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** **CASE NO. 15-452-GA-RDR** **CASE NO. 16-542-GA-RDR** **CASE NO. 17-596-GA-RDR** **CASE NO. 18-283-GA-RDR** **CASE NO. 19-174-GA-RDR** **CASE NO. 20-53-GA-RDR**
IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC. FOR TARIFF APPROVAL.	**CASE NO. 14-376-GA-ATA** **CASE NO. 15-453-GA-ATA** **CASE NO. 16-543-GA-ATA** **CASE NO. 17-597-GA-ATA** **CASE NO. 18-284-GA-ATA** **CASE NO. 19-175-GA-ATA** **CASE NO. 20-54-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-ATA**
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**

OPINION AND ORDER

Entered in the Journal on April 20, 2022

I. SUMMARY

{¶ 1} The Commission approves and adopts the joint stipulation and recommendation filed by Duke Energy Ohio, Inc., Staff, Ohio Energy Group, and the Ohio Consumers' Counsel.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company, as defined by R.C. 4905.03, and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

A. Duke Manufactured Gas Plant Proceedings

{¶ 3} On November 12, 2009, the Commission authorized Duke to defer environmental investigation and remediation costs related to two former manufactured gas plant (MGP)[1] sites in Ohio for potential recovery of reasonable and prudent costs in a future base rate proceeding. *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM, Finding and Order (Nov. 12, 2009) at 4.

{¶ 4} On November 13, 2013, the Commission authorized the recovery of such environmental investigation and remediation costs as had been incurred by the Company between 2008 and 2012. The Commission authorized Duke to recover and continue deferring environmental investigation and remediation costs, indicating further that the Company would be able to recover those costs which were prudently incurred through Rider MGP. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al. (*2012 Rate Case*), Opinion and Order (Nov. 13, 2013) at 70-74.[2]

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1 The MGPs were operated in Ohio from approximately 1850 through 1950 in order to produce commercial grade gas from the combustion of coal, oil, and other fossil fuels. Although these MGPs no longer exist, the remains of the subsurface structures and associated residuals such as coal tar, scrubber wastes, chemicals, and tanks are commonly found to remain under ground.

2 The Supreme Court of Ohio affirmed the Commission's decision authorizing Duke to recover and continue deferring environmental investigation and remediation costs associated with the MGP sites. *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148.

{¶ 5} On March 31, 2014, Duke filed an application in Case Nos. 14-375-GA-RDR and 14-376-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2013 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $8,346,698 (*2013 Rider MGP Adjustment*).

{¶ 6} On March 31, 2015, Duke filed an application in Case Nos. 15-452-GA-RDR and 15-453-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2014 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $686,031 (*2014 Rider MGP Adjustment*).

{¶ 7} On March 31, 2016, Duke filed an application in Case Nos. 16-542-GA-RDR and 16-543-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2015 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $1,061,056 (*2015 Rider MGP Adjustment*).

{¶ 8} On March 31, 2017, Duke filed an application in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2016 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $1,296,160 (*2016 Rider MGP Adjustment*).

{¶ 9} On March 28, 2018, Duke filed an application in Case Nos. 18-283-GA-RDR and 18-284-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2017 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $14,652,068 (*2017 Rider MGP Adjustment*). On that same date, Duke also filed a motion to consolidate the *2013-2017 Rider MGP Adjustments*.

{¶ 10} By Entry issued on June 28, 2018, the attorney examiner granted the motion to consolidate the *2013-2017 Rider MGP Adjustments* and set a comment period.

{¶ 11} Staff, as directed by the June 28, 2018 Entry, filed its review and recommendations in relation to the *2013-2017 Rider MGP Adjustments* on September 28, 2018. Among other recommendations, Staff ultimately proposed to reduce the Company's requested recovery amounts for years 2013-2017 by $11,867,900.00.

{¶ 12} On March 29, 2019, Duke filed an application in Case Nos. 19-174-GA-RDR and 19-175-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2018 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $19,804,031 (*2018 Rider MGP Adjustment*).

{¶ 13} On July 12, 2019, Staff filed its review and recommendations in the *2018 Rider MGP Adjustment*. Staff, again, proposed to reduce the requested recovery amount by $11,366,243, in addition to other recommendations, such as netting the recommended disallowances against insurance proceeds.

{¶ 14} By Entry issued August 13, 2019, the attorney examiner consolidated the *2018 Rider MGP Adjustment* with the other ten rate adjustment cases and established a procedural schedule.[3] The procedural schedule also set a deadline for intervention in the *2018 Rider MGP Adjustment* of September 13, 2019. By Entry issued September 4, 2019, the evidentiary hearing was rescheduled to commence on November 18, 2019, at the offices of the Commission. The hearing was held as scheduled and post-hearing briefs were submitted by the parties.

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[3] The August 13, 2019 Entry consolidated the following cases: Case Nos. 14-375-GA-RDR, 14-376-GA-ATA, 15-452-GA-RDR, 15-453-GA-ATA, 16-542-GA-RDR, 16-543-GA-ATA, 17-596-GA-RDR, 17-597-GA-ATA, 18-283-GA-RDR, 18-284-GA-ATA, 19-174-GA-RDR, and 19-175-GA-ATA.

{¶ 15} Additionally, in Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC, Duke had filed an application seeking authorization to extend its deferral and collection of MGP investigation and remediation costs from customers beyond December 31, 2019. By Entry issued August 13, 2019, the attorney examiner set September 13, 2019, as the intervention deadline and established a comment period. Initial comments were received September 13, 2019, and reply comments were received October 2, 2019.

{¶ 16} Apart from the consolidated proceedings, on March 31, 2020, as amended on July 7, 2020, Duke filed an application in Case Nos. 20-53-GA-RDR and 20-54-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2019 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $39,435,627 (*2019 Rider MGP Adjustment*). Staff filed its report for the *2019 Rider MGP Adjustment* on July 23, 2020, recommending a total negative adjustment for recovered costs of $3,897,930, thus, suggesting the Company be authorized to recover a total of $35,537,697. For purposes of this Opinion and Order, Case Nos. 14-375-GA-RDR, 14-376-GA-ATA, 15-452-GA-RDR, 15-453-GA-ATA, 16-542-GA-RDR, 16-543-GA-ATA, 17-596-GA-RDR, 17-597-GA-ATA, 18-283-GA-RDR, 18-284-GA-ATA, 19-174-GA-RDR, 19-175-GA-ATA, 20-53-GA-RDR, and 20-54-GA-ATA will collectively be referred to as the "*Duke MGP Proceedings*."

B. Duke Tax Cuts and Jobs Act Proceedings

{¶ 17} On December 21, 2018, in response to the passage of the 2017 Tax Cuts and Jobs Act (TCJA), Duke filed its application in Case Nos. 18-1830-GA-UNC and 18-1831-GA-ATA (collectively, "*Duke TCJA Proceedings*") to establish its natural gas TCJA rider to address the impacts of the reduction in the corporate income tax rate from 35 percent to 21 percent for its natural gas operations, including a reduction of the federal income tax rate and creation of excess accumulated deferred income taxes (EDIT), ultimately reducing natural gas bills for customers. A hearing was scheduled and held on August 7, 2019, and post-hearing briefs were submitted by the parties.

C. Joint Stipulation

{¶ 18} On August 31, 2021, Duke, the Ohio Consumers' Counsel (OCC), Ohio Energy Group (OEG), and Staff (collectively, Signatory Parties) filed a stipulation and recommendation (Stipulation), which they claim resolves all the issues raised by the Signatory Parties in the *Duke MGP Proceedings* and the *Duke TCJA Proceedings*, in addition to affording various customer protections and benefits. The Stipulation also provides a commitment to transition from Duke's gas cost recovery (GCR) mechanism to a standard service offer (SSO) competitive auction format for natural gas supply,[4] a requirement for Duke to provide OCC, upon request, shadow billing information for natural gas customers in a format to be mutually agreed upon by Duke and OCC, and a new bill format proposal to include an SSO price-to-compare message on natural gas bills. The Signatory Parties aver that the Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), and Ohio Partners for Affordable Energy (OPAE) have agreed not to oppose the Stipulation. Duke also filed proposed tariffs, as well as the direct testimony of Amy Spiller and the supplemental testimony of Sarah Lawler in support of the Stipulation.

{¶ 19} On September 17, 2021, and September 29, 2021, respectively, Interstate Gas Supply, Inc. (IGS) and Retail Energy Supply Association (RESA) filed motions for leave to intervene in the above-captioned proceedings.

{¶ 20} Memoranda contra the motions for leave to intervene were timely filed by Duke, OCC, and OEG, to which RESA and IGS filed replies on October 12, 2021.

{¶ 21} By Entry issued October 15, 2021, the attorney examiner, citing the unique circumstances of these proceedings, granted limited intervention to RESA and IGS in order to address the three areas discussed in their motions for leave to intervene, namely Duke's commitment to transition from the GCR mechanism to an SSO competitive auction format

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4 While the application has not been filed, a docket has been opened: *In re the Application of Duke Energy Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 21-903-GA-EXM, et al.

for natural gas supply, the proposed SSO price-to-compare message on natural gas bills, and the commitment to provide OCC aggregate shadow billing data on an ongoing basis. The attorney examiner noted that, upon being granted limited intervention, IGS and RESA were entitled to inquire into these specific provisions of the Stipulation and any potential adverse impact they may have upon the competitive market in Duke's service territory. The October 15, 2021 Entry also established a procedural schedule, setting November 15, 2021, as the deadline for testimony in opposition to the Stipulation, and November 22, 2021, as the date on which the evidentiary hearing would commence.

{¶ 22} Duke filed a motion for protective order on October 22, 2021, in which it requested that the Commission issue an order providing that Duke need not respond to certain interrogatories, as they exceeded the scope of discovery permitted by the October 15, 2021 Entry.

{¶ 23} IGS and RESA filed memoranda contra Duke's motion for protective order on October 29, 2021.

{¶ 24} On October 27, 2021, RESA filed a motion to move the hearing date. Duke filed, on November 1, 2021, its memorandum contra RESA's motion to move the hearing.

{¶ 25} By Entry issued November 3, 2021, the attorney examiner granted RESA's motion to move the hearing date and rescheduled the hearing to begin on November 18, 2021, at 11:00 a.m. via remote hearing technology, as well as adjusted the deadline for testimony in opposition to the Stipulation. Further, the attorney examiner found that the motion for protective order appeared to be moot, given Duke's attempts to provide responses to the discovery requests, but, nonetheless, provided additional guidance in response to the parties' arguments regarding the scope of discovery to be had in these proceedings. Ultimately, the attorney examiner noted that RESA and IGS were being provided ample opportunity to offer evidence and/or argument in opposition, consistent with Ohio Adm.Code 4901-1-30, but also within the confines of their limited intervention

status. The November 3, 2021 Entry neither expanded nor reduced the ability of these parties to participate in these proceedings as provided in the October 15, 2021 Entry.

{¶ 26} On November 8, 2021, RESA and IGS filed a joint interlocutory appeal and request for certification, pursuant to Ohio Adm.Code 4901-1-15(B).

{¶ 27} On November 10, 2021, Duke and OCC filed memoranda contra the joint interlocutory appeal and request for certification.

{¶ 28} By Entry issued November 10, 2021, the attorney examiner denied certification of the interlocutory appeal as moot after providing additional guidance to the parties, noting that there was "nothing in the October 15, 2021, or November 3, 2021 Entries that would prohibit RESA or IGS from contesting the inclusion of the competitive market provisions in the Stipulation, including whether such inclusion renders the Stipulation unreasonable pursuant to the Commission's three-prong test. To find otherwise would be contrary to the Commission's rules and past precedent, as well as the explicit language used in the November 3, 2021 Entry." Entry (Nov. 10, 2021) at ¶ 30.

{¶ 29} The hearing was held, as scheduled, on November 18, 2021. At the hearing, Duke witnesses Sarah Lawler and Amy Spiller testified in support of the Stipulation, and RESA/IGS witnesses James Cawley, Frank Lacey, and James Crist testified in opposition.

{¶ 30} Initial briefs were timely filed on December 9, 2021, by Staff, Duke, OEG, OCC, and jointly by RESA and IGS. OMAEG and Kroger filed correspondence indicating they would not be filing an initial brief. Reply briefs were timely filed by Staff, Duke, OCC, and jointly by RESA and IGS, on December 23, 2021. OEG filed correspondence indicating that it would not be filing a reply brief.

