

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	) ) )	Case No. 14-375-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	) )	Case No. 14-376-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	) ) )	Case No. 15-452-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	) )	Case No.15-453-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	) ) )	Case No. 16-542-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	) )	Case No. 16-543-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	) ) )	Case No.17-596-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	) )	Case No.17-597-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	) ) )	Case No.18-283-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	) )	Case No.18-284-GA-ATA

In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 19-174-GA-RDR
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 19-175-GA-ATA
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017.	)	Case No. 18-1830-GA-UNC
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments.	)	Case No. 18-1831-GA-UNC
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs.	)	Case No. 19-1085-GA-AAM
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 19-1086-GA-UNC
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 20-0053-GA-RDR
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 20-0054-GA-ATA
)	

POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

December 9, 2021

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND OF THE RESOLVED PROCEEDINGS.....	4
A. Summary of the MGP-Related Proceedings.....	4
B. Summary of the TCJA Proceedings.....	8
C. Resolution of the Proceedings.....	9
III. SUMMARY OF THE STIPULATION.....	11
A. Overview of the Settlement Terms and Benefits.....	11
B. Resolution of the Cost Recovery Issues.....	12
C. Resolution of Future Issues	15
1. Resolution of Known, Estimable and Probable MGP Issues.....	15
2. Resolution of Potential Ohio River Remediation.....	16
D. Other Settlement Terms and Conditions.....	17
1. Transition to an SSO	17
2. Creation of Two Bill Assistance Programs.....	18
3. Provision of Natural Gas Choice Information on the Bill.....	19
IV. THE STIPULATION SATISFIES THE COMMISSION’S THREE-PART TEST	20
A. The Standard Of Review	20
B. The Stipulation Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties	21
C. The Stipulation, as a Package, Benefits Ratepayers and Is in the Public Interest	27
D. The Stipulation Package Does not Violate any Important Regulatory Principle or Practice.....	31
V. CONCLUSION	34

I. INTRODUCTION

On August 31, 2021, a Stipulation and Recommendation (Stipulation)¹ was filed in these proceedings that, if approved, will resolve nine cases (eighteen total proceedings), some of which have been pending before the Public Utilities Commission of Ohio (Commission) for more than seven years. This Stipulation provides numerous benefits to the parties, as well as to the competitive natural gas market in southwest Ohio. Most significantly, it resolves highly contested cost recovery for environmental investigation and remediation without increasing any rates, and instead results in credits flowing back to customers and an overall rate decrease for natural gas customers of Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company). The Stipulation does this by establishing terms that include, but are not limited to the following:

- Complete resolution of manufactured gas plant (MGP) cost recovery issues for calendar years 2013 through 2019 without any increase in rates;²
- Immediate bill credits to natural gas customers and an overall reduction in natural gas base rates, reflecting impacts of the Tax Cuts and Jobs Act of 2017 (TCJA);³
- Creation of two natural gas bill assistance programs for qualifying, low-income customers, including one specifically for senior citizens;⁴
- A commitment to file future applications to implement a competitively bid, wholesale natural gas auction by way of a standard service offer (SSO) and a new price-to-compare message;⁵
- Establishment of conditions precedent for a potential future application for recovery of costs of MGP remediation within the Ohio River;⁶ and
- Provision of natural gas customers' shadow billing data to the Office of the Ohio Consumers' Counsel (OCC).⁷

¹ Joint Ex. 1, Stipulation and Recommendation (Admitted Nov. 18, 2021).

² *Id.* ¶ III.A.8.

³ *Id.* ¶ III.A.9, III.A.10, III.A.14, and III.A.18c.

⁴ *Id.* ¶ III.A.18.

⁵ *Id.* ¶¶ III.B and III.C.

⁶ *Id.* ¶ III.A.17.

⁷ *Id.* ¶ III.C.25.

The resolved cases are complex and the parties to these proceedings have devoted countless hours, spanning, in some instances, more than seven years, to arrive at the resolution now pending Commission approval. The earliest of these proceedings relates to incremental cost recovery to remediate two former MGP sites once used by Duke Energy Ohio to provide service to customers. The MGP-related cases address recoverability of more than \$85 million in MGP investigation and remediation expense pending in annual cost recovery filings for calendar years 2013 through 2019, as well as the appropriateness of additional deferral accounting for environmental investigation and remediation beyond 2019. The lack of resolution of these issues has created significant financial uncertainty for the Company and unpredictability of rates for its customers.

The issues involving the TCJA were equally complex, with disagreement over the appropriate valuation of impacts of the TCJA and the timing for providing credits to customers. These TCJA issues have, likewise, remained unresolved since 2018. The Stipulation provides finality to these highly contested cases and an accelerated return of benefits to customers.

The parties participating in these lengthy negotiations include OCC, the Ohio Manufacturers Association Energy Group (OMAEG), the Ohio Energy Group (OEG), Ohio Partners for Affordable Energy (OPAE), The Kroger Company (Kroger), Staff of the Commission (Staff), and Duke Energy Ohio. The signatory parties include the Company, OCC, Staff, and OEG (collectively, the Signatory Parties). Notably, the Stipulation was unopposed by all others who had intervened by that point (collectively, the Non-Opposing Parties). These Signatory and Non-Opposing parties (collectively, the Settling Parties) are highly experienced, having participated in countless proceedings before this Commission and were represented by experienced counsel. These parties encompass stakeholder interests that include the natural gas utility, residential customers, low-income customers, commercial customers, industrial customers, and Staff, who

impartially represents all interests.⁸ The Stipulation, many months in the making, was the result of lengthy negotiations. At the time of filing, the Stipulation was unopposed by all parties to the eighteen total proceedings included therein.

The Stipulation represents a fair, reasonable, and comprehensive resolution of all issues raised by both the Signatory Parties and the Non-Opposing Parties.⁹ It is a compromise reached by a diverse cross-section of Duke Energy Ohio's customers and Staff. The provisions of the Stipulation are designed such that they work in tandem with one another to create a logical and meaningful regulatory framework and complete resolution. Thus, the provisions are interwoven so that, as a package, the Stipulation delivers benefits that will provide customers with value. The value concepts are immediate and meaningful for customers and the Company. The issue now before the Commission is whether this Stipulation, as a total settlement package, is reasonable and should be approved in accordance with a well-established three-part test.

Post-Stipulation Intervening Parties Interstate Gas Supply, Inc., (IGS) and Retail Energy Supply Association (RESA) were given a fair opportunity to present their opposition through these proceedings and have not shown that the Stipulation, as a total package, is unreasonable, or fails any component of the three-part test. Again, the issue is whether the totality of the settlement as a package is reasonable. It is not whether any individual issue or component, on a stand-alone basis, passes the test.¹⁰ The Commission should approve the Stipulation without modification.

⁸ *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, pp. 20-21 (September 7, 2016) (“Staff impartially represents the interests of all stakeholders, including residential customers.”).

⁹ Joint Ex. 1, Stipulation and Recommendation (Admitted Nov. 18, 2021).

¹⁰ *See In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order ¶ 131 (Nov. 17, 2021) (“We emphasize that the Commission must evaluate the benefits of the Stipulation as a package and each provision of the Stipulation need not provide a direct and immediate benefit to ratepayers and the public interest.”).

II. BACKGROUND OF THE RESOLVED PROCEEDINGS

A. Summary of the MGP-Related Proceedings.

In 2009, Duke Energy Ohio first requested authorization to defer “all environmental investigation and remediation costs incurred . . . after January 1, 2008, in compliance with state and federal regulations,”¹¹ with the expectation that the majority of such costs would stem from investigation and remediation of the MGP sites.¹² After “review[ing] . . . the applicable federal and state rules and statutes,” the Commission “f[ound] that these environmental investigation and remediation costs are business costs incurred by Duke in compliance with Ohio regulations and federal statutes,” and authorized deferral.¹³ The Commission noted that any actual recoveries of the deferred amounts would have to be addressed in future proceedings.¹⁴

The Company’s first application to recover MGP investigation and remediation costs was through its 2012 natural gas base rate case proceeding, Case No. 12-1685-GA-AIR, *et al.* (2012 Gas Rate Case).¹⁵ In that case, the Company, among other things, sought recovery of (1) approximately \$57.9 million for MGP remediation costs, and (2) approximately \$5 million in carrying costs.¹⁶ By Opinion and Order dated November 13, 2013, the Commission authorized the recovery of approximately \$55 million in environmental investigation and remediation expense incurred between 2008 and 2012, and further established the mechanism (Rider MGP) pursuant to which subsequently incurred investigation and remediation costs would be recovered annually

¹¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 09-712-GA-AAM, Finding and Order, p. 2 (November 12, 2009) (Commission paraphrasing Company’s request).

