

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Natural Gas Rates. |) | Case No. 22-507-GA-AIR |
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| 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 |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval. |) | Case No. 22-509-GA-ATA |
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| In the Matter of the Application of Duke Energy Ohio, Inc., for Approval To Change Accounting Methods. |) | Case No. 22-510-GA-AAM |
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**INITIAL BRIEF
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

The stipulated resolution of the issues in these proceedings, as recommended by nearly all parties including the Retail Energy Supply Association (“RESA”),¹ is reasonable and should be approved by the Public Utilities Commission of Ohio without modification. The record establishes that the Stipulation and Recommendation (Joint Exhibit 1) satisfies the Commission’s three-part test because the settlement is a product of serious bargaining among capable, knowledgeable parties; as a package, benefits ratepayers and the public interest; and does not violate any important

¹ The statements expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

regulatory principle or practice.² The Stipulation fully resolves a number of issues raised by RESA in these proceedings and results in multiple benefits to customers, competitive retail natural gas service (“CRNGS”) suppliers and the competitive market. In addition, the Stipulation supports development of the competitive market and is consistent with several important regulatory principles, including natural gas policies in Ohio Revised Code Section 4929.02 and ensuring that shopping customers do not pay twice for the Commission’s assessment costs. The Commission should approve the Stipulation as presented and without modification, and at the same time reject all arguments from the sole party who opposes the Stipulation.

II. Argument

A. The Stipulation was negotiated by capable, knowledgeable parties.

There are seven parties to these proceedings, including the Staff of the Commission. As the Commission is aware, all seven parties are knowledgeable and have participated in numerous Commission proceedings for many years. Those cases have included prior natural gas rate cases of Duke.³ The Signatory Parties are capable and knowledgeable, and the settlement negotiations were open to all parties and involved several months of serious negotiations.⁴ Duke witness Lawler

² The Supreme Court of Ohio has endorsed the analysis of stipulations using those three criteria. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126).

³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in its Natural Gas Distribution Rates*, Case Nos. 12-1685-GA-AIR et al., Opinion and Order (November 13, 2013); and *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case Nos. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008), both of which involved most of the same parties as the instant proceedings.

⁴ Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 9-10; Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 37-38; and Staff Ex. 8 (Liphratt Direct Testimony in Support) at 4.

provided details in her supplemental direct testimony that demonstrates the Stipulation in these proceedings is the product of serious bargaining among capable, knowledgeable parties, stating:⁵

[T]he parties to these proceedings began meeting regularly, almost weekly, to discuss issues in the case. After two initial “virtual” meetings with all parties, an in-person meeting occurred with all parties. The subsequent settlement discussions occurred virtually with all parties invited to the large group meetings. In addition, the Company offered to meet individually with parties to discuss their specific issues that were raised in their respective objections. If the Company and the individual parties came to terms on a provision, that provision was brought to the remaining parties to provide an opportunity for their review and input. The final Stipulation was agreed upon through electronic exchange of drafts. Despite the divergent interests among them, all parties, including those opposing the Stipulation, had the opportunity to express their opinions during the negotiation process.

The testimony opposing the Stipulation from the OCC’s witnesses did not contest this criteria.⁶ Nothing in the transcript challenges this criteria either. As a result, the record establishes that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

B. Multiple supplier-related provisions of the Stipulation will benefit customers and the public interest.

1. The stipulated provision related to the Gas Surcredit Rider will benefit customers and the public interest.

The Signatory Parties agree and recommend (at page 10 of Joint Exhibit 1) that the Company’s Gas Surcredit Rider (“Rider GSR”) shall continue, but the rate will be a credit of \$0.000992 per Ccf to Transportation Customers served on Rates RFT, RFT-LI, FT-S, FT-L, and IT until approval of the Company’s next rate case.

⁵ Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 37-38.