III. DISCUSSION

A. Procedural Issues

1. INTERVENTION

{¶ 31} RESA/IGS first argue that they were not provided due process, as the October 15, 2021 Entry limited their right to participate in these proceedings to the three market-related commitments contained in the Stipulation and deprived them of due process in these cases in violation of the Commission's intervention standard and the Fifth and Fourteenth Amendments to the U.S. Constitution. Despite the lack of a procedural schedule to consider the Stipulation or any evidence in the record to show that RESA and IGS's intervention would unduly prolong or delay the proceedings, these parties contend that the October 15, 2021 Entry unfairly limited both parties' participation in these cases to the proposed provisions related to the competitive market. In doing so, RESA/IGS claim that they were precluded from presenting evidence and/or arguments in opposition to the entire Stipulation pursuant to Ohio Adm.Code 4901-1-30(D) and, therefore, deprived of their right to due process. Further, RESA/IGS argue that, although several parties did not move to intervene in either of the *Duke TCJA Proceedings*, they were afforded the opportunity to provide input on the resolution of those matters.

{¶ 32} Additionally, RESA/IGS argue that their intervention in these proceedings was improperly limited and heavily scrutinized. Entry (Oct. 15, 2021) at ¶¶ 32-33. However, they argue that the Supreme Court of Ohio has stated that intervention in Commission proceedings should be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the Commission. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20. The limited intervention ruling is even more unfair, according to RESA/IGS, given the unprecedented level of participation the attorney examiners have allowed for others, noting OEG, Kroger, and OMAEG did not request intervention and were not granted intervention in the *Duke TCJA Proceedings* or the *2018 Rider MGP Adjustment*. RESA/IGS add that OPAE did not request intervention and was not granted intervention in the *Duke*

TCJA Proceedings, the *2018 Rider MGP Adjustment*, or the *2019 Rider MGP Adjustment*. Despite these parties' failure to properly file for intervention, RESA/IGS argue that they have otherwise been permitted to file pleadings, make appearances, make arguments at hearing, and present positions on brief in cases in which they never sought to intervene. However, RESA and IGS assert that they were only allowed to participate in a limited manner, amounting to a disparate and unwarranted level of participation in these 18 proceedings.

{¶ 33} According to Duke, only if a party has demonstrated a real and substantial interest by being deprived of notice and opportunity to be heard would due process have been denied. Ohio Adm.Code 4901-1-11; *In re the Application of MFS Intelenet of Ohio, Inc. for a Certificate of Public Convenience*, Case No. 94-2019-TP-ACE, Entry on Rehearing (Jun. 1, 1995) at 3. However, because IGS and RESA demonstrated a real and substantial interest only with respect to the competitive market provisions, Duke and OCC assert their intervention was properly limited to those three provisions. In fact, according to Duke, OCC, and OEG, IGS and RESA are seeking full participation in these 18 proceedings without limit, despite their own decision not to seek intervention until September 17, 2021, and September 29, 2021, respectively, nearly two years following the previous motion to intervene. Additionally, Duke contends that, despite claiming that they were precluded from presenting evidence in opposition to the Stipulation, depriving them of their due process rights, RESA/IGS do not support this argument with any authority. Further, Duke asserts that it is unclear how Ohio Adm.Code 4901-1-30(D) confers any due process right upon RESA or IGS such that limiting their participation to the competitive market provisions can be considered a due process violation. Nonetheless, according to Duke, in the event that limited intervention has been granted to a party, the attorney examiner properly referenced precedent supporting limiting the scope of discovery. Entry (Nov. 3, 2021) at ¶ 27, citing *In re Cincinnati Gas & Electric Co.*, Case No. 00-681-GA-GPS, Entry (Dec. 2, 2004). Ohio Adm.Code 4901-1-11(D)(1) provides that the Commission or the attorney examiner may "[g]rant limited intervention, which permits a person to participate with

respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties." Although IGS and RESA claim they demonstrated real and substantial interests in all 18 proceedings and opposed the Stipulation, Duke notes that those interests were never expounded upon in their respective motions to intervene or their joint post-hearing briefs, adding that it is not the duty of the Commission to create an argument where none is made. *See, e.g.*, *Deutsche Bank Natl. Trust Co. v. Taylor*, 2011-Ohio-435, 2011 WL 345990, at ¶ 7. Thus, Duke urges the Commission to find that granting limited intervention was proper in accordance with Ohio Adm.Code 4901-1-11(D).

{¶ 34} Additionally, despite RESA/IGS claiming that they were not put on notice that the competitive market provisions could be raised in these proceedings, Duke suggests this argument does not support their claim that limited intervention was unreasonable. In fact, according to Duke, this is the precise reason they were granted limited intervention in order to provide them with due process. Entry (Oct. 15, 2021) at ¶ 31.[5] Moreover, Duke asserts the comparisons to the intervention of other parties to RESA and IGS are misplaced, noting several of these parties have been involved in these proceedings for up to seven years. Duke contends there is no reason RESA or IGS, being very familiar with the intervention standards of the Commission, would not have been capable of intervening in any of these proceedings before the Stipulation was filed should they have had a real and substantial interest in any of those cases. Furthermore, Duke asserts that the scope of permissible discovery was consistent with the grant of limited intervention by the attorney examiners. Notably, Duke points to Commission precedent that has established even more stringent discovery opportunities commensurate with the facts and circumstances of the

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5 In the October 15, 2021 Entry, the attorney examiner stated, "[c]onsistent with Commission precedent, however, the dispositive issue is determining whether IGS and RESA should have been on notice that these three provisions could be raised in these proceedings or appear in the resulting Stipulation. The attorney examiner finds that they could not have, based on the proceedings up to the filing of the Stipulation."

particular case at issue. *In re the Complaint of the City of Cleveland and WPS Energy Services, Inc.*, Case No. 01-174-EL-CSS, Entry (Mar. 29, 2001).

{¶ 35} The Commission finds no basis in the arguments proffered by RESA/IGS as to the granting of limited intervention. The reasoning provided by the attorney examiner in the October 15, 2021, November 3, 2021, and November 10, 2021 Entries is thorough and sound, and we will not opine further on the validity of those decisions; instead, we affirm them in their entirety for the reasons set forth therein. Entry (Oct. 15, 2021) at ¶¶ 25-33; Entry (Nov. 3, 2021) at ¶¶ 27-29; Entry (Nov. 10, 2021) at ¶ 30.

{¶ 36} Moreover, with respect to due process claims, the Supreme Court of Ohio has held that there is no constitutional right to notice and hearing in rate-related matters if no statutory right to a hearing exists. *Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, at ¶ 20 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 70 Ohio St.3d 244, 248-249, 638 N.E.2d 550 (1994); *Armco, Inc. v. Pub. Util. Comm.*, 69 Ohio St.2d 401, 409, 433 N.E.2d 923 (1982); *Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 453, 424 N.E.2d 561 (1981)). Here, RESA/IGS have cited to no statutory right to a hearing in these proceedings, which were initiated by Duke's applications to recover costs incurred during its remediation efforts at the MGP sites, as well as the Company's application to implement the change in the federal income tax rate resulting from the TCJA.

2. BURDEN OF PROOF

{¶ 37} RESA/IGS assert that the burden of proof rests on the Signatory Parties to establish that the Stipulation is reasonable and should be adopted by the Commission. *In re the Application of Ohio Power Co. and Columbus S. Power Co. for Authority to Merge and Related Approvals*, Case Nos. 10-2376-EL-UNC, et al., Entry on Rehearing (Feb. 23, 2012) at ¶ 15; *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213. RESA/IGS, however, note that the October 15, 2021 Entry stated that the limited intervention was granted for RESA and IGS to inquire into and address the competitive market provisions in the Stipulation and any potential adverse impact they may have on the

competitive market in Duke's service territory, as well as indicated that the attorney examiner would "heavily scrutinize any requests from RESA or IGS that are perceived to unnecessarily delay the outcome of these proceedings." Entry (Oct. 15, 2021) at ¶ 33. Taking these statements together, RESA/IGS suggest that the attorney examiner imposed the burden on RESA and IGS to address and prove under heavy scrutiny the unreasonableness of the competitive market provisions. RESA/IGS go even further to claim that the November 10, 2021 Entry confirms their theory. Entry (Nov. 10, 2021) at ¶ 30. As such, RESA/IGS note that the Commission must correct this error and determine whether the Signatory Parties satisfied their burden of proof of presenting sufficient evidence of the reasonableness of the Stipulation, including the reasonableness of including the competitive market provisions in the Stipulation.

{¶ 38} Initially, Duke asserts that RESA and IGS cannot specifically request to inquire into portions of the Stipulation in their respective motions to intervene, then argue that the granting of that request improperly shifted the burden. Along that same line of reasoning, Duke notes that both IGS and RESA provided assurances that their late intervention would not unduly prolong or delay the proceedings, and the October 15, 2021 Entry simply acknowledges this by notifying the intervenors that the attorney examiner would scrutinize any requests from IGS or RESA that are perceived to create unnecessary delay. Ohio Adm.Code 4901-1-11(B)(3). Similarly, Duke posits that the Entry's statement that "Duke, OCC, and OEG believe there will be no such adverse impact" does not shift the burden to IGS and RESA to prove that such an adverse impact exists; rather, it is merely reiterating the position of those parties. In sum, Duke claims that the October 15, 2021 Entry's attempt to thoroughly consider the factors set forth in Ohio Adm.Code 4901-1-11 did not shift the burden to IGS and RESA to prove that the competitive market provisions were unreasonable and, therefore, any argument that the burden was shifted should be rejected. OCC further disputes the notion that the burden has been shifted, as that determination would not be possible at this stage of the proceedings.

{¶ 39} The Commission finds no basis in RESA/IGS's claim that the burden has been wrongly shifted in these proceedings. In deciding whether to permit intervention, Ohio Adm.Code 4901-1-11(B)(3) clearly states that an attorney examiner is required to consider whether the intervention by the prospective intervenor will unduly delay or prolong the proceedings. In fact, as noted by Duke, both IGS and RESA, in their respective motions to intervene in these proceedings, provided assurances that their late intervention would not unduly prolong or delay the proceedings. Entry (Oct. 15, 2021) at ¶ 33. The October 15, 2021 Entry merely acknowledges this fact and notes that the attorney examiner would scrutinize future actions from either party that would result in undue delay in these proceedings. *Id*. As with all stipulations submitted for Commission consideration, the burden of proof lies with the Signatory Parties to show that the Stipulation will satisfy the three criteria used by the Commission. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*Ohio Power PPA Proceedings*), Opinion and Order (Mar. 31, 2016) at 18.

3. FAILURE TO REOPEN THE PROCEEDINGS

{¶ 40} Next, RESA/IGS assert the evidentiary hearing records for the majority of the cases proposed to be resolved by the Stipulation were closed long ago and not reopened, or requested to be reopened, prior to the November 18, 2021 hearing. When raised at the beginning of the hearing, RESA/IGS assert that the attorney examiners improperly stated that the evidentiary hearing records were reopened by the October 15, 2021 Entry. (Tr. at 22-24.) However, according to RESA/IGS, nothing in the three Entries issued between the filing of the Stipulation and the November 18, 2021 hearing explicitly reopened any of the evidentiary hearing records. As such, RESA/IGS assert that the attorney examiners erred by not reopening the evidentiary hearing records for the *Duke TCJA Proceedings* and the *2013-2018 Rider MGP Adjustments*, which had previously gone to hearing and had post-hearing briefs submitted.

{¶ 41} In response, Duke and OCC refer to Ohio Adm.Code 4901-1-34, which states that the Commission or an attorney examiner may, "upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance

of a final order." Consistent with Commission practice, Duke and OCC assert that "upon their own motion" does not create an affirmative obligation for an attorney examiner to make an explicit statement before engaging in some action; rather, an attorney examiner directs the parties as appropriate pursuant to the rules. In establishing a procedural schedule with a date for an evidentiary hearing, Duke and OCC argue that the attorney examiner, upon her own motion, reopened the applicable records. Thus, Duke and OCC assert that, both in the October 15, 2021 Entry granting intervention as well as at the beginning of the November 18, 2021 hearing, the attorney examiner, upon her own motion, reopened the proceedings. Furthermore, Duke asserts many of the actions authorized to be taken by an attorney examiner in the Ohio Administrative Code do not require an official motion. Accordingly, Duke and OCC assert the attorney examiner's decision, and process, to reopen the record was appropriate.