¹² *Id.*, p. 1.

¹³ *Id.*, p. 3.

¹⁴ *Id.*, pp. 3-4.

¹⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No.12-1685-GA-AIR, *et al.*, Opinion and Order, p. 58. (November 13, 2013).

¹⁶ *Id.*

(Gas Rate Case Order).¹⁷ The Commission held that “it is undisputed on the record that [Duke Energy Ohio] has the societal obligation to clean up these [MGP] sites for the safety and prosperity of the communities in those areas . . . therefore, these costs are a current cost of doing business.”¹⁸ The Gas Rate Case Order established dates by which such deferral authority would end based upon a Commission-established ten-year period from the date that Duke Energy Ohio “became aware of the changing of the conditions” at the two MGP sites (East End and West End sites), which it determined to be 2006 and 2009, respectively.¹⁹ Thus, the Commission initially limited the period for which the Company could continue to defer and recover remediation costs incurred to December 31, 2016, for the East End site and December 31, 2019, for the West End site.²⁰ However, recognizing that exigent circumstances could render such ten-year periods unreasonable, the Commission expressly provided Duke Energy Ohio with the right to seek an extension of the deferral and the related recovery periods.²¹

On May 16, 2016, Duke Energy Ohio filed its application in Case No. 16-1106-GA-AAM, *et al.*, requesting an extension of its deferral authority for expenses incurred in investigating and remediating the East End MGP site.²² The Company explained that such an extension was necessary due to exigent circumstances that were beyond the Company’s control.²³ On December 21, 2016, the Commission issued its Finding and Order in the Extension Case, granting the Company a three-year extension, lasting until December 31, 2019, for continued deferral authority

¹⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order, pp. 70-74 (November 13, 2013) (hereinafter the Gas Rate Case Order).

¹⁸ Gas Rate Case Order, p. 59 (November 13, 2013).

¹⁹ Gas Rate Case Order, p. 72 (November 13, 2013).

²⁰ *Id.* p. 74.

²¹ *Id.* p. 72; *See also*, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Entry on Rehearing, p. 4 (January 8, 2014).

²² *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Application (May 16, 2016) (hereinafter the Extension Case).

²³ *Id.* pp. 6-12.

for environmental investigation and remediation costs at the East End site.²⁴ Once again, the Commission provided the Company with the right to seek further extensions upon a showing of exigent circumstances.²⁵

The Gas Rate Case Order was timely appealed to the Ohio Supreme Court (Court), and on June 29, 2017, the Court affirmed the Commission, finding that remediation costs were service-related and recoverable through rates under R.C. 4909.15(A)(4).²⁶ The Court acknowledged, “[a]s the current owner or operator of facilities from which there is a release or threatened release of hazardous material, Duke is liable for remediation of the MGP sites under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).”²⁷ Furthermore, the Court confirmed that such legally mandated costs incurred in providing service are recoverable.²⁸

In 2019, the Company filed its second application requesting Continued Deferral Authority of the Company’s MGP expenses beyond December 31, 2019 (2019 Deferral Extension Case).²⁹ The Company argued that additional deferral authority for environmental investigation and remediation at its East End MGP site was justified based upon exigent circumstances beyond the Company’s control.³⁰ No hearing has occurred, and the 2019 Deferral Extension Case remains unresolved.

In accordance with the Commission’s 2012 Gas Rate Case Order, as affirmed by the Court, Duke Energy Ohio has applied annually to recover its incremental environmental investigation and remediation costs related to the former MGP sites. Applications for recovery of MGP investigation and remediation expense related to calendar years 2013 through 2019 have been

²⁴ Extension Case, Finding and Order, p. 1 (December 21, 2016).

²⁵ *Id.* p. 14.

²⁶ *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp. 441-443 (June 29, 2017).

²⁷ *Id.* p. 438; citing 42 U.S.C. 9601, *et seq.*

²⁸ *Id.*

²⁹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Continue Deferral of Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, *et al.*, (Application) (May 10, 2019).

³⁰ *Id.* pp. 12-28

submitted and reviewed by Staff, yet remain unresolved.³¹ Issues involving cost recovery of MGP investigation and remediation expenditures incurred between January 1, 2013 and December 31, 2018 have been litigated and briefed by the parties (Litigated MGP Proceedings). Neither the Company's application for 2019 MGP cost recovery nor the Company's 2019 Deferral Extension Case Application were litigated prior to the filing of the Stipulation.

As reflected in Table 4 in the July 23, 2020 Report by the Staff of the Public Utilities Commission filed in Case No. 20-53-GA-RDR, *et al.*, (Staff Exhibit 1), approximately \$85 million in incremental MGP investigation and remediation expense that the Company has incurred between January 1, 2013 and December 31, 2019, is currently at issue.³² Parties, including Staff, have disagreed for years over the amount of expense and areas of remediation that are appropriate and eligible for recovery. Staff's recommended disallowances were based upon disputed geographic boundaries of the MGP sites. Although Staff did not challenge the prudence of the environmental investigation and remediation activities or costs that the Company incurred in any of its previously issued reports of investigation, OCC did challenge the prudence of the Company's remediation activities. Cost-recovery for MGP remediation and investigation has been highly controversial and such disputes have been ongoing for many years. The Stipulation, if approved without material modification, will put these issues to rest without ongoing lengthy appeals by the

³¹See *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 14-375-GA-RDR *et al.*, (Application)(March 31, 2014); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 15-452-GA-RDR *et al.*, (Application)(March 31, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 16-542-GA-RDR *et al.*, (Application)(March 31, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 17-596-GA-RDR *et al.*, (Application)(March 31, 2017); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 18-283-GA-RDR *et al.*, (Application)(March 28, 2018); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 19-174-GA-RDR *et al.*, (Application)(March 29, 2019); and); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 20-53-GA-RDR *et al.*, (Application)(March 31, 2020).

³² Staff Ex. 1, A Report by the Staff of the Public Utilities Commission of Ohio, p. 7, (Admitted Nov. 18, 2021).

parties who have been involved with these issues from the outset, and with no increase in customer rates.

B. Summary of the TCJA Proceedings.

On December 21, 2018, Duke Energy Ohio filed its application in Case No. 18-1830-GA-UNC, *et al.*, to begin flowing the benefits of the TCJA back to natural gas customers.³³ In its application, the Company proposed to do this via a twofold process: by decreasing natural gas base rates and by creating a discrete rider (Rider GTCJA).³⁴ Staff recommended accepting the Company's proposal, subject to several modifications.³⁵ Duke Energy Ohio and Staff agreed on most aspects of rate design, including but not limited to the calculation of the deferral for the reduced corporate federal income tax (FIT) rate since January 1, 2018 (Stub Period Deferral), the amortization of protected Excess Accumulated Deferred Income Taxes (EDITs), and Staff's recommendation to true up Rider GTCJA annually with regard to credits for EDIT amortization. However, material disputes remained and the case was litigated.

The material disputes involved how the benefits should flow through to customers and whether or not customers should only receive the benefits of excess deferred income taxes for plant and certain deferrals that are actually reflected in base rates. The Company, among other things, argued that the Commission should reject two of Staff's recommended modifications to: (1) include the proposed base rate decrease as a component of Rider GTCJA, instead of the administratively simpler proposal from the Company to adjust base rates, and (2) use the Company's balance sheet as of December 31, 2017, as the basis for calculating the balances for

³³ See *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI, Finding and Order, p. 18 (Oct. 24, 2018) (directing rate-regulated utilities to file applications to pass back TCJA benefits).

³⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., to Establish a Rider to Credit Its Natural Gas Customers with the Benefits of the Tax Cuts and Jobs Act*, Application, pp. 4-5 (Dec. 21, 2018) (Duke Energy Ohio Ex. 1, Case No. 18-1830-GA-UNC, *et al.*, (Admitted Aug. 7, 2019)).

³⁵ Case No. 18-1830-GA-UNC, *et al.*, Staff Ex. 1, Review and Recommendations of the Staff of the Public Utilities Commission of Ohio, pp. 4-5.

both “normalized” (also referred to as “protected”) and “non-normalized” (also known as “unprotected”) EDITs, instead of the date of the last base rate case, March 31, 2012, as proposed by the Company and as had already been done by another utility.³⁶ On brief, the Company further argued that the Commission should consider excluding any direct refund for the Stub Period Deferral from its TCJA decision, and permit the Company to make a proposal in a separate proceeding for a more optimal solution that allocates those amounts to existing deferred costs to avoid creating unnecessary rate volatility for customers.³⁷ The Stipulation here does that very thing by leveraging TCJA proceeds to offset increases for the MGP costs, but in a way that not only wholly offsets those costs, but results in both credits and overall rate reductions for customers as well as other tangible benefits.

