THE PUBLIC UTILITIES COMMISSION OF OHIO

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**
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**

OPINION AND ORDER

Entered in the Journal on November 1, 2023

I. Summary

{¶ 1} The Commission adopts the joint stipulation and recommendation resolving all issues related to the application filed by Duke Energy Ohio, Inc. to increase its gas distribution rates.

II. Procedural History

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, Duke is subject to the jurisdiction of this Commission pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. The statutory requirements for an application to increase a public utility's rates are enumerated in R.C. 4909.17, 4909.18, 4909.19, and 4909.43. Also, pursuant to R.C. 4901.13, 4909.04(C), and 4909.18, the Commission adopted Ohio Adm.Code 4901-7-01 and its Appendix (Standard Filing Requirements). These Standard Filing Requirements specify the format for filing all information required in an application for an increase in rates and define the information that the Commission requires pursuant to R.C. 4909.18(E). Further, pursuant to R.C. 4929.05(A), a natural gas company may request approval of an alternative rate plan by filing an application to establish or change a rate under R.C. 4909.18.

{¶ 4} On May 31, 2022, Duke filed notice of its intent to file an application for an increase in rates, in accordance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I(B), and an application for approval of an alternative rate plan, pursuant to Ohio Adm.Code 4901:1-19-06(A). Also, on May 31, 2022, as amended on June 2, 2022, Duke filed a motion to establish a test year and date certain and for waiver of certain filing requirements pursuant to R.C. 4909.15(C), Ohio Adm.Code 4901-7-01, and 4901:1-19-02(D), respectively. By Entry issued June 29, 2022, the Commission approved the test year and date certain and granted the requested waiver of specified Standard Filing Requirements.

{¶ 5} On June 30, 2022, as amended on September 8, 2022, Duke filed a combined application to increase rates and charges and for approval of an alternative rate plan pursuant to R.C. 4909.18 and R.C. 4929.05, respectively.

{¶ 6} On September 9, 2022, Staff filed a letter stating that Duke's application complies with the Standard Filing Requirements found in Ohio Adm.Code 4901-7-01, Appendix A, and Ohio Adm.Code 4901:1-19-06. By Entry dated October 19, 2022, the Commission found that Duke's application for an increase in rates and for an alternative rate plan be accepted for filing as of June 30, 2022.

{¶ 7} On various dates, motions to intervene were filed by the Ohio Consumers' Counsel (OCC), Interstate Gas Supply, Inc. (IGS), Ohio Energy Group (OEG), Retail Energy

Supply Association (RESA), and People Working Cooperatively, Inc. (PWC). By Entry dated February 24, 2023, the attorney examiner granted the motions to intervene.

{¶ 8} Staff conducted an investigation of the facts, exhibits, and matters relating to Duke's applications. On December 21, 2022, Staff filed a comprehensive written report of its investigation (Staff Report).

{¶ 9} On December 22, 2022, the attorney examiner established a procedural schedule. Thereafter, the attorney examiner granted several requests to adjust the procedural schedule.

{¶ 10} On January 20, 2023, objections to the Staff Report were filed by various parties, consistent with R.C. 4909.19 and Ohio Adm.Code 4901-1-28(B), as well as Ohio Adm.Code 4901:1-19-07(F).

{¶ 11} Local public hearings were held at Mason Municipal Center, Fire Station 51, in Mason, Ohio, on March 8, 2023 and Cincinnati City Hall in Cincinnati, Ohio on March 10, 2023. Notice of the local public hearings were published in accordance with R.C. 4903.083, and proof of such publication was submitted by Duke. During the local public hearings, one individual testified in opposition to Duke's application for an increase in rates and two individuals testified in support of Duke's application. Eight public comments were also filed, all of which express opposition to Duke's request to increase its rates.

{¶ 12} On April 28, 2023, Duke filed a joint stipulation and recommendation (Stipulation). All parties except for OCC signed the Stipulation.

{¶ 13} The evidentiary hearing commenced on May 23, 2023, and concluded the next day on May 24, 2023.

{¶ 14} Initial and reply briefs were filed by the parties on June 16, 2023, and July 14, 2023, respectively.

III. Discussion

A. Summary of the Application

{¶ 15} As originally proposed in its application, Duke sought to increase natural gas distribution operating revenues by about 9.8 percent, which is approximately $48.8 million. That would equate to a 5.6 percent increase on a customer's bill. The Company supported the requested increase by claiming the funds are necessary to pay its operating expenses, to service its debt, and to provide an adequate rate of return on used and useful property. Duke noted that the current rates were established in 2012 and that, since then, investment in necessary property has materially increased. According to Duke, currently, the Company's earned rate of return is just 5.32 percent, which is significantly below the 7.73 percent return that was approved by the Commission in 2012. Duke also submitted changes to previously-approved riders. The Company asked to move revenues currently recovered through its Accelerated Main Replacement Program Rider (Rider AMRP) into base rates and discontinue the rider thereafter. Further, Duke requested to roll the revenue requirement associated with its Capital Expenditure Program Rider (Rider CEP) into base rates, amortize currently deferred balances as of the date certain, and to reset Rider CEP back to zero. Associated with Rider CEP, Duke sought reasonable annual caps that allow the Company to continue to make necessary investments through its CEP and earn a fair return on them. Among other requests, Duke also proposed to recover the cost of offering a fee-free payment option for residential customers using credit cards through future uncollectible rider filings, to continue various other riders, and to amortize previously deferred integrity management costs and recover those costs as part of base rates.

B. Summary of the Staff Report

{¶ 16} In its investigation, Staff asserts it examined Duke's accounts and records during the test year and recommends a revenue increase between approximately $23.7 million and $36.4 million, which equates to a 4.73 to 7.28 percent increase. Using a cost-of-capital approach, Staff recommends a rate of return between 6.66 percent and 7.19 percent. Regarding rate base, which represents the Company's net investment in plant and other assets, Staff recommends several adjustments associated with plant-in-service, depreciation, construction work in progress, working capital, and other rate base items. The various disallowances requested by Staff concern, among other things, assets no longer in service, Company fitness centers, capitalized incentive compensations, and adjustments made in other rate cases.

C. Summary of the Stipulation

{¶ 17} As previously stated, Duke, Staff, OEG, RESA, IGS, and PWC (the Signatory Parties) submitted the Stipulation on April 28, 2023, for the Commission's consideration. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. Below is a summary of the provisions agreed to by the Signatory Parties. This summary is not intended to replace or supersede the Stipulation.

{¶ 18} Initially, the Signatory Parties recommend that Duke's application be approved, as modified by the recommendations in the Staff Report, unless otherwise specifically modified by the terms of the Stipulation. The Stipulation proposes a revenue requirement totaling $531.7 million, excluding all riders except gas cost recovery revenues and the Gas Surcharge Rider. This would result in an increase of $31.7 million.

{¶ 19} The Signatory Parties agree to an overall rate of return (ROR) of 6.96 percent and a return on equity (ROE) of 9.6 percent. The Signatory Parties agree to a capital structure of 52.32 percent equity and 47.68 percent long-term debt. Additionally, the Stipulation includes updated schedules that include modified, agreed-to adjustments to rate base, depreciation expenses, and operation and maintenance (O&M) costs. Duke also agrees to include a depreciation study in its next natural gas base rate case.