{¶ 42} This is an unpersuasive argument proffered by RESA/IGS, which, if adopted, would lead to an absurd result and interpretation of the Commission's procedural rules. Initially, we note that a proceeding may be reopened through other means without any reference to Ohio Adm.Code 4901-1-34, let alone a motion specifically requesting such action pursuant to the rule. *See, e.g.*, *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Entry (Jan. 10, 2007) at 5-6. In fact, Commission precedent demonstrates that the filing of a stipulation is generally treated as a sufficient basis for reopening the evidentiary record, pursuant to Ohio Adm.Code 4901-1-34. *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, Entry (Jan. 10, 2008). Further, the attorney examiner correctly addressed this issue when it was raised by counsel for RESA during the evidentiary hearing, by explaining that the October 15, 2021 Entry "would, in fact, constitute the reopening of the proceedings for the purposes of evaluating the Stipulation for the Commission's consideration." Additionally, the attorney examiner stated explicitly: "[w]e are here, the proceedings have been reopened, and we will be proceeding with the hearing this morning." (Tr. at 24-26.) Moreover, if there were any basis to this argument, which there is not, RESA/IGS should have raised it well before the beginning of the hearing to avoid

unnecessary delay and expense, which the attorney examiner rightfully cautioned these parties against in the October 15, 2021 Entry. In fact, the attorney examiner specifically noted this during the hearing by stating this issue should have been raised by RESA before the beginning of the evidentiary hearing, but, nonetheless, conceded that a much more timely effort would have resulted in the same answer: the proceedings had been reopened for the purpose of the Commission's consideration of the submitted Stipulation (Tr. at 24). Notably, RESA/IGS present no authority in support of this argument in their post-hearing briefs. Thus, we agree with the attorney examiner that the proceedings were properly reopened in order to consider the Stipulation.

4. TESTIMONY THAT WAS IMPROPERLY STRICKEN FROM THE RECORD

{¶ 43} RESA/IGS claim that the attorney examiners erred in striking portions of the direct testimonies of RESA/IGS witnesses Cawley, Lacey, and Crist. As to Mr. Cawley, RESA/IGS contend that the attorney examiner erred in striking portions of his testimony in which he opines on the Signatory Parties' knowledge during settlement negotiations, finding such testimony to be speculative (Tr. at 155-156, 164). However, RESA/IGS claim there is nothing speculative about Mr. Cawley's testimony based on his analysis of Commission precedent, the procedural history of these 18 cases, and the Stipulation. RESA/IGS also request that the Commission reverse the attorney examiner's ruling to strike Mr. Cawley's direct testimony regarding the Pennsylvania Public Utility Commission's review of settlement agreements that differs from the Commission's three-part test, concluding it was not relevant (Tr. at 159). RESA/IGS maintain that the testimony is relevant since the Pennsylvania Public Utilities Commission generally follows a similar approach to reviewing settlements, to which the witness has extensive, first-hand knowledge, and highlights the actions Pennsylvania has taken to prevent the precise circumstances of exclusionary settlement discussions as alleged by RESA/IGS to have occurred here. With regard to Mr. Lacey's direct testimony, RESA/IGS request that the Commission reverse the attorney examiner's ruling striking testimony regarding the supplier-related provisions having been included by OCC, on the grounds of lack of

personal knowledge, noting that this is an obvious deduction that the witness made regarding the supplier-related provisions (Tr. at 224). Finally, with regard to Mr. Crist's direct testimony, RESA/IGS argue that the attorney examiner improperly struck testimony regarding historical and current employment and salary data for IGS Energy. Under Ohio Rule of Evidence 803(6), a witness may testify regarding records of regularly conducted activity, while the rule also acknowledges that the witness may either be "a custodian or other qualified witness." According to RESA/IGS, Mr. Crist is very familiar with IGS's business activities, having worked with and testified on behalf of IGS many times over several decades. Moreover, RESA/IGS claim that the stricken testimony provided a simple tabulation of annual payroll and salary information. RESA/IGS further note that, as an administrative agency, the Commission is capable of evaluating evidence itself and can give it the necessary weight in each situation. *In re the Application of Ohio Power Co. and Columbus S. Power Co. for Authority to Merge and Related Approvals*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Dec. 14, 2011) at 13. As such, RESA/IGS argue that this information should be considered by the Commission in these proceedings, which may negatively affect jobs in Ohio.

{¶ 44} Duke and OCC argue that the attorney examiner properly excluded this testimony on the basis that it was irrelevant, speculative, hearsay, or some combination thereof. Duke and OCC note portions of Mr. Cawley's direct testimony were stricken as a result of his speculation into the intentions and knowledge of the Signatory Parties during the course of negotiation and settlement (RESA/IGS Ex. 1 at 12-13). Duke and OCC note, when properly granting the motion to strike, the attorney examiner stated that Mr. Cawley's observation was "very speculative," further finding that the witness was "not in a position" to provide such testimony (Tr. at 156). Duke notes this ruling is consistent with Ohio Rule of Evidence 602, which prohibits a witness from testifying to a matter "unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter" (Tr. at 177-178). Based on his own testimony, Duke and OCC assert Mr. Cawley cannot possibly testify to the intentions, knowledge, or purpose of any of the Signatory

Parties in the negotiation of the Stipulation. Duke and OCC also assert that the attorney examiner was correct to strike portions of Mr. Cawley's testimony on the basis of relevancy, when such testimony described in detail the Pennsylvania Public Utilities Commission's process for reviewing proposed settlements, including certain sections of the Pennsylvania Code requiring settlement agreements to disclose parties denied an opportunity to enter into the settlement (Tr. at 159). As such, Duke and OCC note that this testimony was properly excluded because it makes no fact regarding the reasonableness of the Stipulation under Ohio law more or less likely, consistent with Ohio Rule of Evidence 401. According to Duke and OCC, the Pennsylvania Public Utilities Commission's approach to the consideration and approval of settlement agreements holds no bearing on this matter.

{¶ 45} Duke and OCC further argue that the attorney examiner was correct to strike portions of Mr. Lacey's direct testimony, including an observation that Duke's agreement to file an application to transition from the GCR mechanism to an SSO, along with other provisions, were "clearly included by OCC" (Tr. at 224; RESA/IGS Ex. 2 at 9). Similar to their arguments in respect to Mr. Cawley's stricken testimony, Duke and OCC assert Mr. Lacey's testimony was properly stricken as he lacks the personal knowledge to state that a certain term was included by any particular party. Ohio Evid. R. 602. In fact, Mr. Lacey similarly admitted he "was not present at any of the discussions between the signatory and non-opposing parties regarding the Stipulation" (Tr. at 245).

{¶ 46} Finally, Duke also argues that the attorney examiner properly granted the motion to strike sections of Mr. Crist's direct testimony because he has no personal knowledge of the data he presented and was simply including information told to him by counsel for IGS (Tr. at 245). The testimony at issue describes employment data of both IGS and Duke, including the number of employees, annual payroll, and salaries, for the purposes of demonstrating that the choice program in Ohio has "resulted in development of industry" (RESA/IGS Ex. 3 at 12-13). As to the data Mr. Crist presented with respect to Duke, the Company contends the testimony is wholly inaccurate as it fails to include numerous Ohio employees. Similarly, Duke argues the data Mr. Crist presented with

respect to IGS was not based on his own personal knowledge, as Mr. Crist admitted that the payroll numbers were simply provided to him by counsel for IGS (Tr. at 314). As such, Duke asserts this testimony should be stricken as contrary to Ohio Evidence Rule 602, adding that it also can be characterized as inadmissible hearsay. Ohio Evid. R. 801(C), 802. Furthermore, Duke argues that the Commission should also reject RESA/IGS's novel argument contained in their brief: that this testimony somehow qualifies for an exception to hearsay for records of regularly conducted activity. Ohio Evid. R. 803(6). Duke asserts that this argument is completely misplaced as Mr. Crist cannot be a qualified witness under Ohio law, given his lack of familiarity with the information presented in this portion of his testimony (Tr. at 290-291).[6]

{¶ 47} Although not strictly bound by the Ohio Rules of Evidence, the Commission "seeks to maintain consistency with the Ohio Rules of Evidence to the extent practicable." *In re the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, et al., Opinion and Order (Sept. 4, 2013) at 17. Further, "the presiding hearing officer may, without limitation, take actions that are necessary to avoid unnecessary delay and prevent the presentation of irrelevant or cumulative evidence." Ohio Adm.Code 4901-1-27(B)(7). Upon review of the hearing transcript, we agree with Duke and OCC, as well as the presiding attorney examiner, that the stricken testimony of Mr. Cawley and Mr. Lacey was clearly irrelevant to these proceedings or speculative as to the intent of various Signatory Parties during settlement negotiations. As such, the attorney examiner's decision to strike these portions of their testimony was wholly appropriate. Similarly, we find the decision of the attorney examiner to strike certain portions of Mr. Crist's testimony should be affirmed. While RESA/IGS are correct that the Commission maintains considerable discretion with respect to hearsay, the dispositive issue in these cases was whether Mr. Crist was qualified to testify as to the historical and current employment and

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6 A "qualified witness" for the purposes of Rule 803(6) is someone "with enough familiarity with the record-keeping system of the business in question to explain how the record came into existence in the ordinary course of business." *State v. Hood*, 135 Ohio St.3d 137, 147, 2012-Ohio-6208, 984 N.E.2d 1057; *United States v. Lauersen*, 348 F.3d 329, 342 (2d Cir. 2003).

salary data for IGS and the Company. We conclude he was not, as he was merely acting as a conduit of the knowledge of counsel and was unable to demonstrate his familiarity with the subject factual information, despite being provided ample opportunity to do so (Tr. at 310-319). We note that the presiding attorney examiners are provided ample discretion in their regulation of the course of a hearing, including taking such actions to ensure the hearing proceeds in an orderly and expeditious manner. Ohio Adm.Code 4901-1-27. Accordingly, we find the attorney examiner properly exerted her discretion as to Mr. Crist's testimony, in accordance with this rule. Furthermore, as to the arguments on hearsay and exceptions thereto, the Commission notes that hearsay was not raised as a basis for striking the testimony during the evidentiary hearing. As such, we will not address those arguments.

5. MOTION TO REOPEN THE HEARING RECORD

{¶ 48} As a final procedural matter, on February 2, 2022, RESA/IGS filed a joint motion to reopen the hearing record to submit a stipulated fact, pursuant to Ohio Adm.Code 4901-1-34. Specifically, RESA/IGS request that the evidentiary record be reopened to correct Duke Exhibit 8, which shows choice shopping percentages in the Dominion East Ohio territory, but fails to include a clarifier that the percentages included standard choice offer (SCO) customers. RESA/IGS seek to correct the error in the document by entering into the record a simple stipulation as follows: "The choice statistics for Dominion East Ohio Gas shown on Duke Ex. 8 include both Choice customers and SCO customers." RESA/IGS contend that good cause exists for granting this motion, as they were unable to confirm with Staff that the disclaimer was missing from the document until after the hearing and no hearing is required to admit the stipulation. Further, RESA/IGS note that there also is no need to conduct any additional post-hearing briefing as none of the parties referenced Duke Exhibit 8 in their initial or reply briefs. RESA/IGS argue that, by granting the motion, the exhibit will be corrected and the record will be accurate.

{¶ 49} Duke filed a memorandum contra RESA/IGS's motion to reopen the evidentiary record on February 16, 2022, and OCC followed suit on February 22, 2022. Duke

and OCC opine that the evidentiary hearing took place almost three months, and briefing was completed more than a month, before the filing of the motion. Initially, Duke and OCC assert that there is no reason for the Commission to reopen the record when no party cited to the disputed fact in its post-hearing brief. Beyond arguing that the motion is procedurally improper, Duke and OCC contend that RESA/IGS have failed to establish the factual support for the accuracy of the information required by Ohio Adm.Code 4901-1-34(B), which provides that a motion to reopen a proceeding for the purpose of presenting additional evidence "shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding." Moreover, though RESA/IGS caption the motion as a request to submit a "stipulated fact," OCC and Duke assert this fact is not stipulated to by any party other than the joint movants.

{¶ 50} Duke notes that, on November 12, 2021, joint movants filed the direct testimony of James L. Crist. Mr. Crist's testimony addressed Duke's gas supply procedures and their current and potential impact on the development of a competitive natural gas market (RESA/IGS Ex. 3 at 4). He included Exhibit JC-2[7] with that testimony, which was a summary of the statewide total percent in choice for 2021 quarter two, which was printed from the Commission's shopping statistics website. At hearing, when presented with copies of Exhibit JC-2 of his testimony and Duke Exhibit 8, which demonstrate an overall decline in natural gas shopping from 2012 to 2021, Duke asserts that Mr. Crist had no personal knowledge of why the shopping statistics were higher than he expected in 2012. (Tr. at 301-304.) Duke claims it is improper that, three months following the hearing, RESA/IGS are attempting to reopen the hearing in order to correct the data presented in Duke Exhibit 8, especially since this exhibit was utilized during both the deposition and cross-examination of Mr. Crist. According to Duke, RESA/IGS should have prepared for hearing in a timely manner and contested the information at that time; regardless, Duke notes that the joint movants provide no explanation as to why they allowed two months to pass between the

[7] The document was also marked as Duke Exhibit 9 for purposes of the hearing.

discovery of the alleged error and the filing of their motion. *See In re the Complaint of Gerald R. Hoolahan v. Columbia Gas of Ohio, Inc.*, Case No. 84-568-GA-CSS, Opinion and Order (May 14, 1985) at 17–18. Further, OCC asserts a hearing record can be reopened only to permit the presentation of additional evidence, which is not the case here; instead, RESA/IGS request the correction of already-admitted evidence. Moreover, Duke claims neither it nor any other party would be able to cross-examine the Staff member who corresponded with RESA/IGS as to the content of Duke Exhibit 8 and the additional information summarized in those exchanges. As such, Duke maintains that there is no effective way for Duke to challenge the veracity of the information, and, thus, allowing this correction would only serve to prejudice those parties that were not able to challenge the accuracy of such evidence.

