

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to adjust Rider DR-IM) Case No. 13-1141-GE-RDR
and Rider AU for 2012 SmartGrid Costs.)

OPINION AND ORDER

The Commission, having considered the evidence admitted at hearing and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Amy B. Spiller and Elizabeth H. Watts, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Devin D Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Terry Etter, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility customers of Duke Energy Ohio, Inc.

Colleen L. Mooney, 231 West Lima Street, Findlay, Ohio 45840, on behalf of Ohio Partners for Affordable Energy.

Joseph M. Clark, 21 East State Street, 19th Floor, Columbus, Ohio, on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC.

Mark A. Hayden and Scott J. Casto, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, on behalf of FirstEnergy Solutions Corp.

OPINION:

I. Background

Duke Energy Ohio, Inc. (Duke) is an electric light company and a natural gas company, as defined in R.C. 4905.03(A), and a public utility under R.C. 4905.02. Duke supplies electricity to approximately 690,000 consumers and natural gas to approximately

420,000 customers in southwestern Ohio, all of whom will be affected by Duke's application. (Duke Ex. 1 at 1.)

On December 17, 2008, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) (*2008 ESP Case*), the Commission approved a stipulation that, inter alia, provided a process for recovering costs associated with the electric SmartGrid system, designated Rider Distribution-Reliability, Infrastructure Modernization (Rider DR-IM). The stipulation provided that, each year, Duke shall file for approval of Rider DR-IM adjustments, subject to due process, including a hearing. On May 28, 2008, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008) (*Gas Rate Case*), the Commission authorized Duke to file deployment plans for installation of an automated gas meter reading system, which would share the SmartGrid communications technology. The plan provided that Duke would recover costs related to the deployment plans through Rider Advanced Utility (Rider AU).

In *In re Application of Duke Energy Ohio, Inc.*, Case No. 09-543-GE-UNC, et al., Opinion and Order (May 13, 2010), the Commission approved a stipulation that set the initial rates for Riders DR-IM and AU. Most recently, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 12-1811-GE-RDR, Opinion and Order (Mar. 27, 2013), the Commission approved a stipulation authorizing the current rates as follows: for Rider DR-IM, \$3.31 and \$4.93 per bill per month for residential customers and nonresidential customers, respectively; for Rider AU, \$2.50 per meter per month; and, for gas-only customers, a credit of \$1.37 per meter per month.

On June 28, 2013, Duke filed its application and supporting testimony requesting authority to adjust Riders DR-IM and AU for SmartGrid deployment, pursuant to the process approved in the *Gas Rate Case* and the *2008 ESP Case* (Duke Ex. 1). Motions to intervene were filed by the Ohio Consumers' Counsel (OCC) on July 19, 2013, Ohio Partners for Affordable Energy (OPAE) on September 13, 2013, and Direct Energy Services, LLC and Direct Energy Business, LLC. (collectively, Direct Energy) and FirstEnergy Solutions Corp. (FES) on September 19, 2013. The attorney examiner granted the motions to intervene filed by OCC, OPAE, Direct Energy, and FES by Entry dated October 23, 2013.

On October 31, 2013, comments were filed by OCC (OCC Ex. 1), OPAE (OPAE Ex. 1), Staff (Staff Ex. 1), and Direct Energy (Direct Energy Ex. 3). On November 14, 2013, reply comments were filed by Duke (Duke Ex. 8) and OCC (OCC Ex. 2).

On January 10, 2014, a stipulation and recommendation (Stipulation) entered into by Duke, Staff, OPAE, OCC, and FES was filed in this proceeding (Jt. Ex. 1). Direct Energy was not a signatory party to the Stipulation.

The hearing in this matter was initially scheduled to commence on November 19, 2013. Following several requests by the parties to extend the procedural schedule in this case, the hearing was held, as rescheduled, on February 4, 2014. At the hearing, Jared A. Lawrence and Donald L. Schneider, Jr. testified for Duke and Teresa L. Ringenbach and Jennifer L. Lause testified for Direct Energy. Briefs and reply briefs were filed by Duke, OPAE, Direct Energy, Staff, and OCC on February 14, 2014, and March 3, 2014, respectively.

II. Summary of the Evidence and Stipulation

As stated previously, with the exception of Direct Energy, all of the parties in this case filed a Stipulation, which purports to resolve all of the issues in this matter. However, as delineated later in our Order under our consideration of the Stipulation, Direct Energy contests the Stipulation, stating that it does not meet the three-prong test utilized by the Commission in reviewing stipulations, because, as a package, it does not benefit ratepayers, is not in the public interest, and violates important regulatory principles and practices. The following is a summary of the application, the comments and reply comments, and the Stipulation, followed by our consideration of the Stipulation and overall conclusion.

A. Application

Duke requests an increase for Rider DR-IM of \$4.91 and \$7.30 per bill per month for residential customers and nonresidential customers, respectively. According to Duke witness Laub, the increase in residential rates is below the \$5.50 cap established in the *2008 ESP Case*. For Rider AU, Duke requests the charge be reduced to \$1.48 per meter per month and, for gas-only customers, there be a credit of \$0.70 per meter per month (Duke Ex. 2 at 10-11, 15.)

