BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Natural Gas Rates.	)))	Case No. 22-507-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation.	)))	Case No. 22-508-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 22-509-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 22-510-GA-AAM

MOTION TO TAKE ADMINISTRATIVE NOTICE BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

This case involves Duke Gas of Ohio, Inc.'s ("Duke") application to increase charges to consumers in their base distribution rates for natural gas service. On behalf of the signatory parties,[1] including the Staff of the Public Utilities Commission of Ohio ("PUCO"), Duke filed a Settlement that would increase base distributions revenues by $31.8 million.[2] The recommended increase includes charges to consumers for the annual

[1] The signatory parties include the Company, Staff, the Ohio Energy Group, Interstate Gas Supply, LLC, Retail Energy Supply Association, and People Working Cooperatively ("Signatory Parties"). *See* Stipulation and Recommendation ("Settlement") at footnote 1, ¶ 1 (Apr. 28, 2023).

[2] Settlement at ¶ 3.

amortization of approximately $2.9 million of costs for Duke's retired propane caverns.[3] The caverns were not used and useful in providing utility service on the date certain.[4]

The PUCO approved a stipulation and recommendation[5] abandoning the propane facilities and deferring their retirement costs in Case Nos. 21-986-GA-ABN and 21-1035-GA-AAM.[6] The Deferral Settlement set forth the agreement of the parties related to the Staff Report filed in those dockets.[7] The PUCO specifically ordered that "nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation."[8]

For consumer protection, the Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of Duke's approximately 440,000 residential customers, asks the PUCO to take administrative notice of the Deferral Staff Report. In that report, the PUCO Staff stated that "if the date certain of the Company's next gas distribution base rate case is after the retirement of the propane caverns, those assets will not be reflected in base rates, as the assets will not be used and useful as of the date certain."[9] The date certain in

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[3] *Id*. (recommending approval of the Company's application as modified by the recommendations in the Staff Report unless otherwise stipulated). *See also* Staff Review and Recommendation (Dec. 21, 2022) at ¶¶ 14-15 (recommending an adjusted annual amortization amount of $2,894,182) ("Staff Report").

[4] *See In re the Application of Duke Energy Ohio, Inc*., Case No. 16-253-GA-BTX, Correspondence (Mar. 15, 2022).

[5] *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Abandon Certain Propane-Air Facilities,* Case No. 21-1035-GA-AAM et al., Stipulation and Recommendation (Apr. 27, 2022) ("Deferral Settlement").

[6] *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Abandon Certain Propane-Air Facilities,* Case No. 21-1035-GA-AAM et al., Opinion and Order (Oct. 5, 2022) ("Deferral Order").

[7] *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Abandon Certain Propane-Air Facilities,* Case No. 21-1035-GA-AAM et al., Staff Review and Recommendation (Jan. 6, 2022) ("Deferral Staff Report"), Exhibit 1 attached.

[8] Deferral Order at ¶ 13.

[9] Deferral Staff Report at ¶¶ 3-4.

this case was March 31, 2022.[10] The propane caverns were no longer used and useful on March 14, 2022 when the Central Corridor Pipeline was placed into service.[11] The PUCO Staff "recommend[ed] denial of deferral authority for the [net book value] of the remaining [propane facility] assets, which is primarily based on the fact this would amount to deferral of assets which are no longer used and useful."[12] Consumers should not be charged for the propane caverns.

The Deferral Staff Report is relevant here. The PUCO must determine whether charging consumers for the propane caverns when the caverns were not used and useful on the date certain is in the public interest, violates any important regulatory principle or practice, is lawful, and results in just and reasonable rates.[13] The Deferral Staff Report addresses these very issues.

There is good cause to grant this motion, as explained in the following memorandum of support. O.A.C. 4901-1-12 allows for Motions and 4901-1-14 allows for rulings on procedural matters. The Signatory Parties will not be prejudiced by taking administrative notice of the Deferral Staff Report. The parties have knowledge of and have an adequate opportunity to explain and rebut the Deferral Staff Report. Accordingly, this Motion should be granted for reasons more fully explained in the attached Memorandum in Support.

