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

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

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On Behalf of the Staff of the
Public Utilities Commission of Ohio

June 16, 2023

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INTRODUCTION

The matter has been resolved through a stipulation signed by all parties other than the Ohio Consumers' Counsel (OCC). It represents a fair, balanced, and reasonable compromise of the issues in this proceeding. The Stipulation is a product of serious bargaining amongst all the capable, knowledgeable signatory and non-signatory parties in this matter. The Stipulation benefits ratepayers and the public interest. Finally, the Stipulation does not violate any important regulatory principles or practices. Accordingly, the Commission should approve the Stipulation.

BACKGROUND AND CASE HISTORY

The applicant, Duke Energy Ohio, Inc. (Duke, the Applicant, or the Company), is an Ohio corporation engaged in the business of supplying natural gas service to approximately 450,000 customers in southwestern Ohio.

On May 31, 2022, in Case No. 22-507-GA-AIR, et al. the Applicant filed a notice of intent to file an application for an increase in its natural gas distribution rates applicable in its entire service area subject to the jurisdiction of the Public Utilities Commission of Ohio (PUCO or Commission) and an application for an alternative rate plan. The Company also filed a motion to set a test period and date certain and for waiver of certain filing requirements. On June 2, 2022, the Applicant filed an amended motion requesting a waiver of certain filing requirements, that its test period begin January 1, 2022, and end December 31, 2022, and that the date certain for property valuation be March 31, 2022.

By its Entry of June 29, 2022, the Commission approved the requested test period and date certain and waiver of certain filing requirements.

On June 30, 2022, the Applicant filed its application to increase natural gas distribution rates and for an alternative rate plan. On September 8, 2022, the Applicant filed an Application Addendum.

By entry dated October 19, 2022, the Commission ordered that the applications be accepted as of June 30, 2022. The rates proposed by the Applicant for increase, when applied to test year sales volumes, would have generated $48,745,468 of additional retail base rate revenues. The total requested revenue increase over test year operating revenues was approximately 10 percent.

On December 21, 2022, Staff filed its Staff Report. As shown on Schedule A-1 of the report, the Staff of the PUCO (Staff) recommended a revenue increase in the range of $23,662,353 to $36,434,162. This represented an increase of 4.73 percent to 7.28 percent over test year operating revenue.[1] This determination was based on Staff's examination of the accounts and records of the Applicant for the 12 months ending December 31, 2022, as summarized in the Staff Report, including schedules which incorporated Staff's recommended rate of return (ROR), rate base, and adjusted operating income.[2]

On April 28, 2023, the Stipulation was filed in this matter. The stipulated revenue increase is $31,689,742.[3]

Per Commission Entry dated April 28, 2023, the following testimony was prefiled:

- On May 4, 2023, testimony in support of Stipulation was filed.
- On May 12, 2023, testimony in opposition to Stipulation was filed.
- On May 17, 2023, Staff testimony in response to objections was filed.

The hearing was held on May 23rd and 24th of 2023. Per Attorney Examiners' instructions at the conclusion of the hearing, the due date for initial briefs is June 16, 2023.[4] Staff files this Initial Brief on June 16, 2023.

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1 Staff Report at p. 7.
2 *Id*.
3 Stipulation, Attachment I (Schedule A-1).
4 Transcript (Volume II) at p. 261.

ARGUMENT

I. Standard of Review

In considering the reasonableness of a stipulation, the Commission has used the following criteria: (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties; (2) Does the settlement, as a package, benefit ratepayers and the public interest; and (3) Does the settlement package violate any important regulatory principle or practice. *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, 126.