C. Resolution of the Proceedings.

On August 31, 2021, following many months of negotiations, a comprehensive and detailed settlement was filed in these proceedings that, at the time, was unopposed by all intervening parties involved in one or more of the eighteen underlying proceedings. The Stipulation resolves all issues raised by the Settling Parties. Contemporaneously with the filing of the Stipulation, the Company submitted the Direct Testimony of Amy B. Spiller, President of Duke Energy Ohio,³⁸ and the Supplemental Testimony of Sarah E. Lawler, Vice President of Rates and Regulatory Strategy³⁹ for Duke Energy Ohio, both in Support of the Stipulation. Ms. Lawler and Ms. Spiller summarize

³⁶ Case No. 18-1830-GA-UNC *et al.*, Duke Energy Ohio Ex. 1, Direct Testimony of William Don Wathen, pp. 19-28, (Admitted Aug. 7, 2019).

³⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1830-GA-UNC *et al.*, Initial Post Hearing Brief of Duke Energy Ohio, Inc., pp 21-23 (Sept. 11, 2019); *see also In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 17-2202-GA-ALT, Opinion and Order, pp. 20, 28 (November 28, 2018).

³⁸ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller (Admitted Nov. 18, 2021).

³⁹ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler (Admitted Nov. 18, 2021).

the proceedings, explain the Stipulation, the benefits to customers, and how the Stipulation is reasonable and satisfies the Commission's well-established three-part test.

Then, on September 17, 2021, IGS moved to intervene in these proceedings, identifying three specific provisions of the Stipulation, which in IGS's opinion impact the competitive market and support its intervention.⁴⁰ The three issues of concern to IGS involved Duke Energy Ohio's commitment to: 1) "transition from its long-standing Gas Cost Recovery ("GCR") mechanism to a competitive Standard Service Offer ("SSO") auction format for natural gas supply;" 2) provide "twenty-four months of aggregate shadow billing data to [OCC] on an ongoing basis;" and 3) "implement billing system changes that will include the Price-to-Compare on all shopping customer bills."⁴¹ On September 29, 2021, RESA also moved to intervene citing those same three provisions as reasons supporting its intervention.⁴²

On October 15, 2021, the Attorney Examiner established a procedural schedule, including accelerated discovery, and over the objections of several of the existing parties, granted intervention to both RESA and IGS, limiting their participation to the three specific issues they identified as justifying intervention.⁴³

On November 12, 2021, RESA and IGS jointly submitted the direct testimony of three witnesses: 1) James H Cawley, a regulatory utility lawyer licensed in Pennsylvania but not Ohio;⁴⁴ 2) Frank Lacy, President of Electric Advisors Consulting, LLC;⁴⁵ and James L. Crist, President of Lumen Group, Inc., a consulting firm.⁴⁶ The three joint witnesses' testimonies can be broadly summarized as opposing the Stipulation's inclusion of the three above-listed items identified by

⁴⁰ IGS Motion to Intervene, p. 5 (Sept. 17, 2021).

⁴¹ *Id.*, p.5

⁴² RESA Motion to Intervene, p. 5 (Sept. 29, 2021).

⁴³ Entry, ¶ 36 (Oct. 15, 2021).

⁴⁴ RESA/IGS Ex. 1 (Admitted Nov. 18, 2021).

⁴⁵ RESA/IGS Ex. 2 (Admitted Nov. 18, 2021).

⁴⁶ RESA/IGS Ex. 3 (Admitted Nov. 18, 2021).

IGS and RESA as justifying their intervention. An evidentiary hearing was conducted on November 18, 2021, during which IGS and RESA were given the opportunity to challenge the reasonableness of the Stipulation as it relates to the inclusion of the three-identified commitments.

III. SUMMARY OF THE STIPULATION

A. Overview of the Settlement Terms and Benefits

The Stipulation provides numerous benefits to the Company's natural gas customers and affords clarity and certainty for all stakeholders by resolving these complex and long-pending regulatory proceedings. This comprehensive settlement resolves nine proceedings (eighteen total cases), including: 1) Duke Energy Ohio's seven pending requests to adjust Rider MGP for the periods of January 1, 2013, through December 31, 2019;⁴⁷ 2) Duke Energy Ohio's request to implement the TCJA, including Rider GTCJA;⁴⁸ and 3) Duke Energy Ohio's request to extend its MGP deferral authority for ongoing investigation and remediation beyond December 31, 2019.⁴⁹

The Stipulation brings finality to disputed issues of recovery of MGP investigation and remediation costs already incurred in a manner that eliminates customers' obligation to pay for such costs via Rider MGP. It also eliminates customers' exposure to additional and specific MGP investigation and remediation costs at the inaccessible areas of the East End MGP site that will occur in the future.⁵⁰ It limits the Company's ability to seek additional MGP remediation deferral authority by imposing consumer protections through agency confirmation of ongoing remediation with specific time limitations on the Company's ability to obtain such confirmation and make a future application. It brings finality to disputes regarding the allocation of over \$50 million in net

⁴⁷ *Supra* fn 30.

⁴⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., to Establish a Rider to Credit Its Natural Gas Customers with the Benefits of the Tax Cuts and Jobs Act*, Application, pp.4-5 (Dec. 21, 2018) (Duke Energy Ohio Ex. 1, Case No. 18-1830-GA-UNC, *et al.*, (Admitted Aug. 7, 2019)).

⁴⁹ *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, *et al.*, Application (May 10, 2019).

⁵⁰ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 16 (Admitted Nov. 18, 2021).

insurance proceeds the Company was able to negotiate with carriers possessing policies that the Company argued covered the MGP remediation (Insurance Proceeds). The Stipulation resolves the TCJA proceedings by accelerating the benefits of the EDITs afforded to customers to insulate customers from any increases in rates due to MGP costs incurred since 2013.

The benefits of this Stipulation are not only reflected in the resolution of known MGP-related liabilities, as it makes provision for a reduction in current natural gas base rates and a significant bill credit for all-natural gas customers.⁵¹ The Stipulation creates two utility bill assistance programs for qualifying low-income natural gas customers with certain dollars specifically targeted towards senior citizens who have been particularly impacted by the COVID-19 pandemic. Finally, the Stipulation supports the expansion of the competitive natural gas market as it commits the Company to seek authority to transition from the current GCR process to an SSO through which natural gas supply would be competitively procured via a wholesale auction. This Stipulation supports Duke Energy Ohio's financial health by resolving the uncertainty regarding cost recovery in a way that provides finality among the Settling Parties, which is fundamental to maintaining good credit standings, all the while mitigating against abrupt cost increases for customers.

B. Resolution of the Cost Recovery Issues

The Stipulation provides a solution for known MGP investigation and remediation costs that have already been incurred and that will have to occur in the near future upon becoming accessible through retirement and decommissioning of operating utility infrastructure. As explained by Ms. Lawler, the Stipulation, through an agreed-upon disallowance, application of insurance proceeds, and credits from the natural gas TCJA against the charges related to MGP

⁵¹ Joint Ex. 1, Stipulation and Recommendation, ¶ 10, (Admitted Nov. 18, 2021) (Rate IT will receive a volumetric-based credit over 12 -months. All other natural gas customers will receive a one-time lump-sum bill credit on natural gas bills.).

investigation and remediation, results in a complete offset of the MGP charges and terminates Rider MGP.⁵² The Stipulation, if approved without modification, ensures customers will not have to pay for any of the MGP investigation and remediation costs incurred since January 1, 2013, while still receiving net bill credits and an overall reduction to current natural gas base rates for the remaining benefits of the natural gas TCJA not offsetting MGP costs.

As detailed in the Stipulation and explained by Duke Energy Ohio witness Lawler, Duke Energy Ohio has incurred \$85,217,593 in MGP investigation and remediation costs between January 1, 2013, and December 31, 2019.⁵³ As a concession for the purpose of this comprehensive settlement and the resolution of contested issues, the Signatory parties agreed that \$11,357,579 in MGP investigation and remediation expense is not recoverable.⁵⁴ After agreeing to that disallowance, the remaining net MGP investigation and remediation costs through December 31, 2019, equaled \$73,860,014.⁵⁵

The Settling Parties also agreed that the EDITs created as a result of the TCJA will be valued as of March 31, 2012, thereby reflecting the amount currently in customer base rates.⁵⁶ The unprotected EDITs on a grossed-up basis are valued at \$28,106,996 and, because tax normalization rules do not apply to unprotected EDIT balances, those unprotected EDITs will be used to immediately offset MGP remediation costs, thereby reducing the “recoverable” MGP costs by \$28,106,996, leaving remaining net MGP investigation and remediation costs of \$45,753,018.⁵⁷ The Stipulation next applied the \$50,562,476 in Insurance Proceeds to wholly offset the remaining

⁵² Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, pp. 9-13 (Admitted Nov. 18, 2021).