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[10] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase In Its Natural Gas Rates,* Case No. 22-507-GA-AIR, Entry (Jun. 29, 2022) at 1.

[11] *In re the Application of Duke Energy Ohio, Inc*., Case No. 16-253-GA-BTX, Correspondence (Mar. 15, 2022).

[12] Deferral Staff Report at ¶6.

[13] *See, e.g.,* R.C. 4909.15, 4905.22; *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, 126.

Respectfully submitted,

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In this case, Duke seeks to increase charges to consumers in their base distribution rates for natural gas service by $31.8 million. The recommended increase includes charges to consumers for the annual amortization of approximately $2.9 million of costs for Duke's retired propane caverns.

R.C. 4909.15(A) charges the PUCO with setting "just and reasonable rates." The statute sets out a mandatory ratemaking formula that requires the PUCO to make a series of determinations when fixing rates. It "shall determine the valuation of the property of the public utility used and useful" in the rendering of public utility service.[14] That valuation is the rate base.[15] An asset is included in rate base if it is used and useful "as of

[14] R.C. 4909.15(A)(1), *In re Suburban Natural Gas Co.*, 166 Ohio St.3d 176, 2021-Ohio-3224, 184 N.E.3d 44, ¶ 17.

[15] *In re Duke*, 150 Ohio St. 3d 437, 441 (2017).

the date certain, not at some speculative unspecified point in time."[16] A utility cannot include in rate base "property not actually used or useful in providing its public service, no matter how useful the property may have been in the past or may yet be in the future."[17]

The propane caverns were not used and useful in rendering public utility service on the date certain. Consumers should not be charged for the propane caverns. The PUCO Staff's Deferral Staff Report addresses these same issues. It should be considered here. For consumer protection, the PUCO should take administrative notice of it.

II. STANDARD GOVERNING ADMINISTRATIVE NOTICE

The PUCO has broad discretion to conduct its own hearings.[18] The PUCO is not stringently confined to the rules of evidence,[19] but is directed by statute to observe the practice and rules of evidence in civil proceedings.[20]

Under Rule 201 of the Ohio Rules of Evidence, judicial notice may be taken of any adjudicative fact that is not subject to reasonable dispute. This rule permits courts to fill gaps in the record. Accordingly, courts have judicially noted documents filed, testimony given, and orders or findings. Under subsection (F) of Rule 201, "Judicial notice may be taken at any stage of the proceeding."

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[16] *Id.*

[17] *Id.*

[18] *See, e.g.,* R.C. 4903.02, 4903.03, 4903.04; O.A.C. 4901-1-27.

[19] *See Greater Cleveland Welfare Rights v. Pub. Util. Comm.* (1982), 2 Ohio St.3d 62.

[20] R.C. 4903.22.

The Supreme Court of Ohio has held that there is no prohibition against the PUCO taking administrative notice of facts outside the record in a case.[21] The important factors for applying administrative notice, according to the Court, are that the complaining party has prior knowledge of and an opportunity to rebut the materials judicially noticed.[22] The appropriate scope of notice is broader in administrative proceedings than in trials.[23]

The PUCO itself has recognized that it may take administrative notice of adjudicative facts,[24] cases,[25] entries,[26] expert opinion testimony, and briefs and other

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[21] *See Canton Storage and Transfer Co. v. Pub. Util. Comm.* (1995), 72 Ohio St.3d 1, 17-18 (citing to *Allen, D.B.A. J & M Trucking, et al., v. Pub. Util. Comm.* (1988), 40 Ohio St.3d 184, 185.

[22] *See, e.g., Allen,* 40 Ohio St.3d at 186.

[23] *See Banks v. Schweiker*, 654 F.2d 637, 641 (9th Cir. 1981).

[24] *In the Matter of the Review of the Interim Emergency and Temporary PIP Plan Riders Contained in the Approved Rate Schedules of Electric and Gas Companies*, Case No. 83-303-GE-COI, Entry (Feb. 22, 1989) at ¶ 6 (administrative notice taken of facts adduced at hearing in another investigation, information compiled by Staff from the 1980 Census Report, and customer information reported pursuant to the Ohio Administrative Code).

