

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Approval of its	)	Case No. 16-576-EL-POR
Energy Efficiency and Peak Demand	)	
Reduction Portfolio of Programs	)	

---

**THE OHIO HOSPITAL ASSOCIATION’S INITIAL POST-HEARING BRIEF**

---

**I. INTRODUCTION**

On June 15, 2016, Duke Energy Ohio, Inc. (“Duke”) filed its Application for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs (“Portfolio Plans” or “Application”). On December 22, 2016, Duke filed a Stipulation and Recommendation<sup>1</sup> which was signed by various parties. Duke subsequently filed an Amended Stipulation and Recommendation<sup>2</sup> on January 27, 2017 (the Stipulation and Recommendation and Amended Stipulation and Recommendation are collectively referred to as the “Stipulation”). As a signatory party to the Stipulation, the Ohio Hospital Association (“OHA”) respectfully requests that the Commission grant Duke’s Application, subject to the modifications contained in the Stipulation. The Stipulation represents a reasonable resolution of the complex issues involved in this case. The Stipulation addresses the concerns of a diverse group of intervenors, while also allowing Duke to achieve its statutory obligations under R.C. 4928.66. This careful balance results in a Stipulation that is lawful, reasonable, and beneficial to the public interest.

---

<sup>1</sup> Stipulation and Recommendation (“Joint Ex. 1).

<sup>2</sup> Amended Stipulation and Recommendation (“Joint Ex. 2”).

## II. LAW AND ARGUMENT

Under O.A.C. 4901-1-30, parties to Commission proceedings may enter into stipulations to resolve contested issues. Although stipulations are not binding on the Commission, the terms of these agreements are given substantial weight by the Commission. In considering the reasonableness of stipulations, the Commission often relies on the following three-prong test:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?<sup>3</sup>

The Stipulation in this case should be adopted by the Commission because it satisfies the three-prong test.

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

The record clearly indicates that the Stipulation is product of serious bargaining among capable, knowledgeable parties. The Stipulation has support of the following of the following parties:

- Duke
- Ohio Partners for Affordable Energy
- OHA
- Environmental Law and Policy Center
- Environmental Defense Fund
- Natural Resources Defense Fund
- Ohio Environmental Council
- The Kroger Company
- The Ohio Manufactures' Association
- IGS Energy.<sup>4</sup>

---

<sup>3</sup> See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n*, 68 Ohio St.3d 559 (1994).

<sup>4</sup> Joint Ex. 1 at 13-14; Joint Ex. 2 at 15-16.

These signatory parties have significant experience participating in energy efficiency and peak demand reduction (“EE/PDR”) proceedings.<sup>5</sup> The signatory parties are all very knowledgeable regarding the Commission’s regulatory process, and were represented by experienced, competent counsel throughout this case.<sup>6</sup> In addition, as Duke witness Duff testified, the terms of the Stipulation indicate that various parties made concessions to ultimately achieve a final agreement, which demonstrates that the Stipulation is the product of serious bargaining between the signatory parties.<sup>7</sup>

**B. The Stipulation, as a package, benefits ratepayers and the public interest.**

Duke’s Portfolio Plans, as modified by the Stipulation, will benefit ratepayers and the public interest.<sup>8</sup> In his testimony, Duke witness Duff discussed the various terms of the Stipulation which will benefit the public interest.<sup>9</sup> In particular, Mr. Duff testified regarding Duke’s commitment to leverage OHA’s EE-PDR efforts in Duke’s territory.<sup>10</sup> Duke and OHA also agreed to develop a new portfolio program that will help target hospitals, which will further increase hospitals’ participation in Duke’s energy efficiency programs.<sup>11</sup> The goal of these provisions of the Stipulation is to help hospitals control and reduce their energy costs. By providing hospitals with the tools necessary to reduce their expenses, hospitals will have more funds to allocate towards their core function – serving the health needs of the public.

---

<sup>5</sup> Supplemental Direct Testimony of Timothy J. Duff (“Duke Ex. 16”) at 2 and 10.

<sup>6</sup> *Id.* at 10.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> *Id.* at 2-9.

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *Id.*

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

The Stipulation is entirely consistent with regulatory practices and principles.<sup>12</sup> The Stipulation contains a number of enhancements and modifications to Duke's Portfolio Plans which were agreed upon by the vast majority of the parties to this case.<sup>13</sup> The Stipulation addresses the concerns of various intervenors while also allowing Duke to achieve its statutory obligations under R.C. 4928.66.

**III. CONCLUSION**

Based on the foregoing, the Commission should grant Duke's Application, subject to the modifications contained in the Stipulation.

Respectfully submitted on behalf of  
THE OHIO HOSPITAL ASSOCIATION



---

Richard L. Sites  
Regulatory Counsel  
OHIO HOSPITAL ASSOCIATION  
155 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, OH 43215-3620  
Telephone: (614) 221-7614  
Facsimile: (614) 221-4771  
Email: [rick.sites@ohiohospitals.org](mailto:rick.sites@ohiohospitals.org)

and

Matthew W. Warnock  
Dylan F. Borchers  
Devin D. Parram  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-2388; 227-4914  
Facsimile: (614) 227-2390  
E-mail: [mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dparram@bricker.com](mailto:dparram@bricker.com)

---

<sup>12</sup> *Id.* at 10-11.

<sup>13</sup> Duke Ex. 16 at 11; Joint Ex. 1 at 5-12; and Joint Ex. 2 at 5-14.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 31<sup>st</sup> day of March 2017 *via* electronic mail.



---

Devin D. Parram

[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
[mfleisher@elpc.org](mailto:mfleisher@elpc.org)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[Callwein@keglerbrown.com](mailto:Callwein@keglerbrown.com)  
[Mpritchard@mwncmh.com](mailto:Mpritchard@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[rdove@attorneydove.com](mailto:rdove@attorneydove.com)  
[perko@carpenterlipps.com](mailto:perko@carpenterlipps.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/31/2017 4:36:49 PM**

**in**

**Case No(s). 16-0576-EL-POR**

Summary: Brief The Ohio Hospital Associations' Initial Post-hearing Brief electronically filed by Mr. Devin D. Parram on behalf of Ohio Hospital Association