

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority to)	Case No. 16-1852-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. 4928.143, in the)	
Form of an Electric Security Plan.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of)	Case No. 16-1853-EL-AAM
Certain Accounting Authority.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
INITIAL BRIEF**

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") files with the Public Utilities Commission of Ohio ("Commission") this initial brief in these proceedings considering the applications of Ohio Power Company ("Ohio Power") for authority to establish a standard service offer ("SSO") in the form of an Electric Security Plan ("ESP") and for approval of certain accounting authority. OPAE is a signatory party to the Joint Stipulation and Recommendation ("Stipulation") filed in these proceedings on August 25, 2017. Joint Exhibit 1. The Stipulation is a product of lengthy, serious bargaining among the signatory parties and other parties who chose not to sign the Stipulation. *Id.* at 1. The Stipulation, as a package, benefits customers and the public interest, provides direct benefits to residential and low-income customers, and represents a just and reasonable resolution of all issues in the proceedings. *Id.* The Stipulation also violates no regulatory principle or practice and promotes the policies and requirements of

Title 49 of the Ohio Revised Code. Id. at 1-2. OPAE recommends that the Commission adopt the Stipulation without modification.

II. The Stipulation satisfies the Commission's test for the reasonableness of stipulations.

The Staff of the Commission ("Staff") presented the testimony of Tamara S. Turkenton, who testified that the Stipulation was the product of serious bargaining among capable, knowledgeable parties. Staff Exhibit 3 at 3. The negotiations took place over five to seven months, and there was serious bargaining among capable parties. Tr. I at 169. With her regulatory experience in negotiating cases before the Commission, Ms. Turkenton was able to testify that there was give and take by all the parties that signed or decided not to oppose the Stipulation. In the give and take, there were concessions in which the stipulating parties came off their litigation positions. Id. Thus, the terms of the Stipulation represent serious bargaining among all parties to find a mutually acceptable agreement. With the Stipulation, the signatory parties were able to mitigate the risk inherent in litigation. Staff Ex. 3 at 4.

In addition, the parties that signed the Stipulation agree that the Stipulation as a whole is in the public interest. Tr. I at 170. Ms. Turkenton cited the economic development incentives, such as the automaker credit; programs to promote peak-demand reduction and reliability; renewable energy options; the creation of more diverse energy options; the promotion of innovative measures relating to Smart City and Power Forward initiatives that allow for micro grids, EV

platforms, and smart grid systems; and enhancements to the retail competitive market. Tr. I at 171-172.

Ms. Turkenton also testified that the Stipulation provides direct benefits to residential and low-income residential ratepayers. Id. The Residential Distribution Credit Rider (“RDCR”) benefits residential ratepayers, including low-income residential ratepayers, by \$14.7 million annually. Tr. I at 172. The Neighbor-to-Nighbor program, with funding at \$1 million from the \$14.7 million RDCR, benefits low-income residential customers and could potentially benefit any residential customer. Id.

Ms. Turkenton also testified that the Stipulation violates no important regulatory principle or practice. Staff Ex. 3 at 4. Ms. Turkenton concluded that the Stipulation meets the Commission’s three-part test for the evaluation of a stipulation. Id.

The Office of the Consumers’ Counsel’s (“OCC”) witness Michael P. Haugh testified that the Stipulation, as a package, does not benefit customers and the public interest. OCC Ex. 8 at 4. Mr. Haugh stated that the Stipulation has a number of programs that are “handouts to the signatory parties and only benefit certain individuals” that signed the Stipulation. Id. Mr. Haugh testified that the Commission should evaluate if all, or a majority of, customers benefit from the Stipulation, not if a few signatory parties benefit as a result of signing the Stipulation.

However, the Commission evaluates a settlement as a package, the entirety of the settlement, and not whether separate components of a stipulation

fail to benefit all or a majority of customers. Tr. IV at 509. Even if OCC prefers that individual components of a stipulation be considered as positive or negative to the overall package, the Commission applies its test to the package as a whole. It is obvious that an individual component of a stipulation may not benefit all parties even when the total package has benefits that satisfy the Commission's test for the evaluation of stipulations. Tr. IV at 514.

In addition, a party's receipt of some value in a stipulation is not a sign that the stipulation does not meet the Commission's test for the reasonableness of stipulations. Settlements are encouraged, and signatories to settlements expect to find value in the settlements. The Commission has addressed arguments regarding "favor trading" and declined to conclude that benefits received by signatory parties to a stipulation were the sole motivation of the party in support of the stipulation. FirstEnergy Corp., Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016) at 104; citing FirstEnergy Corp., Case No. 14-1297-EL-SSO, Opinion and Order at 44-45. The Commission should follow its precedent and reject OCC's effort to malign the Stipulation and all the signatory parties on the grounds that they were motivated to sign the Stipulation solely on the basis of individual provisions for their own benefit.