In support of Duke's application, Duke witness Schneider explains that 2012 was the fourth year of Duke's full-scale distribution automation (DA) deployment. In 2012, Duke installed or upgraded over 244 system devices inside substations and over 2,621 system devices on distribution circuits, which met Duke's 2012 plan. Mr. Schneider further explains that 2012 was the third year for full-scale, advanced metering infrastructure (AMI) deployment. The target for 2012 was to install 184,000 electric meters, 107,030 gas meters/modules, and 48,000 communications nodes. Actual installation for 2012 included 185,031 electric meters, 113,024 gas meters/modules, and 45,801 communications nodes. (Duke Ex. 6 at 3.)

Duke witness Schneider further provides that, through the first quarter of 2013, Duke has installed a total of 547,194 electric meters, 363,233 gas modules, and 127,232

communications nodes, and has certified 510,689 of the electric meters installed and 340,365 of the gas modules installed. Meters are certified to identify when the meter has successfully been commissioned and verified and the meter data is ready to be used for billing. Duke's AMI deployment is approximately 75 percent complete, with planned completion to occur in mid-2014. With the completion of AMI deployment, Duke will have installed over 717,000 electric meters, 437,000 gas meters/modules, and 139,000 communications nodes. (Duke Ex. 6 at 3-4.)

With respect to DA deployment through the first quarter of 2013, Duke has installed and/or automated with two-way communications capabilities a total of 900 system devices inside substations and over 4,232 system devices on distribution circuits. These numbers put the total planned DA deployment at approximately 65 percent complete, with deployment planned for completion year-end 2013. With the completion of DA deployment, Duke will have installed and/or automated with two-way communications capabilities a total of 1,165 system devices inside substations and over 6,700 system devices on distribution circuits. (Duke Ex. 6 at 4.)

Duke witness Schneider also explains Duke's performance with respect to the system average interruption frequency index (SAIFI), which is a utility industry standard for reporting the average number of sustained, greater than five minutes, interruptions per customer per year. In the *2008 ESP Case*, Duke committed to achieving specified SAIFI targets for each year of deployment. Mr. Schneider states that Duke met or exceeded its SAIFI targets for 2009, 2010, 2011, and 2012. (Duke Ex. 6 at 5.)

B. Comments and Reply Comments

Staff proposes that Duke: provide additional information regarding outages and the operation of automated circuits; correct discrepancies in system devices on its distribution circuits; ensure that gas-only customers receive automated meters; and calculate each rider's rate using the costs applicable to each rider (Staff Ex. 1 at 3-6, 8). In its reply comments, Duke states that, it is not generally opposed to such reporting requirements or providing a solution to gas-only customers, and that it is interested in discussing these issues in greater detail with Staff and other parties to seek a proper resolution for these concerns (Duke Ex. 8 at 1-2).

Staff notes that Duke included severance costs for former meter readers, whose release dates were in 2013 and 2014 in the current Rider DR-IM. Staff states that these expenses are more appropriately included in Duke's riders in the year when the severance has actually been paid out; therefore, Staff recommends the costs associated with the accrual for the 2013-2014 severance payouts be removed from this year's Rider DR-IM and Rider AU. (Staff Ex. 1 at 7-8.) Duke disagrees with this proposed accounting methodology, stating that, based upon the accounting methodology presently employed

by Duke, the proper time for inclusion of such costs is during the current year. However, Duke agrees with Staff's recommendation for an accounting adjustment related to calculation of Rider AU. (Duke Ex. 8 at 2.) OCC disagrees with Staff's position, advocating that Duke's customers should not have to pay for those severance payouts; rather, Duke should reduce its riders by the amount of those payouts (OCC Ex. 2 at 2).

With regard to time-differentiated rates, Staff states that, after two workshops with competitive retail electric service (CRES) providers, it is unaware of any interest by any CRES provider in offering time-based rates that reduce peak demand and energy usage. Staff, therefore, recommends approval of Duke's proposed customer education plan be held in abeyance until a time when time-differentiated rates will surely be offered, either as a standard service offer (SSO) option, or as a competitive rate by CRES providers. Staff also recommends that, until the marketplace is more fully developed, a utility with advanced metering capabilities should offer at least one time-differentiated rate option to SSO customers, which would improve price signals and customer response as compared with a flat rate. (Staff Ex. at 11-13.) In response, Duke states that it is interested in understanding, from the CRES viewpoint, whether time-of-use (TOU) rates are to be offered in the near term. Further, as Duke's customers are served only through an SSO that is derived from an auction price that is not time constrained, TOU rates are not appropriately offered by an electric distribution utility (EDU). (Duke Ex. 8 at 2-3.)