{¶ 20} As to rate design, the Stipulation proposed a specific cost allocation to each rate class. The allocation for the residential rate-class is 67.8 percent. Further, the parties agree that the rate design shall be consistent with Staff's calculations and recommendations, subject to corrections for Rate IT and Rate IS that reflect per ccf charges and the volumetric charges, as described in the Stipulation.

{¶ 21} The parties agree that Duke shall use an amortization period of five years for rate case expense. Duke will include a credit in the rate base in this proceeding and in future Rider CEP filings for the estimated revenue requirement impact of capitalizing employee bonus expenses for incremental investment for its Ohio retail customers, to ensure that the value of the employee bonus expense for incremental investments on projects placed in-service since March 31, 2022, is not included.

{¶ 22} Concerning Rider CEP, the Signatory Parties agree to roll the current expenditures into base rates and reset the rider. Rider CEP will be subject to the following annual residential rate caps:

2022	2023	2024	2025	2026	2027	Average	Total
$2.25	$2.25	$1.53	$1.00	$1.00	$1.50	$1.59	$9.53

The proposed rate caps would not go into effect until an order is issued in this proceeding. The caps would be in effect until the effective date of Duke's next rate case application and/or alternative rate application to modify or extend Rider CEP. As agreed to, Rider CEP would be set to zero by the latter of October 31, 2029, or upon the full recovery of the vintage 2027 investments subject to the Rider CEP cap. Further, Rider CEP would have a pre-tax 8.32 percent return on rate base. The depreciation offset would no longer be necessary and would be removed. Rider CEP would be subject to an annual audit. The Stipulation provides that the rider's revenue requirement would be collected through a fixed monthly charge for all rate classes, except Rate IT, which would be collected as a volumetric charge.

{¶ 23} The Signatory Parties also note adjustments to other riders. The Gas Tax Cuts and Jobs Act Rider would be updated to reflect any federal tax law changes, as directed by the Commission. Additionally, Duke agrees to withdraw its request to include third-party payment processing fees for recovery through its Uncollectible Gas Expense Rider.

{¶ 24} The Stipulation also provides for several enhancements regarding competitive retail natural gas suppliers. Of note, Duke agrees to reduced fees for various customer lists in Rate SAC and agrees to remove the $4 switching fee from Rate RFT, RFTLI, FT-L, and FT-S. The Company also agrees to complete a study analyzing the effects of a modified straight-fixed variable rate design on certain Rate IT and FT-L customers, and to include the study with its next rate case application.

{¶ 25} As part of the Company's revenue requirement, the Stipulation provides for the continuation of $1,795,000 in annual funding for weatherization programs administered by PWC. If PWC does not spend the budgeted amount in a year, the remainder will rollover to the next year. On top of the amount in rates, Duke agrees to provide $200,000 annually in shareholder contributions.

D. Consideration of the Stipulation

{¶ 26} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (*Consumers' Counsel*), 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 27} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland*

Elec. Illum. Co., Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records,* Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. 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?

(3) Does the settlement package violate any important regulatory principle or practice?

{¶ 28} The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Ohio Supreme Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 29} The Signatory Parties urge the Commission to approve the Stipulation in its entirety. In its brief, the sole opposing party, OCC, has generally focused on certain objections to the Staff Report by raising arguments regarding the Commission's three-part test for evaluating the reasonableness of the Stipulation. Pursuant to Ohio Adm.Code 4901-1-28(D), an objection to a staff report of investigation in a rate case proceeding is deemed withdrawn if a party fails to address the objection in its initial brief. Accordingly, we will address only briefed objections. The Commission addresses the parties' specific arguments in the context of the three criteria for evaluating the reasonableness of the Stipulation.

1. Is the Stipulation the Product of Serious Bargaining Among Capable, Knowledgeable Parties?

{¶ 30} The stipulating parties maintain the agreement is the result of serious bargaining among capable, knowledgeable parties and satisfies the first prong of the Commission's test. Duke points out that the parties met almost weekly over the course of several months. Further, according to the Company, it regularly met with individual parties to discuss specific issues. Duke notes that OCC, although not a Signatory Party, was included in these discussions. Duke explains that the resulting agreement contains numerous modifications from the Company's original application, which demonstrates that serious bargaining occurred. Staff, PWC, RESA, and IGS similarly explain that all of the parties regularly convened to discuss the proceeding and had meaningful, productive negotiations that ultimately resulted in the Stipulation that is before the Commission.

{¶ 31} OCC contends that serious bargaining did not occur. OCC avers that Duke has outsized negotiating leverage in that the Company can pull back its application if the Stipulation is not approved to Duke's satisfaction. According to OCC, this gives Duke an unfair advantage and puts pressure on parties to give Duke's requests undeserved weight. In addition, OCC maintains Duke wins over certain Signatory Parties by providing funding for organizations through base rates. OCC asserts that it is inappropriate for such funding to be recoverable through base rates and argues that those Signatory Parties did not engage in serious bargaining. Finally, OCC submits that the Signatory Parties do not represent a diversity of interests. As explained by OCC, it is the only party that solely represents residential customers. As the revenue requirement will largely be recovered from residential ratepayers, OCC emphasizes that it is critically important for those customers to be a part of any agreement. Accordingly, OCC maintains that the Stipulation fails to meet the first prong.

{¶ 32} In response, Duke argues that OCC attempts to claim a veto power over stipulations. The Company maintains that the Commission has repeatedly rejected such claims from OCC. According to Duke, in the first prong of the Commission's stipulation test, there is no specific requirement for a diversity of interests. However, Duke points out that, regardless, the Signatory Parties represent a multitude of interests, even without OCC's inclusion. Duke asserts the Signatory Parties represent low-income customers, small businesses, and other relevant entities. The Company also emphasizes that all parties were represented by capable, knowledgeable counsel that regularly appear before the Commission. Furthermore, Duke notes that OCC was regularly invited, and participated in, all settlement discussions.

{¶ 33} The Commission determines that the first prong of the test is met, as it is evident that the Stipulation is the result of serious bargaining. It is uncontested that all parties to the proceeding regularly met to negotiate the issues. Parties initially began discussions in January 2023 and continued talks either in person, virtually, over the phone, or via email (Duke Ex. 11 at 37). Discussions continued thereafter, on an almost-weekly basis. Notably, all parties were invited to the meetings and all parties were represented by experienced, competent counsel. (Duke Ex. 11 at 37-38; Staff Ex. 8 at 4.) The resulting agreement involved numerous concessions from the Company, including a significant reduction from its original revenue requirement request, which helps demonstrate that serious bargaining occurred (Duke Ex. 11 at 38; *See, e.g,* Duke Ex. 1, Joint Ex. 1). The Commission is unpersuaded by OCC's contention that Duke has outsized negotiating leverage and thus serious bargaining did not occur. OCC acknowledges that Duke does not possess any veto power over the Commission's approval of its application and does not offer any compelling evidence to support its claim. OCC's main complaint concerning Duke's negotiating power is that the Company is able to offer necessary funding to organizations that eventually sign on to the Stipulation. However, this pertains to just one party, PWC, regarding which OCC's witness acknowledged funding was already in base rates prior to this pending application (Tr. I at 90). Further, OCC's witness admitted to not having any knowledge as to why PWC signed the Stipulation.

