

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Duke Energy Ohio, Inc. for an)
Increase in Electric Distribution Rates) Case No. 21-887-EL-AIR

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Tariff)
Approval) Case No. 21-888-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Approval)
to Change Accounting Methods) Case No. 21-889-EL-AAM

**INITIAL JOINT BRIEF OF INTERSTATE GAS SUPPLY, INC. AND RETAIL ENERGY
SUPPLY ASSOCIATION**

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I. INTRODUCTION

On September 19, 2022, Duke Energy Ohio, Inc. (“Duke”) and a diverse group of parties, including Interstate Gas Supply, Inc. (“IGS”) and the Retail Energy Supply Association (“RESA”), filed a Stipulation and Recommendation (“Stipulation”) regarding Duke’s October 1, 2021, Application to Increase Rates (“Application”) and the Staff Report filed on May 19, 2022 (“Staff Report”).

Because the Stipulation is the product of serious bargaining, will benefit the public interest, and does not violate any important regulatory policy or practice, IGS and RESA urge the Commission to approve the Stipulation.

II. STANDARD OF REVIEW

Under Rule 4901-1-30, parties to Commission proceedings may enter into stipulations to resolve contested issues. Although the Stipulation filed in this case is non-binding to the Commission, the terms of the agreement are accorded substantial weight.¹

In considering the reasonableness of stipulations the Commission often relies on a test, colloquially known as the Three Prong Test (“Test”). Under the test, the Commission addresses three questions:

- (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?²

III. ARGUMENT

As the record demonstrates, the Stipulation is the product of serious bargaining among capable and knowledgeable parties, benefits ratepayers and the public interest, and advances important regulatory principles and practices.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Stipulation is the result of serious bargaining between a diverse set of parties.³ While not all parties to the negotiations signed the Stipulation, every party had a seat at the table during settlement discussions.⁴ Following those discussions, parties with

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Distribution Rates*, Case No. 17-32-EL-AIR, at al., Opinion and Order ¶ 167 (Dec. 19, 2018).

² See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm’n*, 68 Ohio St.3d 559 (1994).

³ Duke Exhibit 3 at 10.

⁴ Duke Ex. 3 at 10; *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996).

varying interests and represented by experienced and knowledgeable counsel including Duke, the Commission staff, energy suppliers and vendors, and representatives of all customer segments signed the resulting Stipulation.⁵ The only party that did not sign was the Office of the Ohio Consumers' Counsel ("OCC"), who continues to oppose adoption of the agreement.

Implying that it has some unique position in the proceedings, or a diversity of parties, OCC, as it has in the past, contends that the Stipulation should be rejected because the signatory parties do not represent the interests of residential customers.⁶

The claims advanced by OCC are neither accurate nor consistent with Ohio law.

First, the interests of residential customers were well represented by parties other than OCC. For example, Ohio Partners for Affordable Energy and Partners Working Cooperatively both represent the interests of residential customers.⁷ Further, the Commission staff must consider the interests of all parties, including those of residential customers, in its review of the Application and the resulting Stipulation.⁸

Second, OCC misstates the legal requirements for approval of a stipulation. The Commission has never held that a Stipulation must necessarily be agreed to by a broad range of diverse interests; rather, the Commission has stated that signatory parties representing a broad range of interests is an indication of good-faith and serious bargaining. Further, the Commission has stated that, in a case with only three parties in total, a diversity requirement would necessitate a unanimous settlement agreement, but

⁵ Duke Ex. 3 at 10-11.

⁶ See, e.g., OCC Ex. 3 at 5.

⁷ Tr. at 171.

⁸ Id.

the Commission has long ruled that no single party should be afforded veto power under the first part of the three-part test.⁹ As it has in the past, the Commission should decline to afford any single party the ability to preclude a settlement simply by withholding its signature.