Direct Energy states that it is untimely for Duke to spend \$850,000 on a general education and awareness campaign targeted to all customers when Duke is the only entity with access to the information necessary to provide smart-meter-enabled products to customers. Therefore, Duke should delay implementation of its consumer education campaign to coincide with the launch of its web portal and the ability of CRES providers to access AMI meter data for customer billing. Direct Energy believes that, once Duke completes development of its web portal, and other procedures are in place to allow CRES providers to access the interval data captured by AMI meters, providing TOU and other dynamic pricing products should be a function provided by the competitive market, not electric utilities. Therefore, Duke should terminate its TOU pilot programs once it has launched its web portal and CRES providers are marketing TOU products to customers in Duke's territory. Alternatively, Duke should transfer administration of these programs to a competitive supplier. (Direct Energy Ex. 3 at 1-3.) Duke responds that, to the extent a CRES provider wishes to engage in testing or offering TOU rates, Duke does not oppose such activities. However, Duke disagrees that it should turnover any of its existing proprietary work with respect to TOU rates, or otherwise provide assistance to CRES providers in developing or providing TOU rates. With regard to timing of a general education campaign, Duke states that it stands ready to facilitate the campaign that was agreed to in a previous stipulation, whenever the parties and the Commission wish it to do so. (Duke Ex. 8 at 6.) OCC disagrees with the position taken by Direct Energy regarding Duke's TOU pilot programs, stating that Direct Energy's recommendation reduces the

benefits available to residential customers. OCC argues this proposal should be rejected and the Commission should ensure that Duke continues to make voluntary TOU rates available to SSO customers who want them and that Duke's Grid Modernization Collaborative (Collaborative) should continue to work on data, privacy, and other issues that need to be resolved so that CRES suppliers can effectively make such rate offerings. (OCC Ex. 2 at 1, 3.)

OCC believes that Duke should make dynamic and time-differentiated rates available, on a voluntary basis, to all residential customers who have a certified smart meter no later than the second quarter of 2014. In addition, Duke should resolve any outstanding issues with CRES providers, so that CRES providers can also begin to offer these enhanced rate options. OCC recommends that discussions on unresolved issues, *e.g.*, consumer privacy, electronic data interchange, billing-system, rate-design adaptability, and who will pay for billing system upgrades, be accelerated through the Collaborative. Further, OCC believes now is the time for Duke to educate its customers so that, if electric prices start increasing, customers may be able to temper generation rate increases by managing their usage through these enhanced, rate-design programs. (OCC Ex. 1 at 2-4.) In response, Duke again states that it would be inappropriate for Duke to offer TOU rates because its SSO customers are served through an auction. Duke states that the auction price that factors into customer rates is not time delineated. Thus, the TOU rate concept has no logical purpose with respect to SSO pricing. Duke states that customers find it difficult to understand the TOU rate concept in the first instance and that applying TOU concepts to an SSO rate will run the risk of further confusion to customers. (Duke Ex. 8 at 1-3.)

OPAE maintains that Duke's rider cases are essentially rate increase cases that should include a report of Staff's investigation on the revenue requirements and the schedules supporting them. According to OPAE, it is procedurally unfair to expect intervenors to duplicate the work of a Staff investigation and that a Staff report is a necessary precursor to intervenor comments or objections. Further, in the future, the Commission should revise the process for these rider applications so that a Staff report of investigation is issued before intervenor comments or objections are filed. (OPAE Ex. at 1-2.) Duke disagrees with OPAE's contentions (Duke Ex. 8 at 4).

OPAE points out that, according to Duke witness Schneider's prefiled testimony, Duke's planned deployment of communication nodes/devices, AML, and two-way communications capability is partially complete. OPAE maintains that updates to this information should be included in the record. In addition, OPAE notes that three customers were disconnected after refusing smart meter installation. However, OPAE submits that no customer should be disconnected for refusal to allow installation of an advanced meter and that, after the Commission's new rules go into effect, customers will be able to opt out of smart meter installation. (OPAE Ex. 1 at 2-4.)

OPAE states that the SmartGrid project is being transformed from an initiative that will benefit generation customers to a grid modernization project that will emphasize distribution modernization. OPAE believes that, given that ratepayers are being asked to pay, on an annual basis, through the riders' expenses on a dollar-for-dollar basis and, given that capital investment is also recognized annually under the riders, it makes sense that ratepayers would enjoy the benefits of the programs on the same accelerated basis as the special cost recovery. However, OPAE offers that, if the benefits need to be limited to only distribution service benefits, an examination of the entire cost recovery mechanism based on the original business case for the grid modernization project may be necessary. (OPAE Ex. at 4-7.) Duke responds that it has provided detailed information in its application and in the testimony of Duke witness Schneider and that OPAE has not requested any discovery in this matter. Duke states that the application is sufficient with respect to the status of the deployment, which is on schedule. Further, Duke notes that OPAE is overlooking the dollars of savings that will be returned to customers as a result of the deployment of grid modernization, in addition to funding provided by the federal government. Duke states that, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 10-2326-GE-RDR, (*Mid-Term Review Case*), the Commission undertook to reexamine the advisability of continuing with deployment, and the signatory parties to the stipulation in that proceeding, including OPAE, agreed that Duke should commit to a netting of benefits to reduce the revenue requirement in an amount equal to the value of operational benefits. Duke notes that the signatory parties agreed to a schedule that included increasing savings beginning in 2011 and continuing through 2014. Duke asserts that OPAE's suggestion that it now wishes to revisit this commitment is directly contrary to its representation in the *Mid-Term Review* stipulation. (Duke Ex. 8 at 4-6.)

C. Stipulation

As previously stated, a Stipulation signed by Duke, Staff, OPAE, OCC, and FES (Signatory Parties) was submitted on the record at the hearing held on February 4, 2014. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in this proceeding. Direct Energy, however, contested the Stipulation at hearing. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- (1) Duke should collect from customers \$41.8 million via Rider DR-IM and \$7.0 million via Rider AU associated with the revenue requirement for SmartGrid investments and associated expenses made through December 31, 2012.¹ These revenue increases convert to a rate of \$4.83 per bill per month for

¹ The Signatory Parties are not agreeing to any particular expense item in Duke's application.

residential electric customers and \$7.17 per bill per month for nonresidential electric customers under Rider DR-IM.² The revenue increase results in a rate of \$1.40 per meter per month under Rider AU, gas-only customers will receive a \$0.63 credit per meter per month.