⁵³ *Id.* p. 9.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Joint Ex. 1, Stipulation and Recommendation, ¶ 5 (Admitted Nov. 18, 2021); Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 10 (Admitted Nov. 18, 2021). The Company also maintained that the valuation date should be December 31, 2017, for the EDITs included in Riders AMRP and AU, which reflected the amount in customer rates for those riders.

⁵⁷ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 10 (Admitted Nov. 18, 2021).

MGP costs. Rider MGP, which is already suspended, will then be terminated. This leaves \$4,809,458 of remaining insurance proceeds to be refunded to customers. Table 1 of Joint Exhibit 1⁵⁸ depicts the calculation to eliminate the MGP costs as follows:

TABLE 1:	
Duke Energy Ohio's MGP Remediation Costs	\$85,217,593
MGP Costs to be Disallowed from Charges to Customers	(\$11,357,579)
Duke Energy Ohio's Net MGP Remediation Costs	\$73,860,014
Use of TCJA Unprotected EDITs (3/31/12 valuation)	(\$28,106,996)
Duke Energy Ohio's Remaining Net MGP Remediation Costs	\$45,753,018
Use of the Majority of net Insurance Proceeds to offset MGP Charges to Customers	(\$45,753,018)
Remaining MGP Obligation	\$ 0

As outlined in the Stipulation and discussed in more detail in Ms. Lawler's testimony, customers will receive the full benefit of the TCJA.⁵⁹ The protected EDITs will be credited back to customers in accordance with tax normalization rules through Rider GTCJA. This will offset natural gas rates going forward, meaning customers will continue to receive benefits through reduced rates.⁶⁰ As Company witness Spiller explained in her Direct Testimony, the Company has been deferring the difference between the FIT in base rates and the reduction to 21 percent as established in the TCJA, since January 1, 2018.⁶¹ This Stub Period Deferral will be valued as of the date on which the Commission approves this Stipulation without material modification, and will be provided to customers as direct bill credits.⁶² As Ms. Lawler explained, all customers except those customers taking service through Rate IT will receive the value of this deferral through a one-time credit on their natural gas bills.⁶³ Rate IT customers will also receive the credit; however, it will be over a twelve-month period.⁶⁴ These credits will include the Stub Period

⁵⁸ Joint Ex. 1, Stipulation and Recommendation, ¶ 8 (Admitted Nov. 18, 2021).

⁵⁹ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 11 (Admitted Nov. 18, 2021).

⁶⁰ *Id.*

⁶¹ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 18 (Admitted Nov. 18, 2021).

⁶² *Id.*

⁶³ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 11 (Admitted Nov. 18, 2021).

⁶⁴ *Id.*

Deferral and the protected EDITs that have become unprotected with the passage of time. Non-residential customers will also receive \$1 million of the remaining insurance proceeds as part of their bill credit calculation.⁶⁵ Finally, to account for the lower FIT going forward, Duke Energy Ohio is agreeing to reduce its natural gas base rates.⁶⁶ This will produce a 5.3558 percent reduction for all natural gas customers until such base rates may be adjusted in the future.⁶⁷

C. Resolution of Future MGP Issues

1. Resolution of Known, Estimable and Probable MGP Issues

Under the Stipulation, the Company will withdraw its deferral request for post-2019 MGP investigation and remediation expense that has been pending in Case No. 19-1085-GA-AAM, *et al.* This withdrawal will mean that Duke Energy Ohio is foregoing its ability to seek deferral of costs related to future remediation of inaccessible areas at the East End MGP site and costs incurred for investigation of the Ohio River.⁶⁸ As explained by witness Spiller, the Company considers this a “material concession on the part of Duke Energy Ohio as its application to extend its deferral authority was justified given the existence of exigent circumstances.”⁶⁹ Ms. Spiller explains that the Company recorded a reserve for the estimable and probable environmental investigation and remediation activity yet to be performed for these inaccessible areas and Ohio River investigation costs, which costs it is legally obligated to incur.⁷⁰ This withdrawal will result in an immediate \$19 million write-off to the Company.⁷¹ Although this write off will be at least partially offset by other accounting adjustments as a result of the settlement provisions addressing the natural gas TCJA proceeding, as part of the settlement package, Duke Energy Ohio assumes the risk that actual

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Joint Ex. 1, Stipulation and Recommendation, ¶ 16, (Admitted Nov. 18, 2021).

⁶⁹ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 16, (Admitted Nov. 18, 2021).

⁷⁰ *Id.*

⁷¹ *Id.* See also, Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 12, (Admitted Nov. 18, 2021); Joint Ex. 1, Stipulation and Recommendation, ¶ 15 and fn. 16. (Admitted Nov. 18, 2021).

investigation and remediation expense exceeds current estimates.⁷² Nonetheless, this settlement package resolves that customers will not be asked to pay for these costs in the future.⁷³

2. Resolution of Potential Ohio River Remediation

Under federal and state environmental laws, the Company must investigate whether MGP contaminants have migrated, and could continue to migrate, into the banks and sediments of the Ohio River, and, if necessary, remediate such impacts.⁷⁴ As the Company previously explained in these proceedings, the current bank of the Ohio River is as much as 200 feet north of the former waterline that existed when the MGP sites were operational due to the construction of the Markland Dam in 1964.⁷⁵ The Markland Dam significantly increased the normal pool elevation of the Ohio River, placing portions of the former MGP operations under the water of the current Ohio River.⁷⁶ These investigations remain ongoing. As the Company explained in its 2019 Deferral Extension Application, the Company does not know whether, and to what extent, remediation will be required in the Ohio River.⁷⁷

As part of the resolution of these proceedings, Duke Energy Ohio is agreeing to several conditions/limitations on its ability to seek Commission approval to defer those remediation costs, if necessary, in the future. First, the Company agrees it will only make a deferral application for Ohio River MGP remediation costs determined necessary after an Ohio EPA or U.S. EPA order, consent decree, or settlement has imposed a legal obligation to incur costs to remediate in and/or under the Ohio River, or after a written statement issued by the Ohio EPA or U.S. EPA that

⁷² Joint Ex. 1, Stipulation and Recommendation, ¶ 115, (Admitted Nov. 18, 2021); Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 16, (Admitted Nov. 18, 2021).

⁷³ *Id.*

⁷⁴ Case No. 19-174-GA-RDR, *et al.*, Duke Energy Ohio Ex. 13, Direct Testimony of Todd Bachand, p. 6 (Admitted Nov. 19, 2019).

⁷⁵ Case No. 20-53-GA-RDR, *et al.*, Duke Energy Ohio Ex. 5, Bachand Direct Testimony, pp. 14-15, 18-20 (Admitted Nov. 18, 2021).

⁷⁶ Case No. 14-376-GA-RDR, *et al.*, Duke Energy Ohio Ex. 14, Supplemental Testimony of Todd Bachand, pp. 16-17 (Admitted Nov. 19, 2019).

⁷⁷ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Continue Deferral of Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, *et al.*, Application (May 10, 2019).

remediation in and/or under the Ohio River is necessary to meet applicable standards under controlling environmental laws.⁷⁸ Second, the Company is agreeing to a five-year time limitation for filing such a deferral application, which time limitation begins on the date the Commission approves the Stipulation without material modification.⁷⁹ Parties retain their right to support or oppose the Company's application in the future, should it be filed.⁸⁰ These limitations ensure that the Company will only perform future remediation if a state or federal agency confirms it is necessary. The time limitation ensures that the Company will seek that guidance or receive that confirmation within a reasonable time.

D. Other Settlement Terms and Conditions

1. Transition to an SSO

In addition to the rate-related issues described above, the Stipulation contains numerous other benefits to customers. One such significant benefit of this Stipulation is the Company's agreement to file an application to exit its GCR and transition to a competitive auction structure to procure natural gas supply for non-shopping customers (Auction Application).⁸¹ Currently, Duke Energy Ohio procures natural gas supply via a mixture of short-term and long-term natural gas supply contracts with recovery of commodity costs through the GCR. Duke Energy Ohio is the last of the large investor-owned local distribution companies in Ohio that still uses the GCR, contract-based procurement structure.⁸² This Stipulation commits the Company to file the Auction Application to transition to a competitive auction to procure supply, in the format of an SSO, similar to how the Company procures competitive retail electric service for its non-shopping electric customers.⁸³ This transition brings wholesale competition to Duke Energy Ohio's gas

⁷⁸ Joint Ex. 1, Stipulation and Recommendation, ¶ 17 (Admitted Nov. 18, 2021).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Joint Ex. 1, Stipulation and Recommendation, ¶ III.B. (Admitted Nov. 18, 2021).

