

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the	)	
Purchased Gas Adjustment Clauses	)	
Contained within the Rate Schedules of	)	Case No. 18-0218-GA-GCR
Duke Energy Ohio Inc., and Related	)	
Matters.	)	

In the Matter of the Audit of the	)	
Uncollectable Expense Rider of Duke	)	Case No. 18-0318-GA-UEX
Energy Ohio Inc., and Related Matters.	)	

In the Matter of the Application of Duke	)	
Energy Ohio Inc., for Approval of an	)	Case No. 18-0418-GA-PIPP
Adjustment to its Interim and Temporary	)	
PIPP Plan and Rider Case	)	

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**INITIAL POST HEARING BRIEF OF INTERSTATE GAS SUPPLY, INC.**

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Michael Nugent (0090408)  
Email: michael.nugent@igs.com  
Joseph Olikier (0086088)  
Email: joe.oliker@igs.com  
Counsel of Record  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
Telephone: (614) 659-5000  
Facsimile: (614) 659-5073

***Attorneys for IGS Energy***

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**I. INTRODUCTION**

R.C. 4905.302 and Rule 4901:1-14-07, Ohio Administrative Code (O.A.C.), require the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to conduct periodic audits of natural gas companies. Accordingly, on February 21, 2018, the Commission initiated the above-captioned proceeding and directed its Staff to proceed with an accounting audit<sup>1</sup> and a management performance audit<sup>2</sup> of Duke Energy Ohio, Inc.

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<sup>1</sup> Entry Ordering the Annual Gas Cost Recovery, Uncollectible Expense, and Percentage of Income Payment Plan Audits of Duke Energy Ohio, Inc. (February 21, 2018) (hereinafter “GCR Audit Entry”).

<sup>2</sup> Entry Ordering the Management/Performance Audit of Duke Energy Ohio, Inc. (February 21, 2018) (hereinafter “Management/Performance Audit Entry”).

(“Duke”). Interstate Gas Supply, Inc. (“IGS”)<sup>3</sup> and the Office of the Ohio Consumers’ Counsel (“OCC”)<sup>4</sup> subsequently filed motions to intervene.

The Commission directed that the accounting audit review Duke’s incurred and estimated cost used to calculate gas cost recovery (“GCR”) rates as well as the rates charged under Duke’s uncollectible expense (“UEX”) and percentage of income payment plan (“PIPP”) riders.<sup>5</sup> Duke selected Deloitte and Touche, LLP (“Deloitte”) to perform the accounting audit. Exeter Associates, Inc. (“Exeter”) was selected by the Commission to perform the management performance audit (“Audit”) and was directed to identify and evaluate the specific management policies, procedures, and reasoning of Duke’s existing or proposed procurement strategy, and include management recommendations based on an evaluation of Duke’s performance for the period September 1, 2015, through August 31, 2018.<sup>6</sup> Deloitte submitted an Independent Accountants’ Report on the Uniform Purchased Gas Adjustment on October 5, 2018, and Exeter submitted a report on the management performance audit to the Commission on January 24, 2019.

Though a hearing in this matter was originally scheduled for January 15, 2019<sup>7</sup>, the Attorney Examiners extended the hearing date on five separate occasions to afford the parties time to engage in settlement discussions and, ultimately, finalize the terms of a settlement agreement. In the intervening time, the four parties to the case (i.e. Duke, Commission Staff, OCC, and IGS) discussed and considered various options for resolving

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<sup>3</sup> See Motion to Intervene of Interstate Gas Supply, Inc. (September 27, 2018).

<sup>4</sup> See Motion to Intervene of the Office of the Ohio Consumers’ Counsel (April 26, 2018).

<sup>5</sup> GCR Audit Entry at 2.

<sup>6</sup> Management/Performance Audit Entry at 1.

<sup>7</sup> GCR Audit Entry at 3.

the issues presented in the audits. As a result of those discussions, three of the parties to this proceeding - Duke, Commission Staff, and IGS - entered into a Stipulation<sup>8</sup> and submitted it for the Commission's consideration on July 26, 2019. Duke filed testimony in support of the stipulation; OCC submitted testimony in opposition. An evidentiary hearing was held on September 10, 2019.

The OCC opposes the Stipulation arguing that it violates regulatory principles of cost-causation and falls short of benefitting customers and the public interest, because the Stipulation does not properly allocate propane commodity costs during the audit period nor refund those costs to GCR customers.<sup>9</sup> OCC also opposes the Stipulation because it did not incorporate OCC's requests to replace Duke's GCR with a standard service offer auction or to include aggregated shadow-billing data on customers' bills.<sup>10</sup> Although OCC urges the Commission to amend the Stipulation, its justifications for opposing the settlement agreement are meritless and its arguments should be dismissed. For the reasons set forth below, the Commission should find that the agreement satisfies its three-part test for consideration of contested settlements and should approve the Stipulation without modification.