{¶ 51} In their joint replies filed on February 23, 2022, and March 1, 2022, RESA/IGS argue the joint motion is procedurally proper, is factually supported, and satisfies the standard under Ohio Adm.Code 4901-1-34(A). Initially, RESA/IGS contend that the joint motion is procedurally proper as to form and timing because the motion includes the stipulated fact that would be admitted into evidence and the motion was filed prior to the issuance of a final order. Further, RESA/IGS reiterate that the stipulated fact could not have been presented earlier in the proceedings since it was only after the hearing closed that Staff provided documents to IGS's attorney that established the error and the correction for the first time. Moreover, RESA/IGS note that Mr. Crist's deposition took place on the afternoon of November 16, 2021, and the hearing commenced on the morning of November 18, 2021. Finally, RESA/IGS argue that it is irrelevant that no party cited to Duke Exhibit 8 in its post-hearing brief, and it should be enough to correct evidence admitted into the record, at the very least, in the event of an appeal.

{¶ 52} We note that, when parties have been faced with a similar issue in prior Commission cases, the appropriate procedural mechanism to utilize was simply a motion to amend the existing exhibit, rather than a motion to reopen the proceedings. *In re Ohio Power Co.*, Case No. 20-585-EL-AIR, et al. (*Ohio Power Rate Case*), Opinion and Order (Nov. 17, 2021) at ¶ 33. This may be the reason RESA/IGS fail to cite to any authority with similar

circumstances in support of their request. Be that as it may, we find it appropriate to amend the existing Duke Exhibit 8 to reflect the requested disclaimer language. The Commission has the administrative expertise to give the appropriate weight to testimony and other evidence, including evidence that might present hearsay concerns in other settings. *In re Ohio Power Co. and Columbus S. Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 13. However, we have given no weight to this exhibit, or Mr. Crist's testimony regarding this exhibit, in our resolution of these proceedings, as discussed further below.

B. Summary of the Stipulation

{¶ 53} As noted above, the Stipulation was filed by the Signatory Parties on August 31, 2021. The following includes a non-exhaustive list of the provisions of the Stipulation and is not intended to replace or supersede the Stipulation.

1. RESOLUTION OF THE TCJA AND MGP PROCEEDINGS

{¶ 54} Duke's applications filed in the *Duke MGP Proceedings* and the *Duke TCJA Proceedings* shall be approved subject to the terms and customer benefits provided by the Stipulation. If any proposed rates, charges, terms, conditions, or other items set forth in Duke's applications are not addressed in the Stipulation, the proposed rate, charge, term, condition, or other item shall be treated in accordance with the relevant application. (Joint Ex. 1 at 8.)

{¶ 55} Duke's charges to customers for MGP related remediation costs shall be reduced by $11,357,579 (Joint Ex. 1 at 8).

{¶ 56} The balances for protected (or normalized) and unprotected (non-normalized) EDITs shall be determined as of March 31, 2012, the date certain of Duke' last natural gas base rate case, except for EDIT balances associated with costs recovered through Duke's Rider AU and Rider AMRP, which shall be determined as of December 31, 2017 (Joint Ex. 1 at 9).

{¶ 57} Unprotected EDITs as of the dates outlined above on a grossed-up basis are $28,106,996. Duke will withdraw its request to amortize the unprotected EDIT regulatory liability over a six-year period. Instead, Duke shall immediately apply the entire unprotected EDIT regulatory liability against natural gas customers' obligations for net MGP remediation costs, thereby reducing customers' obligation by $28,106,996. (Joint Ex. 1 at 9.)

{¶ 58} An amount of $45,753,018 of the insurance proceeds will be allocated to the remaining net MGP remediation costs, thereby fully offsetting natural gas customers' obligations for these costs (Joint Ex. 1 at 9).[8]

{¶ 59} Pursuant to the terms of the Stipulation, customers: (1) will not see any rate impact related to MGP remediation costs incurred through December 31, 2019; (2) will not be billed for MGP river investigation costs; and (3) will not be billed for remediation expenses related to the inaccessible upland areas that could not be remediated due to ongoing utility (e.g., propane) operations (Joint Ex. 1 at 10).

{¶ 60} Protected EDITs as of March 31, 2012 and the protected EDITs included in Riders AU and AMRP as of December 31, 2017 on a grossed-up basis are $147,422,807. The protected EDIT balances remaining as of the end of the month preceding the month revised base rates and Rider GTCJA become effective in customer rates shall be normalized and will be provided as a credit on natural gas customer bills through the Company's Rider GTCJA as proposed in the Company's TCJA Case application. Further, Rider GTCJA will be credited to all customers, except for those taking natural gas service under Interruptible Transportation Service (Rate IT), as a fixed monthly credit. For customers taking natural gas service under Rate IT, Rider GTCJA will be credited on a volumetric basis. Rider GTCJA will be effective on customer bills beginning with the first billing cycle of the first month 60 days following Commission approval, without material modification, of the Stipulation.

[8] The disposition of the remaining $4,809,458 of the insurance proceeds will be discussed below.

The additional unprotected EDITs that were amortized from protected EDIT until the end of the month preceding the date of the order approving the Stipulation shall be included in a bill credit. The additional unprotected EDITS that were amortized from protected EDIT to unprotected EDIT as of July 31, 2021 are $12,097,270 on a grossed-up basis. (Joint Ex. 1 at 10-11.)

{¶ 61} Duke will withdraw its proposal to amortize the federal income tax deferral liability over a one-year period. Beginning with the first billing cycle of the first month 60 days after Commission approval of the Stipulation absent material modification, the federal income tax deferral liability will be credited to the natural gas customers as follows:

a. Over a 12-month period, in volumetric rates, for non-residential customers on Rate IT; and

b. As a one-time bill credit for all other natural gas customers, to be applied to natural gas customer bills on the first billing cycle of the first month 60 days after Commission approval of the Stipulation. (Joint Ex. 1 at 11.)

{¶ 62} The bill credits noted above will also include additional EDITs that became unprotected over time per tax normalization rules (Joint Ex. 1 at 11).

{¶ 63} Duke will use the most current billing determinants in calculating the Rider GTCJA and the bill credits (Joint Ex. 1 at 12).

{¶ 64} Using the existing base revenues for natural gas service established by the Commission in the *2012 Rate Case*, and adjusting the revenue requirement to reflect the federal income tax rate of 21 percent established by the TCJA, reduces the base revenue requirement by approximately $12.9 million (or 5.3558 percent of the base revenue previously approved). The Company's revised tariffs reflecting this adjustment will be effective on customer bills beginning with the first billing cycle of the first month 60 days after Commission approval of the Stipulation. (Joint Ex. 1 at 12; Joint Ex. 2.)

{¶ 65} Duke will remove from its balance sheet the difference in EDIT balances between the values outlined above (i.e., balances as of March 31, 2012 for base rates and December 31, 2017 for riders) and December 31, 2017, which will partially mitigate write-offs incurred by the Company under the Stipulation (Joint Ex. 1 at 12).[9]

{¶ 66} The Company will withdraw its request to extend deferral authority of costs to remediate the inaccessible upland area and the Ohio River, filed in Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC, and those matters will be closed (Joint Ex. 1 at 13).

{¶ 67} Upon approval of the Stipulation, Rider MGP shall be withdrawn. Duke reserves the right to seek deferral authority and future cost recovery for costs to remediate the Ohio River, only after an Ohio Environmental Protection Agency (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 remediation in and/or under the Ohio River is necessary to meet applicable standards under applicable environmental laws. Any future remediation cost recovery must be addressed in a future application by the Company, and shall recommend the same customer class allocation and rate design that was used to recover costs under Rider MGP. Any such filing for deferral authority for Ohio River remediation shall be made within five years of an order approving this Stipulation. (Joint Ex. 1 at 13.)

{¶ 68} The remaining $4,809,458 of insurance proceeds will be addressed as follows:

a. An amount of $3,309,458 shall be allocated for utility bill payment assistance from Duke to qualifying low-income, residential natural gas customers (per criteria agreed to by Duke and OCC), and to qualifying seniors who are residential natural gas customers in Duke's service territory, including those

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9 Such write-offs include the previously incurred but disallowed costs reflected on page 10 of the Stipulation and the known, estimable, and probable, but yet-to-be spent remediation in the currently inaccessible upland areas at the MGP site.

who have been adversely affected by the COVID pandemic. This provision is subject to reasonable and appropriate audits and oversight, and the third-party administrators of the program shall make their financial information (including audit and oversight information) available to Duke, OCC, and Staff upon request. The funds will be distributed as follows:

i. The Company will reserve $309,458 to be available to qualifying senior citizen customers, age 65 or older, whose income qualification is at or below 250 percent of the federal poverty level. The reserved funds will remain available from Duke to eligible customers whether or not the Stipulation is approved.

ii. Within 60 days of approval of the Stipulation, the Company will make available $3 million for transfer to eligible low-income customers who are identified for benefits by the agreed-upon third parties.

iii. The agreed-upon third parties will identify the eligible low-income customers and facilitate Duke's distribution of the $3,309,458 to qualified customers no later than October 1, 2023, with the goal of all funds being distributed by December 31, 2022.

iv. Any funds remaining after October 1, 2023 will be credited to Rider UE-G (Uncollectible Expense Rider for natural gas customers). No unused bill payment funds shall be retained by Duke.

b. Within 60 days of approval of the Stipulation, an additional $500,000 shall be made available for the above-described senior citizen program.

c. The remaining $1 million in insurance proceeds shall be allocated to non-residential customers and credited as part of the bill credits described above. (Joint Ex. 1 at 14-16.)

2. TRANSITION TO A STANDARD SERVICE OFFER COMPETITIVE AUCTION PROCESS FOR NATURAL GAS SERVICE

{¶ 69} Contemporaneously with the filing of the Stipulation, Duke shall file its notice of intent to file an application to transition to a natural gas auction in the form of an SSO (not an SCO) and to transition away from its gas cost recovery (GCR) process (Joint Ex. 1 at 16).

{¶ 70} Duke will conduct stakeholder sessions with interested parties to discuss the transition to the SSO auction in an effort to gain agreement among interested parties. Duke will conduct a minimum of two sessions within 60 days of the filing of the Stipulation and will hold auction workshops following initial auction implementation to evaluate learnings that may be incorporated in future SSO auctions. (Joint Ex. 1 at 16.)

{¶ 71} Within five business days of the Commission's approval of the Stipulation, Duke shall file its application to transition to an SSO (Joint Ex. 1 at 16).

{¶ 72} Duke's auction application shall include a transition contingent upon recovery of reasonable and prudent costs to exit the GCR and to develop, transition to, implement, and operate the desired SSO auction process. Deferral authority should be granted as part of the approval of the Stipulation for prudently-incurred costs incurred prior to implementation of the identified recovery mechanism(s) with recovery of such deferral for prudently-incurred costs to be proposed and determined as part of the auction application proceeding. The auction application shall propose such recovery consistent with the following:

a. SSO transition costs to be recovered by a non-bypassable rider on residential natural gas customer bills and by a bypassable rider on non-residential natural gas customer bills;

b. Ongoing costs incurred by the Company to administer the SSO auctions shall be recovered in a bypassable rider on natural gas customer bills;

c. A plan to address the end, including any necessary reconciliations and true-ups, of the GCR process to ensure a smooth transition for all customers;

d. Following approval of the Company's auction application, Duke shall conduct its first SSO auction for natural gas supply as soon as January 2022, but no more than three months following the Commission's order approving the auction application. In order to avoid early termination penalties associated with its GCR and to have sufficient time to implement the auction results, the first delivery period under the auction shall commence no sooner than November 2022, but will occur no later than three months following the first auction.

e. Should the Commission order an initial SSO auction delivery date prior to November 2022, any termination penalties for existing contracts used to manage the GCR process, including, but not limited to, asset management agreements, shall be recoverable as transition costs.

f. Duke will regularly apprise OCC of its actions to advocate for the SSO structure described in the Stipulation, including appeals. (Joint Ex. 1 at 16-18.)

