

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Natural Gas Rates.)	Case No. 22-507-GA-AIR
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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
)	
)	
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
)	

**REPLY BRIEF
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

The Retail Energy Supply Association (“RESA”)¹ responds to certain portions of the Initial Brief filed by the Office of the Ohio Consumers’ Counsel (“OCC”) in these proceedings because several OCC arguments are inconsistent with Commission precedent and overlook many beneficial provisions in the Stipulation and Recommendation (“Stipulation”). For example, OCC claims that the Stipulation should be rejected because it was not the product of serious bargaining. That claim is premised on the fact that OCC did not join the Stipulation, but “serious bargaining” has never been, nor should it ever be, contingent upon OCC being a signatory party. A second example is

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.

OCC's claim that the Stipulation is more harmful than beneficial. This claim should be rejected because that is not the proper analysis and, even if it was, OCC ignores many beneficial provisions of the Stipulation – including all of the Stipulation provisions that RESA addressed in its initial brief.² Those supplier-related provisions are part of a proper analysis of the Stipulation and they will provide benefits to the customers and the public interest. A final example is OCC's erroneous position that the Stipulation should be rejected because it does not contain OCC's desired customer protections. There is no requirement that customer protections, let alone one specific party's desired customer protections, must be included in a stipulation for it to be reasonable. Regardless, the Stipulation contains customer protections such as in provisions resolving several issues of concern to RESA.

None of OCC's arguments have merit. The Stipulation presented in these proceedings satisfies the Commission's three-part test – the settlement (1) is a product of serious bargaining among capable, knowledgeable parties; (2) as a package, benefits ratepayers and the public interest; and (3) does not violate any important regulatory principle or practice. The Stipulation should be approved without modification.

II. Argument

A. There was serious bargaining by capable, knowledgeable parties.

OCC makes two arguments to support its claim that there was no serious bargaining. First, OCC claims at page 5 of its Initial Brief that there was no serious bargaining because the “broad interests” of residential consumers are not represented in the Stipulation, and more specifically,

² Those provisions (pages 10-12 of the Stipulation) address the Gas Surcredit Rider; the switching fee; supplier fee reductions; increases in rate codes; disputed tariff language related to important terms/conditions involving balancing, procurement of natural gas, and delivery penalties; and participation in a future collaborative. OCC's failure to consider those provisions amounts to overlooking nearly 20% of the stipulated terms of the Stipulation (this calculation excludes the Stipulation provisions containing introductory provisions, “whereas” provisions, procedural matters, and signature lines).

because the settlement terms that OCC advocated for were not included in the Stipulation. However, serious bargaining is not determined by whether a particular party's desired settlement terms, including OCC's desired settlement terms, are included in the settlement. The Commission has previously concluded that it is not required that any single party, including OCC, be a signatory party in order for a stipulation to be the product of serious bargaining.³ The Commission should follow that precedent and reject this argument from OCC.

Second, OCC argues at page 5 of its Initial Brief that the Commission should give little weight to the fact that all parties but OCC are signatory parties. However, evidence of the signatory status of the parties was presented and is relevant to demonstrate the bargaining that occurred was done by capable, knowledgeable parties. As RESA noted in its Initial Brief at 3, all seven parties are knowledgeable and have participated in numerous Commission proceedings for many years. The Signatory Parties are capable and knowledgeable, and the settlement negotiations were open to all parties and involved several months of serious negotiations.⁴ The evidence establishes that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. OCC's argument to the contrary should be rejected.

B. The Stipulation, as a package, will benefit customers and the public interest.

OCC argues at page 6 of its Initial Brief that the Stipulation's benefits do not outweigh the Stipulation's harm and, therefore, the Stipulation must be rejected. The analysis for the second prong of the Commission's three-part test is not whether the Stipulation's benefits outweigh the

³ *In re Application of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR et al., Opinion and Order at 52 (March 31, 2016), citing *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order at 10 (February 19, 2014); *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order at 26 (July 18, 2012); and *Dominion Retail, Inc. v. The Dayton Power and Light Company*, Case Nos. 03-2405-EL-CSS et al., Opinion and Order at 18 (February 2, 2005) and Entry on Rehearing at 7-8 (March 23, 2005).

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.

harm. Rather, the second prong of the Commission's three-part test involves the question of whether the Stipulation, as a package, benefits ratepayers and the public interest.⁵ OCC's argument should be rejected on the basis that OCC applies the wrong analysis.

If the Commission, however, considers OCC's benefits-versus-harm argument, it should still reject the argument because OCC ignored numerous provisions in the Stipulation (pages 10-12). Those provisions resolve issues related to the Gas Surcredit Rider; the switching fee; supplier fees (with reductions); rate codes (with increases); disputed tariff language related to important terms/conditions involving balancing, procurement of natural gas, and delivery penalties; and participation in a future collaborative. As RESA explained on pages 3-7 of its Initial Brief, the record establishes that these provisions are beneficial in multiple ways for customers and suppliers. As a result, the record demonstrates that, **as a package**, the Stipulation benefits ratepayers and the public interest.

Additionally, OCC claims at pages 1, 3 and 36 of its Initial Brief that the Stipulation fails the OCC's benefits-versus-harm argument because OCC's desired customer protections were not included. OCC's desired customer protections do not have to be included in the Stipulation for the Stipulation, as a package, to be beneficial. Like the analysis for serious bargaining, the analysis of the second prong of the Commission's three-part test is not determined by whether a particular party's desired settlement terms are included in the settlement, including OCC's desired consumer protection terms. The Stipulation, however, does include customer protections, including some provisions that RESA addressed in its Initial Brief at page 7. For example, the resolution for the Gas Surcredit Rider ensures that customers do not pay twice for the same assessment costs.

⁵ 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).

Another example is the resolution of tariff proposals related to balancing and procurement of natural gas, which avoids confusing and problematic language that would impact the ability of suppliers to supply natural gas to customers in efficient, system-effective and cost-effective manners. OCC ignored these aspects of the Stipulation in its analysis of the second prong of the stipulation. The lack of OCC's desired customer protections does not justify rejecting the Stipulation.

III. Conclusion

The Stipulation satisfies the Commission's three-part test and is reasonable. As RESA pointed out in its Initial Brief, the Stipulation fully resolves a number of issues raised by RESA in these proceedings; will provide multiple benefits to customers, competitive retail natural gas service suppliers and the competitive market; supports development of the competitive market; and is consistent with several important regulatory principles. The Commission should reject OCC's arguments and should approve the Stipulation without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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