not used and useful in rendering service.

RESA Objection 3: The Staff Report erred in not investigating Duke's management and operation of the Customer Connect system, and in not concluding that there was mismanagement as evidenced by the significant issues that Customer Connect has caused, and continues to cause, for customers and competitive retail suppliers.

RESA Objection 8: The Staff Report failed to analyze and recommend removal of the switching fee from Tariff Sheet 33.16 (page 2 of 4) in light of Duke's acknowledgement that there is no discernible incremental cost for any EDI enrollment.

RESA Objection 9: The Staff Report failed to review and recommend reduction of the Customer Information List fee on Tariff Sheet 45.3.

RESA Objection 10: The Staff Report failed to review and determine a cost basis for the governmental aggregator eligible customer list fees and the monthly fee for additional rate codes, or recommend removal of those fees from Tariff Sheet 45.3 for lack of a cost-based justification.

RESA Objection 12: The Staff Report erred in not conducting and relying on a current, complete Customer Service Audit regarding the customer service performance, practices, and procedures of the company, rather than the 2019 Customer Service Audit referenced.

IGS Objection 2: The Staff Report's Failure to Address and to Recommend Removal of the Switching Fee that Duke charges to Residential Firm Transportation Service Customers is Unlawful and Unreasonable.

IGS Objection 3: The Staff Report Failed to Consider the Imprudent Management Policies and Practices Associated with Duke's Central Information System ("CIS") Conversion, and in doing so, Failed to Recommend a Corresponding Reduction to Duke's Return on Equity.

IGS Objection 6: The Staff Report's Failure to Address and to Recommend Modifications to Better Align Duke's EFBS Tariff and Rider FBS with Balancing Services Provided to Default Service Customers is Unlawful and Unreasonable.

IGS Objection 7: The Staff Report Fails to Address Duke's Practice of Including Its Affiliate's Non-Jurisdictional Charges on the Utility Bill, and to Recommend that Duke Certify to the Commission that those Affiliate Charges Will No Longer Be Presented on the Utility Bill.

IGS Objection 10: The Staff Report Failed to Evaluate Whether Duke’s Customer Information System, Customer Connect, Was Designed to Support New and Innovative Product and Service Offerings from CRNGS, and Whether Certain Fees Associated with CRNGS Offerings are Cost Justified.

OCC Objection 5: The PUCO Staff erred to consumers’ detriment in recommending a ten-year amortization period for charging consumers the deferred asset from the propane plant retirement.

OCC Objection 7: The PUCO Staff erred to consumers’ detriment in not recommending that, if amortization of Customer Connect costs is permitted, the amortization period should be no shorter than fifteen years.

OCC Objection 8: The Staff Report erred to consumers’ detriment by proposing a too-high rate of return (including based on an inappropriate capital structure) than is fair and reasonable under R.C. 4909.15(A)(2) and other authority, which will result in unjust and unreasonable rates and charges to consumers.

OCC Objection 10: The Staff Report erred to consumers’ detriment by applying an unreasonable risk-free rate in the application of the CAPM model, which will lead to too-high rates and charges to consumers that are unjust and unreasonable.

OCC Objection 14: The PUCO Staff erred to consumers’ detriment by not rejecting Duke’s proposed class allocations.

OCC Objection 17: The Staff Report erred to consumers’ detriment by failing to recommend elimination of fees from being charged to any consumers using a credit or debit card to make a utility payment to Duke.

OCC Objection 19: The PUCO Staff failed to recommend extending shareholder contributions to low-income weatherization programs, to consumers’ detriment.

OCC Objection 20: The PUCO Staff erred to consumers’ detriment by failing to require annual PUCO Staff review and audit of the low-income weatherization program.

OCC Objection 23: The Staff Report erred to consumers’ detriment by failing to reject Duke’s proposal for a November automatic approval process for the CEP charge.

OCC Objection 24: The PUCO Staff erred to consumers’ detriment by setting the proposed residential rate cap on annual increases for Duke’s CEP at too high a level.

OCC Objection 26: Based on the foregoing, the Staff Report is flawed and harms consumers because the PUCO Staff should have recommended an outright rejection of Duke’s unjust and unreasonable application.

As outlined in the Memorandum in Support, these objections by the Intervenors should be stricken because they lack the required specificity; are unrelated to setting natural gas distribution

rates, the Company's application, or this case as a whole; do not articulate a disagreement with the Staff Report; or suggest action in direct conflict with settled constitutional law. The grounds for this motion are more fully described in the attached Memorandum in Support.