3. BILLING SYSTEM CHANGES

{¶ 73} The Signatory Parties agree that Duke shall add the SSO price-to-compare on its natural gas bills for customer information. Such billing system change shall commence with the second billing month that a customer is billed based upon the SSO. Duke shall include the billing format change as part of its future auction application:

a. The price-to-compare message on bills for shopping customers shall prominently include language similar to the following: "In order for you to save money, a natural gas supplier must first offer you a price lower than $X.XX per CCF for the same usage that appears on this bill."

b. The price-to-compare message should be included on all shopping customer bills, including those customers who have gas only and those customers who are combination gas and electric.

{¶ 74} The Signatory Parties agree that beginning with the second billing month following approval of the Stipulation, Duke will begin promptly providing OCC, upon OCC's request, shadow billing information for natural gas customers in a format to be mutually agreed upon by the OCC and the Company. The shadow billing information shall also include calculations of historic 24 months of data comparing aggregate shopping customer costs to what those customers would have paid had they been served on Duke's GCR or SSO (beginning with the 24 months prior to the signing of the Stipulation) and will be carried forward with aggregate customer data each month thereafter. Duke shall provide OCC with the shadow billing for historic 24 months of data upon the signing of the Stipulation. The aggregated shadow billing information is not to be considered confidential.[10] (Joint Ex. 1 at 18-19.)

4. TIMING OF IMPLEMENTATION AND NOTICE TO CUSTOMERS

{¶ 75} The Signatory Parties agree that beginning with the first billing cycle of the first month 60 days after Commission approval of the Stipulation:

a. Duke will file new tariffs to reduce natural gas base rates for customers by 5.3558 percent to reflect the lower federal income tax rate of 21 percent until such time as new base rates are implemented as part of an application filed pursuant to R.C. 4909.18.

b. Duke will file Rider GTCJA to begin crediting customers for the amortization of protected EDITs. This amortization will include the amortization of

[10] Staff takes no position on this provision.

protected EDITs associated with the recently suspended Rider AU and the existing Rider AMRP.

c. Duke will process the bill credit to customers through one or more riders to effectuate the agreed-upon credits and the Signatory Parties will support the mechanisms necessary to implement the credits as discussed in this Stipulation. (Joint Ex. 1 at 19-20.)

{¶ 76} The Company will notify customers via bill messages of implementation of this Stipulation upon Commission approval. The Company agrees to discuss wording of such bill messages with OCC (Joint Ex. 1 at 20).

{¶ 77} Rider GTCJA shall remain eligible for inclusion of any future changes in the federal income tax rate (Joint Ex. 1 at 20).

C. Consideration of the Stipulation

{¶ 78} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. C*onsumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123,125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 79} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *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 The 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); *In re Ohio Edison Company, The Cleveland Elec, Illum. Co., and The Toledo Edison Co.*, Case Nos. 16-481-EL-UNC, et al. (*FirstEnergy Grid Mod Case*), Opinion and Order (July 17, 2019).

The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. 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?

{¶ 80} 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. *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. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

1. SHOULD THE COMPETITIVE MARKET PROVISIONS BE PRECLUDED FROM BEING CONSIDERED PART OF THE STIPULATION AS THESE PROVISIONS ARE WHOLLY UNRELATED TO THE UNDERLYING PROCEEDINGS?

a. Party Arguments

{¶ 81} As a preliminary matter, RESA/IGS argue that, despite the lack of a rule explicitly prohibiting unrelated provisions in a stipulation, the Commission's existing precedent does not address the situation where wholly unrelated provisions are included in a stipulation without the knowledge of the industry segment impacted by those provisions. RESA/IGS do note that, while the Commission has included "unforeseeable and unrelated provisions in a stipulation," those instances have involved adequate due process protections for non-signatory parties. See *Ohio Power PPA Proceedings*, Fifth Entry on Rehearing (Apr.

5, 2017) at ¶ 24. However, RESA/IGS notes in that case, the Commission included the challenged provisions in the stipulation because: the provisions were "commitments * * *to offer specific proposals for the Commission's consideration in future proceedings"; OCC was "involved in the settlement process culminating in the stipulation and [was] aware of the terms at issue"; and "OCC was afforded ample opportunity to present evidence* * *in opposition to* * *the stipulation." *Id*. Thus, RESA/IGS claim that the inclusion of wholly unrelated provisions, especially without input of the impacted industry segment, renders a stipulation incapable of being a proposed resolution of some or all of the issues in a proceeding, pursuant to Ohio Adm.Code 4901-1-30. In support of their position, RESA/IGS claim that the Commission has rejected requested stipulation modifications that go outside the scope of the proceedings. See *In re the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case Nos. 15-218-GA-GCR, et al., Opinion and Order (Sept. 7, 2016) at ¶ 59; *In re the Application of The Dayton Power and Light Co. for the Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005) at 13. Accordingly, RESA/IGS submit that the Commission's review of the reasonableness of the Stipulation should consider whether the Stipulation includes provisions that are wholly unrelated to the proceedings and whether those provisions were negotiated and included without the knowledge of the industry segment most impacted by those provisions.

{¶ 82} RESA/IGS suggest amending the Commission's three-part test, arguing that allowing the type of conduct at issue in these settlement negotiations sets a dangerous precedent, the type of which has been specifically admonished by the Supreme Court of Ohio. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 1996-Ohio-224, 61 N.E.2d 1097. Further, RESA/IGS maintain that the Commission has previously noted the importance of not excluding customer classes. See, e.g., *Ohio Power Rate Case*, Opinion and Order, (Nov. 17, 2021) at ¶ 107. RESA/IGS assert that a class of suppliers should be treated no different. However, according to RESA/IGS, negotiations were conducted behind closed doors without any representation from any suppliers. RESA/IGS claim that allowing the

competitive market provisions to stay intact will, in effect, be an endorsement of "logrolling" in Commission proceedings. In support of their request, RESA/IGS argue that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). If the Signatory Parties' conduct is endorsed, RESA/IGS contend there will be grave consequences, and in some cases, relevant stakeholders may not be made aware of unrelated prejudicial provisions in a stipulation before it is too late. Accordingly, RESA/IGS argue that the Commission should interpret the three-part test to find that it is unreasonable to approve a stipulation that includes unrelated provisions that significantly affect stakeholders who are not parties to the proceeding or part of the negotiations, or, at the very least, adopt such an interpretation in these proceedings.

{¶ 83} In response, Duke asserts that RESA/IGS completely misinterprets the Commission's decision in the *Ohio Power PPA Proceedings* to permit challenged, extraneous provisions only where the challenging party was provided adequate due process by participating in the settlement process and having an opportunity to present evidence in opposition to the stipulation. *Ohio Power PPA Proceedings*, Fifth Entry on Rehearing (Apr. 5, 2017) at 10-11. Instead, Duke claims the Commission's analysis in that case made particular reference to the fact that the challenging party, OCC, was permitted to present evidence at hearing, as well as post-hearing briefs, in opposition to the stipulation. *Id*. at 10-11. Similarly, Duke contends that both RESA and IGS were given ample opportunity to be heard in these proceedings.

{¶ 84} Further, while RESA/IGS argue that the attorney examiner agreed the competitive market provisions were "wholly unrelated" to the underlying proceedings in the October 15, 2021 Entry, Duke notes that the attorney examiner has already correctly addressed these arguments, stating "I will note you are correct that we use the phrase wholly unrelated in that entry. However, not to be taken out of context, that entry was aimed

to address the motions for leave to intervene by RESA and IGS. In no way were we making any sort of determination on the Stipulation filed. That's why we are here today." (Tr. at 26-27.) Duke also asserts, even if the provisions are determined to be "wholly unrelated," as suggested by RESA/IGS, the Commission has previously rejected attempts to modify the three-part test when faced with similar arguments, noting that, under the test, the Commission carefully reviews all terms and conditions in the proposed stipulation. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Provide for a Standard Service Offer*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 78-80. Finally, OCC and Staff contend *Time Warner* is inapplicable, noting that case dealt with the concern from the Supreme Court of Ohio that an entire customer class had been intentionally excluded from settlement negotiations, and RESA and IGS are not a customer class. *Time Warner*, 75 Ohio S.3d at 233, fn. 2. Furthermore, OCC argues the Commission has applied *Time Warner* in prior cases to determine "whether each party was afforded the opportunity to participate in settlement discussions and whether any class of customers was intentionally excluded from settlement discussions." *See, e.g.*, *In re the Application of Ohio Power Co.*, Case No. 17-1230-EL-UNC, Opinion and Order (Feb. 27, 2019) at ¶ 27.

b. Commission Conclusion

{¶ 85} Before addressing the parties' arguments, we will first take a moment to appreciate the magnitude of the cases before us today. These proceedings are quite complex and, in some instances, have spanned more than seven years in duration. The earliest of these proceedings relates to incremental cost recovery to remediate two former MGP sites once used by Duke to provide service to customers. The *Duke MGP Proceedings* 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 activities beyond 2019. Similarly, the *Duke TCJA Proceedings*, which have remained unresolved since 2018, include equally challenging issues, such as the

disagreement over the appropriate valuation of impacts of the TCJA and the timing for providing credits to customers.

{¶ 86} As acknowledged by RESA/IGS, there is no explicit Commission rule that prohibits parties from including provisions in a stipulation that are unrelated to the underlying proceedings. In prior cases, the Commission has considered and approved stipulations that address a wide variety of issues, often resolving several pending proceedings at the same time and including provisions not directly related to the reason the Commission or applicant originally initiated the case. *See, e.g.*, *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019); *In re the Application of Ohio Power Co.*, Case No. 18-1007-EL-UNC, Finding and Order (Oct. 3, 2018); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 79; *In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44; *In re Dayton Power & Light Co.*, Case No. 02-2779-EL-ATA, Opinion and Order (Sept 2, 2003) at 29. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing issues before the Commission, while also, often times, avoiding the considerable time and expense associated with the litigation of a fully-contested case. *See, e.g.*, *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17. As noted above, the burden of proof lies with the Signatory Parties to show that the Stipulation will satisfy the three criteria of the Commission's three-prong test. *Ohio Power PPA Proceedings*, Opinion and Order (Mar. 31, 2016) at 18. Furthermore, the Commission considers evidence regarding every proposed stipulation by evaluating the contents of the stipulated terms and supporting evidence, as well as alternative evidence produced by opposing parties. *See In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 18-857-EL-UNC, Opinion and Order (Mar. 20, 2019) at ¶ 34.

{¶ 87} We also note the cases cited by RESA/IGS in support of their argument that the Commission has already placed some restrictions on the ability of parties to include provisions in stipulations unrelated to the underlying proceedings are misplaced. For instance, RESA/IGS take significant liberties in the citation to a prior rate case by not recognizing that the Commission stated it would not order the company to provide the funding as requested by OPAE and "that, *absent a provision in the stipulation*, the question of funding for energy efficiency programs is properly left to the general rate case." *In re the Application of The Dayton Power and Light Co. for the Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005) at 13 (emphasis added). As such, the Commission specifically recognized that, if such funding had been contemplated in the stipulation submitted to the Commission, it may have properly been considered at that time.

{¶ 88} We also reject the request that the Commission modify its application of the three-prong test. Adopting the approach proposed by RESA/IGS may eventually lead to requiring negotiating parties to provide notice to all potentially affected stakeholders during the course of settlement negotiations, which is a standard that could make stipulations impossible to reach. Thus, adopting the recommendation proffered by RESA/IGS would result in a substantial disincentive for parties to engage in settlement negotiations or, at the very least, unreasonably extend the duration of those negotiations. *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019) at ¶ 62. We will not impose inappropriate parameters on settlement negotiations in cases before us and stymie the potential resolution of numerous proceedings by limiting what the parties engaged in settlement discussions may want to include in those discussions. *Ohio Power PPA Proceedings*, Second Entry on Rehearing (Nov. 3, 2016) at 18; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 20-21, Third Entry on Rehearing (Feb. 9, 2011) at 9-10; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 41. As such, we note that the Commission is already engaging in a thorough review of

all aspects of a stipulated agreement and no additional modifications to the three-prong test are necessary at this time. We find no error in applying the existing three-part test, which, as endorsed by the Supreme Court of Ohio, enables the Commission to conduct a careful review of all of the terms and conditions set forth in a proposed stipulation, in order to determine whether it should be approved. *Ohio Power PPA Proceedings*, Opinion and Order (Mar. 31, 2016) at 49. Further, we agree with OCC and Staff that *Time Warner* is inapplicable in these proceedings as suppliers are not customer classes and there is nothing in the record to indicate that these parties were improperly or intentionally excluded from settlement negotiations. *Time Warner*, 75 Ohio St.3d at 233, fn. 2. Furthermore, as noted by OCC, the Commission has applied *Time Warner* in prior cases to determine "whether each party was afforded the opportunity to participate in settlement discussions and whether any class of customers was intentionally excluded from settlement discussions." *See, e.g.*, *In re the Application of Ohio Power Co.*, Case No. 17-1230-EL-UNC, Opinion and Order (Feb. 27, 2019) at ¶ 27. As noted above, we believe the decision to limit the intervention of RESA and IGS to the competitive market provisions was an appropriate one; however, this limited intervention status did not preclude RESA or IGS from having ample opportunity to present evidence and arguments in opposition to the Stipulation. Though facing a paradox in the ability of a party to participate in negotiations when they have no interests in the underlying proceedings, we find that the process utilized here strikes the appropriate balance, given the unique circumstances in these proceedings.