{¶ 34} The Commission also is not persuaded by OCC's attempt to insert a diversity requirement into the first part of the stipulation test. We have, at times, underscored diversity in proceedings where a large number of parties were able to achieve a settlement agreement that reflects a broad coalition of competing interests as being one indicator that serious bargaining occurred. The Commission, however, has often stated that no single party is afforded veto power under the first part of the three-part test. *In re the Application of Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) (*Rider CEP Case*) at ¶ 50; *See, e.g., In re Complaint of Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18 ("The Commission will not require OCC's approval of stipulations."); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9 ("There is no requirement that any particular parties execute stipulations in order for the first prong of the test for stipulations to be met."); *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, et al., Opinion and Order (Apr. 9, 2008) at 32 ("No one possesses a veto over stipulations, as this Commission has noted many times."). With regard to residential customers, we have observed previously, and reiterate here, that Staff also takes into account the interests of all customer classes, including the residential class. The vast array of stakeholders who signed the Stipulation represent a cross-section of customer classes, including advocates for residential customers, with varying competing interests. Consistent with our prior practice, we again decline to afford a single party the ability to thwart a settlement agreement merely by withholding its signature.

2. Does the Stipulation, as a Package, Benefit Ratepayers and the Public Interest?

{¶ 35} According to the stipulating parties, the Stipulation is a just and reasonable resolution of the issues raised in this proceeding and benefits ratepayers and the public interest. Duke points out that this was the Company's first request for an increase in natural gas rates in over ten years and encompasses over $1 billion in increased rate base. Duke avers that the Company's initial request was modest and that the agreed-upon, negotiated rate is 35 percent less than what the Company initially sought. Further, according to the Company, the Stipulation provides Duke with certainty that it will be able to provide safe, reliable, and reasonable service to its customers. Along these lines, Duke emphasizes that securing this reasonable rate increase will allow the Company to be financially sound and have access to financial markets that are necessary to attract investors at reasonable rates. Additionally, according to Duke, the competitive retail natural gas market benefits from this Stipulation, as the resulting agreement eliminates certain fees and lessens existing limitations on rate codes.

{¶ 36} Staff agrees with Duke's arguments and notes that the rate of return in the Stipulation is lower than the Company's original request and is within the range recommended by Staff in the Staff Report. Staff also maintains that ratepayers benefit from the removal from rate base of certain compensation incentives tied to financial and stock-based performances. As explained by Staff, ratepayers also benefit from the continuation of Rider CEP, which allows the Company to invest in safe and reliable service. However, Staff notes that the annual spending caps associated with Rider CEP are lower than what was originally sought by Duke. Duke, Staff, and PWC also cite Duke's annual financial commitment to PWC as a benefit. PWC explains that the funds assist with energy conservation and weatherization for low-income ratepayers.

{¶ 37} OCC disputes that the Stipulation benefits ratepayers and is in the public interest. OCC challenges various specific provisions of the settlement agreement and, therefore, recommends that the Commission reject the Stipulation in its entirety or advocates that the Commission amend the Stipulation to include additional benefits for ratepayers and the public interest. OCC's contentions, and opposing replies are discussed below. Duke and RESA emphasize that the test requires the Commission to consider the Stipulation as a package and to consider everything in the Stipulation together. Both Duke and RESA maintain that OCC is attempting to impose a new test that seeks to require the evaluation of each provision separately rather than as part of a package.

a. Propane caverns

{¶ 38} OCC states that, if the Stipulation is approved, Duke would wrongfully be authorized to charge ratepayers $2.9 million per year for amortization of around $29 million in deferred costs associated with Duke's propane caverns. As background, for decades Duke used manmade caverns to store propane. Recently, in 2019, Duke was authorized to construct the Central Corridor Pipeline (CCP), which, among other purposes, would allow the Company to retire the caverns.[1] Thereafter, Duke was granted approval to abandon the caverns as well as to create regulatory assets for deferral.[2] OCC explains that, consistent with R.C. 4909.15(A), utilities are required to demonstrate that all property included in rate base is used and useful as of the date certain. Here, OCC avers that the propane caverns were not used and useful as of March 31, 2022, the date certain in this proceeding. OCC states that the CCP began commercial operation on March 14, 2022. According to OCC, once the CCP became operable, the caverns were logically no longer used and useful, and, thus, should not have been included in base rates. OCC contends that this results in customers paying for both the caverns and the CCP, even though they serve the same purpose. In arguing against recovery associated with the caverns, OCC cites multiple proceedings where Duke affirmed that the CCP would replace the need for the caverns. OCC highlights the testimony from this proceeding of Duke witness Brian Weisker stating "one of the major drivers of the Central Corridor pipeline was to enable the Company to retire the East Works caverns," citing Duke Ex. 8 at 27.

{¶ 39} Continuing, OCC also argues that even though the Company may have been granted authority to defer costs associated with the caverns, that does mean that Duke is

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[1] *In re the Application of Duke Energy Ohio, Inc.*, Case No. 16-253-GA-BTX, Opinion, Order, and Certificate (Nov. 21, 2019) (*CCP Certificate Case*).

[2] *In re the Application of Duke Energy Ohio, Inc.*, Case No. 21-986-GA-ABN, et al., Opinion and Order (Oct. 5, 2022) (*Deferral Case*).

guaranteed recovery of those costs from ratepayers. OCC maintains the Company must still demonstrate that the caverns were used and useful as of March 31, 2022. Because the CCP was already in commercial operation by that date, OCC contends the caverns were not used and useful and not eligible for recovery. OCC alleges that including such costs in base rates is unlawful and clearly not beneficial to ratepayers.

{¶ 40} Duke disputes OCC's contentions on multiple fronts. First, Duke asserts that the caverns are not a part of base rates and thus "used and useful" is not a necessary requirement. Rather, according to the Company, the caverns were removed from base rates consistent with prior accounting adjustments and the approved stipulation in the *Deferral Case*. Thus, says Duke, the caverns are considered a cost of providing service, under R.C. 4909.15(A)(4), and Duke is only able to recover its expenses, and not a return. In this situation, Duke states, the "used and useful" standard is not applicable.

{¶ 41} The Company contends that, even if the "used and useful" standard was applicable, the caverns satisfied that requirement on the date certain. Duke explains that while the CCP began operating on March 12, 2022, it was not functioning at full capacity at that time. In regard to the CCP, Duke explains the facility has multiple purposes, of which, allowing the Company to retire the caverns was just one such purpose. Duke asserts that the implementation of the CCP was a major transformation of its gas system and the Company rationally kept the caverns in operation as a back-up measure while Duke started up operations of the CCP. According to Duke, the caverns were not actually shut down until April 12, 2022. Duke avers that OCC has provided no evidence that the caverns were not in use as of the date certain.