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.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Public Utilities Commission of Ohio (the Commission) Staff (Staff) prepared and issued its report of investigation on December 21, 2022 (the Staff Report). Pursuant to R.C. 4909.19, Objections to the Staff Report were submitted by Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) and by other parties—including the Intervenor¹—on January 20, 2023. The Attorney Examiner, by Entry dated December 22, 2022, provided that all motions to strike objections should be filed by January 30, 2023. This memorandum addresses a number of objections filed by the Intervenor—as enumerated above. Such objections should be stricken because they lack the required specificity, are not relevant or related to the Staff Report, are not relevant to the Company’s application, are not relevant to this case in general, agree with—rather than object to—the Staff Report, or suggest action contrary to constitutional law.

II. LAW AND ARGUMENT

A. Certain Intervenor Objections Should Be Stricken Because They Lack Specificity, in Violation of O.A.C. 4901-1-28(B).

The Commission’s rules provide that “[a]ll objections must be specific. Any objections that fail to meet this requirement may be stricken upon motion of any party.”² The rule requires that any objection “inform the staff and other parties of the precise area of disagreement with the position taken in the staff report.”³ That is, the objection must be “specific enough to convey what is actually being placed at issue.”⁴ Examples that the Commission has given of insufficiently

¹ Ohio Energy Group (OEG), People Working Cooperatively, Inc. (PWC), Retail Energy Supply Association (RESA), Interstate Gas Supply, Inc. (IGS), and the Office of the Ohio Consumers’ Counsel (OCC) (collectively, the Intervenor).

² O.A.C. 4901-1-28(B).

³ *In the Matter of the Application of Ohio-American Water Co. for Auth. to Increase its Rates for Water Serv. Provided to its Entire Serv. Area*, Case No. 01-626-WW-AIR, Entry at 2 (Jan. 4, 2002).

⁴ *In the Matter of the Application of Copley Square Water Co. for an Increase in Rates & Charges*, No. 96-572-ST-AIR, Entry at ¶ 3 (Dec. 27, 1996).

specific objections include objections stating that “the staff incorrectly calculated test year labor expense” or “the staff unreasonably determined rate case expense.”⁵ The Attorney Examiner in this case, by Entry dated December 22, 2022, confirms that objections must be specific: “All objections must be specific; any objection that lacks the specificity required to convey what is actually being placed at issue will be stricken pursuant to O.A.C. 4901-1-28(B).”⁶

The specificity requirement must be enforced to ensure “that Staff and the parties to the case may know what specific issues are to be contested during the course of the hearings.”⁷ Objections to Staff Reports are frequently stricken for failing to meet the specificity requirement.⁸

With these standards in mind, the Company moves to strike the following objections for lack of specificity.

OEG Objection 1: Class Allocation.

OEG’s objection comprises only the following:

OEG objects to Staff’s proposal cost-of-service method. Staff has not established that its proposed adjustments to Duke Energy Ohio Inc.’s (“Company”) cost-of-service method are appropriate.

In its objection, OEG provides no detail, and the Company can only guess as to OEG’s specific disputes related to Staff’s class cost-of-service method. Indeed, OEG cites a four-page range of the Staff Report related to Staff’s cost-of-service analysis that contains a number of explanations, adjustments, and analyses. The Company cannot determine what OEG’s specific issues are related to this four-page cost-of-service analysis, and therefore cannot determine what

⁵ *In the Matter of the Application of the Cincinnati Gas & Elec. Co. for an Increase in Its Rates for Gas Serv. to All Jurisdictional Customers*, No. 95-656-GA-AIR, Entry at 1 (July 15, 1996).

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Rates*, Case Nos. 22-507-GA-AIR, *et al.*, Entry at ¶ 10 (December 22, 2022).

⁷ *In the Matter of the Application of The Dayton Power and Light Co. for Auth. to Modify and Increase Its Rates for Gas Serv. to All Jurisdictional Customers*, No. 83-777-GA-AIR, 1984 Ohio PUC LEXIS 26, Opinion and Order at *11–12 (Aug. 7, 1984).