[25] *In the Matter of the Amendment of Chapter 4901:1-13, Ohio Administrative Code, to Establish Minimum Gas Service Standards*, Case No. 05-602-GA-ORD, Entry on Rehearing (May 16, 2006) at 33 (administrative notice taken of case filed where utility presented problems with remote technology, and sought to discontinue new installation of remote meters).

[26] *In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 89-1001-EL-AIR, Opinion and Order (Aug. 19, 1990) at 110 (administrative notice taken by the Attorney Examiner of entries and orders issued in an audit proceeding and an agreement filed in the audit docket).

pleadings filed in separate proceedings.[27] The PUCO has also taken administrative notice of the entire record[28] and evidence presented in separate cases.[29]

III. THE PUCO SHOULD TAKE ADMINISTRATIVE NOTICE OF THE DEFERRAL STAFF REPORT

For consumer protection, OCC is asking the PUCO to take administrative notice of the Deferral Staff Report. The report involves evaluating the establishment of a regulatory asset (including the remaining net book value of the propane facilities). It involves the implications of establishing the regulatory asset. And it recommends against establishing the regulatory asset "primarily based on the fact this would amount to deferral of assets which are no longer used and useful."[30]

In this case, it is recommended in the Settlement to amortize $2.9 million per year (charged to consumers) for that regulatory asset (the propane facilities). Good cause exists for granting OCC's Motion and taking administrative notice of the Deferral Staff Report. The Deferral Staff Report is relevant to the revenue requirement recommended in

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[27] *See In the Matter of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 18-21 (finding that the Court has placed no restrictions on taking administrative notice of expert opinion testimony, and that it declined to impose such restrictions*); In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Entry (Apr. 6, 2010) at ¶ 6*,* aff'd by Entry on Rehearing (May 13, 2010) at ¶ 14 (both Entries allowing the entire record of a prior proceeding to be administratively noticed in the ESP proceeding and ruling that all briefs and pleadings "may be used for any appropriate purposes").

[28] Case No. 10-388-EL-SSO, Entry (Apr. 6, 2010) at ¶ 6, aff'd by Entry on Rehearing (May 13, 2010) at ¶ 14.

[29] *Id.; In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Electric Rates in its Service Area,* Case No. 91-410-EL-AIR, Opinion and Order (May 12, 1992) at 19 (administrative notice taken of the record in the Zimmer restatement case and evidence presented in the case).

[30] Deferral Staff Report at ¶6.

the Settlement – specifically, whether the propane caverns should be included in it. Taking administrative notice will provide the PUCO with additional insight (from its own staff) into whether the Settlement is in the public interest, violates any important regulatory principle or practice, is lawful, and results in just and reasonable rates.[31]

The Signatory Parties will not be prejudiced by taking administrative notice of the Deferral Staff Report. They have notice of the Deferral Case[32] and will have an opportunity to prepare and respond to the Deferral Staff Report.[33]

For consumer protection, the PUCO should grant OCC's Motion.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ William J. Michael
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31 *See, e.g.,* R.C. 4909.15, 4905.22; *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, 126.

32 *See* Staff Report at ¶ 14 (discussing the deferral case and its relation to the current case).

33 *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase In Its Natural Gas Rates,* Case No. 22-507-GA-AIR et al., Entry (Apr. 28, 2023) at ¶ 6 (stating the May 23, 2023 date for the evidentiary hearing remains unchanged).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Take Administrative Notice was served via electronic service upon the parties this 3rd day of May 2023.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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January 6, 2022

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
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RE: *In the Matter of the Application of the Duke Energy Ohio, Inc., for Authority to Change Accounting Methods, Case No. 21-1035-GA-AAM and for Authority to Abandon Certain Propane-Air Facilities, Case No. 21-986-GA-ABN*

Dear Docketing Division:

Enclosed please find the Staff's Review and Recommendations regarding the application filed by Duke Energy Ohio, Inc., for authority to change accounting methods, in Case No. 21-1035-GA-AAM and for authority to abandon certain propane-air facilities, in Case No. 21-986-GA-ABN.