## **II. STANDARD OF REVIEW**

Rule 4901-1-30 of the Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a written stipulation. Although stipulations are not binding on the Commission, their terms are accorded substantial weight.<sup>11</sup> This concept

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<sup>8</sup> See *Generally* Joint Exhibit 1.

<sup>9</sup> OCC Exhibit 1 at 6-7.

<sup>10</sup> *Id.* at 15.

<sup>11</sup> See *Consumers' Counsel v. Pub. Util.Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992).

is especially true where, as here, the stipulation is supported or unopposed by most of the parties in the proceeding.<sup>12</sup> Although the Commission may place substantial weight on the terms of a stipulation, it must determine from the evidence what is just and reasonable.<sup>13</sup> The standard of review for considering the reasonableness of a stipulation is well-established. In considering the reasonableness of a stipulation, the Commission evaluates the following criteria:<sup>14</sup>

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court endorsed the Commission's approach to using the three-part test to analyze and resolve issues in contested settlement proceedings.<sup>15</sup> After applying that three-part test to the Stipulation filed in this proceeding, the Commission should approve and adopt the Stipulation without modification.

### **III. ARGUMENT**

#### **A. The Stipulation is the Result of Serious Bargaining Among Capable, Knowledgeable Parties.**

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<sup>12</sup> See *In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 20 (May 13, 2010) (hereinafter "*In re Columbus S. Power Co.*").

<sup>13</sup> See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order, at 18 (September 7, 2016).

<sup>14</sup> *In re Columbus S. Power Co.* at 21.

<sup>15</sup> *Id.*

The parties to the Stipulation are capable and knowledgeable. The four parties to this proceeding – Duke, Staff, IGS, and the OCC – all regularly and actively participate in Commission proceedings and were represented by experienced, competent counsel. None of the parties were excluded from the settlement negotiations, and each had an opportunity to express its opinion in the negotiation process.<sup>16</sup>

Although all the parties engaged in settlement discussions, the Staff, IGS and Duke are the signatory parties.<sup>17</sup> The three signatory parties represent a broad range of interests and customers in Duke's service territory; and have significant experience and understanding of Duke's history providing distribution gas service and planning and procurement of gas supply.<sup>18</sup> The bargaining that occurred during settlement meetings produced beneficial modifications and compromises, and no party disputes that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. Therefore, the Stipulation satisfies the first prong of the Commission's settlement test.

**B. As a Package, the Stipulation Benefits Ratepayers and the Public Interest.**

The second part of the Commission's test requires that it evaluate the Stipulation as a whole.<sup>19</sup> In performing its evaluation, the Commission has found value in the parties' ability to resolve pending matters through a stipulation package and thereby avoid the

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<sup>16</sup> Duke Exhibit 1 at 3-4.

<sup>17</sup> See *Generally* Joint Exhibit 1.

<sup>18</sup> Duke Exhibit 1 at 2.

<sup>19</sup> See *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RD, Opinion and Order, at 78 (March 31, 2016).

considerable time and expense associated with the litigation of a fully contested case.<sup>20</sup> As discussed below, the Stipulation signed by Duke, Staff, and IGS satisfies the second part of the Commission's reasonableness test.

The Stipulation benefits ratepayers and serves the public interest insofar as it satisfies the concerns raised in the management performance audit by accepting most of the auditor's recommendations.<sup>21</sup> The Stipulation issues refunds and credits for overcollection, where appropriate, and adopts portions of the audit in a forward-looking manner, which will lead to the availability of reasonably priced gas. The Stipulation also promises to fine-tune tariff requirements related to the assignment of propane commodity costs, and in doing so, will provide pricing certainty for market participants and thereby benefit consumers in Duke's service territory.<sup>22</sup> Therefore, the Stipulation is a just and reasonable result that benefits ratepayers and serves the public interest.

**i. The Stipulation's Recommendation Regarding Propane Commodity Costs Satisfies the Second Part of the Commission's Test.**

The OCC, however, claims that the Stipulation fails to satisfy the second part of the Commission's test, arguing that it does not properly allocate propane commodity costs to choice customers nor provide a refund to GCR customers.<sup>23</sup> OCC argues that the Stipulation violates principles of cost-causation by failing to allocate incremental propane costs to choice customers during the audit period.<sup>24</sup> It is for that reason, OCC argues,

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<sup>20</sup> *Id.* at 77-78.