- (2) The monthly charge per residential electric meter resulting from the Rider DR-IM revenue requirement for the applicable period is below the applicable cap established in the 2008 *ESP Case*.
- (3) The revenue requirements are based upon rates of return of 7.73 percent, approved by the Commission in Case No. 12-1682-EL-AIR, et al., and 8.45 percent, approved by the Commission in the *Gas Rate Case*.
- (4) In order to mitigate the impact of the rate increases attributable to Rider DR-IM and to better balance the SmartGrid investment risk between Duke and its customers, Duke previously agreed to defer recovery of all or a portion of the following expenses, normally recovered in the Rider DR-IM revenue requirement, for 2011 and 2012: operation and maintenance (O&M), depreciation, and/or property taxes.³ Such deferrals are incremental to the normal deferral process used in the Rider DR-IM calculations. The amount of the incremental deferrals attributable to costs incurred 2012 is \$1.47 million. Duke shall be allowed to increase the revenue requirement of Rider DR-IM for costs incurred in 2013 and 2014 to recover the expenses deferred from the 2011 and 2012 recovery periods. The additional recovery in 2013 and 2014 will be \$1.76 million and \$4.43 million, respectively. The impact on the Rider DR-IM revenue requirement will be as follows: 2011, \$3.86 million reduction; 2012, \$1.47 million reduction; 2013, \$1.76 million increase; and 2014, \$4.43 million increase.
- (5) Duke shall defer, without carrying charges, O&M expenses for account 182362 for severance costs associated with 2013-2014 severance payouts and recover them as part of its 2013-2014 SmartGrid investment. Such deferral shall not be included in

² These figures assume that Rider DR-IM rates go into effect on April 1, 2014. If the effective date is different, rates would change accordingly.

³ *Mid-Term Review Case*, Stipulation and Recommendation, Feb, 24, 2012, at 5, Section II.

determining whether Rider DR-IM complies with future rate caps. A rate cap of \$6.75 applies for Rider DR-IM rates beginning with the filing made in calendar year 2014 and \$7.00 applies for Rider DR-IM rates in the filing made in calendar year 2015.

- (6) Duke shall recalculate the rate for gas-only customers pursuant to Staff's recommendations in its comments.
- (7) Duke shall track and provide a report on the following within its non-cost metrics annual report that shall be filed in its SmartGrid rider applications: the number of times when Duke's self-healing teams were called upon in outages to operate; the number of instances when such teams operated; and the number of instances when they failed to operate. Further, Duke will identify causes of failures, to the extent feasible, and corrective action taken to correct the cause of failure to avoid future failure of self-healing teams.
- (8) Related to proactive outage detection and restoration management, Duke agrees to perform an analysis of the costs and benefits to customers of integrating data from AMI into the outage management system by June 1, 2014. The analysis will include the cost/benefit of implementing battery back-up on communication nodes to enable them to provide last gasp, i.e., provide outage data as long as power is available to operate the communications nodes, to enable outage notifications to Duke that would cover smart meters at customer locations downstream of each node.
- (9) Duke will deploy automated meter reading for gas-only customers as part of its SmartGrid program.
- (10) Duke will extend pilot Rate TD-2013 through May 31, 2016.
- (11) Duke will not disconnect or refuse service to its residential customers who refuse to accept installation of a SmartGrid meter or who otherwise opt-out of receiving such SmartGrid meters.

D. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *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 almost all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (Dec. 30, 1993); *Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 31, 1989); *Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC (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: is the settlement a product of serious bargaining among capable, knowledgeable parties; does the settlement, as a package, benefit ratepayers and the public interest; and does the settlement package violate any important regulatory principle or practice.

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

Duke witness Lawrence testified in support of the Stipulation stating that it was the product of serious bargaining among capable knowledgeable parties. Specifically, Mr. Lawrence explains that all of the issues raised by the Signatory Parties in the proceeding were thoroughly reviewed and addressed during negotiations and, despite the divergent interests among them, all parties had an opportunity to express their opinions in the negotiation process. Further, the settlement discussions resulted in beneficial modifications and compromises, thereby confirming that serious bargaining occurred at settlement meetings. (Duke Ex. 5 at 6-7.)

The Commission finds that there is no dispute in this case that the Stipulation was the product of serious bargaining among capable, knowledgeable parties. Therefore, we conclude that the first prong of the three-prong test for our consideration and approval of stipulations has been met.

2. Does the settlement, as a package, benefit ratepayers and the public interest?

Duke witness Lawrence maintains that the Stipulation, as a package, benefits ratepayers and the public interest. Specifically, he explains that the Stipulation provides that Duke recover costs as set forth in the agreement. Mr. Lawrence notes that the Stipulation also recommends: that certain deferred O&M costs related to severances be deferred without carrying charges, and Duke will include recovery of such costs in its 2013-2014 SmartGrid investment; a rate cap of \$6.75 for Rider DR-IM; a recalculation of the rate for gas-only customers pursuant to Staff's recommendation; a commitment by Duke to track and report certain reliability operations and outage management and detection parameters; the continuation of a TOU pilot program; and a commitment not to disconnect customers who refuse to accept installation of a SmartGrid meter until such time as the Commission rules become final. (Duke Ex. 5 at 5-6.)

