

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate Power)	Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider)	

)	
In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority)	

**REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC. AND DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

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I. INTRODUCTION

On December 14, 2015, Ohio Power Company and a diverse group of parties, including Interstate Gas Supply, Inc. ("IGS") and Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy") (IGS and Direct Energy are collectively referred to as "Suppliers") submitted a stipulation and recommendation ("Stipulation") to resolve the outstanding issues presented in this proceeding. On February 1, 2014, the Suppliers filed an initial brief in support of the several programs recommended for consideration in the Stipulation:

- The guaranteed discount rate referral program ("Referral Program");
- The Competition Incentive Rider ("CIR")

- Supplier consolidated billing program (“SCB”)¹
- Grid modernization and expansion of advanced metering (“AMI”)

The Office of the Ohio Consumers’ Counsel (“OCC”), the Ohio Manufacturing Association (“OMA”), and the Retail Supply Association, Exelon, and Constellation (“RESA, Exelon, and Constellation”) filed initial briefs that criticize these particular programs within the Stipulation, as well as question whether the Stipulation was a product of serious bargaining. As discussed below, their arguments lack merit. These programs will contribute to the development of the competitive market, increase the availability of innovative products and services, and result in direct savings to customers. Therefore, Direct Energy and IGS urge the Commission to acknowledge the benefits of these pilot programs in its Opinion and Order. Our decision not to address every argument raised by other parties in this proceeding should not be construed as agreement or support.

II. ARGUMENT

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into a stipulation. While a Stipulation does not bind the Commission, the terms of such agreements are accorded substantial weight. 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, commonly referred to as the three prong test:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

¹ The Referral Program, CIR, and SCB are collectively referred to as the “Pilot Programs.”

- (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?

The Pilot Programs satisfy this criteria.

A. The Stipulation is a product of serious bargaining.

Non-Signatory parties attempt to make several arguments in support of their claim that the Stipulation was not the product of serious bargaining among capable parties but each is without merit. First, OCC and OMA claim that use of “footnotes and carve outs” makes it impossible to discern the package of benefits that Signatory parties are requesting for approval.² OCC also claims that certain parties have “greatly diminished the significance, if any, of their signatures on the Joint Stipulation, by using footnotes to opt out of material provisions.”³ Further, OCC claims that the Stipulation could not be a product of serious bargaining among knowledgeable parties because it includes many “unknowns” such as the amount of the CIR and the parameters of the SCB Pilot.⁴

The Stipulation is the result of intense bargaining between a diverse set of parties. Direct Energy is one of the largest power and natural gas providers in the United States. IGS Energy has operated and maintained an Ohio based retail electricity and natural gas business since 1989. Both parties have participated in numerous PUCO proceedings throughout the course of their operation. The very fact that there are footnotes in the Stipulation attest to the fact that the parties thoroughly read and understood each provision and negotiated specific language to protect their individual business interests and legal rights.

² OMA Initial Comments at 22-23.

³ Id. at 37.

⁴ OCC Initial Comments at 32.

Further, the use of footnotes to “carve out” or further clarify a particular party’s position in settlement is not a new or unusual course of action. In fact, the Commission would not be hard pressed to find proceedings in which OCC or OMA used a footnote to “carve out” or further clarify their position on a particular term within a Stipulation. For example:

The Office of the Ohio Consumers’ Counsel (OCC), FirstEnergy Solutions, and the Ohio Manufacturer’s Association (OMA) support the Stipulation. However, the OCC, FirstEnergy Solutions, and OMA take no position regarding Section VII.A., or do not support or oppose the paragraph, so that the OCC’s FirstEnergy Solutions’ and OMA’s support for the Stipulation may not be used as precedent in any other proceeding.⁵

Also, “DTE, OPAE, and OCC state that while they support the Stipulation, that support should not be interpreted as support for SCO auctions in general, or in this Stipulation.”⁶ And in another AEP Ohio proceeding, “Due to the fact that AEP Ohio is embarking in good faith to meet its benchmarks and that their energy efficiency programs are in start-up mode, OCC is agreeing to this provision, however, this agreement should not be construed as supporting this concept in the future.”⁷

The use of footnotes does not weaken the Stipulation, instead, it demonstrates that capable parties carefully negotiated specific language to protect their business interest and legal rights. Direct Energy and IGS demonstrated their support of the Stipulation as a package by signing the document. The Stipulation is a product of serious bargaining and should be approved by the Commission.

B. The Pilot Programs will benefit ratepayers and the public interest.

As discussed further below, the Pilot Programs will contribute to the development of the competitive market, promote comparable and unbundled rate structures, increase the

⁵ See PUCO Case No. 11-3549-EL-SSO et al., Stipulation filed on October 24, 2011 at footnote 5.

⁶ See PUCO Case No. 08-1344-GA-EXM, Stipulation filed on October 7, 2009 at footnote 6.

⁷ See PUCO Case No. 09-1089-EL-POR, Stipulation filed on November 12, 2009 at footnote 4.

availability of innovative products and services, and result in direct savings to shopping customers.

1. The CIR will incentivize shopping by increasing the benefits realized by Choice customers.

Although OCC makes a litany of arguments against the CIR, it seems that OCC fundamentally misunderstands or misconstrues the proposal because many arguments begin with a false presumption. First, OCC claims that the Signatory parties will “choose what the price increase will be for consumers.”⁸ This claim is patently false. The Stipulation provides that AEP Ohio and Signatory parties will meet to determine the charge to be included in the 2016 ESP amendment case. If Signatory parties cannot agree on an appropriate recommended charge the Commission Staff will choose the final level for inclusion in AEP Ohio’s extension filing.⁹ AEP Ohio’s extension filing itself is obviously subject to approval by the Commission. Therefore, while AEP Ohio and the other Signatory parties will collectively determine the recommended CIR charge, ultimate approval of both the CIR and the amount of the CIR is subject to the Commission approval following due process.