Respectfully submitted,

David Lipthratt
Chief, Accounting and Finance Division
Public Utilities Commission of Ohio

Enclosure
cc: Parties of Record

Duke Energy Ohio
Case No. 21-1035-GA-AAM

BACKGROUND

Duke Energy Ohio (DEO or Company) has used manmade caverns since 1959 to store propane that it uses, along with related propane-air facilities, to supplement natural gas during peak usage periods and as otherwise needed. The caverns can be neither inspected nor repaired. The Company has determined that the caverns and the associated propane-air facilities should be replaced by alternative methods to provide reliable natural gas distribution service.

On November 21, 2019, the Ohio Power Sitting Board (OPSB) issued an Opinion, Order, and Certificate for the construction and operation of a new 12.7-mile pipeline (Central Corridor Pipeline). A major purpose of the Central Corridor Pipeline is to enable the Company to retire the caverns and related propane-air peaking facilities, while maintaining safe and reliable service to customers. The Central Corridor Pipeline's construction is ongoing and has an expected in-service date of early to mid-February 2022[1].

Pursuant to R.C. 4905.20, public utilities desiring to abandon any facilities that have been dedicated to public use, or the service provided therefrom, must first obtain the approval of the Commission.

DEO states in its Application that no customer will be negatively impacted by the abandonment of the propane caverns and related propane-air facilities, as service during peak usage will be maintainable without such caverns and facilities as a result of the construction of the Central Corridor Pipeline. Furthermore, the Company states that the environmental remediation of the Company's Manufactured Gas Plants cannot be completed until the propane caverns and associated facilities have been decommissioned. DEO submits that abandonment is reasonable, in the best interest of the public, and should be approved.

OVERVIEW

On October 7, 2021 DEO file an application (Application) requesting the authority for the accounting treatment to record and defer $38.5 million in costs, resulting from the retirement of these facilities, as a regulatory asset on its books and records. The Company is not seeking carrying charges on this deferral[2] and the estimated costs are made up of the following: propane inventory at East Works and Erlanger, the net book value (NBV) of remaining assets at East Works, Dick's Creek, and Erlanger, and the decommissioning costs associated with East Works, Dick's Creek, and Erlanger.

Propane Inventory:

The caverns are currently holding propane supplies which must be removed from the caverns for retirement purposes. DEO is proposing and has estimated that the least costly method for removal is to run the remaining propane through the system, while leaving 500,000 gallons of propane in the caverns. DEO plans to charge customers, through its Gas Cost Recovery (GCR) mechanism, for the propane that is run through the system at the same cost it would have incurred had the

[1]Duke Energy Ohio, Case No. 21-1035-GA-AAM, Staff-DR-01-15.
[2]Duke Energy Ohio, Case No. 21-1035-GA-AAM, Staff DR-01-09

Company been running natural gas through the system instead of propane. The Company seeks to recover the difference between the inventory propane cost and the cost the Company will charge customers through the GCR (Delta). The Delta will be calculated as the difference between the weighted average cost of the propane inventory and the weighted average cost of cast for Duke's supply and storage withdrawals at the citygate for the month that the propane was burned. Based on the current propane inventory balances on the Company's balance sheet and the most current GCR rate, the Delta is estimated to be $3.1 million at East Works and $1.7 million at Erlanger. DEO also proposes to include the propane remaining in the cavern, which is $0.4 million at East Works and $0.2 million at Erlanger.

Net Book Value of Remaining Assets:

DEO estimates the NBV of the propane caverns as of the estimated retirement date of March 31, 2022 is $18.8 million for East Works, $2.5 million for Dick's Creek and $3.3 million for Erlanger. DEO will continue to depreciate these assets in accordance with accounting rules and regulations until the retirement date and then the assets will be written off. DEO is proposing that this write-off be recorded as a regulatory asset and be amortized during this period such that the overall expense related to these assets is the same as the last approved natural gas base rate case and until the effective date of the next natural gas base rate case.