{¶ 42} Finally, the Company emphasizes that Commission has already authorized Duke to defer costs associated with the caverns, in the *Deferral Case*. Despite OCC's contentions, the Company maintains this is a legitimate accounting mechanism and a common form of recovery in ratemaking. Duke notes that the *Deferral Case* contemplates that the Company would need to justify recovery of the deferred costs in its next base rate case. As described by Duke, typically, when an asset is retired, any remaining net book value of that asset remains in the class of assets in the group account. Here, however, Duke asserts that the entire class of assets will have been taken out of service and, therefore, there are no additional assets against which to apply the remaining net book value.

{¶ 43} Similarly, Staff emphasizes that the plain language of R.C. 4909.15(A)(4) contemplates that the cost of rendering public utility service should naturally include associated termination costs. Staff contends that for the plant termination costs to be included in base rates, the plant must have been in service at some point and the termination costs must have occurred during the test year. According to Staff, for the caverns, both such facts are uncontested in this proceeding. Thus, it is appropriate for termination costs of the caverns to be recoverable.

{¶ 44} After review, the Commission approves of the treatment of the propane caverns as described in the Stipulation. As discussed, in the *Deferral Case*, Duke sought approval to abandon the caverns and to record and defer costs associated with the caverns, including decommissioning costs, costs associated with remaining propane inventories, and the remaining net book value of the caverns. Thereafter, in a stipulation that was approved by the Commission, the Company was authorized to defer, among other things, the net book value of certain Ohio-based caverns and an estimate of the costs to decommission those caverns. Duke was to seek recovery of the deferral in its next base rate case and seek an amortization period of no less than ten years. Consistent with the agreement, Duke was not to seek to earn a return on the deferred amounts. *Deferral Case* at 8-10. In this proceeding, the Company seeks recovery of that deferral, which totals almost $29 million and would be amortized over ten years. Largely at issue is whether this deferral falls under R.C. 4909.15(A)(1), and is considered property that must be used and useful as of the date certain, or whether the deferral is considered a cost of rendering utility service under R.C. 4909.15(A)(4), and not subject to the "used and useful" standard. We affirm the Stipulation's consideration of the caverns as a cost of service under R.C. 4909.15(A)(4). The caverns were removed from the Company's plant account when its books were closed on December 31, 2021, and consistent with the Commission's approval of the stipulation in the *Deferral Case*, the deferral was thereafter recorded as an expense. (Duke Ex. 11 at 16-17.) OCC is correct that the accounting approved in the *Deferral Case* does not constitute ratemaking. Thus, Duke's deferral was subject to review in this proceeding. In the Staff Report, the requested recovery was reviewed, including an independent engineering study, and ultimately Staff recommended recovery, subject to some small disallowances (Staff Ex. 1 at 14-15). Consistent with our prior approvals and proper accounting, the Commission finds the costs of winding down the operations and decommissioning the caverns were properly considered as costs of service. This does not mean, as OCC implies, that the Company was able to evade review of the prudency or accuracy of those costs. Further, consistent with R.C. 4909.15(A)(4), and also the stipulation in the *Deferral Case*, Duke is not able to seek a return or carrying costs on the deferral of these expenses.

{¶ 45} While we determined that the "used and useful" standard associated with R.C. 4909.15(A)(1) does not apply here, we nonetheless determine that the caverns would properly be considered used and useful. We find that OCC's arguments are based largely on inference and conjecture. The sum of their arguments is that the purpose of the CCP was to replace the caverns, the CCP became operational prior to the date certain, and, therefore, the caverns were not used and useful as of the date certain. While it is uncontested that the CCP began providing service, in some fashion, on March 14, 2022, weeks before the date certain of March 31, 2022, OCC provides no evidence that the caverns were not operational on the date certain. As explained by Duke, the caverns remained in service as a back-up option until April 12, 2022. OCC infers the options must be binary, and that if the CCP is operating, then the caverns must be closed. However, the evidence demonstrates otherwise. (Duke Ex. 11 at 17.)

b. Property taxes

{¶ 46} OCC alleges the Stipulation is not beneficial to ratepayers as the calculation of property taxes is flawed and overcharges customers. As proposed in the Stipulation, property taxes will increase by approximately $2.3 million. OCC explains that the method of calculating property taxes described in the Stipulation is based on the plant-in-service balance as of the date certain, March 31, 2022. However, according to OCC, that taxable amount would not be due to be paid until December 31, 2023, and June 30, 2024. OCC contends this lag goes beyond the test year and is not a known and measurable amount because various local tax rates could change in the meantime. Instead, OCC avers that Duke's 2022 tax bill should be used, or, alternatively, use Staff's tax calculation method but use plant-in-service balances on December 31, 2021.

{¶ 47} In reply, Duke submits that OCC's arguments are faulty and should be disregarded. Duke notes that the test period in this proceeding was from January 1, 2022, to December 31, 2022, and that OCC's proposal to use 2021 information thus goes against the test year concept required by R.C. 4909.15(C)(1). The Company further explains that it uses the accrual basis of accounting, where costs are recorded in Duke's books when the expenses occur. Duke asserts this is a generally accepted accounting principle. As described by Duke, OCC seeks a cash basis method of accounting, whereby a company records costs when they are actually paid. Duke contends this method of accounting is not appropriate for ratemaking or regulated utilities. Staff offers similar arguments, noting that Duke is required to use the accrual basis of accounting. Staff further states that the Commission has regularly approved treatment of property tax expenses for ratemaking in this manner. Duke maintains that OCC is unable to demonstrate how the Company's tax expense recovery is in any way inflated. According to the Company, a growth in plant-in-service will typically correspond to an increase in the value of the property and, thus, an increase in property taxes.

{¶ 48} The Commission finds that the treatment of property taxes in the Stipulation is reasonable and appropriate. As described by Duke, and supported by Staff, property taxes are recorded on an accrual basis, which is a generally accepted accounting principle. Under this method, costs are accrued in the period they are incurred and included in the period to which they relate. The Company explained that it accrues property tax on a monthly basis and later trues up expenses when the final bills are paid. (Duke Ex. 11 at 10-13.) We affirm that this method is consistent with generally accepted accounting principles and consistent with how regulated utilities record property tax expenses. The harm from this method alleged by OCC is vague and unsupported. Further, we find OCC's alternative method of expensing property taxes to be inconsistent with R.C. 4909.15(C)(1) and outside of the test year.

c. Rider CEP

{¶ 49} Regarding Rider CEP, OCC alleges that the adjustments made to the rider via the Stipulation do not benefit ratepayers. Initially, OCC states the proposed spending caps for Rider CEP are in violation of the caps already agreed to and approved by in the *Rider CEP Case*, Opinion and Order (Apr. 21, 2021). As argued by OCC, the caps agreed to in that proceeding were to remain in place until a new gas rate case is approved, and it would violate that agreement to implement new caps here. OCC further submits that an increase in the caps does not benefit customers. OCC avers that Duke has a history of excessive CEP spending increases and the proposed caps would not sufficiently limit Duke's spending. According to OCC, there has not been significant enough growth in the Company's service area to justify the larger caps. Duke counters that its CEP expenditures are necessary in order to provide safe, reasonable service to its customers. Furthermore, Duke points out that the justification for the Company's CEP investments has been discussed and approved in other proceedings. Duke does not disagree with OCC's assertion that, in the *Rider CEP Case*, the Commission approved a stipulation that set rate caps for Rider CEP until new base rates went into effect. Duke maintains that setting new rate caps through this rate case proceeding is precisely in line with what is described in the *Rider CEP Case*.