⁸ *In the Matter of the Application of Gte N. Inc. for Auth. to Increase & Adjust Its Rates & Charges & to Change Reguls. & Pracs. Affecting the Same*, No. 87-1307-TP-AIR, 1988 WL 1620810, Entry at *1 (July 12, 1988).

specific issues are being contested as required by Commission jurisprudence and the Attorney Examiner's December 22, 2022 Entry. This objection should therefore be stricken for non-specificity in accordance with O.A.C. 4901-1-28(B).

OCC Objection 8: The Staff Report erred to consumers' detriment by proposing a too-high rate of return (including based on an inappropriate capital structure) than is fair and reasonable under R.C. 4909.15(A)(2) and other authority, which will result in unjust and unreasonable rates and charges to consumers.

OCC asserts that the Staff Report adopts an inappropriate capital structure, but does little to explain what about Staff's proposed capital structure is inappropriate. It is unclear how OCC expects the Company, the Commission, and the other Intervenors to know the specific issue being contested here, as no party to this case can reasonably determine, from this objection alone, what about the proposed capital structure is inappropriate for ratemaking, and what capital structure OCC believes would be appropriate. Additional detail is required for the Company and other Intervenors to prepare responsive testimony in these proceedings. Additionally, OCC's objection narrative states that "[t]he capital structure proposed by Duke and adopted by the PUCO Staff of 47.66 percent long-term debt and 52.34 percent equity is *appropriate* for rate making purposes."⁹ This is in direct conflict with OCC's stated objection statement, and is in fact an *agreement* with the Staff Report. It is therefore unclear to the Company whether this is even an objection at all. As such, the Company moves to strike this objection for lack of specificity and lack of relevance under O.A.C. 4901-1-28(B).

OCC Objection 23: The Staff Report erred to consumers' detriment by failing to reject Duke's proposal for a November automatic approval process for the CEP charge.

OCC's objection is limited to the following:

⁹ Objections to the PUCO Staff's Report of Investigation by Office of the Ohio Consumers' Counsel at 11 (emphasis added).

Duke's description of the automatic approval process for annual CEP charge cases is vague and undefined. Therefore, OCC objects to the PUCO Staff's acceptance of an undefined process that could potentially harm consumers.

The above narrative comprises the entire objection. Neither the Company nor the Commission can determine why OCC believes that the Company's description of this process is vague and undefined, or why Staff erred in failing to reject it. Instead, the Company can merely glean that OCC is objecting, but not why OCC is objecting or what, exactly, OCC is placing at issue. If anything is "vague and undefined," it is OCC's objection here. The Company thus moves to strike this objection for lack of specificity under O.A.C. 4901-1-28(B).

OCC Objection 24: The PUCO Staff erred to consumers' detriment by setting the proposed residential rate cap on annual increases for Duke's CEP at too high a level.

This objection should also be stricken for non-specificity, as OCC does not provide enough information for either the Commission or the Company to determine why it believes \$1.50 per month is too high but \$1.00 per month is more appropriate. OCC does not point to citations, examples, studies, or other reasoning in support of its objection. Therefore, this objection lacks the sufficient level of detail, and the Company therefore moves to strike this objection for lack of specificity under O.A.C. 4901-1-28(B).

B. Certain Intervenor Objections Should Be Stricken Because They Do Not Relate to Issues Relevant to this Rate Case.

Many of the Intervenor's objections seek to expand this proceeding beyond its proper focus by invoking irrelevant issues. The rules limit the matters that are up for consideration in this proceeding. When considering a rate increase request, "[t]he scope of the Commission's inquiry does not extend to matters not put in issue by the applicant and not related to the rates which are the subject of the application."¹⁰ The rules therefore provide that permissible objections must relate

¹⁰ *Cleveland Elec. Illuminating Co. v. Pub. Utilities Comm'n of Ohio*, 42 Ohio St. 2d 403, 420, 330 N.E.2d 1 (1975).

only to “the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items.”¹¹ Objections that seek to import extraneous issues into a ratemaking proceeding are therefore appropriately stricken so as to prevent forcing the Commission to consider issues that are not properly litigated in this forum.¹²

With these principles in mind, the Company moves to strike the following objections for lack of relevance.

RESA Objection 1: The Staff Report erred in including in rate base any costs associated with Duke’s new customer information system (called Customer Connect), in recommending recovery of any Customer Connect costs, and in recommending Duke be granted authority to seek recovery in a future proceeding because Customer Connect was not used and useful as of the date certain, and was/is not used and useful.