B. The Stipulation benefits ratepayers and the public interest.

The stipulation also provides substantial benefits to ratepayers and the public interest. See Duke Ex. 3 at 12-14; Duke Ex. 12 at 27-29; and Staff Ex. 8 at 4-5. In addition, it resolves several issues important to energy suppliers.¹⁰ These supplier benefits include:

1. The elimination of the End Use Customer Enrollment Fee and Customer Usage Request Charges and the reduction of the Pre-Enrollment End-use Customer List Fee from \$150 to \$50 because Duke is implementing a new customer information system that it states will reduce its cost to provide customer information to suppliers.¹¹
2. An alternative path to the proper allocation of costs associated with the delivery of default service currently collected in distribution rates. While RESA and others continue to dispute Duke's refusal to support reassignment of costs to provide

⁹ *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at P 50 (citing, *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 [*34] 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.")).

¹⁰ See, generally, Duke Ex. 3 at 6-7 and Duke Ex. 12 at 6-7.

¹¹ Joint Ex. 1 at 10-11 and OCC Ex. 15.

default service through the distribution rates,¹² the Stipulation avoids in this case any protracted litigation by providing a procedure for addressing those issues upon a change of law.¹³

3. The resolution of contested tariff provisions regarding the sale of renewable energy credits and time of use rates. The Stipulation favorably resolves complaints about Duke's proposed changes to expand its GoGreen program and recommends a reasonable path for the expansion of time-of-use rates by providing for the provision of time-of-use distribution rates while leaving to the market the determination of reasonable time-of-use generation rates.¹⁴
4. Provisions to guide discussions toward the introduction of supplier consolidated billing for Duke distribution customers. The Stipulation recommends a process for considering supplier consolidated billing.¹⁵

Collectively, these terms addressing concerns of energy suppliers provide meaningful benefits to them that will also benefit customers by advancing effective competition in the retail generation market.

C. The Stipulation does not violate any important regulatory principle or practice.

Finally, the record demonstrates that the Stipulation does not violate any important regulatory principle.¹⁶ As Duke witness Spiller explained, the Stipulation advances

¹² See, e.g. Objections and Summary of Major Issues of the Retail Energy Supply Association at 1-5 (June 21, 2022),

¹³ Joint Ex. 1 at 11-13.

¹⁴ Id. at 13-14.

¹⁵ Id. at 17-21

¹⁶ Duke Ex. 12 at 26.

important principles by addressing the Company's revenue deficiency and enables recovery of reasonable costs to continue providing safe, reliable, and reasonable electric distribution service.¹⁷ Similarly, Staff witness Liphtratt confirmed that the settlement did not violate any important regulatory principles or practices and concluded that the Stipulation "represents a fair, balanced, and reasonable compromise of the issues in this proceeding," and "meets all of the Commission's criteria for adoption of settlements."¹⁸

Although the record demonstrates otherwise, OCC argues that the that the Stipulation does not advance public policy interests because, among other concerns not addressed here, it does not provide for bill format changes, the provision of aggregated supplier information, and changes in the manner by which customers can limit access to their user information.¹⁹ None of these arguments are supported by the record.

1. *There is no reasonable justification for bill format changes or the provision of aggregated billing information*

As part of its efforts to undo the Stipulation, OCC argues that Duke should revise its residential bills for shopping customers to include the historic amount the customer would pay if the customer took service on the standard service offer. OCC claims this addition would assist customers in determining if they were receiving reasonably priced electric service.²⁰ Additionally, OCC states that the Stipulation does not satisfy public interest concerns because it lacks a provision requiring Duke to provide aggregated billing

¹⁷ Duke Ex. 3 at 11.

¹⁸ Staff Ex. 9 at 5.

¹⁹ OCC Ex. 3, *passim*.

²⁰ OCC Ex. 3 at 14-15 and Att. JDW-01 at 24-26.

information. These claims are a refrain that the Commission has repeatedly rejected for sound reasons.

First, as the examination of OCC's witness demonstrated, customers already have access to the necessary information on their bills to determine the historic difference between their generation costs and what they would have paid had they been taking default generation service. Specifically, the current bill format is required to contain a price to compare of the avoidable costs and the monthly generation amount. Multiplying the two provides the avoidable generation costs.²¹ Thus, there is not any informational deficit that needs to be filled.