⁸² Transcript, p. 58.

⁸³ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 20 (Admitted Nov. 18, 2021).

procurement strategy by creating a new market for interested suppliers to participate. Since Duke Energy Ohio is the only public utility that is a combination natural gas and electric distribution company regulated by the Commission remaining in Ohio, bringing its natural gas procurement in line with its electric service procurement is a logical and meaningful benefit for its combination electric and natural gas customers. Duke Energy Ohio's natural gas customers will continue to have their choice of retail suppliers participating in the Company's Choice Program if they choose to shop for their natural gas commodity directly. The SSO auction, if approved in a subsequent proceeding, will provide those customers who do not shop, by choice or otherwise, with a wholesale, auction-based price that is unavailable to them today.

Under the terms of the Stipulation, the Company filed its notice of intent to file its Auction Application contemporaneously with the filing of the Stipulation.⁸⁴ Although the Stipulation includes minimum/recommended terms that must be included in the Company's Auction Application (*e.g.*, SSO structure, cost recovery, timing of implementation, *etc.*), the Company agreed to hold stakeholder information meetings to discuss this transition with interested parties to provide a transparent process and receive input from interested parties in advance of the application filing.⁸⁵ The Company has already initiated these meetings.⁸⁶ Because the Company must file a subsequent application, interested stakeholders, and the Commission itself, will have the ability to evaluate the merits of the transition in a subsequent proceeding.

2. Creation of Two Bill Assistance Programs

Another benefit of the Stipulation is the creation of two low-income bill-assistance programs for residential customers to help mitigate the costs of natural gas during winter months. This is a significant benefit to customers, particularly in light of the recent COVID-19 pandemic,

⁸⁴ Notice, Case No. 21-0903-GA-EXM, *et al*, (August 31, 2021).

⁸⁵ *Id.* ¶ 20.

⁸⁶ Transcript, p. 63.

where customers have found difficulty managing energy costs. The Stipulation guarantees \$300,000 in funding for low-income senior citizens regardless of approval. Upon approval of the Stipulation without material modification, an additional \$500,000 will be made available.⁸⁷ This is the first low-income senior-citizen-specific bill-assistance program that has been implemented for the Company's natural gas customers.

The second bill assistance program will be funded at \$3 million, and will be available to qualifying natural gas customers of Duke Energy Ohio.⁸⁸ The program contains time limitations to ensure that funds are timely spent. Any funds not spent by October 1, 2023, will be used as a credit against Duke Energy Ohio's natural gas Uncollectible Expense Rider (Rider UE-G). Therefore, if low-income customers do not exhaust the funding, those dollars will still go to customers in the form of offsetting other recoverable costs.

3. Provision of Natural Gas Choice Information on the Bill

The Stipulation provides a path for additional information for customers and customer-representatives regarding Duke Energy Ohio's natural gas choice program in two respects. First, if approved, Duke Energy Ohio will include, as part of its Auction Application, a request to amend its existing bill format to include additional price-to-compare information for customers. The bill message agreed upon for purposes of the Auction Application will model what the Company currently provides for electric customer bills as recently approved by the Commission.⁸⁹ The Stipulation provides that the language to be proposed in that subsequent case will state: "In order for you to save money, a natural gas supplier must offer you a price lower than \$X.XX per CCF

⁸⁷ Joint Ex. 1, Stipulation and Recommendation, ¶ 18 (Admitted Nov. 18, 2021).

⁸⁸ *Id.*

⁸⁹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Bill Format Approval*, Case No. 19-1593-GE-UNC, Order Finding and Order ¶ 36 (December 18, 2019) (approving price-to-compare message as reflected in the Company's Oct. 4, 2019 Correspondence Clarifying Sample Bill Formats, which states as follows: "In order for you to save money, an electric supplier must offer you a price lower than [X.XX] cents per kWh for the same usage that appears on this bill..."); Case No. 19-1593-GE-UNC, Correspondence, p. 3 (Oct. 4, 2019).

for the same usage that appears on this bill.”⁹⁰ If approved in that subsequent case, the Company’s natural gas customers, the vast majority of whom are also electric customers who already see this type of message on their bill for electric service, will have additional information regarding their natural gas price-to-compare as well. Again, any interested stakeholder will have an opportunity to weigh in on this proposed change in that subsequent filing and the Commission will determine whether to accept, amend, or deny that proposal in a subsequent case.

Also, per the Stipulation, Duke Energy Ohio is agreeing to provide OCC with aggregate shadow billing data that includes calculations of historic twenty-four months of data comparing shopping customer costs to what those customers would have paid had they been served on Duke Energy Ohio’s GCR or SSO. The Company is agreeing to maintain this information going forward and provide it to OCC upon request, similar to what other utilities have done, and has been approved by the Commission.⁹¹

These provisions will provide customers and the OCC with additional data regarding participation in the Company’s natural gas Choice program.

IV. THE STIPULATION SATISFIES THE COMMISSION’S THREE-PART TEST

A. The Standard Of Review

Ohio Administrative Code (O.A.C.) 4901-1-30(A) authorizes parties to Commission proceedings to enter into a stipulation, providing that “[a]ny two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding.”⁹² The standard of review for considering

⁹⁰ Joint Ex. 1, Stipulation and Recommendation, ¶ 24a, (Admitted Nov. 18, 2021).

⁹¹ See *In the Matter of the Application to Modify, in Accordance with Section 4920.08, Revised Code, the Exemption Granted Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Opinion and Order, p. 26 (Jan. 9, 2013) (approving a Stipulation that, among other things, continued Columbia’s residential and non-residential shadow billing); see also *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order ¶ 131 (Nov. 17, 2021) (approving a Stipulation that included the provision of aggregate shadow billing data to OCC and Staff).

⁹² O.A.C. 4901-1-30(A).

the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.⁹³ 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.⁹⁴ Although not binding on the Commission, the terms of a stipulation are “accorded substantial weight” by the Commission.⁹⁵ In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?
- Does the settlement package violate any important regulatory principle or practice?⁹⁶

The Supreme Court of Ohio has endorsed the Commission’s analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities and affirmed that the Commission may place substantial weight on the terms of a stipulation.⁹⁷ As explained below, the record supports that the Stipulation satisfies the three-part test.

B. The Stipulation Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties

The evidentiary record in these proceedings is replete with evidence of the serious bargaining that occurred. The evidentiary record was first developed as part of the hearings for the underlying MGP proceedings for cost recovery from 2013 through 2018, litigated November 18

⁹³ See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

⁹⁴ See, e.g., *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, et al., Opinion and Order ¶ 95 (Nov. 17, 2021).

⁹⁵ *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, citing *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

⁹⁶ *Id.*

⁹⁷ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers’ Counsel* at 126.

through 21, 2019, as well as the TCJA proceeding litigated on August 7, 2019. As outlined above, on August 31, 2021, after close to a year of negotiations, a diverse group of parties entered into the Stipulation.⁹⁸ If approved without material modification, that Stipulation will resolve all of the issues raised by the Signatory and Non-Opposing parties to the underlying cases.

The fact that the Stipulation is a product of serious bargaining is indisputable. The Commission may view the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between parties.⁹⁹ The Company's Applications in the MGP proceedings sought recovery of approximately \$85 million representing remediation costs incurred through December 31, 2019.¹⁰⁰ The intervening parties to the Litigated MGP proceedings and Staff argued for significant disallowances. In the Litigated MGP Proceedings, Staff recommended disallowances of approximately \$27 million in MGP remediation costs that Staff attributed to being outside of boundaries of what it believes was authorized for recovery.¹⁰¹ OCC and other intervening parties challenged the prudence of the Company's remediation activities, arguing that additional disallowances were appropriate.¹⁰² The boundary issue, as well as the accuracy of Staff's allocation of costs to those areas, were disputed by the Company in the Litigated MGP Proceedings.¹⁰³ Similarly, the allocation of insurance proceeds was a contested issue. Staff recommended additional disallowances for 2019 costs.¹⁰⁴

⁹⁸ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 16, (Admitted Nov. 18, 2021); Transcript p. 46.

⁹⁹ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR *et al.*, Opinion and Order ¶ 131, (Nov. 17, 2021); citing *First Energy 2014 ESP Case*, Opinion and Order p. 44, (Mar. 31, 2016).

¹⁰⁰ Joint Ex. 1, Stipulation and Recommendation, ¶8, (Admitted Nov. 18, 2021).