{¶ 50} OCC also takes issue with the lack of a savings offset as part of Rider CEP. As Duke upgrades its infrastructure, OCC maintains it is logical that, with the improved facilities, associated O&M costs would decrease. OCC contends that the cost savings associated with the decreased O&M expenses should be returned to customers. OCC points to the Company's Rider AMRP, which OCC describes as a similar rider to the CEP that has such a savings offset. Rider AMRP replaced aging pipeline infrastructure, which resulted in less leaks and thus less repairs and lower O&M costs. According to OCC, similar results can be expected with Rider CEP and those cost savings should be returned to ratepayers. Additionally, OCC derides the removal of the depreciation offset from Rider CEP. As argued by OCC, the depreciation offset reduces the return on new investments that correspond to the decline in rate base caused by depreciation that occurs between rate cases. Without the offset, OCC submits that Rider CEP rates can be wrongfully increased for additional plant investment.

{¶ 51} In reply, Duke states there is no evidence that there are O&M savings associated with CEP investments. The Company explains that there will always be O&M expenditures necessary to maintain the CEP investments. Duke further avers that the Commission has repeatedly determined an O&M savings offset is not necessary in other Rider CEP proceedings. Similarly, Duke maintains that a depreciation offset is unnecessary. As described by the Company, the caps in place prevent overcharging and, further, depreciation offsets would be added back in if no base rate case application accompanies the next alternate rate application. Duke submits that a depreciation offset would not actually benefit ratepayers, as it would allow the Company to include more capital and defer additional expenses.

{¶ 52} Upon review, we find OCC's concerns with Rider CEP to be unavailing. Initially, the Commission expresses that OCC's contention that the proposed new CEP caps violate the settlement in the *Rider CEP Case* is illogical. In summarizing the stipulation in that proceeding, the order in the *Rider CEP Case* states: "The annual residential rate caps agreed to in the Stipulation shall apply until the effective date of Duke's next natural gas base rate case." *Rider CEP Case* at 18. Thus, the caps in the *Rider CEP Case* are in place until an order is issued in this case. The Stipulation in this proceeding proposes to install new caps to replace those from the *Rider CEP Case*. We do not see a conflict with the prior agreement. Along those lines, the Commission does not take issue with the rate caps provided in the Stipulation. OCC contends that the increase in the rate caps does not correlate with the lack of growth in Duke's service area. Further, OCC asserts Duke is prone to overspending on capital expenditures. Neither of these arguments are compelling. We note that the caps are significantly lower than what was originally proposed in Duke's application. Additionally, it has been demonstrated that the CEP provides benefits to ratepayers and is in the public interest. *See, e.g., Rider CEP Case* at ¶ 61-62. The caps on spending ensure that the bill impact is limited. We also note that Rider CEP is subject to annual audits to ensure the spending is appropriate. The Commission also determines that a savings offset and a depreciation offset are not warranted. While OCC infers that a savings offset is necessary because capital investments will result in O&M savings, such a claim was unsupported (Tr. I at 186). As to the depreciation offset, Duke explained that it was no longer necessary as Rider CEP is to be reset and accumulated depreciation is to be incorporated into the new base rates (Duke Ex. 11 at 28). With the proposed caps in place, Duke will already not be able to include all of its annual investments in the rider for recovery. Thus, Duke will not be recovering all of its CEP-related depreciation expenses. (Duke Ex. 11 at 33-34.) We observe that, besides lowered caps, the Stipulation incorporates additional protections concerning depreciation expenses, originally proposed by Staff, such that if the Company files an alternative rate application separately from a base rate application, the depreciation offset will be reintroduced (Joint Ex. 1 at 8). Further, Duke will be required to conduct a depreciation study within five years (Joint Ex. 1 at 5).

d. Return on equity and capital structure

{¶ 53} OCC contends that the ROE is excessive and thus not beneficial to customers and should be rejected by the Commission. As explained by OCC, Duke's ROR and common equity ratio are not ideal as compared to other recent rate case decisions. The capital structure as agreed upon in the Stipulation is 47.68 percent long-term debt and 52.32 percent common equity. OCC asserts that a more appropriate structure would be 52.39

percent long term debt and 47.61 percent common equity. As explained by OCC, these numbers are an average of Staff's listed comparable companies, Duke and Duke's parent company average, and the national average. OCC's logic is that this ratio more closely aligns with similar gas utility companies. OCC also recommends that the ROE proposed in the original Staff Report should be adopted. As proposed in the Stipulation, based on the agreed-upon ROE and capital structure, the ROR is 6.96 percent. If OCC's proposals were adopted, the ROR would be 6.67 percent. According to OCC, this rate is more in line with the national average of 6.83 percent. OCC avers that its proposed ROR would still allow the Company to access capital and that the ROR offered in the Stipulation is excessive.

{¶ 54} In response, initially, Duke submits that the ROE and the capital structure provided in the Stipulation are within Staff's acceptable range. As described by the Company, the ROE and capital structure balances Duke's right to earn a reasonable rate of return with the interests of ratepayers. Duke further contends that OCC's analysis is flawed. According to Duke, OCC's analysis is merely an average of other utilities' ROE. There is no actual analysis or consideration of factors concerning operations and financial conditions that may be unique to Duke. Duke avers it is illogical to just consider the national average. The Company also points out that OCC's data is dated, and was never updated, despite multiple opportunities to do so. As to the utilities OCC considered in creating its average ROE, Duke asserts that many of the utilities were holding companies, not regulated operating utilities, that operate in multiple states and have large, unregulated components. Duke states it is illogical to compare its operation to such companies. Based on this, the Company contends OCC's recommendation should be disregarded.

{¶ 55} Additionally, OCC also maintains that the cost allocation of base distribution charges wrongfully harms residential ratepayers. Pursuant to the Stipulation, 67.83 percent of base distribution revenue charges would be allocated to residential customers. OCC submits that residential ratepayers continue to deal with the aftereffects of the COVID-19 pandemic as well as record high inflation. According to OCC, non-residential consumers are better equipped to deal with increased utility rates, as those consumers can raise the price of their goods and services to accommodate the increase, whereas residential consumers have no such option. At the least, OCC asks that the Commission gradually adjust cost allocation. OCC also contends that the fixed delivery charge does not benefit ratepayers and is not in the public interest. The stipulated fixed delivery charge for residential consumers is $43.29, and $39.29 for low-income consumers. OCC affirms this is an over-38 percent increase from the current delivery charge. According to OCC, a more appropriate residential fixed charge would be $34.23. OCC explains that this charge is consistent with the 9.49 percent increase to residential consumers' base distribution revenues.