Direct Energy witness Ringenbach does not believe the Stipulation meets the Commission's criteria for approval of settlements. Specifically, Direct Energy does not believe the Stipulation, as a package, benefits ratepayers and is in the public interest and that the settlement does not violate important regulatory principles and practices. Therefore, she asserts the Commission should modify the Stipulation in order to make it fit within the Commission's criteria for approval of settlements. Specifically, the Stipulation should be amended to: explicitly permit a CRES provider to receive from Duke, with customer consent, customer-interval, energy-consumption/load data; allow a CRES provider to obtain customer consent to receive the customer-interval, energy-consumption/load data through a conspicuous disclosure in the terms and conditions of service for the contract; direct Duke to provide CRES providers customer-interval, energy-consumption/load data through flat files (e.g. Excel files) and eventually through electronic data interchange (EDI) files; declare that the confidentiality of customer-interval, energy-consumption/load data received by a CRES provider is adequately governed by Duke's current supplier tariff; direct Duke to implement a master data management system; and allow for recovery of any incremental information technology (IT) infrastructure costs to implement these items. According to Ms. Ringenbach, these changes would provide Duke ratepayers the opportunity to take advantage of the full benefits of their smart meters, which they pay for, soon after full deployment. Additionally, these changes would require protection of customer information by CRES providers and provide important disclosures regarding CRES provider access to customer-interval load data. (Direct Energy Ex. 1 at 5-6.)

Direct Energy believes this is an appropriate docket to address the data access issues. Direct Energy witness Ringenbach acknowledges the data access issues raised in this docket have been raised in other Commission dockets, including the *In re Review of Ohio Adm.Code 4901-1-10*, Case No. 12-2050-EL-ORD, and *In re Review of Customer Privacy, Customer Data Access, and Cyber Security*, Case No. 11-277-GE-UNC. However, Direct Energy believes the Commission should take the opportunity in this docket to move these issues forward. Ms. Ringenbach states that doing so in this docket, limited to this one utility, makes sense inasmuch as Duke is the furthest along of the Ohio EDUs in smart meter deployment. (Direct Energy Ex. 1 at 6-7.)

Even if the Commission does address the data access issues identified in this case in one or more of the other dockets at the Commission, it seems unlikely that those dockets would be where an individual EDU will actually implement the Commission's decisions on the data access issues, according to Ms. Ringenbach. She states that, in that circumstance, Direct Energy would be in favor of an order in this case acknowledging that possibility and making any order in this case subject to any future order in those dockets. Therefore, this case serves as a vehicle and provides record support for implementation of the data access issues should the Commission agree with Direct Energy. Ms. Ringenbach asserts that creating this record, gives the Commission a place to approve these market enhancements, gives CRES providers in Duke's territory a head start on implementing these important market enhancements, and gives customers quicker access to the improved products and services that might be provided by using their smart meters. (Direct Energy Ex. 1 at 7.)

Ms. Ringenbach states that, alternatively, if the Commission does not feel comfortable issuing such an order applicable to all CRES providers in Duke's service territory, the Commission should permit Direct Energy to access customer-interval load data on a 24-month pilot basis under the conditions previously described and direct Duke to promptly implement the necessary IT upgrades. Then, on a yearly basis during the same month that the original order in this case is approved, Direct Energy, Duke, and Staff should be required to submit a report to the Commission with the following information: number of Direct Energy products in the market utilizing interval load data, number of customers on each product by month for the previous 12 months, individual customer response, and results of efficiency aspects of any products designed to reduce load. (Direct Energy Ex. 1 at 7-8.)

With regard to whether Duke is able to provide customer-interval load data, Ms. Ringenbach states that Duke is not currently capable of providing this information via an EDI transaction. However, Duke is able to provide this information through a flat file, e.g. an Excel, and has developed a plan and could implement much of the access if funding is approved. Ms. Ringenbach states that CRES providers should promptly be given access to

hourly data today through a flat-file transfer site in order to begin offering Duke's advanced products outlined above. She states that customers are paying for the rider and paying for the metering, but have limited opportunity to achieve the benefits that can accrue to them on an individual basis. Further, the Commission should require Duke to implement a flat-file transfer site within six months of the order in this case. With regard to why it is necessary to implement an EDI change, Ms. Ringenbach states that, while Direct Energy can use a flat-file transfer today, such a flat file is not ideal. She notes that Duke can provide manual, flat-file information today, but not for large numbers of customers. Further, the flat-file transfer creates another step to download information from Duke to Direct Energy's system that does not exist for EDI transactions. Ms. Ringenbach states that, with a flat-file transfer, Direct Energy's system, once downloaded, reedits the information into EDI in order to submit the load information, along with pricing, back to Duke for bill-ready billing. She notes that, as customer counts grow, the process may be cumbersome for billable load versus things like historical load and that EDI removes the extra step and any potential delays in receiving the data in time to meet billing windows. Therefore, while Direct Energy can work with flat files in the interim, the best long-term solution is EDI. (Direct Energy Ex. 1 at 10-11.)