{¶ 89} While we find that modifications are not necessary to the three-prong test, we take a moment to caution parties before including similarly unrelated provisions in future stipulations. We note that, in the event parties choose to include provisions that are wholly unrelated to the underlying proceedings, such an act will invariably invite additional due process, and consequently cause delay before the Commission renders a decision on the reasonableness of that proposed stipulation. Parties, thus, assume the risk of this delay, in addition to the eventual possibility that the Commission will reject the provisions resulting

from the analysis of the three-part test, much like any other provision contained in a stipulation before us.

{¶ 90} Having determined that the existing three-prong test provides the appropriate standard for which to evaluate the Stipulation before us, we will next determine, pursuant to the first part of that test, whether the settlement represents the product of serious bargaining among capable, knowledgeable parties.

2. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

a. Party Arguments

{¶ 91} Duke, OCC, Staff, and OEG address the first criterion and conclude that the Stipulation represents a settlement among a diverse group of capable and knowledgeable parties that have participated in many complex regulatory proceedings (Duke Ex. 7 at 21-22). Duke further notes the extensive history associated with the *Duke MGP Proceedings* and the *Duke TCJA Proceedings*, acknowledging that parties had already litigated these cases November 18 through 21, 2019, and August 7, 2019, respectively. After close to a year of negotiations, Duke asserts that a diverse group of parties filed the Stipulation, which, if approved without material modification, will resolve all of the issues raised by the Signatory Parties, as well as those parties not opposing the Stipulation, including OMAEG, OPAE, and Kroger. As evidence of the serious bargaining undertaken, Company witness Lawler testified that multiple meetings occurred over many months and that all parties to the proceedings at the time of the settlement negotiations "were provided with an opportunity to express their concerns that resulted in the resolution of issues" contained in the Stipulation (Duke Ex. 6 at 16). Further, Duke, OCC and Staff assert that the Signatory Parties, as well as those not opposing the Stipulation, represent a diverse array of interests, including residential customers, a utility, large nonresidential customers, Staff,[11] Ohio

[11] Duke notes that the Commission has previously found that Staff impartially represents the interests of all stakeholders. *See In re the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate*

manufacturers and other businesses, as well as low-income customers and weatherization providers (Joint Ex. 1 at 24-25). OCC and OEG note that RESA and IGS were not parties to these cases at the time of settlement negotiations or at the time when the Stipulation was filed; as they chose not to intervene earlier, after having ample time to do so, and given the attorney examiner's ruling that their intervention be limited, OCC, Staff, and OEG argue that their absence from the Stipulation or underlying negotiations has no bearing on the first prong of the Commission's three-part test. Duke agrees, noting that RESA/IGS witness Lacey conceded that the Signatory Parties, including Staff, and non-opposing parties are knowledgeable and capable as to some issues (Tr. at 245-246). OCC adds that there is no requirement that every signatory party or non-opposing party be the utmost capable and knowledgeable party on every single issue addressed in a stipulation to satisfy the first prong. Additionally, Duke argues that the Commission has repeatedly rejected the contention that any one class of customers (or any one party) can effectively veto a stipulation. *See, e.g.*, *In re 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 (Jan. 31, 2018) at ¶ 70; *In re the Application of the Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. 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 (Nov. 21, 2017) at 25; *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2, 2005) at 19.

{¶ 92} Duke and Staff note that the Commission may view the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between parties. *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 131, citing *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 44. As noted by Duke, the Company's applications in the *Duke MGP Proceedings* sought recovery of

Schedules of Duke Energy Ohio, Inc. and Related Matters, Case No. 15-218-GA-GCR, et al., Opinion and Order (Sept. 7, 2016) at 20-21.

approximately $85 million representing remediation costs incurred through December 2019 (Joint Ex. 1 at 10). In response, intervening parties to those proceedings argued for significant disallowances. Duke points out that Staff recommended disallowances of approximately $27 million in MGP remediation costs that it attributed to work falling outside the boundaries of what was specifically authorized for recovery. In fact, Duke asserts the boundary issue itself, as well as the accuracy of Staff's allocation of costs to those areas, were disputed by the Company in the hearing held in November 2019. According to Duke, OCC and other intervening parties challenged the prudency of the Company's remediation activities, arguing that additional disallowances were appropriate. Additionally, the allocation of insurance proceeds was a contested issue and Staff ultimately recommended additional disallowances for 2019 costs. (Staff Ex. 1 at 7, Table 4; Duke Ex. 14 at 14-17, 22, Att. TLB-6.) Further, in its 2019 deferral extension request, Duke asserts that the Company originally requested additional accounting authority for investigation and remediation activities at the MGP sites for periods after December 2019, which included an accounting reserve of approximately $19 million of probable MGP remediation costs to be incurred. (Duke Ex. 6 at 4, 12). *In re 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) at 30.

{¶ 93} Overall, Duke asserts that 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. See, e.g., *In re Smartenergy Holdings, LLC*, Case No. 19-1590-EL-UNC, Finding and Order (Nov 6, 2019) ¶ 9; *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 108.

{¶ 94} Pursuant to the terms of the Stipulation as they relate to the *Duke MGP Proceedings*, the Signatory Parties have agreed to more than $11 million in disallowances related to MGP remediation costs already incurred through 2019 (Joint Ex. 1 at 10). The

Signatory Parties also note that this agreement resolves the disputed boundary issue, as well as the issue regarding the allocation of insurance proceeds. Additionally, the Signatory Parties note that Duke has agreed to withdraw its 2019 deferral extension request (Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC), 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 (Duke Ex. 6 at 12; Joint Ex. 1 at 12-13). Furthermore, according to the Signatory Parties, approval of the Stipulation results in immediate write-offs to Duke for unrecoverable MGP costs (Joint Ex. 1 at 12-13). Notably, the Signatory Parties acknowledge that the remaining MGP costs, approximately $74 million, while considered recoverable, will not actually be charged to customers; instead, the Signatory Parties and non-opposing parties negotiated a complete offset of these MGP costs through accounting adjustments resulting from the resolution of the *Duke TCJA Proceedings* and the application of MGP insurance proceeds against those expenses (Joint Ex. 1 at 10). Duke asserts that the valuation date of EDITs under the TCJA was one of the contested issues in the hearing previously held in the *Duke TCJA Proceedings*; however, Duke asserts the Stipulation resolves that dispute with the Signatory Parties and non-opposing parties negotiating the valuation date proposed by the Company in exchange for other concessions, such as the write-offs of MGP expenses noted above. Additionally, Duke notes that the parties agreed to a more accelerated distribution of the TCJA-related benefits that are not subject to tax normalization rules and the federal income tax deferral than what either the Company or Staff originally proposed in the *Duke TCJA Proceedings*, allowing for a complete offset of the $74 million of MGP costs and providing significant bill credits to customers (Duke Ex. 6 at 8-13; Duke Ex. 7 at 16; Joint Ex. 1 at 12-13.) According to Duke, the Stipulation also strikes a reasonable compromise regarding the potential future remediation issues related to the Ohio River, establishing limitations and timing constraints on Duke's reservation of rights and ability to seek any future deferral authority related to MGP remediation that may be performed in the Ohio River (Joint Ex. 1 at 13).[12] Duke

[12] Specifically, this includes: (1) a prohibition of deferring any future investigation/remediation costs incurred in the defined "inaccessible areas"; (2) a limitation that the Company may only file a request for

quickly notes that none of these limitations or timing constraints were included in the Company's 2019 deferral application and were only possible through negotiation.

{¶ 95} Duke goes on to assert that the Stipulation introduces several items that could only be accomplished via a negotiated settlement, such as the creation of two natural gas bill assistance programs for qualifying low-income customers, including a program specifically identified to assist senior citizens (Joint Ex. 1 at 15-16).[13] Duke also mentions the fact that settlement negotiations resulted in a commitment by Duke to file an application to exit its GCR and transition to an auction-based SSO structure, which Duke argues 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." R.C. 4929.04(A). The Stipulation notes that this application will be submitted for the Commission's consideration in another proceeding, including minimum provisions that the negotiating parties requested be included in that application. Notably, Duke asserts that the Commission maintains full authority to approve, modify, or reject the Company's subsequent application. Similarly, Duke states that the settlement negotiations also 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 subsequent application to transition to an auction-based SSO model. (Joint Ex. 1 at 16-18; Duke Ex. 7 at 3.) Duke further claims that the Stipulation commits Duke to provide OCC with aggregate shadow billing data, which is neither required nor precluded under Ohio law. Despite the Company's prior resistance to provide OCC with this data or to include it on customers' bills, Duke asserts that, 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

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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 meet applicable standards under environmental laws; (3) a requirement that any such future application by the Company must recommend adoption of the same rate design previously used to allocate MGP costs; and (4) a five-year time limitation on the Company's ability to file a deferral request before the Commission.

13 The Company emphasizes that this program will be the Company's first of its kind directed specifically towards senior citizens.

use. (Joint Ex. 1 at 19; IGS Ex. 5 at 4; IGS Ex. 6 at 5-6; IGS Ex. 7 at 5; IGS Ex. 19 at 2.) Finally, Duke claims that, consistent with Commission precedent, "[t]he Commission is not required to evaluate the negotiation process* * * to determine whether serious bargaining occurred." *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 108, citing *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶¶ 45-47. Accordingly, the Signatory Parties assert that the Commission should find that the first prong of the three-part test has been satisfied.

{¶ 96} Contrarily, RESA/IGS claim that the Stipulation fails the first prong of the Commission's test, again noting that the competitive market provisions were added to the Stipulation without RESA or IGS receiving notice that the Stipulation could include provisions related to the competitive market and no competitive retail natural gas suppliers, including RESA or IGS, were invited to participate in the settlement negotiations (Tr. at 47; RESA Ex. 4; RESA Ex. 29; IGS Ex. 34; IGS Ex. 35). In fact, RESA/IGS note that none of the Signatory Parties directly represent the interests of competitive retail natural gas suppliers (RESA Ex. 29; IGS Ex. 34). Before the filing of the Stipulation, RESA/IGS state that there was no reason for them, or any retail natural gas supplier, to be involved in these cases as there were no pending issues in the proceedings that related to the competitive retail natural gas market (Tr. at 40). *See also* Entry (Oct. 15, 2021) at ¶ 31. Despite having no connection to the underlying proceedings, RESA/IGS further assert that the Signatory Parties elected to include the competitive market provisions that they claim clearly affect retail natural gas suppliers and Ohio's competitive retail natural gas market as a whole. And due to this alleged lack of representation, RESA/IGS also contest whether any party involved in the negotiations would be considered "knowledgeable" pertaining to the competitive market provisions, given that neither Duke witness was aware of the recent Commission order that addressed two of the three contested competitive market-related provisions in the Stipulation, i.e., shadow billing and price-to-compare, before the Stipulation was filed. In fact, Duke witnesses Lawler and Spiller admitted the first time either one of them had read this Finding and Order was after the Stipulation was submitted in these proceedings. (Tr.

at 78, 115.) *See In re Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD (*MGSS Rules Case*), Finding and Order (Feb. 24, 2021). As such, RESA/IGS argue that no serious bargaining can occur when the participants lack the necessary experience to properly address those issues. Finally, as to Staff's participation, RESA/IGS note that Staff did not take any position on the shadow billing provision, further bolstering the conclusion that no serious bargaining occurred (Joint Ex. 1 at 19, fn. 18).

{¶ 97} Moreover, RESA/IGS note that, by excluding natural gas suppliers from settlement negotiations, the Signatory Parties were not able to learn and incorporate the past experience of those suppliers with gas supply transitions into the negotiations (RESA/IGS Ex. 3 at 18). In fact, RESA/IGS assert that the two Duke witnesses that did testify in support of the Stipulation were inexperienced when it comes to issues affecting competitive retail natural gas suppliers (Tr. at 38, 103-104). According to RESA/IGS, by virtue of engaging in secret and exclusionary settlement discussions on matters wholly unrelated to the MGP Rider and TCJA credit, the Signatory Parties set the stage for no serious bargaining among capable, knowledgeable parties. Contrarily, RESA/IGS assert that their three witnesses demonstrated an immense wealth of experience and knowledge with the competitive energy market, and all concluded that the only parties with the qualified expertise to participate in the negotiations regarding the competitive market issues are the competitive retail natural gas suppliers, such as IGS and RESA (RESA/IGS Ex. 2 at 2, 6; RESA/IGS Ex. 3 at 1-3). RESA/IGS witness Cawley, who had 16 years of experience with the Pennsylvania Public Utility Commission, including as Chairman, testified that the Stipulation was not a product of serious bargaining among capable, knowledgeable parties and that the Commission's broad range of diverse interests standard cannot be satisfied (RESA/IGS Ex. 1 at 13-15; Tr. at 208).