Next, OCC argues that the CIR is inconsistent with the regulatory principle that “rates should be conducive to rate stability” and that fluctuating CIR rates will create inefficiently high rates because customers will switch marketers.¹⁰ Again, OCC misunderstands the proposal. Nothing in the proposal indicates that the CIR rate will “fluctuate” based on any variable other than changes to the SSO. Rather, AEP Ohio shall propose a pre-set (and approved by the Commission) per mWh charge to reflect costs that the SSO avoids that are

⁸ OCC Initial Comments at 49.

⁹ Joint Stipulation at 12.

¹⁰ OCC Initial Comments at 49.

necessary to provide retail electric service and to otherwise incent shopping. The CIR will not be a charge that constantly fluctuates. IGS and Direct Energy envision the CIR operating as a stable kWh charge that will not vary as shopping levels increase or decrease. In any event, the Commission reserves the right to review any proposal in AEP's ESP extension case. The CIR is a fair compromise to incent shopping without creating a "death spiral" of remaining customers paying utility costs. OCC does not have a right or responsibility to advocate solely for the interests of SSO customers, but is tasked with representing the interests of all residential ratepayers, including Choice customers. The CIR will provide a significant benefit to both current and future Choice customers and should be approved.

Finally, OCC argues that adding additional costs to the standard offer will diminish the incentive for CRES providers to offer a competitive price to attract standard offer customers and that there will be an "incentive" to raise rates by some amount up to the CIR rate.¹¹ The stated purpose of the CIR is to incentivize competition and again, OCC misunderstands or mischaracterizes market behavior. Direct Energy and IGS are both highly motivated to present customers with compelling Choice products and services. However, to the extent that there are certain costs associated with providing CRES that are not reflected in SSO bypassable rates, it creates market inefficiencies that distort the true value of Choice products. The CIR rectifies the existing preferential regulatory treatment that the SSO receives by avoiding costs necessary to provide retail electric service. Thus, the CIR promotes State policy in favor of comparable and non-discriminatory retail electric products. Therefore, the Signatory parties have endorsed the CIR as a mechanism by which to more accurately reflect and allocate such costs to provide

¹¹ Id. at 50.

greater benefit to shopping customers. Nothing in the record suggests that the CIR will diminish CRES providers incentive to compete for customers.

2. A pilot program will allow stakeholders to test and evaluate the benefits of Supplier Consolidated Billing.

Under this provision, AEP, Staff, and Signatory parties will work to establish a 2-year SCB for participating CRES providers. As proposed, the SCB is open to all customer classes and will require costs to be shared between suppliers and the company. OCC argues that the SCB pilot should be paid for by the “cost causers – the three marketers that are benefitting from it”¹² while OMA argues that all costs associated with the program should be borne by beneficiaries of the program, namely CRES signatories and customers of those CRES signatories.¹³ While the theory that cost allocation should follow cost causation certainly has merit in theory, it is not a firm rule, particularly when applied to a pilot program that is designed to test the market. If only the customers who elected to receive SCB via this pilot (the “cost causers”) were required to pay all costs associated with development and implementation of the program, it would result in such a high cost to those particular customers that the pilot would likely offer no tangible benefit to the customers or to the Staff and Commission seeking information. The SCB pilot will provide valuable information to the Commission and benefits to participating customers; it should be approved.

Moreover, modifications to utility billing systems are traditionally recovered from all distribution customers. The Stipulation, however, provides that Signatory CRES providers will

¹² OCC Initial Comments at 66.

¹³ OMA Initial Comments at 55.

pick up a portion of that cost; thus, this provision of the Stipulation should be viewed as beneficial to customers and in the public interest.

C. The Pilot Programs do not violate any regulatory policy or principle

The Pilot Programs do not violate any regulatory policy or principle; rather, they *promote* the state policy contained in R.C. 4928.02. The state policy is undeniably procompetitive. It favors customer education, and innovation, and retail electric choice. RESA, Exelon, and Constellation argue that the Stipulation includes terms that are unjust, including that only AEP Ohio and Signatory parties can discuss the CIR rate; and that the SCO pilot is only open to CRES providers who are also Signatory parties¹⁴. As noted above, the assertion that only Signatory parties can discuss or determine the CIR rate is without merit. Moreover, during AEP's next distribution rate case, it will provide an analysis of all of the costs embedded in distribution rates that are required to provide SSO generation service so the CIR promotes the state policy of promoting unbundled, comparable rates. Further, it does not violate any regulatory policy or principle to permit a limited number of parties to participate in a pilot program, such as the proposed SCB pilot. Accordingly, the pilot programs do not violate any regulatory policy or principle and the Stipulation should be approved by the Commission.

D. Conclusion.

The Stipulation at issue was a product of serious bargaining and the CIR and SCB pilot programs will contribute to the development of the competitive market, increase the availability of innovative products and services, and result in direct savings to customers. Direct

¹⁴ RESA, Exelon and Constellation Initial Comments at 56-57.

Energy and IGS urge the Commission to approve the Stipulation acknowledge the benefits of these pilot programs in its Opinion and Order.

Very truly yours,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Joint Reply Brief of Direct Energy Services, LLC, and Direct Energy Business, LLC and Interstate Gas Supply Inc.*, was served this 8th day of February 2016 via electronic mail upon the following:

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