Decommissioning Costs:

The Company is requesting that decommissioning costs associated with the caverns be included as a regulatory asset. The costs are estimated to be $6.5 million for East Works, $0.6 million for Dick's Creek, and $1.3 million for Erlanger. DEO is also requesting recovery of the decommission study, which is $48,000 plus expenses.

STAFF REVIEW

Staff has historically considered six criteria when determining authority to defer expenses. Staff evaluated the six criteria based on the Application, interviews of Company personnel, and the Company's responses to various interrogatories. Staff has applied the six criteria independently to the propane inventory, the NBV of remaining assets, and the decommissioning costs for which the Company has sought deferral authority and presents is recommendations herein. Staff's evaluation of each criterion is as follows:

Propane Inventory:

1. ***Whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral.***

   The Company is requesting to defer approximately $5,400,000 in costs associated with its propane inventory. Based on the Company 2020 FERC Form 2, revenues attributable to its natural gas operations were $358,997,226. This means the amount requested to be deferred represents 1.50% of the Company's 2020 natural gas revenues. Staff finds the current revenues are sufficient to cover the costs associated with the requested deferral.

2. ***Whether the costs requests to be deferred are material in nature.***

According to the Company's 2020 FERC Form 2, the Company's operating expenses attributable to natural gas operations was $269,092,346. The costs to be deferred would represent 2.01% of 2020 operating expenses. Therefore, Staff finds the amounts to be immaterial.

3. ***Whether the problem was outside of the Company's control.***

   Staff finds the problem was outside of the Company's control once the decision was made to build the Central Corridor pipeline. The Company was required to maintain adequate levels to provide customers with safe and reliable service and was used for peaking purposes and maintaining system pressure.

4. ***Whether the expenditures are atypical and infrequent.***

   Staff avers the Company's retirement of aging plant assets is naturally part of running a utility company. Overall, Staff finds the retirement of the propane caverns is not atypical nor infrequent; however, the Company's need to remove the propane represents an atypical expenditure to be incurred as a consequence of the retirement.

5. ***Whether the costs would result in financial harm to the Company.***

   According to the Company's 2020 FERC Form 2, the Company's net income attributable to natural gas operations was $89,904,880. The costs to be deferred would represent 6.01% of 2020 operating income. Therefore, Staff finds the costs may result in financial harm to the Company.

6. ***Whether the Commission could encourage the utility to do something it would not otherwise do through the granting of the deferral authority.***

   Staff avers the Company has already made the decision to retire the propane caverns. Therefore, Staff finds encouragement is unnecessary in this situation.

Staff recommends approval of deferral authority for the propane inventory as the costs are outside the Company's control and are expected to be material in nature. Staff finds the costs may result in financial harm to the Company. Staff notes the actual propane inventory levels may be further depleted over the upcoming winter heating season and up until the central corridor pipeline is placed in service, reducing the deferral balance, and further minimizing the potential financial harm the propane inventory levels may have on the Company. Staff further recommends the propane deferral balance be updated at the time of recovery to reflect actual inventory levels and the Delta.

Net Book Value of Remaining Assets:

1. ***Whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral.***

   The Company requested to defer approximately $24,600,000 in the remaining NBV of assets associated with the propane cavern and revised the deferral balance in response to Staff's data request. The Company's revised NBV deferral balance is $22,313,900 as of 11/30/21. Currently, the Company's base rates recover the return on and of the value of the assets as of the date certain in the Company's previous gas distribution rate case, March 31, 2012; however, current rates do not reflect amounts attributable to any additional plant investments between March 31, 2012 and the present. Additionally, if the date certain of the

Company's next gas distribution base rate case is after the retirement of the propane caverns, those assets will not be reflected in base rates, as the assets will not be used or useful as of the date certain. Therefore, without deferral authority, new base rates will not reflect a return on and of the net book value of the propane caverns. Staff notes the Erlanger, Kentucky cavern and equipment assets in the requested deferral are not currently included in the Company's Ohio approved rate base or tariffed rates.