{¶ 98} RESA/IGS claim that this conclusion is consistent with the concerns expressed by the Ohio Supreme Court in *Time Warner AxS v. Public Utilities Commission*, 75 Ohio St.3d 229, 661 N.E. 2d 1097 (1996). In *Time Warner*, the Commission approved a partial

stipulation, which "arose from settlement talks from which an entire customer class was intentionally excluded." The Court expressed "grave concerns regarding the [C]ommission's adoption of a partial stipulation which arose from the exclusionary settlement meetings." *Id*. Further, the Court noted that a party to the stipulation "managed to either settle its competitive issues or defer them until a later date, all without having its competitors at the settlement table. *Id*. In response to Duke's assertions RESA and IGS were provided ample opportunity to participate in these proceedings following their intervention, RESA/IGS disagree, noting that the Signatory Parties and non-opposing parties alike had years of participation in these proceedings before hearings were held in 2019, and in addition, spent close to a year discussing a settlement (Tr. at 46, 127). RESA/IGS also note they were granted only limited intervention, restricting their ability to conduct discovery on the MGP and TCJA provisions to challenge the Stipulation in its entirety. Additionally, RESA/IGS question the Commission's review of their actions under "heavy scrutiny," and further note that the procedural schedule was expedited and the evidentiary hearing itself started and finished in one day with five witnesses. In fact, RESA/IGS note that OCC recently complained to the Commission because it was not invited to negotiations before a settlement became public and was included in the initial filings of the proceeding. *In re the Commission's Investigation into AES Ohio's Compliance with the Ohio Administrative Code and Potential Remedial Action*, Case No. 21-1220-EL-UNC, OCC Motion to Intervene (Dec. 17, 2021). Furthermore, contrary to the assertions of OCC and OEG, RESA/IGS note the facts and evidence demonstrate that they could not have reasonably known that the competitive market provisions would be included in the Stipulation, extinguishing any argument that they should have intervened before they did.

{¶ 99} In response to RESA/IGS's claims that Duke witnesses Lawler and Spiller were not knowledgeable and capable under the Commission's test due to the fact that they had not read the decision in the *MGSS Rules Case*, Duke notes that these arguments are irrelevant, as there are numerous Signatory Parties and non-opposing parties to the Stipulation, many of which were involved in that very proceeding. Moreover, Duke asserts

the shadow billing provisions proposed by OCC in the *MGSS Rules Case*, which were ultimately rejected by the Commission, are completely different from what is incorporated in the Stipulation. *MGSS Rules Case*, Finding and Order (Feb 24, 2021) at ¶ 82. Additionally, Duke asserts that RESA/IGS are attempting to redefine the standard for knowledgeable and capable parties by wrongfully contending that this standard includes experience in the particular issues the Stipulation attempts to resolve. Yet, Duke argues that they cite to no authority in support of this requirement. OCC and Duke note that Signatory Parties have demonstrated they are capable and knowledgeable regarding retail natural gas markets. Duke is a natural gas distribution company that also provides natural gas commodity to its customers through its GCR, and Duke routinely works with marketers to facilitate the supply of natural gas to customers (Tr. at 103). Similarly, Duke and OCC note that it is completely unnecessary to address the argument that Staff is not a capable and knowledgeable party as to retail natural gas issues. OCC states that, like the other Signatory Parties, it also has a large breadth of experience with issues affecting the retail supply of natural gas, including active participation in several cases where other Ohio natural gas companies transitioned from a GCR to an SSO. *In re Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Opinion and Order (Dec. 2, 2009); *In re Application of Vectren Energy Delivery of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales & Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Opinion and Order (Apr. 30, 2008); *In re Application of the East Ohio Gas Co. dba Dominion East Ohio for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA, Opinion and Order (May 26, 2006). Moreover, OCC and Duke maintain that this prong also does not include a notice requirement to non-parties prior to the resolution of a matter before the Commission that may affect non-party interests, as suggested by RESA/IGS. In fact, Duke notes that RESA/IGS did not dispute that Duke was under no legal obligation to invite non-parties to settlement negotiations (RESA Ex. 4). While RESA/IGS cite to *Time Warner* in support of their arguments, OCC and Staff again contend this case is inapplicable, noting that the case dealt with the concern from the Supreme Court of Ohio that an entire

customer class had been intentionally excluded from settlement negotiations, and RESA and IGS are not a customer class. *Time Warner*, 75 Ohio S.3d at 233, fn. 2. To that effect, Duke, Staff, and OCC state that each party that participated in the settlement negotiations had an interest in at least one of the cases sought to be resolved by the Stipulation and the fact that those parties did not intervene in every single case at issue within the negotiations does not create a legal obligation to exclude them until they intervene in all cases at issue, nor does it conversely create a legal obligation to invite competitive suppliers to those negotiations. Such a "duty to invite," according to OCC and Staff, would be impossible to implement or enforce. OCC notes that there are 60 marketers licensed to provide retail service for Duke's natural gas customers, all possessing their own interests and objectives when participating in proceedings before the Commission (RESA/IGS Ex. 3 at 5; Tr. at 182-183, 194, 262-263). When inquiring which marketers should have been invited to settlement discussions for these proceedings, OCC notes that RESA/IGS witness Cawley only asked that RESA should have been invited (Tr. at 191-192). Moreover, both OCC and Staff raise concerns with inviting other, non-intervening parties to the confidential settlement discussions by disclosing their content. Instead, OCC and Staff posit the parties engaged in the correct manner, given the circumstances, and that this existing procedural system enabled RESA and IGS to intervene and thoroughly address the aspects of the Stipulation they found concerning through discovery and the presentation of testimony and other evidence during the hearing.

b. Commission Conclusion

{¶ 100} The Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Commission has found that parties are knowledgeable and capable when they are familiar with Commission proceedings, represent a wide range of interests, regularly participate in matters before the Commission, and are represented by experienced and competent counsel. *In re the Application of Ohio Power Co. for Administration of the Significantly Excessive Earnings Test for 2017*, Case No. 18-989-EL-UNC, Opinion and Order (July 17, 2021) at ¶ 19; *In re the*

Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2014 SmartGrid Costs, Case No. 15-883-GE-RDR, Opinion and Order, (Mar. 31, 2016) at 22; *In re the Application of Columbia Gas of Ohio, Inc., for Authority to Amend Filed Tariffs*, Case No. 08-72-GA-AIR, et al., Opinion and Order (Dec. 3, 2008) at 26. Further, the Commission evaluates the level of negotiations that appear to have occurred and takes notice of the experience and sophistication of the negotiating parties. *In re the Application of The Dayton Power and Light Co. for the Creation of a Rate Stabilization Surcharge Rider and Distribution Rate Increase*, Case No. 05-276-EL-AIR, Opinion and Order (Dec. 28, 2005) at 6.

{¶ 101} We note that the Signatory Parties routinely participate in complex Commission proceedings and that counsel for the Signatory Parties have extensive experience practicing before the Commission in utility matters (Duke Ex. 7 at 21-22). Furthermore, the Signatory Parties, as well as the parties not opposing the Stipulation, represent diverse interests, including residential customers, a utility, large nonresidential customers, Staff, Ohio manufacturers and other businesses, as well as low-income customers and weatherization providers (Joint Ex. 1 at 24-25). Additionally, the Commission has repeatedly rejected the contention that any one class of customers or party can effectively veto a stipulation. *See, e.g.*, *In re 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 (Jan. 31, 2018) at ¶ 70; *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. 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 (Nov. 21, 2017) at 25; *Dominion Retail v. Dayton Power & Light Co.,* Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2, 2005) at 19.

{¶ 102} Moreover, the Commission, as evidence of serious bargaining, notes the extensive amount of time dedicated towards settlement negotiations. According to Duke witness Lawler, multiple meetings occurred over many months and all parties to the proceedings at the time of the settlement negotiations "were provided with an opportunity

to express their concerns that resulted in the resolution of issues" contained in the Stipulation (Duke Ex. 6 at 16). Although the Stipulation was filed in these proceedings on August 31, 2021, as noted earlier, the earliest of the above-captioned proceedings have been pending for nearly eight years and the contested issues in the *Duke MGP Proceedings* and *Duke TCJA Proceedings* had already been litigated during evidentiary hearings held in November 2019 and August 2019, respectively. Thus, parties had more than sufficient time to assess the Company's applications and prepare for, and engage in, settlement negotiations.

{¶ 103} Duke and Staff are correct that the Commission may view the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between parties. *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 131, citing *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 44. The Commission observes that the Stipulation incorporates recommendations of the Staff presented in the *Duke MGP Proceedings* and *Duke TCJA Proceedings*, reflects several amendments to provisions proposed in the Company's various applications, as well as the withdrawal of the 2019 deferral extension request in Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC, and includes the addition of terms and conditions to the benefit of customers, demonstrating evidence of significant bargaining among the parties. *See, e.g.*, *In re Smartenergy Holdings, LLC*, Case No. 19-1590-EL-UNC, Finding and Order (Nov. 6, 2019) at ¶ 9; *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 108. Ultimately, among other agreed-upon provisions, the Stipulation calls for more than $11 million in disallowances related to the MGP remediation costs already incurred through 2019, resolves the disputed boundary and allocation of insurance proceeds issues that were highly contested during the 2019 hearings, foregoes the ability to defer an estimated $19 million of additional MGP remediation costs, results in a complete offset of recoverable MGP remediation costs through the resolution of the *Duke TCJA Proceedings* and application of MGP insurance proceeds, as well as provides significant bill credits to customers (Joint Ex.

1 at 10-13; Duke Ex. 6 at 8-13; Duke Ex. 7 at 16). Moreover, the Signatory Parties specifically cite to the fact that certain provisions contained in the Stipulation could only have resulted through negotiated settlement, such as the creation of two natural gas bill assistance programs for qualifying low-income customers, including a program specifically identified to assist senior citizens, as well as the three contested competitive market provisions (Joint Ex. 1 at 15-19; Duke Ex. 7 at 3; IGS Ex. 5 at 4; IGS Ex. 6 at 5-6; IGS Ex. 7 at 5; IGS Ex. 19 at 2).

{¶ 104} Pursuant to Commission and Supreme Court of Ohio precedent, there is no specific checklist that must be applied during the negotiation process in order to demonstrate serious bargaining has occurred, provided there is no evidence of the intentional exclusion of an entire class of customers. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996); *In re Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218; *Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012); *In re Duke Energy Ohio, Inc.*, Case No. 15-534-EL-RDR, Opinion and Order (Oct. 26, 2016); *In re Columbia Gas of Ohio, Inc.*, Case No. 16-2422-GA-ALT, Opinion and Order (Jan. 31, 2018). We decline to impose such requirements in these proceedings, especially given the robust record demonstrating that significant concessions were made in negotiations. Furthermore, the Stipulation represents a diverse group of parties involved in these proceedings and there is no record evidence that any party or class of customers was excluded from negotiations when such negotiations were underway. Further, our finding is consistent with Commission precedent and our unwillingness to investigate the form and manner of the settlement discussions. *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019) at ¶ 61, citing *Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26-27. Based on the evidence presented, we find that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

{¶ 105} We are also mindful of the concerns of RESA/IGS and agree that they had no reason to seek intervention before the filing of the Stipulation, consistent with the

attorney examiner's findings in the October 15, 2021 Entry. RESA and IGS themselves admitted that they had no underlying interest in the resolution of the *Duke MGP Proceedings* or *Duke TCJA Proceedings*. Though they were not parties to these proceedings for purposes of settlement negotiations, RESA/IGS cannot reasonably argue that the Signatory Parties, or those parties not opposing the Stipulation, are not knowledgeable and capable for purposes of the Commission's three-part test and that their absence from negotiations indicates that there were no knowledgeable or capable parties. RESA/IGS witness Lacey conceded that the Signatory Parties, including Staff, and non-opposing parties are knowledgeable and capable as to at least some issues (Tr. at 245-246). Consistent with our earlier findings pertaining to RESA/IGS's request to modify our three-part test, the Commission is not required to evaluate settlement negotiations to the granular level suggested by RESA/IGS or determine whether such negotiations "were inclusive in terms of the parties' positions on various provisions." *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 108, citing *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶¶ 45-47. Moreover, despite the fact that they were not parties to settlement negotiations leading up to the filing of the Stipulation, RESA and IGS were able to fully participate in these proceedings consistent with their stated interests. Although no modification to the Commission's existing three-part test is necessary, the Commission maintains the authority and discretion to evaluate a proposed stipulation containing provisions that are wholly unrelated to the underlying proceedings and evaluate whether the "wide range of interests" represented by those engaged in settlement discussions is sufficient in the existing paradigm. *In re the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2014 SmartGrid Costs*, Case No. 15-883-GE-RDR, Opinion and Order (Mar. 31, 2016) at 22.