<sup>21</sup> Duke Exhibit 1 at 4.

<sup>22</sup> Joint Exhibit 1 at ¶ 7.

<sup>23</sup> OCC Exhibit 1 at 14-15.

<sup>24</sup> *Id.* at 7.



that the Stipulation should be amended to include the incremental costs incurred during the audit period in Duke's Contract Commitment Cost Recovery Rider ("CCCR"), and to require a refund of those costs to GCR customers.<sup>25</sup> OCC's argument disregards the plain language of the Gas Supply Aggregation Agreement contained in Duke's Full Requirements Aggregation Service ("FRAS") tariff and should be dismissed.

Under the FRAS tariff, a supplier serving firm transportation has the *option* to use an allocated share of Duke's propane facilities to meet customer requirements during periods of peak or design day demand.<sup>26</sup> When a supplier elects not to deliver the incremental volume of gas in excess of its adjusted peak day requirements, Duke's tariff provides that it is required to fulfill that supplier's gas needs with propane or other peaking supplies.<sup>27</sup> In that situation, the fully allocated costs of the propane or alternate peaking supply that Duke provided are billed directly to the supplier.<sup>28</sup> Otherwise, the propane commodity charge applied under the tariff is expressly bypassable. Nevertheless, the OCC seeks to modify the Stipulation to include the incremental propane costs incurred during the audit period in Duke's nonbypassable CCCR.

Ironically, what the OCC seems to overlook is that its recommendation violates the second part of the Commission's test. The audit confirms that suppliers operated within market rules during the audit period.<sup>29</sup> Further, the audit provides that suppliers declined

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<sup>25</sup> *Id.* at 3.

<sup>26</sup> Schedule of Rates, Classifications, Rules, and Regulations for Gas Service of Duke Energy Ohio, Addendum to Sheet No. 44 at 25.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Commission-Ordered Exhibit 4 at 6-23:24.

to utilize their allocated share of Duke's propane facilities during the audit period and, instead, obtained additional supply through other sources. Given that propane is likely to be utilized on the coldest days, when wholesale prices for natural gas are the highest, suppliers' alternative sources may have been just as costly as the incremental propane costs OCC seeks to reallocate.<sup>30</sup> Yet OCC now seeks to penalize suppliers and their customers for compliance with Duke's tariff.

The OCC should not be permitted to rewrite the market rules to require choice customers to retroactively pay a propane charge that is expressly bypassable. Here, the Stipulation resolves the auditor's propane cost concerns by agreeing to include the incremental cost of propane utilized for system integrity in its Rider CCCR on a forward-looking basis. The negotiated outcome benefits ratepayers, it serves the public interest, and does not punish suppliers or their customers for compliance with Duke's FRAS tariff during the audit period. Accordingly, OCC's argument to amend the Stipulation and refund GCR customers a portion of those costs should be dismissed.

**ii. The OCC's Recommendations Regarding Duke's Transition to an SSO and Implementation of a Shadow Billing Functionality are Beyond the Scope of this Proceeding and Should Not Be Adopted.**

The OCC also argues that the Stipulation violates the second part of the Commission's test because it fails to adopt OCC's recommendation for Duke to implement a billing mechanism that provides a comparison of Duke's GCR price to suppliers' price for natural gas.<sup>31</sup> The OCC claims that without that billing functionality

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<sup>30</sup> See *Generally* Tr. 43-44.

<sup>31</sup> OCC Exhibit 1 at 6-7.

the Stipulation falls short of benefitting ratepayers and the public interest. OCC's recommendation, however, is irrelevant to an examination of Duke's GCR production and purchasing policies in this proceeding and should therefore be dismissed.

In determining whether the second prong of the test is met, R.C. 4095.302(C)(2) expressly requires that the Commission limit a management or performance audit hearing "to the gas or natural gas company's gas or natural gas production and purchasing policies."<sup>32</sup> This section further provides that no management performance audit or hearing shall extend in scope beyond matters that are necessary to determine the following: (a) that the company's purchasing policies are designed to meet the company's service requirements; (b) that the company's procurement planning is sufficient to reasonably ensure reliable service at optimal prices and consistent with the company's long-term strategic supply plan; and (c) that the company has reviewed existing and potential supply sources.

The OCC's recommendation to amend the Stipulation to include a shadow billing mechanism is unrelated to a determination of whether Duke's purchasing and procurement policies satisfy the criteria set forth in R.C. 4905.302(C)(2). In fact, the Commission previously held that OCC's request to modify a GCR Stipulation to provide a comparison of Duke's GCR price to suppliers' prices for natural gas was outside the scope of the proceeding and had "no bearing on whether the Stipulation meets the three-part test."<sup>33</sup> The shadow billing recommendation OCC raised in this proceeding is nearly

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<sup>32</sup> See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order, at 28 (September 7, 2016).