{¶ 56} As to cost allocation, Duke counters that the distribution of costs are consistent with the class cost of service study (CCOSS) conducted by the Company and admitted in the proceeding. Duke states the residential allocation it originally offered in its application was lower than what was described in the CCOSS in order to promote the concept of gradualism. Thereafter, Duke explains the residential allocation was reduced again as part of negotiations for the Stipulation. The Company states the cost allocation affirmed in the Stipulation is consistent with the concept of cost causation and that Duke, and the other Signatory Parties, must consider all rate classes, not just residential customers. Duke also points out that it is not just residential customers that must grapple with the COVID-19 pandemic and high inflation, but, rather, all of its customers are affected.

{¶ 57} Regarding the fixed delivery charge, Duke asserts that there is not actually a change from what customers have been paying. The Company explains that with the previous fixed charge, plus additional riders, customers were already paying the exact same amount. Duke also questions how the Company would recover its revenue requirement to meet its needs to provide safe and reliable service if OCC's proposed fixed charge was adopted.

{¶ 58} The Commission determines that the proposed ROE of 9.6 percent is reasonable and should be accepted. In doing so, we affirm that the ROE is comfortably within Staff's recommended range of 9.03 to 10.04 percent (Staff Ex. 1 at 23). Staff used the capital asset pricing model and the discounted cash flow model, with other factors, to calculate the ROE range (Staff Ex. 1 at 23). OCC recommends an ROE of 9.52 percent, based on an average of ROEs of other national utilities, and emphasizes that the resulting ROE is what matters, and not how it was calculated. However, OCC agrees that Staff's method of calculating the ROE is reasonable and appropriate. (OCC Ex. 6 at 7.) Furthermore, while both OCC and Duke provided national averages of various authorized natural gas utility ROEs, Duke presented an average using the most the most up-to-date figures, which came out to 9.59 percent.[3] Accordingly the Commission finds the proposed ROE to be reasonable and is unpersuaded by arguments that it is in anyway excessive. Similarly, we approve of the capital structure as agreed upon in the Stipulation, with 47.68 percent long-term debt and 52.32 percent common equity. Logically, this was based on Duke's capital structure as of the date certain (*See, e.g.*, Joint Ex. 1 at 21). As Duke points out, OCC's calculation is based on a comparison of utilities, some of which are holding companies with unregulated aspects (Duke Ex. 11 at 9-10; OCC Ex. 6 at 9). Regarding the offered ROR of 6.96 percent, we additionally find it to be squarely within Staff's recommended range of 6.66 to 7.19 percent. Here, OCC requests a ROR of 6.67 percent and again avers that the method to calculating a ROR is not as important as the end result, and notes that the national average ROR for the first nine months of 2022 was 6.83 percent (OCC Ex. 6 at 6, 10). However, we point out that the ROR in the Stipulation is closer to that national average than the ROR proposed by OCC.

{¶ 59} Finally, we affirm the cost allocation as presented in the Stipulation. Notably, 67.8 percent of revenue is allocated to be recovered from residential consumers. This is consistent with Staff's recommendation in the Staff Report, and supported by the CCOSS (Staff Ex. 1 at 32; Staff Ex. 7 at 2-3). OCC does not dispute the rationale for the allocation, but rather seeks a reduction to account for residential consumers dealing with

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[3] The ROE average provided by Duke considered approved ROEs from May 1, 2022, through April 20, 2023 (Duke Ex. 6 at 3), while the ROE averages submitted by OCC ranged from January 1, 2022, to September 20, 2022 (OCC Ex. 6 at 7).

outside forces such as the COVID-19 pandemic and rising inflation. Certainly, the Commission understands such concerns. However, both residential and non-residential ratepayers are affected by these events. Further, the allocation is consistent with the concept of cost causation. The Commission also finds the fixed charge to be appropriate. OCC's assertion of a 38 percent increase is misleading. As OCC's witness affirmed on cross-examination, the current fixed charge, plus the current versions of Rider AMRP and Rider CEP, equate to a charge of $43.29, which is exactly the same as the fixed charge proposed in the Stipulation (Tr. I at 120-121).[4]

e. Funding of low-income weatherization programs

{¶ 60} Initially, OCC submits that it is inappropriate to consider the funding of low-income weatherization programs during this proceeding. OCC avers such consideration should be done in a separate rider case. OCC points out that, previously, Duke shareholders funded $350,000 annually for such programs, but in this Stipulation, that amount is reduced to $200,000 annually. Further, ratepayers are responsible for $1,795,000 annually, which continues over from the previous rate case. OCC maintains that if these programs were reviewed in a separate proceeding, they would be subject to necessary and appropriate oversight to ensure customer funds were being used responsibly. According to OCC, ratepayers are harmed by the lack of oversight and by the reduction of shareholder contributions.

{¶ 61} PWC responds, asserting that its weatherization programs are subject to ongoing, thorough review by the Ohio Department of Development (ODOD). According to PWC, the Commission has repeatedly recognized the need for funding for weatherization programs, such as those offered in this proceeding. PWC explains that its funding is not solely dependent on ratepayers, as Duke's shareholders agreed to a significant contribution

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[4] As proposed in the Stipulation, the two riders would reset at zero.

and PWC also receives funding from the U.S. Department of Energy and the Department of Health and Human Services. Mainly, PWC states its programs are beneficial to consumers. They assist those consumers most in need and provide services that reduce gas bills and help make safer homes. Duke makes similar arguments, noting that the Company is under no legal obligation to provide funding to PWC.

{¶ 62} The Commission finds OCC's arguments against the funding set aside for PWC to be unavailing. As described, residential customers, particularly low-income ratepayers, benefit from the programs provided by PWC. OCC largely does not take issue with the programs, but rather, contends there is insufficient oversight. (OCC Ex. 2 at 5-6.) However, OCC does not dispute that the programs are subject to audits from ODOD (Tr. I at 100). We further note that funding for PWC, for the same allotted annual amount, was approved in Duke's last rate case.

f. Performance incentives

{¶ 63} OCC alleges that the Stipulation wrongly permits Duke to charge ratepayers for financial performance incentives. According to OCC, consumers receive no benefit from such compensation and should not be responsible for funding it. OCC notes that the auditors previously determined that recovery for financial incentive bonuses should be disallowed. Duke responds by stating the performance incentives are a necessary component of the Company's compensation package that is necessary to ensure safe and reliable service to its customer base. Further, Duke observes that the auditor recommendations cited by OCC concerning incentive pay were never adopted by the Commission.