RESA Objection 2: The Staff Report erred in including in the rate of return any valuation that included Customer Connect because Customer Connect was not used and useful in rendering service.

The Company moves to strike RESA’s Objections 1 and 2 for lack of relevance to items placed at issue by the Company in this proceeding. The Commission is tasked with determining whether the distribution rates requested by the Company and the items included in rates in the Company’s application are just and reasonable. The scope of its inquiry in this rate case “does not extend to matters not put in issue by the applicant and not related to the rates which are the subject of the application.”¹³ The Company did not include the core Customer Connect system for recovery in rates in this case, and only included in rate base related equipment that was used and useful as of the date certain. As a result, the Company did not place at issue in this case the items cited by RESA related to Customer Connect. Accordingly, the Company moves to strike this objection for lack of relevance to this proceeding.

¹¹ O.A.C. 4901-1-28(B).

¹² See *In the Matter of the Application of Gte N. Inc. for Auth. to Increase & Adjust Its Rates & Charges & to Change Reguls. & Pracs. Affecting the Same*, No. 87-1307-TP-AIR, 1988 WL 1620810, Entry at *1 (July 12, 1988).

¹³ *Cleveland Elec.*, 42 Ohio St. at 403.

RESA Objection 3: The Staff Report erred in not investigating Duke’s management and operation of the Customer Connect system, and in not concluding that there was mismanagement as evidenced by the significant issues that Customer Connect has caused, and continues to cause, for customers and competitive retail suppliers.

Similarly, the Company moves to strike RESA’s Objection 3, as the core Customer Connect system and any related management and operations of that system was not placed into issue in the Company’s application. Only the limited capital related to Customer Connect was included in this rate case, not the broader issue of management and operation of the Customer Connect system as a whole, for which the Company is not seeking full recovery in this case. As such, the Company also moves to strike this objection for lack of relevance to this proceeding.

RESA Objection 8: The Staff Report failed to analyze and recommend removal of the switching fee from Tariff Sheet 33.16 (page 2 of 4) in light of Duke’s acknowledgement that there is no discernible incremental cost for any EDI enrollment.

The Company moves to strike RESA’s Objection 8 for lack of relevance to the items placed at issue in this proceeding. In this objection, RESA references the Stipulation and Recommendation filed in the Company’s 2021 electric distribution rate case (the 2021 Electric Stipulation),¹⁴ but that case and the 2021 Electric Stipulation have no relevance to this proceeding. In particular, the terms of the 2021 Electric Stipulation were related to the Company’s electric distribution rates and service—not natural gas rates and service, which are the subject of this proceeding—and were heavily negotiated among a group of parties different from those that are parties to this proceeding. Further, the 2021 Electric Stipulation itself limits its application to the 2021 electric rate case proceeding:

Except for purposes of enforcing the Stipulation or establishing that its terms and conditions are lawful, neither the Stipulation nor the information and data contained therein or attached hereto shall be cited as precedent in any proceeding for or against a Signatory Party, if the Commission approves this Stipulation. The Stipulation is submitted for the purpose of resolving only the proceedings identified herein and does not reflect the position

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR, *et al*, Corrected Stipulation and Recommendation (Sept. 19, 2022).

that any individual Signatory Party may take as to any individual provision of the Stipulation, standing alone.¹⁵

RESA's attempt to cite the 2021 Electric Stipulation against Staff and the Company—both of whom were Signatory Parties to the 2021 Electric Stipulation—is contrary to the Stipulation's express terms. For all these reasons, the Company moves to strike this objection for lack of relevance under O.A.C. 4901-1-28(B).

RESA Objection 9: The Staff Report failed to review and recommend reduction of the Customer Information List fee on Tariff Sheet 45.3.

The Company moves to strike RESA's Objection 9 because it also cites the 2021 Electric Stipulation. As noted above, the Company's 2021 electric rate case involved different service, rates, tariffs, and parties, and the 2021 Electric Stipulation's own terms exclude it from being applied to other proceedings.¹⁶ The Company therefore moves to strike this objection for the same reason it moves to strike RESA's Objection 8.

RESA Objection 10: The Staff Report failed to review and determine a cost basis for the governmental aggregator eligible customer list fees and the monthly fee for additional rate codes, or recommend removal of those fees from Tariff Sheet 45.3 for lack of a cost-based justification.

