

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Regulation of the)	
Purchased Gas Adjustment Clauses)	Case No. 18-0218-GA-GCR
Contained within the Rate Schedules of)	
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-PIP
Adjustment to its Interim and Temporary)	
PIPP Plan and Rider Case.)	

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

October 15, 2019

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INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is presented with a Stipulation and Recommendation (Stipulation) that meets the Commission's three-part test for determining a stipulation's reasonableness. It should, therefore, be adopted by this Commission.

PROCEDURAL HISTORY

By Entries issued on February 21, 2018, the Commission, inter alia, initiated these cases to review Duke's gas cost recovery rates, purchased gas adjustment clause, gas purchasing policies and practices, and related matters. On April 2, 2019, the hearing commenced for the purpose of receiving public testimony. On July 26, 2019, Duke Energy Ohio, Inc. (Duke), Staff, and Interstate Gas Supply, Inc. (IGS) filed a stipulation and recommendation (Stipulation) for the Commission's consideration. All direct expert testimony in support of the Stipulation was filed on August 23, 2019. All direct expert testimony in opposition to the Stipulation was filed by September 3, 2019. The hearing reconvened on September 10, 2019.

DISCUSSION

A. The Stipulation meets the Three-Part Test for Reasonableness.

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such

agreements are to be accorded substantial weight.¹ The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.² In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (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?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.³ When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission "may place substantial weight on the terms of a

¹ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St, 3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St, 2d 155, (1978).

² See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*; Case No. 84-1187-EL-UNC (November 26, 1985).

³ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559 (1994), citing *Consumers' Counsel*, supra, at 126.

stipulation,” it “must determine, from the evidence, what is just and reasonable.”⁴ The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.⁵

Staff and Suburban respectfully submit that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

1. Serious Bargaining

The Stipulation is the product of an open process in which all intervenors were given an opportunity to participate.⁶ All parties have significant experience and understanding regarding the matters discussed in settlement and were represented by knowledgeable counsel.⁷ There were extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests.⁸ Accordingly, the Stipulation is a product of serious bargaining among capable, knowledgeable parties.⁹

⁴ *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

⁵ *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46.

⁶ Prefiled testimony of Jeff L. Kerns at 2 and 4.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3-4

⁹ *Id.* at 4.

2. Public Interest

As set forth in the Stipulation, and as agreed to by the signatory parties, the Stipulation provides benefits for all customer groups and interested stakeholders, while advancing and remaining consistent with state policy.¹⁰ The Stipulation resolves issues between Staff and IGS, if not all the parties and thereby reduces litigation to some extent.¹¹ The terms of the Stipulation set forth provisions whereby, among other things, the Company has agreed to accept recommendations of the auditor in this proceeding.¹² Further, the Stipulation provides that the Company will file an application to change its gas tariff to prevent avoidance of capacity release due to timing of customers leaving the GCR within 60 days of the Order approving the Stipulation.¹³ Finally, the Company has agreed to hold a collaborative to discuss rates and charges paid by competitive retail natural gas suppliers for Firm Balancing Service (FBS) and Enhanced Firm Balancing Service (EFBS) and to discuss whether the formula for pricing FBS should be modified.¹⁴ All of these terms were included in the Stipulation as a result of the discussions between the parties and they are all terms that can be said to be in the best interests of the consumer and the public interest.¹⁵

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 4-5

¹⁴ *Id.* at 5

¹⁵ *Id.*

3. Regulatory Principle or Practice

No provision of the Stipulation violates any regulatory principles or practices.¹⁶

CONCLUSION

The Stipulation meets all prongs of the three-part test. The Commission should adopt the Stipulation as its order in this case.

Respectfully submitted,

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¹⁶ *Id.* at 4.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 15th day of October, 2019.

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Summary: Brief electronically filed by Mrs. Tonneta Y Scott on behalf of PUCO