{¶ 64} As to OCC's argument that costs related to incentive compensation expense and capitalized incentive compensation from rate base should be disallowed, we note that the Commission generally does not authorize the recovery of financial incentive compensation from ratepayers; however, each case must be reviewed on a case-by-case basis and, based upon the facts and circumstances of each case, recovery of financial incentive compensation may be permitted. *See, e.g., In re the Annual Application of Duke Energy Ohio, Inc.*, Case No. 21-618-GA-RDR, Opinion and Order (July 27, 2022) at ¶ 84; *Rider CEP Case*, Opinion and Order (Apr. 21, 2021) at ¶ 69. We also note that the Stipulation provides for a credit in the CEP Rider to offset the rate effect of any capitalized financial incentive compensation for incremental investments on projects placed in service after the March 31, 2022, the date certain in this case. We find that this represents a reasonable compromise of this issue. Therefore, considering these provisions in light of the other benefits provided within the Stipulation, we find OCC's arguments unavailing as to modifying or rejecting the Stipulation.

g. Commission conclusion

{¶ 65} The Commission finds that the second prong of the three-part test is satisfied and the Stipulation benefits ratepayers and the public interest. Initially, we must emphasize this part of the test is not whether there are different or additional provisions that would benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *Rider CEP Case*, Opinion and Order (Apr. 21, 2021) at ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *See, e.g.*, *In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing the issues before the Commission, while also avoiding the considerable time and expense associated with the litigation of a fully contested case. *See, e.g.*, *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 11-

5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17. While we addressed each of OCC's specific issues above, we do not find that, had we agreed with OCC, it necessarily would have changed our consideration as to whether the Stipulation, as a package, benefits consumers. We, therefore, reaffirm that the Stipulation must be viewed as a whole and, for that reason, as well as the rationale expressed above, deny OCC's request to reject or modify the Stipulation.

{¶ 66} **T**he record evidence supports a finding that the Stipulation, as a package, includes numerous benefits for ratepayers and the public interest. We note that the Stipulation contains provisions related to Rider CEP that allow Duke to make necessary investments to provide safe and reliable service, but also carries needed protections for ratepayers to limit spending and bill impacts. Additionally, as Duke and Staff presented, the Stipulation reflects a fair and balanced compromise that is intended to result in reasonable rates for both Duke and its customers. The stipulated revenue increase of $31.7 million is significantly lower than the $49 million requested by Duke in its application, while the stipulated ROE of 9.50 percent is significantly lower than 10.30 percent ROE originally proposed by Duke. This amounts to an average increase of 3.7 percent. Additionally, among other provisions, the Stipulation resolves issues important to energy suppliers that advance effective competition in the retail generation markets not initially contemplated in Duke's application. The Stipulation also provides a benefit by continuing funding for low-income consumers through weatherization programs administered by PWC. For these reasons, we conclude that the overall settlement package, which is supported by intervenors representing residential, commercial, and industrial customers, benefits ratepayers and the public interest.

3. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

{¶ 67} Addressing the third part of the Commission's three-part test, Duke asserts the Stipulation does not violate any important regulatory principle or practice and, in fact, complies with all relevant and important principles and practices. Furthermore, Duke maintains that the Stipulation provides certainty to all stakeholders by resolving these proceedings in a fair and balanced way. The Signatory Parties aver that the Stipulation also advances important ratemaking principles, such as cost causation, gradualism, and the policies set forth in R.C. 4928.02. Overall, they argue that the Stipulation results in a smaller rate increase to customers than what was initially requested in the application by Duke, thus supporting the conclusion that the Stipulation results in just and reasonable rates. Specifically, the parties argue that the Stipulation results in a lower revenue increase than originally requested in the application, and the revenue allocation is consistent with the principle of cost causation, which prioritizes the assignment of costs to the entity or group of entities that cause the cost on the system.

{¶ 68} OCC asserts that the Stipulation fails the third part of the Commission's three-part test in various respects. OCC urges the Commission to reject the Stipulation in its entirety or, at a minimum, modify it substantially as addressed below. Many of OCC's arguments under this prong overlap with or refer back to its discussion points regarding the second prong.

a. Propane caverns

{¶ 69} OCC reiterates its argument that the propane caverns were not used and useful as of the date certain of March 31, 2022. As explained by OCC, it would be inappropriate to treat the caverns cost of rendering service, under R.C. 4909.15(A)(4). OCC contends this is merely a tactic by the Company to evade the "used and useful" standard required by R.C. 4909.15(A)(1). Treating the caverns as a cost of rendering service, explains OCC, would be an entirely new way of treating the facility, which OCC states was always previously handled as property that must be used and useful. In reply, Duke affirms its contention that the used and useful standard does not apply to the propane caverns. Duke also affirms that, even if it did apply, the propane caverns meet that standard. Here, the

Commission affirms its findings, discussed above in our consideration of the second prong, that the propane caverns were properly reviewed under R.C. 4909.15(A)(4).

b. Reasonable rates

{¶ 70} Pursuant to R.C. 4905.22, asserts OCC, every utility must charge just and reasonable rates and provide necessary and adequate facilities and services. Specifically, OCC states a utility's ROE should be adequate to enable the utility to raise necessary capital, citing *Bluefield Waterworks and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923). As discussed, OCC alleges the ROE and ROR are excessively high and beyond what is needed for Duke to attract capital investment. Accordingly, OCC maintains the rates in the Stipulation violate these important ratemaking principles.

{¶ 71} Duke argues in reply that OCC is wrongly opposed to any increase in rates. The Company provides that if the costs to serve customers with safe and reliable service increase, it would be necessary for rates to increase. Duke avers that the CCOSS supports the increase in rates and that the Company's return is just and reasonable.

{¶ 72} OCC also submits that the Stipulation, if approved, would violate the regulatory principle of gradualism. Under this principle, rates should increase gradually over time so to avoid any rate shock to customers. OCC asserts that the rate increase proposed here would violate that principle and harm customers. According to OCC, it would be especially harmful to ratepayers currently that are still recovering from the COVID-19 pandemic and especially-high inflation.

{¶ 73} Additionally, OCC states the Stipulation goes against the regulatory principle of cost causation. OCC explains that the agreement would provide a fixed delivery charge of $43.29 for all residential ratepayers. This fee, notes OCC, is regardless of how much gas a customer uses. OCC avers that residential ratepayers are not homogenous and consume gas differently and have varying needs. According to OCC, the consumers that use the least amount of gas will see the highest percentage increase in their bills.

{¶ 74} Duke responds that the Stipulation is consistent with both the concept of gradualism and the concept of cost causation. As the Company has not requested a rate increase in over a decade, Duke avers that the 4.8 percent increase for residential customers is modest and is not an increase that would cause rate shock. The Company notes that the Stipulation reduces the originally-requested revenue requirement by nearly 35 percent. As to OCC's argument regarding the principle of cost causation as it relates to the fixed delivery charge, Duke submits that OCC's statements are insincere. Duke points out that OCC also proposes a fixed delivery charge, albeit lower, that would be subject to the same theoretical issues regarding cost causation.

{¶ 75} Finally, OCC reiterates that financial performance incentives should not be recoverable from ratepayers. OCC maintains that auditors have repeatedly recommended disallowance of such recovery and approving it here would be counter to Commission precedent. Further, as customers do not benefit from these employee bonuses, they violate the principle of cost causation. Duke counters that OCC has provided no evidence to support its claims. According to Duke, its compensation packages ensure that service is safe and reliable for customers.