⁶ OCC Ex. 3 (Shutrump Direct Testimony in Opposition) at 3-4; OCC Ex. 5 (Fortney Direct Testimony in Opposition) at 4; Tr. 108-109; OCC Ex. 7 (Buckley Direct Testimony in Opposition) at 4; OCC Ex. 9 (Adkins Direct Testimony in Opposition) at 3; and OCC Ex. 11 (Meyer Direct Testimony in Opposition) at 1-2.

Duke witness Spiller identified this provision of the Stipulation as a benefit to customers, low-income interests, and CRNGS suppliers.⁷ In addition, this provision of the Stipulation corresponds with the requirements of Revised Code Section 4905.10(A) and recommends an updated rate as contemplated by the existing tariff language – Tariff Sheet 66.2 (effective June 4, 2008) states that the existing rate would remain in effect until such time as Duke establishes new base rates. This part of the Stipulation ensures that the purpose of Rider GSR continues to be fulfilled and that shopping customers do not pay twice for the Commission’s assessment costs related to competitive retail natural gas service – once in base rates and again in shopping rates. In sum, the Rider GSR provision of the Stipulation will benefit customers and the public interest.

2. The stipulated elimination of the switching fee and the stipulated reduction in the amount of other supplier fees will benefit customers and the public interest.

The Signatory Parties agree and recommend (at page 10 of Joint Exhibit 1) that the \$4.00 switching fee will be eliminated from Duke’s natural gas tariff.⁸ They also agree to and recommend (at page 11 of Joint Exhibit 1) sizeable reductions to three fees imposed on CRNGS suppliers:

- The Customer Information List fee shall be reduced from \$150 to \$50;
- The Government Aggregator Eligible Customer List (Zip Code) fee shall be reduced from \$400 to \$135; and
- The Government Aggregator Eligible Customer list (Boundaries) fee shall be reduced from \$1,200 to \$400.

⁷ Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 6.

⁸ Per Tariff Sheets 33 (page 2), 36 (page 2), 37 (page 2) and 52 (page 2), customers who transfer from one Supplier’s pool to another Supplier’s pool or who revert to Duke’s sales service must pay the switching fee (with some limited exceptions).

Duke witnesses Spiller and Lawler testified that these provisions of the Stipulation are benefits to customers, low-income interests, and CRNGS suppliers.⁹ Both witnesses also testified that these are enhancements for the CRNGS market.¹⁰ Ms. Lawler further noted that the changes with these fees reduced Duke's revenue requirement increase,¹¹ which means that customers will pay less for switching and for supplier-related costs. These provisions of the Stipulation were not contested in the opposition's testimony. The record, therefore, establishes that these fee-related provisions will benefit customers and the public interest.

3. The stipulated increases in the number of free rate codes and overall supplier rate code total will benefit customers and the public interest.

The Signatory Parties agree and recommend (at page 11 of Joint Exhibit 1) that Duke increase the number of free rate codes per supplier from its current limit of 25 codes to a limit of 100 codes, and that Duke increase the total rate code limit for suppliers from 80 codes to 200 codes. Duke witnesses Spiller and Lawler identified this provision as another benefit of the Stipulation.¹² Ms. Lawler added that these stipulated rate code changes result in a lower revenue requirement increase and an increased ability for suppliers to offer various products in the market.¹³ This testimony was not questioned. The record, therefore, establishes that the rate code provision will benefit customers and the public interest.

⁹ Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 6, 8, 11; Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 5-6.

¹⁰ Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 11; Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 41.

¹¹ Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 24.

¹² Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 6-7; Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 4-5, and 6.

¹³ Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 5 and 24.

4. The stipulated resolution of disputed tariff language changes will benefit customers and the public interest.

The Signatory Parties agree and recommend (at pages 10-11 of Joint Exhibit 1) that Duke will:

- Withdraw its proposed changes to balancing language in Sheet Nos. 37, 44, 46, 50, 51, 52 and 58, regarding additional requirements to deliver by city gate;
- Withdraw its proposed addition in Sheet No. 44 regarding an ability to procure natural gas;
- Withdraw its proposed TSQ penalty from Rate FRAS, Sheet No. 44;
- Withdraw its application in Case No. 21-794-GA-ATA, which seeks the same changes as reflected in the above three bullet points; and
- Add language to the proposed Rate IMBS (Sheet No. 58) and Rate FRAS (Sheet No. 44) allowing a waiver of the Operational Flow Order (“OFO”) overrun/underrun penalty of \$15 under certain specified circumstances.