With regard to why access to customer-interval load data is relevant to the Duke rider, Ms. Ringenbach states that receiving customer-interval load data via EDI will take programming and personnel time estimated at \$1,368,000. She believes that these costs are directly related to smart metering and should be included in the rider, just as the costs to provide current monthly aggregated data via EDI programming, when Duke moved to PJM Interconnection, LLC, were paid for by all customers. (Direct Energy Ex. 1 at 12.)

With regard to the protection of customer-interval load data, Ms. Ringenbach states that Direct Energy follows the rules and tariff requirements to keep such data confidential and protected and that Direct Energy receives interval and advanced meter data for residential and small commercial customers in Texas and Pennsylvania. In addition, Direct Energy receives interval data for its large commercial and industrial customers in all states. Ms. Ringenbach offers that the same systems Direct Energy uses in other states and protections of that data would apply here. Further, Direct Energy is bound by Duke's tariff regarding confidentiality of a customer's information. Ms. Ringenbach states that the Commission should provide certainty to CRES providers and Duke and affirmatively acknowledge that Duke's current tariff provisions provide adequate protection and confidentiality of customer-interval load data. (Direct Energy Ex. 1 at 12-13.)

Direct Energy witness Ringenbach acknowledges that there are concerns regarding advanced meter data, which may warrant additional customer disclosures. Therefore, to ensure that customers are aware they are allowing access to the data and understand the purpose of that access, language should be added to CRES providers' enrollment forms noting that the customer is giving consent for a CRES provider's access to interval load

data solely for the provision of the product and that the CRES provider will not sell or disclose the load data for any other purpose. For third-party verifications of direct solicitations and for telephone enrollments, this would be added to the list of questions requiring affirmative consent. Finally, for web enrollments, Ms. Ringenbach recommends that the customer be required to check a box acknowledging disclosure to the CRES provider. (Direct Energy Ex. 1 at 13-14.)

Direct Energy witness Lause submits that the Stipulation does not benefit ratepayers, is not in the public interest, and violates important policies or principles without the addition of provisions regarding a meter data management (MDM) system. Ms. Lause states that an MDM system benefits ratepayers and is in the public interest because it enables CRES providers to offer more dynamic and innovative products to customers. She notes that, until Duke implements an MDM system, it is the only entity that can offer customers products or services that utilize interval meter data and this hinders the development of a more robust competitive market and specifically disadvantages customers, who are ineligible to participate in Duke's pilot. (Direct Energy Ex. 2 at 4-5.)

Ms. Lause maintains that the minimum capabilities that should be included in Duke's MDM system are: billing-quality, validation, estimate, and edit (VEE), hourly-interval data reported to CRES providers on a monthly basis via EDI; AMI meter hourly-interval data reported to CRES providers on a next-day basis via file transfer protocol; and CRES provider access to 12-month, historical, billing-quality data via a web portal and EDI. According to the witness, Duke should be required to implement these minimum capabilities within nine months of the order in this case. Ms. Lause does not believe that Duke intends to exchange hourly-interval data with CRES providers on a daily basis. She states that Direct Energy's experience is that it is essential to communicate with customers enrolled in a TOU product much more frequently than on a monthly basis at the time of billing. According to Ms. Lause, one reason customers enroll in a product like Free Power Day, is to be more engaged in their daily energy usage. Therefore, at a minimum, Direct Energy needs to have access to its customers' interval-usage data on a daily basis. Moreover, Ms. Lause states that, Duke should be required to work with stakeholders to develop a timeline to implement advanced MDM system capabilities, such as 15-minute and one-minute interval data exchange and the ability to access this information in real time via a web address that would push data to CRES providers on demand, with these capabilities to be in place no later than June 2018. Ms. Lause explains that access to more granular interval data on a more frequent basis, such as daily or in real time, gives Direct Energy the ability to develop new products that are more tailored to a customer's particular energy consumption. (Direct Energy Ex. 2 at 6-7.)

In response to the testimony filed by Direct Energy's witnesses, Duke witness Schneider provides information with respect to Duke's MDM systems and its ability to

interact with CRES providers. Mr. Schneider explains that Duke implemented its first generation MDM system in preparation for its initial prescale AMI deployment. However, in 2013, Duke became aware of new technology that would better suit the needs of Duke and customers that had not been available at the time of Duke's initial prescale AMI deployment. Specifically, Duke's first generation MDM system does not have scalable VEE functionality for hourly-interval, customer-usage AMI data; however, the second generation MDM system does. As a result, billing-quality, hourly-interval, customer-usage AMI data is available from the second generation MDM system, but not from the first generation MDM system, on a scalable basis. (Duke Ex. 7 at 3-5.)

Mr. Schneider states that, pursuant to the stipulation *In re Application Duke Energy Ohio's*, Case No. 11-3549-EL-SSO, et al., Duke is enhancing the existing web portal (CRES Portal) that will improve interaction with CRES providers and allow online access to customer data with proper authorization. Mr. Schneider states that Duke is currently finalizing the internet technology required to allow this enhancement to the CRES Portal to be available and that some of the details of interacting with CRES providers, including appropriate authorization, are still being developed by the Commission in a rulemaking proceeding. He points out that interval customer usage data will be available with the CRES Portal enhancements on June 1, 2014. These data will enable Duke to provide interval, customer-usage AMI data from both MDM systems to CRES providers via the CRES Portal, with an indicator if the AMI data are not billing-quality, interval, customer-usage AMI data that have been processed through VEE. Mr. Schneider notes that the interval, customer-usage AMI data will be in hourly intervals and will be updated monthly after each account bills. Further, CRES providers will be able to export hourly-interval, customer-usage AMI data from the CRES Portal on a meter-by-meter basis. (Duke Ex. 7 at 5-6; Duke Ex. 5 at 9.)