Second, the information provided by the format change would be of limited value because it is only historical, as OCC's witness admitted.²² What the customer needs to make a purchasing decision is current pricing. For current pricing, customers could reach out to marketers and also use a regularly updated alternative, the Commission's EnergyChoice website.²³

Third, the aggregated billing information that OCC is seeking to require would be inherently suspect. As OCC's witness conceded on cross examination, the information would be "just reporting numbers."²⁴ Nuances such as the effects of budget billing, customer desires for specialized products such as renewable energy, or special pricing arrangements would be ignored.²⁵

²¹ Tr. at 292-94

²² Tr. at 294 and 301.

²³ Tr. at 294-95. See <https://www.energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=Electric>

²⁴ Tr. at 299.

²⁵ Id.

Fourth, the end for which the collection of aggregated data is intended is far from clear. According to OCC, the goal is to allow the Commission to judge the reasonableness of supplier pricing.²⁶ Yet, OCC's witness concedes that the Commission does not have authority to adjust supplier prices.²⁷

The lack of support for OCC's argument that the Stipulation should be rejected because it does not include bill format changes and collection and distribution of aggregated billing information demonstrates that the Commission's repeated refusal to adopt these recommendations remains sound. As the Commission has determined repeatedly, the proposals advanced by OCC are not justified because customers can calculate their costs based on the current bill format, there are public resources such as EnergyChoice to assist customers in assessing their generation costs, and there are significant administrative costs of providing largely duplicative information.²⁸

In summary, the Commission should reject OCC's argument that the lack of provisions dealing with bill format changes or provision of aggregated price information renders the Stipulation not in the public interest because the argument is not sound.

2. *There is no reasonable justification for rejecting the Stipulation because it does not include OCC's preference for another means for a customer to opt out of providing usage information*

²⁶ OCC Ex. 3, Att. JDW-01 at 26.

²⁷ Tr. at 300.

²⁸ *In the Matter of the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Entry on Rehearing at ¶ 35 (Jan. 27, 2021); *In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order at ¶ 89 (Feb. 24, 2021) and Entry on Rehearing at ¶ 20 (Apr. 21, 2021); *In re Application of Ohio Power Company to Initiate Phase 2 of its gridSMART Project and to Establish the gridSMART Phase 2 Rider*, Case No. 13-1939-EL-RDR, Opinion and Order at ¶ 79 (Feb. 1, 2017) (rejecting Ohio Partners for Affordable Energy's request for shadow billing) and *In re the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc.*, Case No. 18-218-GA-GCR, et al., Opinion and Order at ¶ 54 (Dec. 18, 2019) (rejecting OCC's shadow billing recommendation which the Commission had also previously rejected in Duke's 2015 audit case regarding its GCR rider). See, also, Staff Ex. 4 at 4-5.

OCC further complains that the Stipulation is unreasonable because it does not include a provision allowing additional ways for customers to opt out of having their personal information included on eligible customer lists provided to suppliers. More specifically, OCC offers an example of a preferred approach used by Ohio Power Company that makes use of a form available on that utility's website.²⁹ Once again, OCC is complaining about something that is not a problem.

As the Commission staff explains, Duke already provides sufficient means for customers to limit access and distribution of their personal information to suppliers. Quarterly, Duke's bills carry a mandatory message that customers can opt out, and customers can call or write to Duke to process the request.³⁰

Moreover, customers can opt out by using Duke's website, a process not required by Commission rules.³¹

Accordingly, the Commission should summarily reject OCC's complaint because other alternatives are more than adequate and the method for which OCC advocates is available to customers.

IV. CONCLUSION

The record demonstrates that the Stipulation is the product of serious bargaining among knowledgeable and capable parties, benefits ratepayers and the public interest, and does not violate any important regulatory principle or practice. In particular, it provides

²⁹ OCC Ex. 3 at 14 and Att. JDW-01 at 26-27.

³⁰ Staff Ex. 4 at 5-6.

³¹ Id. at 5.

real benefits to the parties including suppliers by reducing or eliminating supplier fees, setting up a supplier consolidated billing collaborative and a process for unbundling costs of providing the standard service offer currently collected in distribution rates, and properly and lawfully resolving issues regarding time-of-use rates and Duke's GoGreen program. For these reasons, the Commission should approve the Stipulation.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this *Initial Brief of Interstate Gas Supply, Inc. and Retail Energy Supply Association* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on October 31, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties listed below.

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