RESA correctly notes that certain fees have been in effect since the Company performed related cost studies in 2006, but this only supports the Company's position that this objection should be stricken because these fees have not been placed at issue in this proceeding. These fees were approved in a 2006 proceeding,¹⁷ and the Company did not provide additional cost-justification in this proceeding—nor did Staff conduct an analysis related to these fees—because the Company has not proposed to change these fees in this proceeding. The Company provided all required cost-justification, and that justification was accepted by the Commission in the 2006 case;

¹⁵ *Id.* at 25–26.

¹⁶ *Id.*

¹⁷ *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Retail Gas, Electric, and its Certified Supplier Tariffs*, Case No. 06-407-GE-ATA.

the Company has not provided any additional support in this case because the Company is not seeking to modify these fees. Because this objection does not involve an item placed at issue in this case, it should be stricken for lack of relevance.

RESA Objection 12: The Staff Report erred in not conducting and relying on a current, complete Customer Service Audit regarding the customer service performance, practices, and procedures of the company, rather than the 2019 Customer Service Audit referenced.

RESA's Objection 12 raises an additional item not placed at issue in the Company's application—the Company's 2019 customer service audit. Staff conducted an audit of the Company's customer service performance, practices, and procedures in 2019, and references that audit in the Staff Report. The 2019 audit is unrelated to, and was therefore not included in the Company's application, as audits are a practice conducted by Staff on its own timeline. Staff's purported failure to exercise its audit power in the underlying gas rate case, when the Company has not made additional requests in this application that require another audit, is outside the scope of this case and distribution ratemaking principles in general. As such, the Company moves to strike this objection for lack of relevance.

IGS Objection 2: The Staff Report's Failure to Address and to Recommend Removal of the Switching Fee that Duke charges to Residential Firm Transportation Service Customers is Unlawful and Unreasonable.

Like many of the objections above, IGS' Objection 2 should be stricken for lack of relevance to the Company's application and the issues in the proceeding and as far as it is based upon an incorrect premise. The Company did not propose any changes to its \$4.00 switching fee, and therefore did not place this fee—which was previously approved with ample justification in a separate proceeding—at issue. Further, switching fees have no relevance to determining base distribution rates. Switching fees relate to a customer's choice to switch between suppliers; they do not pertain to base distribution rates. Staff's investigation therefore properly excluded an

analysis of switching fees, and the Company moves to strike this objection for lack of relevance. Finally, in its Objection 2, IGS argues that it is discriminatory, under R.C. 4905.35, that Duke Energy Ohio assess a switching fee to customers that transfer from one supplier pool to another, but not those that revert to sales service.¹⁸ However, as set forth in its tariffs, Duke Energy Ohio does charge a switching fee to customers reverting to sales service. To the extent that IGS Objection 2 is based upon this false premise, the Company moves to strike this objection.

IGS Objection 3: The Staff Report Failed to Consider the Imprudent Management Policies and Practices Associated with Duke’s Central Information System (“CIS”) Conversion, and in doing so, Failed to Recommend a Corresponding Reduction to Duke’s Return on Equity.

Like RESA’s Objection 3, the Company moves to strike IGS Objection 3 as it relates to the management of the full Customer Connect system that was not placed into issue in the Company’s application. An objection related to the broader issue of management of the Customer Connect system would be appropriate in a proceeding where the Company was seeking recovery of the system as a whole, but the Company is not seeking such recovery here. As such, the Company moves to strike this objection for lack of relevance to this proceeding.

IGS Objection 6: The Staff Report’s Failure to Address and to Recommend Modifications to Better Align Duke’s EFBS Tariff and Rider FBS with Balancing Services Provided to Default Service Customers is Unlawful and Unreasonable.

This objection also raises issues outside the scope of this case, as the Company is not seeking approval of any items related to this objection. The Company has not placed at issue any balancing services provided to default service customers, in particular as these services relate to Enhanced Firm Balancing Service (EFBS) and the Firm Balancing Service Rider (Rider FBS). In addition, IGS is arguing this point in other proceedings,¹⁹ which further shows that this objection

¹⁸ Objections of Interstate Gas Supply, LLC to the Application and Staff Report and Summary of Major Issues, at 8.

¹⁹ See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedule of Duke Energy Ohio, Inc.*, Case No. 21-218-GA-GCR, *et al*; *In the Matter of the Application of Duke Energy Ohio*,

is inappropriate for this proceeding. IGS is seeking to raise new issues outside the scope of this proceeding under the guise of an objection, and to get two bites at the apple as it relates to this issue. The Company thus moves to strike this objection for lack of relevance to this case.