In addition, Mr. Schneider observes that Duke is considering EDI enhancements that have not been internally approved. However, if Duke's EDI enhancements are internally approved and, if cost recovery is provided, Duke may be able to provide billing-quality, hourly-interval, customer-usage AMI data to CRES providers, via EDI, for AMI meters that have been processed through VEE. Mr. Schneider notes that the interval, customer-usage AMI data would be in hourly intervals, which would be updated monthly after the billing of each account, and that all hourly-interval, customer-usage AMI data available via EDI would be of billing quality. Duke anticipates that this project will be discussed further in the Collaborative and submitted to the Commission for approval as appropriate. Mr. Schneider notes that, at present, Duke is only aware of one CRES provider, Direct Energy, that is interested in TOU rates. (Duke Ex. 7 at 6; Tr. at 36-37.)

Mr. Schneider testifies that, in order to provide billing-quality, hourly-interval, customer-usage data to CRES providers for all AMI meters, it would be necessary to migrate data from the first generation MDM system to the second generation MDM

system, which has scalable VEE functionality for hourly-interval, customer-usage AMI data. If stakeholders require this functionality, and the Commission determines that it is of value to customers, Duke would have billing-quality, hourly-interval, customer-usage data for all AMI meters. However, additional Duke projects may then be required to provide hourly-interval, customer-usage data to CRES providers via EDI and the CRES Portal for these migrated AMI meters. Mr. Schneider states that, as with the EDI enhancements, a decision to go forward with this project will be discussed internally and with external stakeholders and presented to the Commission. (Duke Ex. 7 at 6-7.)

Duke witness Lawrence contends that Direct Energy is asking Duke to provide customer data in a specific format and with greater frequency than is currently possible. However, in this case, Duke is seeking recovery of costs for deployment of grid modernization technology across its service territory in 2012. Duke did not propose nor is it seeking recovery of costs related to interactions with CRES providers in this proceeding, nor did Duke propose or seek recovery for such services in any prior proceeding. Mr. Lawrence states that Direct Energy seeks a ruling from the Commission to guide interactions between Duke and its customers with respect to sharing customer data with third parties such as CRES providers. In particular, Direct Energy wishes to receive this data with specific customer consent and under terms of Duke's current supplier tariff. Mr. Lawrence notes that the Commission opened an investigation in *In re Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI (*Electric Market Case*) to allow interested parties to participate in discussions related to many of these questions. Thus, questions related to customer data security and privacy and CRES interactions are under review. Mr. Lawrence states that it would not be appropriate, in this case, to resolve questions that have not yet been directed by the Commission with respect to all EDUs. Mr. Lawrence points out that the merits of each of the changes proposed by Direct Energy, and any costs that might be incurred and recovered, have not yet been evaluated by Duke. Further, Direct Energy's demands are too far in advance of the development of the appropriate regulatory and legal process. (Duke Ex. 5 at 8-12.)

Duke witness Lawrence states that an alternative plan, proposed by Direct Energy witness Ringenbach, for Duke to work with Direct Energy to the exclusion of other CRES providers, would not be consistent with the Commission's policy to ensure a fair and competitive retail electric service market. Mr. Lawrence states that the issues raised by Direct Energy in its testimony are more efficiently resolved in forums such as the Collaborative where all interested parties can discuss their various views. Then, when Duke proposes changes and cost recovery to the Commission for its consideration, the Commission can be assured that the relevant issues have been discussed and debated, if not entirely resolved. (Duke Ex. 5 at 12.)

The Commission finds that Direct Energy's arguments in this proceeding relate to MDM and data sharing, issues that are not contained within the intended subject matter of

Duke's SmartGrid rider application in this case. Duke did not put forth any issues related to MDM and data sharing at hearing, and there is no information related to any of these matters in Duke's application in this proceeding. The Commission notes that Direct Energy's arguments pertaining to MDM and data sharing are irrelevant in the context of this proceeding. In addition, the Commission would also note, as the parties recognized in their pleadings, that the Commission already has a docket open in the *Electric Market Case* to explore the issues of MDM data sharing with CRES providers that were discussed by Direct Energy's witnesses in their testimony.

In the March 26, 2014 Order in the *Electric Market Case*, the Commission created the Market Development Working Group (MDWG), which will be facilitated by Staff for the purpose of discussing agency concerns, and streamlining and aiding the development of Ohio's CRES market. This working group will consist of CRES providers, EDUs, and other interested stakeholders. As we noted in our Order in the *Electric Market Case*, while the existing Ohio EDI Working Group will continue to analyze and propose EDI standards and change requests, the MDWG will analyze and propose policies and procedures for improving any information exchanges and competitive retail enhancements that would benefit development of the retail electric market. Therefore, the Commission finds that the issues raised by Direct Energy in this case are appropriately being addressed in the *Electric Market Case*. To attempt to place those issues before the Commission for resolution in this Duke-only docket would be inappropriate. Further, the Commission believes that consideration of the questions that have been raised about customer data exchange with a single utility in this case, would be counter productive to the work already done in the *Electric Market Case*. Seeking solutions in this proceeding would, we feel, effectively deprive the Commission of the opportunity to work with all interested stakeholders simultaneously in the *Electric Market Case* to evaluate and find appropriate solutions.