OCC's Haugh also questioned whether the Stipulation has support from the residential class. He testified that OPAE does not represent residential customer interests but is a trade group that represents weatherization providers. He was not sure if the Commission had ever found that OPAE represents residential interests. Tr. IV at 516-517. He also did not know if intervenors on

behalf of environmental groups represent and have members that are residential customers of Ohio Power. *Id.* He recognized that the Staff of the Commission represents all customer classes. Tr. IV at 517.

The Commission has never found that OCC alone represents residential customer interests or that no other party to a stipulation represents residential customers but OCC. OPAE represents residential customer interests, as does the Commission's Staff, as do environmental groups, various other low-income customer groups, and individual community action agencies that represent the low-income residents of their communities.

The Commission has recognized that OPAE represents low-income residential customers. The Commission has noted that OPAE is a nonprofit organization representing the interest of over sixty nonprofits providing energy bill payment assistance, weatherization, energy efficiency, and consumer education programs throughout the state of Ohio with the purpose to promote affordable energy policies and preserve access to essential energy services for all Ohioans. The Commission has found that OPAE's ultimate clientele is primarily low- and moderate-income residential consumers and that OPAE is an advocate on behalf of low- and moderate-income customers. *Ohio Power Company, Case No. 14-1693-EL-RDR, et al., Opinion and Order (March 31, 2016), at 53.*

Moreover, the Commission has found that its test for stipulations is satisfied when only the utility and the Staff sign a stipulation. *Duke Energy Ohio, Case No. 14-457-EL-RDR, Second Entry on Rehearing (October 26, 2016) at 11.* The Commission has found that a utility and the Staff represent diverse interests,

because the Staff has an interest in balancing the concerns of all Ohio ratepayers and ensuring reliable service and fair rates. Id. The Commission has also consistently found that one party, such as OCC, or group of parties cannot effectively nullify a stipulation. Id.

The Commission has also found that its test for stipulations relates to whether parties are excluded from discussions regarding the stipulation. Id. OCC makes no argument that it was excluded from the settlement negotiations that led to the Stipulation in these cases. However, even when a stipulation was the result of a utility and the Staff bargaining between themselves, the Commission has found the test satisfied. Id. Even when a stipulation negotiated between a utility and the Staff was shown to the intervening parties to give them an opportunity to comment before the stipulation was filed, the Commission has found that the intervening parties were not excluded from the negotiations and that its test was satisfied. Id. In short, the Commission's test for the reasonableness of stipulations has not acted as a constraint on the Commission in approving stipulations before it.

Therefore, OCC has presented the Commission with no reason to find that the Stipulation as a package does not meet the Commission's test for the reasonableness of stipulations. Staff's witness Turkenton has described the benefits to ratepayers and the public interest achieved by the Stipulation. She has also provided testimony, based on her experience in regulation before the Commission, that the Stipulation violates no important regulatory principle or practice. The Commission should find that the Stipulation satisfies its test for the

reasonableness of stipulations and the Commission should adopt the Stipulation in its entirety.

III. The Stipulated ESP is more favorable in the aggregate than an MRO.

Under Ohio law, an ESP must be more favorable in the aggregate than a Market Rate Offer (“MRO”). With regard to the comparison between the ESP and an MRO, Staff witness Turkenton testified that the Stipulated ESP is more favorable in the aggregate than an MRO. Staff Ex. 3 at 5. Ms. Turkenton considered both quantitative and qualitative benefits/costs that produce a net result from the Stipulated ESP that make the Stipulated ESP more favorable than an MRO application. She explained that as of June 1, 2015, SSO generation rates have become 100% market-based rates. As a result, there should be no difference between market-based generation rates under an MRO or an ESP filing. Likewise, distribution cost riders set at zero apply to both the ESP and an MRO, because while the distribution costs cannot be recovered through an MRO proceeding, distribution costs can be recovered in a distribution base rate proceeding so that distribution cost riders are not factored into the quantitative price test between the ESP and MRO. For example, the Commission has found that the revenue requirements associated with the recovery of incremental distribution investments should be considered to be the same whether recovered through the ESP or through a distribution rate case conducted in conjunction with an MRO. Accordingly, the Commission does not consider such investments in its quantitative MRO versus an ESP analysis. Tr. I at 162; Ohio Power Company, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015) at 94.