¹⁰¹ Staff Ex. 1, A Report by the Staff of the Public Utilities Commission of Ohio, p. 7 (Admitted Nov. 18, 2021).

¹⁰² See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 14-375-GA-RDR, Initial Post-Hearing Brief by the Office of the Ohio Consumers Counsel, pp. 22-28 (January 17, 2020).

¹⁰³ See, e.g., Case No. 14-376-GA-RDR, *et al.*, Duke Energy Ohio Ex. 14, Supplemental Testimony of Todd L. Bachand, pp. 14-17 (Admitted Nov. 19, 2019) (disputing Staff's boundary limitations for eligible cost recovery); *Id.* p. 22 and Attachment TLB-6 (disputing Staff's allocation of costs to those disputed areas, arguing that at most \$7.46 million in actual remediation work occurred in those disputed areas).

¹⁰⁴ Staff Ex. 1, A Report by the Staff of the Public Utilities Commission of Ohio, Table 4 (Admitted Nov. 18, 2021).

In its 2019 Deferral Extension, the Company requested additional accounting authority for investigation and remediation activities at the MGP sites for periods after December 31, 2019.¹⁰⁵ As witness Lawler explains, this request included an accounting reserve of approximately \$19 million in estimable and probable MGP remediation costs to be incurred.¹⁰⁶ The Company's 2019 Deferral Extension made it clear that it was reserving the right to seek additional future deferral authority for any Ohio River remediation that may be determined necessary in the future.¹⁰⁷

The Stipulation incorporates recommendations of the Staff, reflects several amendments to provisions proposed in the Company's various applications in favor of customers and intervenors, and includes the addition of terms and conditions to the benefit of customers, demonstrating evidence of significant bargaining among the parties.¹⁰⁸ Per the Stipulation, Duke Energy Ohio (and the Signatory Parties) have agreed to more than \$11 million in disallowances, related to MGP remediation costs already incurred through 2019.¹⁰⁹ This agreement resolves the disputed boundary issue, and the issue of allocation of insurance proceeds. Additionally, Duke Energy Ohio is agreeing to withdraw its 2019 Deferral Extension Request, thereby foregoing the opportunity to pursue deferral of additional MGP remediation costs, estimated to be \$19 million that is already reserved per accounting rules as being estimable and probable of occurring.¹¹⁰ Approval of the Stipulation results in immediate write-offs to Duke Energy Ohio for those "unrecoverable" MGP costs.¹¹¹ The remaining MGP costs, approximately \$74 million, while considered "recoverable"

¹⁰⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Continue Deferral of Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, *et al.*, Application (May 10, 2019).

¹⁰⁶ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, pp. 4, 12 (Admitted Nov. 18, 2021).

¹⁰⁷ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Continue Deferral of Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, *et al.*, Application, p. 30 (May 10, 2019).

¹⁰⁸ *See, e.g., In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order ¶ 108 (Nov. 17, 2021).

¹⁰⁹ Joint Ex. 1, Stipulation and Recommendation, ¶ III.A.8 (Admitted Nov. 18, 2021).¶

¹¹⁰ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 12, (Admitted Nov. 18, 2021); Joint Ex. 1, Stipulation and Recommendation, ¶ III.A.15 (Admitted Nov. 18, 2021).

¹¹¹ *Id.*, Table 1 and ¶ III.A.15; *see also* Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 16 (Admitted Nov. 18, 2021).

per the Stipulation, will actually not be charged to customers. The Signatory and Non-Opposing Parties negotiated a complete offset of these MGP costs through accounting adjustments resulting from the resolution of the TCJA proceedings and the application of MGP insurance proceeds against those expenses.

As previously explained, the valuation date of EDITs under the TCJA was one of the contested issues in the litigation of the Company's TCJA proceeding. The original parties (Staff, OCC and the Company) disagreed upon the appropriate date for valuation. The Stipulation, among other issues, resolves that dispute with the Signatory and Non-Opposing Parties negotiating the valuation date proposed by the Company in exchange for other concessions, such as the aforementioned write-offs of MGP expenses. Additionally, the Settling Parties have agreed to a more accelerated distribution of the TCJA benefits that are not subject to tax normalization rules (unprotected EDITs) and the FIT deferral than what either the Company or Staff proposed in the TCJA case. This acceleration of benefits allows the complete offset of the "recoverable" MGP costs and provides significant bill credits to customers.¹¹²

In resolution of the potential future remediation issues related to the Ohio River, the Settling Parties negotiated limitations and timing constraints on Duke Energy Ohio's reservation of rights and ability to seek any future deferral authority related to MGP remediation that may be performed in the Ohio River.¹¹³ First, any future investigation/remediation costs incurred in the defined "inaccessible areas" are not deferrable.¹¹⁴ Second, the Company may only file a request for continued deferral *after* either an Ohio EPA or U.S. EPA order, consent decree, or settlement has imposed a legal obligation to incur river remediation expense, or after a written statement is issued by one of those two agencies confirming that remediation of the Ohio River is necessary to

¹¹² Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, pp. 8-13 (Admitted Nov. 18, 2021).

¹¹³ Joint Ex. 1, Stipulation and Recommendation, ¶ III.A.17 (Admitted Nov. 18, 2021).

¹¹⁴ *Id.*

meet applicable standards under environmental laws. The Settling Parties agree that any such future application by the Company must recommend adoption of the same rate design previously used to allocate MGP costs.¹¹⁵ Finally, the Settling Parties negotiated a five-year time limitation on the Company's ability to file a deferral request before the Commission.¹¹⁶ None of those limitations were included in the Company's 2019 Deferral Application and are only possible through negotiation.

The Stipulation introduces several items that could only be accomplished via a negotiated settlement. First, as previously described, the settlement negotiations resulted in the creation of two natural gas bill assistance programs for qualifying low-income customers, including a program specifically identified to assist senior citizens.¹¹⁷ Although the creation of such customer assistance programs is nothing new and frequently appears in settlements before the Commission, this settlement represents the first such program for the Company that is targeted at senior citizens. Neither Ohio law nor Commission regulations require utilities to offer and manage bill assistance programs of this type. Similarly, the settlement negotiations resulted in a commitment by Duke Energy Ohio to file an application to exit its GCR and transition to an auction-based SSO structure. Again, Ohio law does not require, nor can the Commission or any other party compel the Company to make this type of filing as the initiation of such a process is only "upon the application of a natural gas company."¹¹⁸ This agreement to file the Auction Application for Commission consideration includes minimum provisions that the negotiating parties requested be included in that application. The Commission maintains full authority to approve, modify, or reject the Company's subsequent Auction Application. The Stipulation merely commits the Company to file

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Supra* discussion ¶ III.D.2.

¹¹⁸ R.C. 4929.04(A) vests the Commission with authority to approve an exemption for commodity sales service or ancillary service of a natural gas company "upon the application of a natural gas company."

its proposal, which, if subsequently approved, will enhance the current competitive natural gas market in southwestern Ohio through implementation of a wholesale, competitive, auction-based procurement process.¹¹⁹

Finally, the settlement negotiations resulted in the Company agreeing to include a bill format change to introduce a price-to-compare calculation on customer bills as part of the Auction Application. If that subsequent application is approved, customers will see additional pricing information on their bill.¹²⁰ Again, the Commission maintains discretion to approve, amend, or reject this future application. The Stipulation merely commits the Company to make the filing for consideration. Similarly, the Stipulation commits Duke Energy Ohio to provide OCC with aggregate shadow billing data.¹²¹ Although Ohio law does not require Duke Energy Ohio to provide this information, it does not prohibit it either. And although the Company has resisted prior attempts by OCC for the Commission to compel the Company to place this information on customer bills or make it publicly available in some other way,¹²² through these settlement negotiations, the Company conceded its prior position and the negotiations resulted in a way to compile the information for OCC's information and use.¹²³ Again, this is evidence of the serious bargaining that took place to arrive at the total settlement package.

The Stipulation represents an agreement of settlement between a diverse group of capable and knowledgeable parties in multiple complex regulatory proceedings before the Commission. The settlement discussions occurred over many months.¹²⁴ The interests represented by the Signatory Parties or Non-Opposing Parties include those of Staff, residential customers (OCC), low-income customers (OPAE), large non-residential consumers (OEG), commercial consumers

¹¹⁹ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 3 (Admitted Nov. 18, 2021).

¹²⁰ Joint Ex. 1, Stipulation and Recommendation, ¶ III.C.24 (Admitted Nov. 18, 2021).

¹²¹ *Id.*, ¶ III.C.25.

¹²² *See, e.g.*, IGS Ex. 5, p. 4; IGS Ex. 6, pp. 5-6; IGS Ex. 7, p. 5; and IGS Ex. 10, p. 2 (Admitted Nov. 18, 2021).