IGS Objection 7: The Staff Report Fails to Address Duke’s Practice of Including Its Affiliate’s Non-Jurisdictional Charges on the Utility Bill, and to Recommend that Duke Certify to the Commission that those Affiliate Charges Will No Longer Be Presented on the Utility Bill.

Like many of IGS’ objections, this one should be stricken for raising new issues outside the scope of the Company’s application and this case as a whole. This issue is relevant to the Company’s provision of electric utility service, *not* natural gas service, and was addressed in an entirely separate proceeding.²⁰ As such, the Company did not place this practice at issue here, and there was therefore no reason for Staff to address this. This issue is not being litigated before the Commission in this rate proceeding, and IGS may not force the issue into this case with an improper objection. The Company therefore moves to strike this objection for lack of relevance to this distribution rate proceeding.

IGS Objection 10: The Staff Report Failed to Evaluate Whether Duke’s Customer Information System, Customer Connect, Was Designed to Support New and Innovative Product and Service Offerings from CRNGS, and Whether Certain Fees Associated with CRNGS Offerings are Cost Justified.

The Company moves to strike IGS’ Objection 10 related to Customer Connect for lack of relevance. First, IGS cites R.C. 4929.02, which notes in part that it is a policy of the state to “encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods”; however, it is unclear why IGS believes that this statute supports its objection, as this statute merely codifies generic state policies related to “natural gas goods and services.”

Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services, Case No. 21-903-GA-EXM.

²⁰ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Waiver of Specific Sections of the Ohio Adm. Code*, Case No. 21-1100-EL-WVR.

While this policy may be important, it is unrelated to natural gas distribution rates and base distribution ratemaking in general, and Staff therefore rightfully devoted no analysis in the Staff Report to these issues. Second, as noted above, the Company did not include the core Customer Connect system for recovery in rates in this case, and as a result, the Company did not place at issue the design of the Customer Connect system and whether it supports new and innovative offerings from suppliers.

OCC Objection 5: The PUCO Staff erred to consumers' detriment in recommending a ten-year amortization period for charging consumers the deferred asset from the propane plant retirement.

The Commission cannot properly consider this objection, as it relies on testimony filed in a separate case over ten years ago. OCC cites witness testimony from the Company's 2012 gas rate case to suggest that Staff should have recommended a longer amortization period on the deferred asset from various retired propane facilities.²¹ But under the Commission's procedure for rate cases, witness testimony is filed for a specific case and is not intended to be relied on in other proceedings. Party witnesses change, as do the facts and circumstances relevant to each witness's testimony. Here, the Company has filed witness testimony to support the items in its application; notably, it did not file the same witness testimony that it filed in its 2012 gas rate case. As a result, it is unclear why OCC relies on testimony filed in the 2012 case. This is improper and, most importantly, irrelevant to the case at hand. The Company thus moves to strike this objection for lack of relevance to this case.

²¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates*, Case Nos. 12-1685-GA-AIR, *et al.*

OCC Objection 10: The Staff Report erred to consumers' detriment by applying an unreasonable risk-free rate in the application of the CAPM model, which will lead to too-high rates and charges to consumers that are unjust and unreasonable.

OCC's objection here is not relevant to this proceeding, as OCC claims that Staff relied on data that the Staff Report in fact does not cite. OCC states that Staff relied on "the weighted average of 10-year and 30-year monthly closing Treasury Yields for the period of September 1, 1991, through September 1, 2021," but Staff clearly did not do this. Instead, "Staff calculated a 30-day average yield for 30-year U.S. Treasury Bonds as of October 31, 2022," which Schedule D-1.2 to the Staff Report confirms. OCC is either seeking to introduce new data or has not fully evaluated Staff's use of data in the Staff Report. Either way, this objection is irrelevant because it miscites the Staff Report, and it therefore should be stricken.

OCC Objection 20: The PUCO Staff erred to consumers' detriment by failing to require annual PUCO Staff review and audit of the low-income weatherization program.