2. ***Whether the costs requests to be deferred are material in nature.***[3]

   According to the Company's 2020 FERC Form 2, the Company's operating expenses attributable to natural gas operations was $269,092,346. If deferral is not granted, the NBV would be expensed immediately in its entirety, which would represent 6.55% of 2020 operating expenses. However, the remaining net book value of propane caverns assets represents 1.00% of the 2020 FERC Form 2 the net plant balance for gas operations of $1,761,349,521.[4] When compared to the 2020 operating expenses, the NBV would be material; however, compared to the Company's net plant balance, the NBV is immaterial.

3. ***Whether the problem was outside of the Company's control.***

   Staff finds the decision to build the Central Corridor Pipeline, and ultimately retire the propane caverns, was within the Company's control. Staff avers the need to retire aging plant assets is part of normal and routine operations of a utility. In this case, the need to retire the caverns was due to the age of the assets and not related to a specific unpredictable and uncontrollable event such as a natural disaster forcing a premature retirement. Additionally, the Company controlled the amount of capital investment made to the propane caverns after its previous rate case, and the Company also controlled the amount of capital investment to make during the planning, design, and construction phases of the Central Corridor Pipeline project when the Company had made plans to retire the caverns was in their control Staff finds the majority of investments were made since the Central Corridor Pipeline was approved.

4. ***Whether the expenditures are atypical and infrequent.***

   Staff avers the Company's retirement of aging plant assets is naturally part of running a utility company. Overall, Staff finds the retirement of the propane caverns is not atypical nor infrequent.

5. ***Whether the costs would result in financial harm to the Company.***

   According to the Company's 2020 FERC Form 2, the Company's net income attributable to natural gas operations was $89,904,880. Staff's revised net book value of $17,622,603 represents 19.60% of 2020 operating income. Therefore, Staff finds the costs could result in financial harm to the Company.

6. ***Whether the Commission could encourage the utility to do something it would not otherwise do through the granting of the deferral authority.***

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[3] These calculations are based on an NBV of $17,622,603 as of 11/30/21 which excludes non-cavern distribution and common plant assets mistakenly included in the original requested deferral as well as exclusion of the Erlanger, Kentucky cavern assets.

[4] This value consists of Plant-in-Service (Classified), Completed Construction not Classified, and Accumulated Provisions for Depreciation, Amortization, and Depletion. This balance does <u>not</u> include common utility plant.

Staff avers the Company has already made the decision to retire the propane caverns. Therefore, Staff finds encouragement is unnecessary in this situation. Staff notes the Commission should consider whether or not granting deferral could encourage Duke or other utilities to request deferral of the NBV of assets that will no longer be used and useful.

Staff recommends denial of deferral authority for the NBV of the remaining assets, which is primarily based on the fact this would amount to deferral of assets which are no longer used and useful. Furthermore, Staff notes that net investments made after date certain in the previous rate case total $23,453,401, with $16,576,186 in net investment made within the past five years concurrent with the various design, planning, and construction stages of the Central Corridor Pipeline. Staff contends these investments have not been audited in order to evaluate whether or not they are used and useful. In addition, Staff avers a significant amount of the incremental investment occurred during the various design, planning, and construction stages of the Central Corridor Pipeline, so there exists the possibility the investments may not have been necessary or prudent given the Company's plan to retire the caverns. If any of the incremental investment made during this period were to be deemed not useful or necessary, it would reduce the materiality and potential financial harm due to a reduced NBV.

Staff disagrees with inclusion of the assets for the Erlanger, Kentucky cavern and equipment in the requested deferral as these facilities are not currently included in the Company's Ohio approved rate base or tariffed rates. It is inappropriate to shift the recovery of any portion of the Kentucky assets to Ohio ratepayers now, when recovery has long been received via the Company's Kentucky approved base rates.