¹²³ Joint Ex. 1, Stipulation and Recommendation, ¶ III.C.25 (Admitted Nov. 18, 2021).

¹²⁴ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 16 (Admitted Nov. 18, 2021).

(OMAEG), one of the largest grocery chains in the United States (Kroger), and Duke Energy Ohio. The Signatory and Non-Opposing Parties together represent a cross-section of all Duke Energy Ohio's natural gas customer groups. Moreover, as this Commission has previously held, the Commission Staff impartially represents the interests of all stakeholders.¹²⁵ Each of these parties regularly participates in proceedings before the Commission and has significant experience in regulatory matters. The Settling Parties were represented by experienced, competent counsel and subject matter experts.¹²⁶ All participants were provided an opportunity to express their concerns, raise issues, with those issues being thoroughly reviewed and resolved during negotiations that culminated in the final Stipulation package.¹²⁷ IGS and RESA witness Lacey conceded that the Signatory Parties, including Staff, and Non-Opposing Parties are knowledgeable and capable, at least in some areas.¹²⁸ The Commission has repeatedly rejected the contention that any one class of customers (or any party) can effectively veto a stipulation.¹²⁹ Accordingly, the Commission should find that the first prong of the three-part test has been satisfied.

C. The Stipulation, as a Package, Benefits Ratepayers and Is in the Public Interest

The Stipulation is a comprehensive settlement package that absolutely benefits ratepayers and is in the public interest. RESA and IGS cannot legitimately claim otherwise. The benefits to this settlement package to ratepayers are readily apparent. As explained above, the settlement package resolves eighteen total cases addressing cost recovery of more than \$85 million in costs

¹²⁵ Case No. 15-218-GA-GCR, Opinion and Order, pp. 20-21 (September 7, 2016).

¹²⁶ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 16 (Admitted Nov. 18, 2021).

¹²⁷ *Id.*; see also Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 22 (Admitted Nov. 18, 2021).

¹²⁸ Transcript, pp. 245-246.

¹²⁹ See, e.g., *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Extend and Increase Its Infrastructure Replacement Program*, Case No. 16-2422-GA-ALT, Opinion and Order, ¶ 70 (Jan. 31, 2018); *In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019*, Case No. 16-743-EL-POR, Opinion and Order, p. 25 (Nov. 21, 2017); *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order, p.19 (Feb. 2, 2005).

that have been pending for several years, while lowering customer rates by more than five percent and providing bill credits to natural gas customers.

The Stipulation package creates bill assistance programs for qualifying customers and limits the Company's ability to seek future deferral authority for potential remediation in the Ohio River by placing reasonable guardrails and time restrictions on when the Company may make a future application. The Stipulation package includes provisions that commit the Company to make future applications before the Commission to seek to transition away from its GCR to a competitively procured wholesale natural gas SSO and to seek Commission authorization to include a price-to-compare calculation on the Company's natural gas bills, similar to what it already does for electric customers. These provisions all directly benefit ratepayers and would not be possible absent the comprehensive settlement package negotiated in these proceedings.

The above-described benefits to ratepayers (*e.g.*, resolution of proceedings, lower rates, bill credits, customer assistance programs, competitive market enhancements, guardrails for future deferrals, bill message consistency for Duke Energy Ohio natural gas and electric customers, etc.) also demonstrate that the settlement package is in the public interest. The test for the Commission is whether the settlement as a total package is in the public interest, not whether each and every individual component or term satisfies the public interest on a stand-alone basis. As a package, the terms and conditions of this Stipulation are overwhelmingly in the public interest.

Bringing resolution to a multitude of complex and highly-contested regulatory proceedings that have been pending before the Commission for several years furthers the public interest. The parties that participated in the negotiations that ultimately lead to the resolution of these proceedings have been involved in several if not all of these proceedings for many years.¹³⁰ The

¹³⁰ Staff, OCC, and Duke Energy Ohio were parties to all of the underlying proceedings. By Entry dated August 13, 2019, in Case No. 14-375-GA-RDR, the Commission consolidated the Company's pending MGP cost recovery

Stipulation, upon filing, was unopposed by the stakeholders that had a direct interest in the issues raised in these proceedings. The public interest is furthered by bringing resolution to these complex and contested proceedings that have previously been appealed to the Court and, absent the unopposed settlement of the parties to those underlying proceedings, would likely have been appealed again.¹³¹ The Settling Parties will no longer have the risk associated with the pending MGP issues and the expense of lengthy and expensive appeals.

Although RESA and IGS are opposing the reasonableness of the Stipulation, such opposition is limited to three specific issues. The additional settlement terms with which RESA and IGS now take issue involve two commitments by the Company to file future proceedings where the merits of a price-to-compare bill message and transition to an SSO from the GCR will be vetted and an agreement by Duke Energy Ohio to provide OCC (and only OCC) with summary aggregate shadow billing data.

The public interest is not harmed by the Company committing to file future proceedings before the Commission via the Auction Application. Because subsequent proceedings are required as to the merits of those proposals, RESA, IGS, and any other stakeholder interested in those future proceedings will have an opportunity to participate and weigh in on the Company's applications when they are actually made. Those commitments and related settlement terms merely state what the Settling Parties agreed, at a minimum, should be included in the Company's Auction Application. The Company has the legal right to make those applications on its own, with any such terms the Company wishes to propose, outside of any settlement provision committing the Company to do so. The Stipulation represents the specific terms and conditions the Settling Parties

proceedings for periods 2013 through December 31, 2018, thereby making OEG, OP&E, Kroger, and OMA-EG parties to all the Litigated MGP Proceedings. On April 2, 2020, OEG filed its motion to Intervene in Case No. 20-53-GA-RDR *et al.* On June 8, 2020, OMA-EG filed its Motion to Intervene in Case No. 20-53-GA-RDR *et al.* On June 29, 2020, Kroger filed its Motion to intervene in Case No. 20-53-GA-RDR.

¹³¹ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 11, (Admitted Nov. 18, 2021).

negotiated should, at a minimum, be included in the Company's application. Approving the Stipulation with those commitments to file in the future does not predetermine any outcome. The Commission remains free to approve, modify, or reject whatever the Company may ultimately file.

If the Commission does examine the merits of the future proposals in this proceeding, a transition to an SSO for natural gas default service, if approved, would be an enhancement to the overall competitive natural gas market in southwestern Ohio. Likewise, the inclusion of the price-to-compare message, if approved, would provide customers with an additional data point for evaluating shopping options. Moreover, the addition of a natural gas price-to-compare on Duke Energy Ohio's natural gas customer bills makes such bills' messaging consistent with what Duke Energy Ohio's electric customers, the majority of whom are also natural gas customers of the Company, already see on their bills. Consistency in messaging for Duke Energy Ohio's customers is in the public interest.

With respect to the issue of shadow billing data as included in the Stipulation, it strains credulity to understand how providing aggregate shadow billing data directly to OCC is outside the public interest. Although the Commission has previously declined to adopt OCC's proposals to require Duke Energy Ohio to provide this information publicly to customers, there is no rule or law forbidding Duke Energy Ohio from agreeing to provide this information directly to OCC. Moreover, the Commission has twice, as recently as twenty-four hours before the evidentiary hearing regarding this Stipulation, approved settlement terms that allowed a utility to provide shadow billing data to OCC.¹³² The Commission has recently rejected claims made by IGS that providing shadow billing data to OCC is not beneficial to rate payers and the public interest in the

¹³² *Supra*, fn 91.

context of a total settlement package.¹³³ Prior and recent precedent supports such a provision and therefore, such a term cannot now be contrary to the public interest. The Commission should continue to reject such arguments.

D. The Stipulation Package Does not Violate any Important Regulatory Principle or Practice

The Stipulation, as a complete settlement package, does not violate any important regulatory principle or practice. Company witness Spiller testified to her belief that it complies with all relevant and important principles and practices.¹³⁴ The Stipulation advances important regulatory policies such as enhancing the competitive natural gas market and provides more information to customers regarding their natural gas service and choices.¹³⁵ More specifically, it provides certainty to all stakeholders by resolving complex regulatory proceedings that have been pending for many years.¹³⁶ It resolves cost recovery issues while decreasing rates.¹³⁷ Further, as explained by witness Lawler, the Stipulation complies with important regulatory principles and practices by: 1) not creating any anti-competitive subsidies, 2) being consistent with principles of gradualism, and 3) not producing rate shock.¹³⁸

Ohio Revised Code (R.C.) 4929.02 speaks directly to State policy regarding natural gas service.¹³⁹ Although satisfaction of any, or each and every component of R.C. 4929.02, by each and every individual term of the Stipulation is not a requirement of the Commission's three-part

¹³³ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order ¶¶ 129-131 (Nov. 17, 2021) (“[W]e find that. . . the report may serve to confirm information otherwise available about the competitive market or highlight issues for further review and analysis.”).