Duke’s proposed tariff language was highly contested by RESA.¹⁴ The Stipulation resolves the debate efficiently in these proceedings, and will resolve another Commission proceeding if the Stipulation is approved. Duke witnesses Spiller and Lawler identified the OFO waiver provision, in particular, as another benefit of the Stipulation.¹⁵ Duke witness Lawler also pointed out the benefit of resolving the debate in multiple cases related to these proposed tariff changes.¹⁶ These provisions in the Stipulation end the long-pending debate about the specified tariff language – yet another benefit of the Stipulation established in the record.

¹⁴ See RESA Objections at 5-9.

¹⁵ Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 6-7; Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 6.

¹⁶ Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 5.

5. The stipulated agreement for CRNGS suppliers to be able to participate in Duke's Supplier Consolidated Billing Collaborative is another benefit.

The Signatory Parties agree and recommend (at page 12 of Joint Exhibit 1) that, when a specific new docket opens, Duke will state that it has no objection to CRNGS suppliers also participating in the Supplier Consolidated Billing Collaborative. This is an additional benefit of the Stipulation because it will allow all competitive suppliers (not just competitive retail electric suppliers) to participate in the Collaborative if they choose. The Collaborative can fairly discuss supplier consolidated billing, without any concern that CRNGS-only suppliers are omitted.

C. Multiple stipulated provisions are consistent with regulatory principles.

In addition to the above provisions being beneficial to customers and suppliers, these provisions will not violate any important regulatory principles or practices. Indeed, these provisions are consistent with important regulatory principles that:

- Develop the competitive market – the stipulated provisions promote more competitive products, consistent with Ohio Revised Code Sections 4928.02(A)(1) and (2), because of available rate codes and reduced costs;
- Develop the competitive market – a stipulated provision encourages innovation, consistent with Ohio Revised Code Section 4928.02(A)(4), by allowing fair participation by all competitive suppliers when a supplier-consolidated billing collaborative is established in Duke's service territory;
- Develop the competitive market – a stipulated provision implements flexible regulatory treatment, consistent with Ohio Revised Code Section 4928.02(A)(6), by incorporating the flexibility to waive a penalty fee;
- Ensure customers do not pay twice for the same assessment costs;
- Avoid problematic tariff language; and
- Resolve issues in multiple Commission cases.

Duke witnesses Spiller and Lawler testified that the Stipulation – which includes the supplier-related provisions discussed in this brief – complies with relevant and important principles and practices.¹⁷ Staff witness Liphtratt opined that the Stipulation does not violate any important regulatory principle or practice.¹⁸ The Commission should also conclude that the stipulated supplier-related provisions do not violate any important regulatory principle or practice.

III. Conclusion

Multiple provisions of the Stipulation provide benefits to customers and CRNGS suppliers in a number of ways – such as, saving money, providing more availability to rate codes, resolving tariff language disputes by avoiding problematic language and including flexibility, and allowing fair participation in a future collaborative. These provisions were part of the serious negotiations and bargaining that took place in these proceedings and these provisions do not violate any important regulatory principle or practice. The Commission should approve the Stipulation without modification, and at the same time reject the arguments presented in opposition to the Stipulation.

Respectfully submitted,

/s/ Gretchen L. Petrucci

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¹⁷ Duke Ex. 4 (Spiller Supplemental Direct Testimony) at 10; Duke Ex. 11 (Lawler Supplemental Direct Testimony) at 39-40.

¹⁸ Staff Ex. 8 (Liphtratt Direct Testimony in Support) at 7.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on this 16th day of June 2023 upon all persons listed below:

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AAM**

Summary: Brief - Initial Brief electronically filed by Mrs. Gretchen L. Petrucci on
behalf of Retail Energy Supply Association.