II. The Stipulation is a product of serious bargaining amongst capable, knowledgeable parties.

The Stipulation is the product of an open process in which all intervenors were given an opportunity to participate.[5] All parties were represented by experienced and competent counsel, many of whom have participated in numerous regulatory proceedings before the Commission.[6] There were extensive negotiations among the signatory and non-signatory parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests.[7]

The Signatory Parties to the Stipulation are the Staff of the PUCO (Staff), Duke Energy Ohio, Inc. (Duke or Company), Ohio Energy Group (OEG), Retail Energy Supply Association (RESA), Interstate Gas Supply, Inc. (IGS), and People Working

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5 Prefiled Testimony of David Lipthratt in Support of the Stipulation at Q/A. 9.
6 *Id.*
7 *Id.*

Cooperatively (PWC).[8] The only party that has not signed the Stipulation is the Ohio Consumers' Counsel.[9]

III. The Stipulation benefits ratepayers and the public interest.

The Stipulation results in a just and reasonable resolution of the matters pending in these Commission dockets.[10] Included in this reasonable resolution is a revenue requirement that benefits ratepayers, through a balanced approach by recognizing some of the objections to the Staff Report of Investigation raised by intervening parties, rejecting some of the objections, and considering alternative approaches.[11] Additionally, the following are some of the key benefits of the Stipulation:

- The stipulated revenue increase of $31,689,742 is significantly lower than the $48,745,464 increase requested by Duke in its application.[12] In reaching an agreement on the stipulated revenue increase, Staff considered all parties' (including OCC's) objections to the Staff Report concerning the Staff Report's recommended revenue increase and made several corrections thereto resulting in a reasonable stipulated revenue increase.[13]
- The stipulated rate of return (ROR) is reasonable, in accordance with R.C. 4909.15(A)(2).[14] First, the stipulated ROR falls within the ROR range of

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8 *Id*. at Q/A 10.
9 *Id*. at Q/A 11
10 *Id*. at Q/A 12
11 *Id*.
12 *Id*.
13 Prefiled Testimony of David Lipthratt in Response to Objection at Q/A 8-9.
14 Prefiled Testimony of James Zell at Q/A 7.

6.66 to 7.19 percent recommended by the Staff Report. Second, the stipulated ROR is consistent with the ROR range found in a recent report from S&P Global Market Intelligence.[15] Third, the stipulated rate of return of 6.96 percent is lower than the 7.33 percent requested by Duke in its application.[16] Additionally, the stipulated return on equity (ROE) and capital structure are consistent with the average ROE and capital structure in a recent report from S&P Global Market Intelligence[17] and otherwise reasonable.[18] Finally, the stipulated ROE of 9.6 percent is significantly lower than the 10.30 percent requested by Duke in its application.[19]

- The Stipulation removes incentive compensation attributable to stock-based compensation and financial performance of the Company from Rider CEP on a going forward basis.[20]
- Continuation of Duke's Capital Expenditure Program Rider (Rider CEP) which allows for the Company to make the investments necessary to maintain safe and reliable service.[21]

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15 *Id*.

16 Prefiled Testimony of David Lipthratt in Support of the Stipulation at Q/A 12.

17 Prefiled Testimony of James Zell at Q/A 7.

18 Prefiled Testimony of James Zell at Q/A 8-11 – the proxy group selected by Staff, use of a 30-day average par yield of 30-year U.S. Treasury Bonds as its risk-free rate in its application of the capital asset pricing model ("CAPM"), and use of the historical average of the GNP as a proxy for a long-term growth rate used in its discounted case flow calculation – all to determine a reasonable ROE – was all consistent with the past practices of Staff and ultimately produced a reasonable ROE.

19 Prefiled Testimony of David Lipthratt in Support of the Stipulation at Q/A 12.

20 *Id*.

21 *Id*.