This objection lacks relevance to the case at hand, as an audit of the Company's low-income weatherization program is outside the scope of these proceedings. Indeed, OCC's objection is not tied to any particular issue with the Company's application as it pertains to the weatherization program. Instead, the objection suggests that an audit will help the parties "better understand areas for improvement" and "how best to leverage the other funding sources," but makes no assertion regarding any purported issues with or shortcomings of the weatherization program or Staff's failure to analyze the program. That OCC cannot point to any particular issue with the Company's program or Staff's analysis of the program, and instead relies on general claims that an audit *could* uncover potential issues suggests that this objection is not related to items put at issue in the Company's application or this rate case. The Company therefore moves to strike this objection as lacking relevance to this case.

OCC Objection 26: Based on the foregoing, the Staff Report is flawed and harms consumers because the PUCO Staff should have recommended an outright rejection of Duke's unjust and unreasonable application.

Here, OCC objects to the Commission's accepting Duke Energy Ohio's filing and application in the first place. This is not an objection to the Staff Report; this is an objection to the Commission's accepting the Company's filing. While OCC may not agree with the Commission's decision, objections are limited under O.A.C. 4901-1-28(B) to "objections to a report of investigation," not any Commission action. OCC's objections filing cannot encompass this kind of argument. Moreover, this objection lacks specificity to any individual issue in the Staff Report and has no relevance to setting base natural gas distribution rates. The Company therefore moves to strike this objection for lack of relevance to the Staff Report under O.A.C. 4901-1-28(B).

C. Certain Intervenor Objections Should Be Stricken Because They Are Not Objections—They Are Statements in Agreement with the Staff Report.

Certain of Intervenor's objections are not objections at all. To the contrary, they are simply endorsements of certain aspects of the Staff Report incorrectly identified as objections. Accordingly, they fall well outside the scope of permissible submissions at this stage of the proceeding. Under the rules, "all material findings and conclusions set forth in the report to which no objection has been filed shall be deemed admitted for purposes of the proceeding."²² The role of proper objections is, therefore, to "frame the issues in the proceeding."²³ This is done by identifying areas of *disagreement* between the objectors and the Commission. "Objections" that only point out areas of *agreement* have no purpose and only confuse the record. The Company therefore moves to strike the following objections.

²² O.A.C. 4901-1-28(C).

²³ O.A.C. 4901-1-28.

OCC Objection 7: The PUCO Staff erred to consumers’ detriment in not recommending that, if amortization of Customer Connect costs is permitted, the amortization period should be no shorter than fifteen years.

This is not an objection to the Staff Report; this is a statement that only contemplates disagreement with the Staff Report in a hypothetical scenario:

The OCC supports the position of the PUCO Staff that no amortization of Customer Connect costs should be allowed in this case However, in the event that the expenses are allowed for collection from consumers in this rate case, OCC recommends that the PUCO amortize those expenses and all investment associated with Customer Connect over a period no shorter than 15 years.

As an initial matter, this objection plainly agrees with the Staff Report—that no amortization of Customer Connect O&M costs should be allowed in this case. The Staff Report has already framed the issue of amortization of Customer Connect O&M costs by taking a position at odds with the Company’s request in its application. OCC’s objection adds nothing new—and is not an objection at all.

OCC also attempts to disguise this agreement with the Staff Report by indicating that *if* a different position is taken by the Commission, those costs should be amortized over at least a fifteen-year period. This is inappropriate, as it posits a scenario that would only occur *if the Commission* disagrees with both Staff’s and OCC’s recommendation. This is not the purpose of an objection, as the rules provide that permissible objections must relate only to “the findings, conclusions, or recommendations contained *in the report*, or to the failure *of the report* to address one or more specific items.”²⁴ This objection articulates no disagreement with the Staff Report; if anything, it directs the Commission—not Staff—to take certain action. Accordingly, this objection should be stricken.

²⁴ O.A.C. 4901-1-28(B) (emphasis added).

OCC Objection 14: The PUCO Staff erred to consumers' detriment by not rejecting Duke's proposed class allocations.

OCC's objection here confuses the record and should be stricken. OCC objects to "Staff's allocation of distribution revenues of 67.815% to the residential class," stating that "[a]n allocation no greater than 67.00% is appropriate." OCC cites to page 32 of the Staff Report for this proposition. Yet, nowhere on the cited page (or in the Staff Report) is 67.815% mentioned. OCC's objection is therefore premised on inaccurate or misinterpreted values. Moreover, the cited portion of the Staff Report clearly shows that Staff is proposing to allocate only 66.98% of total distribution revenues to the residential class or 67.48% of the proposed increase; thus, Staff has not recommended a residential allocation of 67.815%, and has even recommended an allocation of total revenues under 67.00%, both of which OCC supports. OCC's "objection" is therefore in agreement with the Staff Report and should be stricken accordingly, as it raises no new issues.