{¶ 76} The Commission affirms that the ROR and ROE are reasonable. In doing so, we point to and reiterate our determinations made above that the ROR and ROE are both firmly within the recommended range produced by Staff (Staff Ex. 1 at 23). We also confirm that the rate increase is consistent with the concepts of gradualism and cost causation. No evidence was presented to demonstrate that the proposed 4.8 percent increase for residential consumers would cause rate shock. Furthermore, we recognize that a higher cost allocation was supported by the CCOSS but was reduced by Duke and then Staff to avoid any potential rate shock (Duke Ex. 11 at 23-24). The Commission finds OCC's arguments concerning the fixed delivery charge and cost causation to be unpersuasive, as the Commission has repeatedly upheld a rate design with a fixed charge. *See, e.g., In re Duke Energy Ohio, Inc.* Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008). Similarly, as to OCC's argument that costs related to incentive compensation expense should be disallowed, we note that, as discussed above, the Commission generally does not authorize the recovery of financial incentive compensation from ratepayers although recovery of financial incentive compensation may be permitted, on a case-by-case basis, depending upon the facts of each case. *See, e.g., In re the Annual Application of Duke Energy Ohio, Inc.*, Case No. 21-618-GA-RDR, Opinion and Order (July 27, 2022) at ¶ 84; *Rider CEP Case*, Opinion and Order (Apr. 21, 2021) at ¶ 69.

{¶ 77} The Commission has completed a thorough review of the evidence of record and the various positions of the parties. Following our review, we agree with the Signatory Parties that the Stipulation does not violate the third part of the three-part test. Consistent with the Commission's findings above, the Stipulation does not violate any important regulatory principle or practice and advances many of the state policy objectives set forth in R.C. 4928.02.

4. CONCLUSION

{¶ 78} Finally, upon analysis of each part of the Commission's evaluation of stipulations, the Commission concludes that all three prongs are satisfied. Thus, we determine that the Stipulation is reasonable should be approved.

E. Rate of Return and Authorized Increase

{¶ 79} Attachment 1 to the Stipulation contains schedules reflecting the terms agreed upon by the Signatory Parties. The Commission finds that the stipulated schedules are reasonable and proper, and we adopt them for the purposes of these proceedings. Given Duke's current rates, the Company has a current operating income of $107,146,245 and a stipulated rate base of $1,897,600,872, which yields a 5.65 percent earned ROR. This ROR is insufficient to provide Duke with reasonable compensation for distribution service provided to its customers. (Joint Ex. 1 at Attachment 1.)

{¶ 80} The negotiated ROR recommended by the Stipulation is 6.96 percent. In order to realize this rate of return on the stipulated rate base of $1,897,600,872, Duke requires net operating income of $132,073,021. Thus, the stipulated revenue increase, or base rate increase, amounts to $31,689,742. This increase reflects a total stipulated revenue requirement of $531,718,409. (Joint Ex. 1 at Attachment 1.)

F. Effective Date and Tariffs

{¶ 81} As part of its investigation in these matters, Staff reviewed the various rates, charges, and provisions governing the terms and conditions of service contained in Duke's proposed tariffs. Upon review, the Commission finds the proposed tariffs to be reasonable, subject to any modifications set forth in the Stipulation. Consequently, Duke shall file final tariffs, subject to final review by the Commission. The new tariffs will become effective for all services rendered on or after the effective date of the tariffs.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 82} Duke is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, Duke is subject to the jurisdiction of this Commission pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 83} On May 31, 2022, Duke filed notice of its intent to file an application for an increase in rates, in accordance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I(B), and an application for approval of an alternative rate plan, pursuant to Ohio Adm.Code 4901:1-19-06(A). Also, on May 31, 2022, as amended on June 2, 2022, Duke filed a motion to establish a test year and date certain and for waiver of certain filing requirements pursuant to R.C. 4909.15(C), Ohio Adm.Code 4901-7-01, and 4901:1-19-02(D), respectively. By Entry issued June 29, 2022, the Commission approved the test year and date certain and granted the requested waiver of specified Standard Filing Requirements.

{¶ 84} On June 30, 2022, as amended on September 8, 2022, Duke filed a combined application to increase rates and charges and for approval of an alternative rate plan pursuant to R.C. 4909.18 and R.C. 4929.05, respectively.

{¶ 85} On September 9, 2022, Staff filed a letter stating that Duke's application complies with the Standard Filing Requirements found in Ohio Adm.Code 4901-7-01, Appendix A, and Ohio Adm.Code 4901:1-19-06. By Entry dated October 19, 2022, the Commission found that Duke's application for an increase in rates and for an alternative rate plan be accepted for filing as of June 30, 2022.

{¶ 86} On various dates, motions to intervene were filed by OCC, IGS, OEG, RESA, and PWC. By Entry dated February 24, 2023, the attorney examiner granted the motions to intervene.

{¶ 87} On December 21, 2022, the Staff Report was filed with the Commission.

{¶ 88} Objections to the Staff Report were filed by various parties on January 20, 2023.

{¶ 89} Following public notice, the Commission conducted local public hearings on March 8, 2023, and March 10, 2023. Notice of the local public hearings were published in accordance with R.C. 4903.083, and proof of such publication was filed by Duke on March 20, 2023.

{¶ 90} On April 28, 2023, the Stipulation was filed by the signatory parties.

{¶ 91} The evidentiary hearing was held at the Commission offices on May 23 and 24, 2023.

{¶ 92} The existing rates and charges for natural gas distribution service are insufficient to provide Duke with adequate net annual compensation and return on its property used and useful in the provision of natural gas distribution services.

{¶ 93} A ROR of 6.96 percent is fair and reasonable under the circumstances of this proceeding and is sufficient to provide Duke just compensation and return on its property used and useful in the provision of natural gas distribution services.

{¶ 94} Duke's application was filed pursuant to, and this Commission has jurisdiction over the application under, the provisions of R.C. 4909.17, 4909.18, and 4909.19, and the application complies with the requirements of these statutes.

{¶ 95} Staff conducted an investigation with a report duly filed and mailed, and public hearings were held, the written notice of which complied with the requirements of R.C. 4909.19 and 4903.083.

{¶ 96} The Stipulation is the product of serious bargaining among capable, knowledgeable parties, advances the public interest, and does not violate any important regulatory principle or practice. The Stipulation meets the three criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

{¶ 97} The Stipulation submitted by the Signatory Parties is reasonable and should be adopted in its entirety.

{¶ 98} Upon review, the Commission finds the proposed tariffs to be reasonable, subject to any modifications set forth in the Stipulation. Consequently, Duke shall file final tariffs, subject to final review by the Commission. The new tariffs will become effective for all services rendered on or after the effective date of the tariffs.

V. ORDER

{¶ 99} It is, therefore,

{¶ 100} ORDERED, That the Stipulation filed on April 28, 2023, be approved in accordance with this Opinion and Order. It is, further,

{¶ 101} ORDERED, That Duke's applications for an increase in rates and for approval of alternative rate plans are granted to the extent provided in this Opinion and Order. It is, further,

{¶ 102} ORDERED, That Duke is authorized to file in final form two complete copies of tariffs consistent with this Opinion and Order and to cancel and withdraw its superseded tariffs upon the effective date of the final tariffs. One copy shall be filed with these case dockets, and one copy shall be filed in Duke's TRF docket. Duke shall also update its tariffs previously filed with the Commission's docketing division. It is, further,

{¶ 103} ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date of this Opinion and Order and the date upon which two complete copies of the final tariffs are filed with the Commission. It is, further,

{¶ 104} ORDERED, That Duke shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 105} 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. It is, further,

{¶ 106} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

NJW/dr