- Continuation of Rider CEP with caps significantly lower than what the Company proposed in its application as shown below:

	2022	2023	2024	2025	2026	2027
Company Requested	$3.00	$5.00	$5.00	$5.00	$5.00	$5.00
Stipulated	$2.25	$2.25	$1.53	$1.00	$1.00	$1.50

While the Application proposed $28.00 cumulatively in rate caps, the Stipulation provides for $9.53 in rate caps on a cumulative basis.[22]

- Rider CEP shall be reset to zero by the later of October 31, 2029, or upon full recovery of the vintage 2027 investments subject to the 2027 Rider CEP residential rate cap unless the Company files a natural gas base rate case or alternative rate application.[23]

- Includes $200,000 per year in shareholder contributions to PWC to be used to support low-income weatherization.[24] Further, the Stipulation addresses an OCC objection to the Staff Report concerning the low-income weatherization program.[25] Specifically, it stipulates that $1,795,000 is to be collected through base rates for the low-income weatherization program.[26]

22 *Id*.
23 *Id*.
24 *Id*.
25 Prefiled Testimony of James T. Ripke at Q/A 5.
26 *Id*.

This is a continuation of a previously established amount last approved in Case No. 12-1685-GA-AIR.[27]

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

Based on Staff's experience, involvement in this proceeding, and review of the Stipulation, Staff concludes that it does not violate any important regulatory principle or practice.[28] OCC's objections to the Staff Report asserts that the Stipulation, to the extent it mirrors the Staff Report, violates the third prong[29] of the reasonableness test for stipulations. Staff disagrees with OCC for the following reasons:

(Objections Addressed by David Lipthratt)

- **OCC Objection 1** – For the reason already addressed in Section III. of this Initial Brief, the stipulated revenue increase is just and reasonable.
- **OCC Objection 2** – The inclusion of bad debt as a part of the revenue requirement factor-up is just and reasonable.[30] It is intended to account for the collection cost and time value of money associated with bad debt, which is not collected through the uncollectible expense rider (Rider UE-G). The gross up of the revenue requirement is to account for the proportional increase to uncollectible expense that comes with the increase

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27 *Id*.

28 Prefiled Testimony of David Lipthratt in Support of the Stipulation at Q/A 13.

29 Some of the objections raised by OCC also allege that the Stipulation violates that second prong of the reasonableness test for stipulation. These prongs do have some overlap. To the extent that there is overlap, Staff's responses to OCC's objections address how Staff believes the Stipulation passes both the second and third prong of the test.

30 Prefiled Testimony of David Lipthratt in Response to Objections at Q/A 10.

in revenues. The gross up of the uncollectible expense is similar to federal income taxes and is intended to set the going forward uncollectible expense based off the Commission's approved adjustment of revenues.

- **OCC Objection 3** – Staff recommendation to not have rate case expense trued up between distribution rates cases is reasonable.[31] A company's revenues and expenses are expected to increase or decrease over time; it is not expected that revenues and most types of expenses mirror the test year or remain constant. However, in Ohio there is not a truing up of these components in subsequent base distribution rate cases. Base distribution rates are established from annualized and normalized test year expenses. Rate case expense is included in the test year expenses and Staff avers that it should be treated consistently to other types of expenses in that it is not isolated and trued up between distribution rate cases. For this reason, Staff avers that this treatment is not unreasonable. Staff would note that the amortization of rate case expense in this case is five years, which coincides with when the rates for Rider CEP goes to zero, unless the Company files an application for new base rates.

- **OCC Objection 4** – The Staff Report is reasonable in not recommending a reduction of stranded investment at retirement for the rate of return that consumers were paying for the operation of propane facilities.[32] Staff's

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31 *Id*. at Q/A 11.
32 *Id*. at Q/A 12.

treatment of the propane facilities is consistent with the Stipulation and Opinion and Order in Case No. 21-1035-GA-AAM. The way in which the net book value was established was determined in that case.

- **OCC Objection 5** – A ten-year amortization period for charging consumers for the deferred asset from the propane plant retirement is reasonable.[33] The stipulation in Case No. 21-1035-GA-AAM, which the Commission adopted, required an amortization period of no less than ten years. Staff attempted to align the customers who would have benefited from the caverns with the recovery. The longer the amortization period the more likely customers that never used the caverns would pay for them. Additionally, Staff attempted to strike a balance amongst all interests as there are no carrying charges on the recovery of the regulatory asset. The ten-year amortization complies with the Commission order in Case No. 21-1035-GA-AAM and, for all the reasons stated, Staff avers a ten-year amortization period to be reasonable.