One quantitative benefit considered in the ESP versus MRO test is the provision in the Stipulation that maintains the current RDCR at least until the effective date of new base distribution rates. Staff Ex. 3 at 5. This provides an annual benefit of approximately \$14.7 million for Ohio Power customers. An additional quantitative benefit resulting from the Stipulation is the \$1 million annual funding of the Neighbor-to-Neighbor program, which funding comes from the \$14.7 million RDCR. Id. at 6; Tr. I at 163. These benefits are not available under an MRO. Id. The Commission has already found that the continuation of the RDCR, which would otherwise expire at the end of the current ESP term, would not be available under an MRO and that the continuation of the RDCR will provide a quantifiable benefit of the ESP over an MRO. Ohio Power Company, Case No. 13-2385-EL-SSO, Opinion and Order (February 25, 2015) at 94.

Ms. Turkenton also testified that the Stipulation provides many qualitative benefits including provisions for economic development, enhancements to the retail competitive market, renewable energy options, and the promotion of innovative measures related to the Smart City and Power Forward initiatives. These qualitative benefits, in addition to the quantitative benefits, ensure the Stipulated ESP is more favorable in the aggregate than an MRO application would be. Staff Ex. 3 at 6-7.

With regard to the ESP versus the MRO test, OCC's witness Haugh states that there are a number of new riders and increases to existing riders under the ESP Stipulation that add over \$1.1 billion in costs to customers with little to no value. He believes that these riders would not be included in an MRO because

an MRO would merely set the SSO price. OCC Ex. 8 at 22. He believes that there are no other provisions under an MRO that allow a utility to include charges to customers for numerous and various riders. Therefore, according to OCC, customers would pay \$1.1 billion more in costs under the Stipulated ESP than under an MRO.

Mr. Haugh also testified that the RDCR was set up in Ohio Power's last distribution base rate case as a mechanism to credit back a double recovery of dollars from both the former ESP's Distribution Investment Rider ("DIR") and base distribution rates. Therefore, according to OCC, the extension of the RDCR is not a benefit but instead a requirement to prevent double recovery. The RDCR is a result of the DIR, and an MRO would not allow the DIR so there would not be any need for the RDCR under an MRO. OCC Ex. 8 at 25. Mr. Haugh also testified that the Neighbor-to-Neighbor program is funded through the RDCR and could be funded with or without an ESP, specifically through shareholder dollars. He believes the Neighbor-to-Neighbor funds are not contingent on an ESP filing and could continue with or without an ESP. Id.

In sum, Mr. Haugh testified that the Stipulated ESP cannot pass the ESP versus MRO test. Id. at 27. As "alleged" quantitative benefits, even if he counts, which he does not, the RDCR at \$13.7 million and the Neighbor-to-Neighbor program at \$1 million for \$14.7 million in quantitative benefits, he considers the Stipulated ESP costs to total \$1.113 billion, mostly from the \$1.01 billion DIR. Id. at 27. If the RDCR is discontinued, the same \$14.7 million should be removed from base rates, which would include the \$1 million for the Neighbor-to-Neighbor

program, which is funded through the RDCR. *Id.* The RDCR would be credited back to customers at some point in time. *Id.*

The Commission should agree with the testimony of Staff witness Turkenton that the Stipulated ESP is more favorable in the aggregate than an MRO. The Commission has already found that distribution costs such as those recovered through the DIR can be recovered in a distribution base rate proceeding so that distribution cost riders are not factored into the quantitative price test between the ESP and the MRO. *Ohio Power Company, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015) at 94.* The Commission has also already found that the continuation of the RDCR would not be available under an MRO and that the continuation of the RDCR will provide a quantifiable benefit of the ESP over an MRO. *Id.* The Stipulation maintains the current RDCR at least until the effective date of new base distribution rates. *Staff Ex. 3 at 5.* While OCC may be confident that the residential distribution credit would have to be credited back to customers at some point in time, the Stipulation guarantees that the RDCR will continue. An additional quantitative benefit resulting from the Stipulation is the \$1 million annual funding of the Neighbor-to-Neighbor program. *Id. at 6; Tr. I at 163.* These benefits are not available under the MRO. *Id.* Therefore, the Commission should find that the quantitative benefits and qualitative benefits ensure that the Stipulated ESP is more favorable in the aggregate than an MRO application would be. *Staff Ex. 3 at 6-7.*

IV. Conclusion

The Commission should find that the Stipulation satisfies the Commission's test for the reasonableness of stipulations. The Stipulated ESP also is more favorable in the aggregated than an MRO would be. The Commission should approve the Stipulation in its entirety.

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CERTIFICATE OF SERVICE

A copy of the foregoing Initial Brief of Ohio Partners for Affordable Energy will be served electronically by the Commission's Docketing Division on parties who are electronically subscribed to these cases on this 30th day of November 2017.

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