The Commission also observes that Direct Energy seeks to employ procedures and data exchange systems that are, thus far, not in existence or in operation for Duke. Although Duke witness Schneider does state that some of the information requested will be available beginning in mid-2014 (Duke Ex. 7 at 5), he also states that Direct Energy's requests in this matter seek procedures and data exchange systems that are beyond Duke's present capabilities. (Tr. at 27-28, 40-42; Duke Ex. 5 at 8.) Therefore, this is not the appropriate forum for exploring these issues; rather, these issues should be discussed in the Collaborative or mentioned in the MDWG.

Therefore, we find that Direct Energy's issues have no relevance with regard to our consideration of the merits of Duke's application in this case, and should not be considered for purposes of our determination of whether the Stipulation satisfies the public interest and benefits ratepayers. Accordingly, we conclude that, upon review of the Stipulation, as a package, it meets the second prong of our test for considering stipulations and it appears to be reasonable and in the public interest.

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

Duke witness Lawrence asserts that the Stipulation does not violate any important regulatory principle or practice. (Duke Ex. 5 at 6.) Conversely, according to Direct Energy witness Ringenbach, the changes suggested by Direct Energy would remedy the Stipulation's failure to follow Ohio's state policies enumerated in R.C. 4928.02, including, but not limited to, subsections (B), (D), and (J). (Direct Energy Ex. 1 at 6.)

The Commission has already determined that the changes proposed by Direct Energy in this case are not relevant for our consideration of Duke's application and the Stipulation, and are more appropriately addressed by the Collaborative and/or the MDWG created in the *Electric Market Case*. Therefore, we find that the third prong of our test is met and the Stipulation, as a package, does not violate any important regulatory principle or practice.

CONCLUSION:

The Commission finds that the Stipulation is supported by adequate data and information. In addition, the Stipulation represents a just and reasonable resolution of the issues raised in this proceeding, and it violates no regulatory principle or precedent. Further, we find that the Stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the parties representing a wide range of interests, including Staff, to resolve the aforementioned issues. Accordingly, the Commission concludes that the Stipulation should be adopted in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is an electric light company and a natural gas company as defined in R.C. 4905.03(A), and a public utility under R.C. 4905.02.
- (2) On June 28 2013, Duke filed its application to adjust Riders DR-IM and AU.
- (3) By Entry dated October 23, 2013, OPAE, OCC, Direct Energy, and FES were granted intervention in this matter.
- (4) On October 31, 2013, comments were filed by OCC, OPAE, Staff, and Direct Energy. On November 14, 2013, reply comments were filed by Duke and OCC.

- (5) On January 10, 2014, Duke, Staff, OP&A, OCC, and FES filed a Stipulation purport to resolve all of the issues in this proceeding.
- (6) The evidentiary hearing was held on February 4, 2014.
- (7) Briefs and reply briefs were filed by on February 14, 2014, and March 3, 2014, respectively.
- (8) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (9) Duke should be authorized to implement the new rates for Riders AU and DR-IM consistent with the Stipulation and this Order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed in this proceeding is approved and adopted.
It is, further,

ORDERED, That Duke take all necessary steps to carry out the terms of the Stipulation and this Order. It is, further,

ORDERED, That Duke observe all directives set forth in this Order. It is, further,

ORDERED, That Duke be authorized to file in final form complete copies of the tariff pages consistent with this Opinion and Order and to cancel and withdraw its superseded tariff pages. It is, further,

ORDERED, The new rates for Rider DR-IM and Rider AU shall be effective on a date not earlier than the date upon which complete, printed copies of the final tariff pages are filed with the Commission. It is, further,

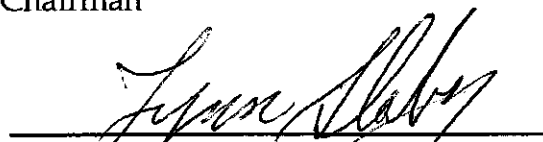
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby


M. Beth Trombold


Asim Z. Haque

KKS/vrm

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Barcy F. McNeal

Barcy F. McNeal
Secretary

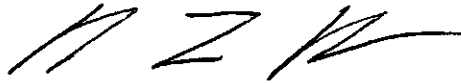
BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to adjust Rider DR-IM) Case No. 13-1141-GE-RDR
and Rider AU for 2012 SmartGrid Costs.)

CONCURRING OPINION OF
COMMISSIONER ASIM Z. HAQUE

I concur that, based upon the parameters of this case, and under applicable law, this Stipulation should be approved. I want to note though that the ability to make the types of offerings contemplated by Direct Energy through its opposition in this case represent an evolution in the competitive marketplace, and should be encouraged in appropriate dockets and workgroups. Such offerings would take full advantage of advanced metering, and could prove very beneficial to consumers who choose such offerings in the marketplace.



Asim Z. Haque

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APR 09 2014



Barcy F. McNeal
Secretary