- **OCC Objection 7** – Staff notes that the Stipulation includes no recovery of the Customer Connect costs making OCC's objection on amortization moot.[34] Staff has not recommended an amortization period should the Commission grant recovery authority in this proceeding.

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33 *Id*. at Q/A 13.
34 *Id*. at Q/A 14.

- **OCC Objection 13** – Addressing OCC's concerns via the Stipulation, the interest expense was updated to reflect the flow-through effects on income tax expenses.[35] Exhibit A of the Stipulation reflects the flow-through effects on income tax expenses.
- **OCC Objection 22** – Contrary to OCC's assertions otherwise, Staff finds an O&M offset is not necessary for Rider CEP.[36] Staff avers that a base distribution rate case is the appropriate place to recognize expense recovery not associated with the CEP, whether increases or decreases.
- **OCC Objection 23** – Staff disagrees that the automatic approval process for annual CEP charge cases needs to be more defined.[37] Staff recommends the automatic approval process be consistent with the process of other companies' riders in which rates are automatically approved. The standard process for automatic rate adjustments allows for due process and true ups that may produce immediate reimbursements.
- **OCC Objection 24** – As already explained in Section III. of this Initial Brief, the Stipulation resulted in an average annual rate cap of $1.59, which is $9.53 on a cumulative basis. Given the terms of the Stipulation, Staff finds the $9.53 to be reasonable.[38]

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35 *Id*. at Q/A 15.
36 *Id*. at Q/A 16.
37 *Id*. at Q/A 17.
38 *Id*. at Q/A 18.

- **OCC Objection 25** – The Company filed a rate case; therefore, depreciation is balanced with plant investment.[39] Contrary to OCC's recommendation, Staff supports no depreciation offset as a component of the CEP charge at this time.[40] However, the depreciation expense level recovered in base rates is more significant the longer a company stays out from setting new distribution rates resulting in a depreciation offset being necessary or prudent.[41]
- **OCC Objection 26** – The issue of whether the application should have been rejected has been resolved by the Commission.[42] The Commission's October 19, 2022, Entry found that Duke's application for an increase in rates and application for an alternative rate plan meets the requirements of R.C. 4909.17 to 4909.19, the standard filing requirements contained in Ohio Adm.Code 4901-7, and Ohio Adm.Code 4901:1-19-06. In addition, Staff was able to request any additional information from the Company that it deemed appropriate in order to carry out its investigation into this matter.[43] Staff found the Application filed by Duke as modified by the Staff Report and Stipulation to be just and reasonable.[44]

(Objection Addressed by Craig Smith)

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39 *Id*. at Q/A 19.
40 *Id*.
41 *Id*.
42 *Id*. at Q/A 20.
43 *Id*.
44 *Id*.

- **OCC Objection 17** – OCC's recommendation to the Commission for the elimination of fees charged to consumers using a credit or debit card to make a utility payment is unreasonable. Staff believes the principle of cost causation requires customers to continue to pay credit and debit card fees.[45] There is a cost to the Company to accept payments using credit and debit cards.[46] It cost the Company $1.53 per transaction to process debit and credit card payments and only 12 cents to process mailed in payments.[47] Accordingly, OCC's belief that the Company would save money by incurring the total cost of credit and debit costs with the reduction in mail transactions is inaccurate.