Decommissioning Costs:

1. ***Whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral.***

   The Company is requesting to defer approximately $8,500,000 in costs associated with decommissioning the propane caverns. Based on the Company 2020 FERC Form 2, revenues attributable to its natural gas operations were $358,997,226. This means the amount requested to be deferred represents 2.37% of the Company's 2020 natural gas revenues. Staff finds the current revenues are sufficient to cover the costs associated with the requested deferral

2. ***Whether the costs requests to be deferred are material in nature.***

   According to the Company's 2020 FERC Form 2, the Company's operating expenses attributable to natural gas operations was $269,092,346. The costs to be deferred would represent 3.16% of 2020 operating expenses. Therefore, Staff finds the amounts to be immaterial.

3. ***Whether the problem was outside of the Company's control.***

   Normally, decommissioning costs are recorded as cost of removal, and applied to other assets within the asset group. In this instance, there are no more assets within the specific asset group, therefore, without deferral authority, the decommissioning costs would be expensed as incurred. Had there been additional assets within the asset group, the request to defer would be rendered moot as the Company could record the decommissioning costs as a cost of removal, and apply it to the other assets within the group. Given the fact that there are no other assets within the asset group, Staff avers the problem is outside the Company's control.

4. ***Whether the expenditures are atypical and infrequent.***

   Staff avers the Company's retirement of aging plant assets is naturally part of running a utility company. Overall, Staff finds the retirement of the propane caverns is not atypical nor infrequent; however, the Company's inability to record the decommissioning costs as cost of removal represents an atypical consequence of the retirement.

5. ***Whether the costs would result in financial harm to the Company.***

   According to the Company's 2020 FERC Form 2, the Company's net income attributable to natural gas operations was $89,904,880. The costs to be deferred would represent 9.45% of 2020 operating income. Therefore, Staff finds the costs could result in financial harm to the Company.

6. ***Whether the Commission could encourage the utility to do something it would not otherwise do through the granting of the deferral authority.***

   Staff avers the Company has already made the decision to retire the propane caverns. Therefore, Staff finds encouragement is unnecessary in this situation.

Staff recommends approval of deferral authority for the decommissioning costs on the basis that these costs were outside of the Company's control and could cause financial harm to the Company. Staff notes that excluding the decommissioning costs associated with Erlanger, Kentucky results in a reduction of $1,300,000.

STAFF FINDINGS AND RECOMMENDATION

In regard to Company's request for abandonment, Staff finds the Application is reasonable and appears to be in the public interest as no customers will be negatively impacted. Staff recommends the Commission approve the application for abandonment.

In regard to the Company's request for deferral authority and for the reasons stated above, Staff does not recommend deferral authority for the NBV of the propane caverns. However, Staff does recommend deferral authority for the propane inventory. The propane inventory needs to be updated at the time of recovery to reflect actual inventory levels and the Delta. Further, Staff recommends deferral authority for $7.2 million in estimated decommissioning costs, which has been adjusted to reflect the removal of Erlanger, Kentucky cavern assets and not to exceed the adjusted amount. Staff's recommendation regarding the amounts to be deferred is summarized in the table below.

	Company's Requested Deferral	Staff's Recommended Deferral
Propane - East Works	3,500,000	3,500,000
Propane - Erlanger	1,900,000	1,900,000
NBV - East Works	18,800,000	-
NBV - Dick's Creek	2,500,000	-
NBV - Erlanger	3,300,000	-
Decomissioning - East Works	6,500,000	6,500,000
Decommissioning - Dick's Creek	600,000	600,000
Decommissioning - Erlanger	1,300,000	-
Decommissioning Study	100,000	100,000
	$ 38,500,000	$ 12,600,000

Additionally, for any of the items for which deferral authority is ultimately granted, Staff recommends the Commission reject the Company's request to include the deferred asset balance(s) in rate base, such that recovery is limited to the return *of* the deferred amount, with no return *on* the balance.

Finally, Staff requests that the Commission emphasize through its order that recovery is not guaranteed until the deferred amounts have been reviewed and addressed in the appropriate future proceeding(s) before the Commission. The question of recovery of the deferred amounts, including, but not limited to, issues such as prudence, proper computation, proper recording, reasonableness, and any potential double-recovery, will be considered when the Company files the application(s) to recover the deferred amounts.