D. Certain Intervenor Objections Should Be Stricken Because They Suggest Actions Contrary to Constitutional Law.

Under the Fifth Amendment of the United States Constitution and Article I, Section 19 of the Ohio Constitution, private property may not be taken or held for public use without just compensation.²⁵ A "taking" deprives the property owner of its right to earn a reasonable return on the value of its property, and this rule applies to a variety of private property owners, including utility providers like Duke Energy Ohio. As a public utility, the Company has a right to receive just compensation in exchange for its providing safe, necessary, adequate, and reliable natural gas utility service to the public in its service territory. Several objections of the Intervenors ignore this important constitutional principle or actively encourage the Commission to skirt it. The Company therefore moves to strike the following objections.

²⁵ See *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

PWC Objection 1: Shareholder Funding for Low-Income Residential Weatherization Assistance

PWC suggests that Staff should have recommended that the Company's shareholders provide funding for low-income residential weatherization assistance programs, but this would be in direct conflict with the constitutional taking principles outlined above. Such action by Staff or the Commission would constitute a taking of shareholders' capital despite the federal and state constitutional mandates to provide the Company with just compensation in return. The Commission does not have the authority to order such a taking, and Staff therefore appropriately did not recommend it. As such, PWC's objection should be stricken as suggesting action in direct contravention of constitutional rights and principles.

OCC Objection 17: The Staff Report erred to consumers' detriment by failing to recommend elimination of fees from being charged to any consumers using a credit or debit card to make a utility payment to Duke.

Credit and debit card convenience fees are charged by third-party processing vendors; the Company has no control over the assessment or amount of these fees. OCC's objection to Staff's not recommending complete elimination of these fees does not recognize this fact, and instead suggests that Staff should have recommended an unconstitutional taking. Complete elimination of these fees would result in either a taking of the processing vendors' or the Company's property, as either would be required to assume any costs not subsumed in those convenience fees. Staff cannot recommend such confiscation of private property, nor can the Commission lawfully order it. This objection should therefore be stricken as recommending unconstitutional action.

OCC Objection 19: The PUCO Staff failed to recommend extending shareholder contributions to low-income weatherization programs, to consumers' detriment.

The Company moves to strike this objection for the same reason it moves to strike PWC's Objection 1: any Staff recommendation or Commission order requiring shareholder funding for low-income weatherization would constitute a taking in violation of the United States and Ohio

Constitutions. Similar funding was established in Case No. 12-1685-GA-AIR per the terms of a negotiated Stipulation and Recommendation,²⁶ whereby the Company agreed to provide such funding. The Commission never ordered the Company to provide funding, nor could it without running afoul of the Constitution. The Company is not obligated to offer its shareholders' capital for funding here, and neither Staff nor the Commission can do so on behalf of the Company. OCC's objection thus suggests action contrary to settled constitutional law and should be stricken accordingly.

²⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates*, Case No. 12-1685-GA-AIR, *et al*, Corrected Stipulation and Recommendation at 11 (April 24, 2013).

III. CONCLUSION

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

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

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Objections to Staff Report was sent by, or on behalf of, the undersigned counsel to the following parties of record this 30th day of January, 2023, via e-mail.

/s/ Rocco O. D'Ascenzo

Rocco O. D'Ascenzo

Counsel:

mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
william.michael@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
connor.semples@occ.ohio.gov
thomas.lindgren@ohioAGO.gov
robert.eubanks@ohioAGO.gov
michael.nugent@igs.com
evan.betterton@igs.com
stacie.cathcart@igs.com
glpetrucci@vorys.com
mjsettineri@vorys.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
mmcdonnell@dickinsonwright.com

Attorney Examiners:

matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov

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Summary: Motion of Duke Energy Ohio, Inc. to Strike Specific Intervenor
Objections to Staff Report electronically filed by Ms. Emily Olive on behalf of Duke
Energy Ohio and D'Ascenzo, Rocco O. Mr. and Kingery, Jeanne W. Ms. and
Vaysman, Larisa M. Ms. and Akhbari, Elyse H. Ms. and Brama, Elizabeth M. Ms.
and Verhalen, Kodi J. Ms.