(Objections Addressed by James T. Ripke)

- **OCC's Objections 18-21** – For the reasons already stated in this Initial Brief, the low-income weatherization program and funding agreed to in the Stipulation is reasonable and benefits the public interest.[48]

(Objection Addressed by Tornain Matthews)

- **OCC's Objection 6** – In its annualization of property taxes, Staff properly included plant in service through March 31, 2022.[49] The OCC argues that the property tax expense should include the actual property taxes paid December 31, 2022 and June 30, 2023. Staff disagrees with OCC's

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45 Prefiled Testimony of Craig Smith in Response to Objections at Q/A 7-10.
46 *Id.* at Q/A 9.
47 *Id.* at Q/A 10.
48 *Also see* Prefiled Testimony of James T. Ripke in Response to Objections at Q/A 5-8.
49 Prefiled Testimony of Tornain Matthews in Response to Objections at Q/A 6.

objection. Staff's property tax calculation applies the latest known property tax rates at the time of the filing of a staff report to plant in service values recommended by Staff to determine the property tax expense. In using this methodology to calculate property tax expense, any adjustments, or disallowances to plant in service also flows through the property tax calculation. This methodology ensures the property tax expense only includes the plant values that have been allowed as a result of the plant in service recommended by Staff. Staff believes this method of calculating property tax expense is a reasonable approach.

(Objections Addressed by Workineh Negewo)

- **OCC's Objection 14** – OCC objects to the Staff Report's recommended allocation of distribution revenues of 67.815% to the residential class. Staff reviewed the Applicant's filed cost of service study (COSS) as well as the corrected COSS and updated COSS provided in response to Staff DRs 132 and 135 respectively.[50] After evaluating several analyses moving each class toward the cost to serve on an index's basis, Staff found the Company's methodology, as it is presented within Staff DR 135, reflects a reasonable movement toward the cost to serve each class and recommended rate of returns by class as presented in Table 2 on page 29 of the Staff Report.[51]

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50 Prefiled Testimony of Workineh Negewo in Response to Objections at Q/A 8.

51 *Id.*

Staff did not perform analyses regarding inflation or possible recession nor did Staff evaluate alternative revenue allocation methodologies that moved classes away from the cost to serve each class.[52]

- **OCC's Objection 15 and 16** – These objections argue that the Staff Report should have rejected the Applicant's proposed fixed delivery charge to residential customers served under Rates RS, RFT, RSLI, and RFTLI. However, in Case Nos. 07-0589-GA-AIR and 12-1685-GA-AIR, the Commission approved modified straight fixed variable rate design for Duke's residential customers. Generally, Staff investigates rate and tariff matters in a proposed application when the Company proposes modifications.[53] The Company did not propose any modification to the residential customers rate design.[54] The Company's application proposes to continue the Commission approved rate design for residential customers. In preparation of the Staff Report, Staff did not perform analysis regarding rate design alternatives for Duke's residential customers.
- **OCC's Objection to Staff's Finding on page 34 of the Staff Report** – Its reasonable for Staff to recommend the Commission require the Company to perform an analysis to determine whether customers within the general service rate classes have homogeneous cost drivers or similar cost causation characteristics. In Case No. 12-1685-GA-AIR (2012 Rate Case), Staff

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52 *Id.*
53 *Id.* at Q/A 9.
54 *Id.*

noted in the Staff Report that general service customers are much less homogeneous than residential customers and a simple fixed charge may not be the appropriate cost recovery mechanism. Staff's recommendation is a reasonable follow-up to Staff's findings in the 2012 Rate Case. Requesting the same type of study be done for residential customers is not a natural follow-up to Staff's findings in the 2012 Rate Case.

(Objections Addressed by James Zell)

- **OCC Objections 8-10** – The ROR and its associated component calculations (ROE, capital structure, risk free rate, etc.) are reasonable for all of the reasons provided in Section III. of the Initial Brief.[55]

CONCLUSION

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

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55 Also see, Prefiled Testimony of James Zell in Response to Objections at Q/A 7-11.

Respectfully Submitted,

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On Behalf of the Staff of the
Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Initial Brief** has been served upon the below-named counsel via electronic mail, this 16th day of June, 2023.

/s/ *Robert Eubanks*
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