<sup>33</sup> See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order, at ¶59 (September 7, 2016).

identical to the shadow billing request it raised in Duke's previous GCR. Accordingly, the OCC's recommendation to modify the Stipulation to require Duke to incorporate a shadow billing functionality should not be adopted.

Based on the foregoing, the Commission should find that the Stipulation benefits ratepayers and serves the public interest and should adopt the Stipulation without modification.

**C. The Stipulation Does Not Violate any Important Regulatory Principle or Practice.**

The Stipulation also satisfies the third part of the settlement test because it is consistent with the approaches and results that the Commission accepted and authorized in Duke's previous GCR.<sup>34</sup> Its lawfulness is supported by Staff's endorsement as well as the auditor's determination that the Stipulation is reasonable and should be adopted.<sup>35</sup>

Yet, the OCC argues that the Stipulation violates regulatory principles of cost-causation by failing to properly allocate propane commodity costs to suppliers during the audit period.<sup>36</sup> Finally, OCC asserts that the Stipulation violates regulatory practice by failing to adopt a billing mechanism that provides a comparison of Duke's GCR price to suppliers' price for natural gas.<sup>37</sup>

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<sup>34</sup> See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order (September 7, 2016).

<sup>35</sup> Tr. at 31.

<sup>36</sup> OCC Exhibit 1 at 7.

<sup>37</sup> *Id.* at 7.

Each of the OCC's arguments fail to refute that the Stipulation does not violate any important regulatory principle or practice. As mentioned previously, the Stipulation allocates the incremental cost of propane utilized for system integrity in Duke's nonbypassable Rider CCCR on a forward-looking basis. The result is an equitable outcome that resolves the concerns identified in the management performance audit without retroactively penalizing suppliers for compliance with Duke's FRAS tariff during the audit period. What's more, OCC's recommendation that the Commission modify the Stipulation to refund GCR customers and allocate to suppliers the incremental propane costs incurred during the audit period contravenes the plain language of Duke's Gas Supply Aggregation Agreement and would lead to an absurd result whereby Duke would be required to identify each and every customer that took competitive supply during that period<sup>38</sup> to accurately assess those costs.

Lastly, the OCC's argument that the Stipulation violates the third part of the Commission's test because it does not include a commitment to provide a comparison of Duke's GCR price to suppliers' prices for natural gas is meritless. The Commission previously determined that the OCC's recommendation is outside the scope of a GCR proceeding and has no bearing on whether the Stipulation meets the three-part test.<sup>39</sup> Since OCC's argument in this proceeding is no different from the argument raised in Duke's 2015 GCR, the same logic and reasoning applies here. Based on the foregoing,

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<sup>38</sup> Note that while implementing OCC's recommendation, Duke may identify customers that no longer reside in Duke's service territory.

<sup>39</sup> See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR et al., Opinion and Order, at ¶59 (September 7, 2016).

the OCC's arguments regarding alleged violations of third part of the Commission's reasonableness test should be dismissed.

#### **IV. CONCLUSION**

The Stipulation reasonably and efficiently resolves the issues presented in this case. It was a product of serious bargaining among capable, knowledgeable parties and does not violate any important regulatory principle or practice. IGS believes that, as a whole, the Stipulation benefits ratepayers and serves the public interest. Therefore, IGS respectfully requests that the Commission approve and adopt the Stipulation without modification.

Respectfully submitted,

/s/ Michael Nugent

Michael Nugent (0090408)

Email: michael.nugent@igs.com

Joseph Oliker (0086088)

Email: joe.oliker@igs.com

Counsel of Record

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

Telephone: (614) 659-5000

Facsimile: (614) 659-5073

***Attorneys for IGS Energy***

### **CERTIFICATE OF SERVICE**

I certify that this *Initial Post-Hearing Brief of Interstate Gas Supply, Inc.* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 15th day of October 2019.

[robert.eubanks@ohioattorneygeneral.gov](mailto:robert.eubanks@ohioattorneygeneral.gov)  
[steven.beeler@ohioattorneygeneral.gov](mailto:steven.beeler@ohioattorneygeneral.gov)  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)  
[sarah.parrot@puc.state.oh.us](mailto:sarah.parrot@puc.state.oh.us)

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  
[rocco.d'ascenzo@duke-energy.com](mailto:rocco.d'ascenzo@duke-energy.com)

/s/ Michael Nugent  
Michael Nugent  
**Attorney for IGS Energy**

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