¹³⁴ Duke Energy Ohio Ex. 7, Direct Testimony of Amy B. Spiller, p. 22 (Admitted Nov. 18, 2021).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* p. 23.

¹³⁸ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 16, (Admitted Nov. 18, 2021).

¹³⁹ R.C. 4929.02

test, nonetheless, the Stipulation, as a package, does not conflict with any of these policies, and in fact furthers several, including, but not limited to:

- promoting the availability of reasonably-priced natural gas services and goods by permitting Duke Energy Ohio to receive cost recovery in a way that results in overall decreases in natural gas base rates, while also providing credits to customers, which is consistent with R.C. 4929.02(A)(1).¹⁴⁰
- promoting a transition to a wholesale competitive procurement process and expansion of the wholesale natural gas market, through the filing of a subsequent application before the Commission, which if that is approved, will in turn, provide customers with an additional option for a market-based, competitively procured default service consistent with, and in furtherance of R.C. 4929.02(A)(7) and (A)(11);
- not resulting in any anti-competitive subsidies, which is consistent with R.C. 4929.02(A)(8).¹⁴¹

Contrary to claims made by RESA and IGS, the Stipulation does not impact the competitive retail natural gas market. Two of the three issues that IGS and RESA oppose (the SSO transition and the price-to-compare) merely involve commitments for the Company to make future filings before the Commission. R.C. 4929.04 authorizes Duke Energy Ohio to make a filing to exit the GCR at its discretion. The fact that the Company has agreed to do so through a settlement is not a violation of Ohio law. Likewise, Commission regulations permit the Company to propose changes to its billing format. While O.A.C. 4901:1-13-11(B) sets forth the minimum required information that must be stated on consolidated natural gas bills, subsection (D) authorizes a natural gas utility to propose changes and establishes the process to do so.¹⁴² And 4901:1-13-11(B)(29) requires the utility to include any information approved by the Commission or required by law.¹⁴³ Therefore, neither the agreement to make a filing to modify the Company's bill format, nor the filing itself is contrary to Ohio regulations.

¹⁴⁰ See *Discussion Supra* § III B.

¹⁴¹ Duke Energy Ohio Ex. 6, Supplemental Testimony of Sarah E. Lawler, p. 16, (Admitted Nov. 18, 2021).

¹⁴² O.A.C. 4901:1-13-11.

¹⁴³ *Id.*

Including, in a regulatory settlement, commitments to make filings that are otherwise permitted by either law or regulation cannot logically result in the total settlement failing the third prong of the three-part test. Neither can the fact that the settlement at issue included an agreement by a group of customers and Staff regarding what information the Company's applications should contain. By committing to make the SSO transition filing through a subsequent application, interested parties, including IGS and RESA, will have the opportunity to raise concerns, and present evidence either in support of, or opposition to, the applications at the time they are made. The Commission will have the opportunity to decide the applications on their merits at that time. Including the commitment to make such a filing as part of the Stipulation itself is not a change to the competitive market, and is not a deficiency under the three-part test despite IGS and RESA's allegations to the contrary.

Finally, providing shadow billing data to OCC as part of regulatory settlements has been approved by the Commission on at least two prior occasions, as recently as November 17, 2021. Containing this provision in this Stipulation cannot possibly result in the entire Stipulation failing the third prong of the three-part test, when the Commission has previously approved similar commitments despite objections by competitive suppliers.¹⁴⁴ In its recent decision, approving the settlement of Ohio Power Company's base rate proceeding, which among other things, contained a shadow billing commitment by the utility, the Commission properly looked to the total settlement package to evaluate whether that stipulation satisfied the three-part test.¹⁴⁵ The Commission further stated that "[e]ach party to a case is vested with the responsibility to negotiate in its interest and, based on that interest, to determine whether to sign a proposed stipulation, oppose the

¹⁴⁴ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order ¶ 131 (Nov. 17, 2021) (approving a Stipulation that included the provision of aggregate shadow billing data to OCC and Staff over the objections of IGS and Direct Energy).

¹⁴⁵ *Id.* ¶131.

stipulation, or do neither.”¹⁴⁶ In these proceedings, despite RESA and IGS not being parties to any of the underlying proceedings resolved in the Stipulation, the Commission, nonetheless, has afforded RESA and IGS the same opportunity to oppose the Stipulation, had they actually intervened prior to the Stipulation’s filing. As in the Ohio Power Case, the Commission is not required to evaluate the negotiation process as advocated here by IGS and RESA.¹⁴⁷

The fact that the Stipulation contains provisions that commit the Company to make future filings does not change the result. The Commission has recently addressed IGS’s identical objections to a stipulation commitment for Ohio Power Company to make a future filing regarding including shadow billing information on customer bills, finding the term of “no adverse consequence to the opposing parties or the retail market,” and that “intervenors in that case will be afforded an opportunity for input and comment on the amended application.”¹⁴⁸ The Commission should do so here as well.

The Stipulation satisfies the third prong of the three-part test. The Stipulation, as a package, does not violate any important regulatory practice or principle. The inclusion of commitments to make future filings to transition to a SSO or to add a price-to-compare calculation or to provide OCC with shadow billing data does not invalidate the settlement or result in any such violation. Ohio law, Commission regulations, and recent precedent support these provisions and the Commission should approve the Stipulation without material modification.

V. CONCLUSION

For all of the reasons above, the Commission should approve the Stipulation without modification. The settlement contained therein, was the product of many months of serious

¹⁴⁶ *Id.* ¶ 108.

¹⁴⁷ *Id.*

¹⁴⁸ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order ¶131 (Nov. 17, 2021).

bargaining by the parties to the underlying proceedings. The Stipulation package provides numerous and significant benefits to rate-payers and is in the public interest. It does not violate any important regulatory principle or practice. Accordingly, it satisfies the Commission's long-standing three-part test. The resolution of these complex, and long-pending issues is a significant benefit to Duke Energy Ohio and its natural gas customers.

Prior to the post-Stipulation interventions of IGS and RESA, the Stipulation was unopposed by the individual parties who were historic parties to the impacted underlying proceedings. Neither RESA nor IGS, individually or collectively, have adequately demonstrated that the Stipulation, as a total package fails to satisfy the three-part test.

Respectfully submitted,

/s/ Rocco O. D'Ascenzo

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Larisa Vaysman (0090290)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street

Cincinnati, Ohio 45202

(513) 287-4320

(513) 287-4385 (Facsimile)

Rocco.D'Ascenzo@duke-energy.com

Jeanne.Kingery@duke-energy.com

Larisa.Vaysman@duke-energy.com

N. Trevor Alexander (0080713)
Mark T. Keaney (0095318)
Kari D. Hehmeyer (0096284)
Sarah G. Siewe (0100690)
BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP
2600 Huntington Center
41 South High Street
Columbus, Ohio 43215
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com
ssiewe@beneschlaw.com

Attorneys for Duke Energy Ohio, Inc

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by electronic service, this 9th day of December, 2021.

/s/ Rocco D'Ascenzo
Rocco D'Ascenzo

Werner.margard@OhioAGO.gov
rdove@keglerbrown.com
joe.oliker@igs.com
michaelnugent@igs.com
evan.betterton@igs.com
mjsettineri@vorys.com
gpetrucci@vorys.com
aasanyal@vorys.com
eowoyt@vorys.com

Christopher.healey@occ.ohio.gov
William.michael.@occ.ohio.gov
Amy.botschner.obrien@occ.ohio.gov
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com
[Bojko @carpenterlipps.com](mailto:Bojko@carpenterlipps.com)
donadio@carpenterlipps.com
paul@carpenterlipps.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/9/2021 3:08:18 PM

in

**Case No(s). 14-0375-GA-RDR, 14-0376-GA-ATA, 15-0452-GA-RDR, 15-0453-
GA-ATA, 16-0542-GA-RDR, 16-0543-GA-ATA, 17-0596-GA-RDR, 17-0597-GA-
ATA, 18-0283-GA-RDR, 18-0284-GA-ATA, 19-0174-GA-RDR, 19-0175-GA-ATA,
18-1830-GA-UNC, 18-1831-GA-ATA, 19-1085-GA-AAM, 19-1086-GA-UNC, 20-
0053-GA-RDR, 20-0054-GA-ATA**

Summary: Brief Post-Hearing Brief of Duke Energy Ohio, Inc. electronically filed by
Mrs. Debbie L. Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O.
Mr. and Kingery, Jeanne W and Vaysman, Larisa