{¶ 106} Accordingly, we find that the Stipulation satisfies the first criterion. Next, we will determine whether the cumulative benefits arising from the Stipulation, as a package, benefit ratepayers and the public interest in our consideration of the second prong of our three-part test.

3. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

a. Party Arguments

{¶ 107} Duke, OCC, OEG, and Staff argue that the Stipulation is a comprehensive settlement package that benefits ratepayers and is in the public interest, specifically noting that the settlement package resolves 18 total cases addressing cost recovery of more than $85 million in costs that have been pending for several years, while lowering customer rates by more than five percent and providing bill credits to natural gas customers (Duke Ex. 7 at 14-20). Generally, the Signatory Parties assert that, as a package, the terms and conditions of this Stipulation are overwhelmingly in the public interest by bringing resolution to a multitude of complex and highly-contested regulatory proceedings that have been pending before the Commission for several years. As noted by the Signatory Parties, the Stipulation, upon filing, was unopposed by the stakeholders that had a direct interest in the issues raised in these proceedings. Duke also alleges that 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 (Duke Ex. 7 at 11). Further, these parties maintain the benefits provided by the Stipulation can be categorized in three separate groups: (1) resolving disputes regarding Duke's MGP cleanup and the extent to which consumers would have to pay for it; (2) passing to consumers the benefits of lower tax rates under the TCJA; and (3) the competitive market provisions, which include providing aggregate shadow billing data to OCC, filing an application with the Commission to transition from a GCR to an SSO, and including within that application, proposed price-to-compare language on shopping customers' bills. The Signatory Parties posit that it would not be possible to provide all of these benefits to consumers in the absence of the Stipulation (Joint Ex. 1 at 8). Further, as noted by Staff and Duke, 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.

{¶ 108} As noted above, the Signatory Parties stress that Duke's charges to consumers for MGP remediation costs are reduced by nearly $11.4 million (Joint Ex. 1 at 8). Furthermore, according to the Stipulation, Duke's natural gas customers are currently owed about $28.1 million in tax refunds for Duke's unprotected EDIT (Joint Ex. 1 at 9). While Duke had originally proposed crediting that money to customers over a six-year period, the Signatory Parties contend that customers will now receive an immediate credit of the full $28.1 million, which will be used to offset charges that customers would otherwise pay for Duke's MGP remediation efforts (Joint Ex. 1 at 9; Duke Ex. 6 at 17). Further, the Signatory Parties contend that, pursuant to the Stipulation, Duke is required to use $45.8 million of the $50 million insurance proceeds it received from insurance companies for claims related to MGP remediation efforts to further offset charges that customers would otherwise pay for Duke's MGP cleanup (Joint Ex. 1 at 9). Moreover, the Stipulation provides, according to the Signatory Parties, the commitment of Duke to terminate Rider MGP, as well as to implement limitations and restrictions on Duke's ability to request to charge customers in the future for MGP remediation costs (Joint Ex. 1 at 13; Duke Ex. 7 at 23). Finally, the Signatory Parties assert that the approximately $4.8 million in insurance proceeds remaining after the full offset of charges to customers for MGP remediation efforts will be used to benefit consumers who have been impacted by the coronavirus pandemic, including approximately $3.8 million to be used for bill payment assistance for qualifying low-income residential consumers and seniors. (Joint Ex. 1 at 14-17; Duke Ex. 7 at 24).

{¶ 109} Additionally, the Signatory Parties contend that Duke's customers will finally begin receiving credits for Duke's protected EDITs from the passage of the TCJA, which will provide more than $147 million in credits to customers (Joint Ex. 1 at 10-11.) Further, the Signatory Parties note that Duke currently owes customers more than $54 million in credits related to the change in income tax rates under the TCJA, which are separate and apart from the EDIT-related credits. Under the Stipulation, Duke will provide residential consumers with their share of these funds as an immediate one-time credit, which is expected to be a credit of at least $107.27 per customer. (Joint Ex. 1 at 5-6, 11; Duke

Ex. 7 at 23.) The Signatory Parties also state that Duke's base distribution revenue requirement will be reduced by approximately $12.9 million per year to account for the difference in the federal income tax rate, amounting to a 5.35 percent reduction in charges to consumers for natural gas service (Joint Ex. 1 at 12; Duke Ex. 6 at 17; Duke Ex. 7 at 23).

{¶ 110} Finally, the Signatory Parties claim that the Stipulation also includes provisions that commit the Company to make future applications before the Commission to seek to transition 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. OCC and Duke specifically assert that this future application to transition to an SSO model benefits consumers because the SSO will be a market solution in the form of a natural gas auction. (Joint Ex. 1 at 16-17.) In fact, Duke witness Spiller described this provision as "[e]nhancing the competitive market through transition to a competitive natural gas procurement process for non-shopping customers" (Duke Ex. 7 at 24). According to OCC, the price-to-compare and shadow billing provisions will also provide added information and transparency for shopping customers regarding what they are paying to their marketer for natural gas relative to Duke's rates for natural gas (Joint Ex. 1 at 18-19). Similarly, OCC notes that Duke witness Spiller testified that these market-related provisions will "enhance[e] the competitive natural gas market and provid[e] more information to customers regarding their natural gas service and related choices." (Duke Ex. 7 at 23). Duke and OCC further assert that Duke witness Lawler also testified that the Stipulation will "enhance [the] competitive natural gas market in Ohio." (Duke Ex. 6 at 16).

{¶ 111} In response to the arguments raised by RESA/IGS, Duke contends that two of the competitive market provisions, i.e., the commitment to file an application to transition from a GCR to an SSO and the commitment to include within that application proposed price-to-compare messaging to be included on customer bills, are just that: commitments to file in a future proceeding. Duke argues that the public interest is not harmed by the Company's commitments in these two provisions, namely because subsequent proceedings

will be required to vet the merits of any proposals submitted by Duke, and both RESA and IGS, as well as any other stakeholder interested in those proceedings, will have the opportunity to participate in those proceedings before the Commission. Furthermore, Duke argues again that the commitments and related settlement terms merely state what was agreed upon during settlement negotiations as to what, at a minimum, should be included in the Company's subsequent application to transition from the GCR to an SSO. As such, Duke asserts approving the Stipulation with those commitments to file in the future does not predetermine any outcome, noting that the Commission remains free to approve, modify, or reject whatever the Company may ultimately file. However, if the Commission does examine the merits of the future proposals in these proceedings, Duke asserts 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. Despite Mr. Lacey stating he was unaware of whether previous applications of utilities to transition from a GCR to an SSO resulted in harm to the competitive market because he did not review those applications, Duke maintains that there would have been some evidence of such harm when these other Ohio natural gas utilities underwent the same transition provided in the Stipulation (Tr. at 236). OCC points out that RESA/IGS witness Crist previously admitted that an SSO is better than a GCR because it involves a competitive bidding and auction format, thus, demonstrating that a transition to an SSO would be a benefit to customers (Tr. at 326-328). Further, OCC notes that Duke also opines that the inclusion of the price-to-compare message, if approved, would provide customers with an additional data point for evaluating shopping options and would make Duke's natural gas customer bills consistent with those of Duke's electric customers (Duke Ex. 7 at 21). In fact, Ohio Adm.Code 4901:1-10-22(B)(22) requires a similar price-to-compare message to be listed on bills produced by electric utilities. Moreover, Duke asserts the testimony of RESA/IGS witness Lacey emphasizing the negative impacts on the competitive market or on shopping rates related to including a price-to-compare message on customer bills is unsupported. In fact, at hearing, Mr. Lacey was unable to speak to whether the inclusion of such a message on Duke's electric customer bills was impacting shopping rates for electric customers, or how

those rates fared against those of customers receiving natural gas service. (Tr. at 227-228, 233-235, 240, 259-261.) According to Duke, Mr. Lacey's concerns amount to nothing more than theories, to which RESA and IGS will be able to, nonetheless, test and present additional evidence in the subsequent proceedings contemplated by the Stipulation.

{¶ 112} Likewise, Duke also notes its commitment to provide OCC with summary aggregate shadow billing data, stating that, although the Commission has previously declined to adopt OCC's proposals to require Duke to provide this information publicly to customers, there is no rule or law forbidding Duke from agreeing to provide this information directly to OCC. Moreover, Duke recognizes that the Commission has twice approved settlement terms that allowed a utility to provide shadow billing data to OCC. *See In re the Application to Modify, in Accordance with R.C. 4920.08 the Exemption Granted Columbia Gas of Ohio, Inc.*, Case No. 08-1344-GA-EXM et al., Opinion and Order (Jan. 9, 2013) at 26; *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 131 (approving a Stipulation, over the objections of marketers, that included the provision of aggregate shadow billing data to OCC and Staff). When cross-examining Mr. Lacey, who opined that shadow billing would negatively impact the competitive market, Duke notes that Mr. Lacey agreed that Columbia provides shadow billing data to the Commission and was unable to provide any research, studies, or other data to show that the provision of this data had a negative market impact for Columbia (Tr. at 242-244). OCC avers that shadow billing represents an important data point, contending that, if consumers were aware that, in the aggregate, shopping for their natural gas commodity has resulted in higher or lower bills, it would be once piece of relevant educational information for those consumers. Furthermore, Duke and OCC contend that the Commission has also rejected claims made by IGS that providing shadow billing data to OCC is not beneficial to rate payers and the public interest in the context of a total settlement package. *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 129-131. As prior precedent supports such a provision, Duke and OCC, therefore, allege that such a term cannot now be contrary to the public interest.

{¶ 113} RESA/IGS contend, however, that the Stipulation will not benefit ratepayers or the public interest, noting that the Signatory Parties provided very little record evidence to show that the competitive market provisions contained in the Stipulation would benefit ratepayers (Duke Ex. 6 at 8; Duke Ex. 7 at 3, 14, 21). Further, RESA/IGS argue again that, if the Stipulation is approved as presented with the three competitive market provisions intact, the Commission will set a very dangerous precedent that will effectively require parties to intervene in every Commission proceeding to ensure that they receive notice of settlement negotiations, even if the settlement negotiations on their face relate to wholly unrelated matters. These parties add that such broad scale intervention by numerous parties in every case before the Commission will not benefit ratepayers or the public interest – it will only lead to a substantial increase in the amount and costs of litigation at the Commission, as well as amount to a waste of Commission resources. (RESA/IGS Ex. 1 at 16.)

{¶ 114} Notably, RESA/IGS witness Crist provided the only substantive testimony, according to RESA/IGS, regarding the supply of gas to Duke's non-choice customers and the benefits and disadvantages of utilizing a GCR, SSO, or SCO (RESA/IGS Ex. 1 at 9-8). Specific to the SSO, which is the mechanism selected in the Stipulation, Mr. Crist explained that a transition to an SSO will not enhance the competitive retail natural gas market for a variety of reasons, including that an SSO supplier is not required to be licensed as a supplier and has no relationship with a customer (RESA/IGS Ex. 1 at 8, 11; Tr. at 57). Contrarily, according to RESA/IGS, SCO suppliers, who are required to be certified by the Commission, are assigned to specific customers and their name will appear on the customers' bills. Given these differences, RESA/IGS witness Crist concluded that Duke's commitment in the Stipulation to transition to an SSO is not consistent with the policy purposes of R.C. 4929.02, which is to encourage energy supplier choices for customers. (RESA/IGS Ex. 1 at 8-9, 11). Mr. Crist explained that a transition by Duke to an SCO model instead of an SSO model would move Duke closer to the ultimate desired end state of a fully competitive choice market. According to RESA/IGS, a choice market provides various benefits to customers

such as product and service innovation, and unlike the SSO model, the SCO option involves competitive retail gas suppliers serving customers and increasing knowledge of the competitive market, which sets the stage to achieve the policy goal of a completely competitive gas supply market as set forth in R.C. 4929.02. (RESA/IGS Ex. 1 at 11-12, 16.)

{¶ 115} Moreover, RESA/IGS specifically question the alleged benefits associated with the price-to-compare and shadow billing provisions and whether these provisions will actually harm the competitive retail natural gas market. RESA/IGS witness Lacey testified that a price to compare will create confusion to customers because Duke's current GCR and the SSO proposed in the Stipulation are essentially no-value wholesale cost pass-through products, whereas retail products have different attributes such as carbon offsets, efficiency products or services, long terms and potentially other features (RESA/IGS Ex. 2 at 13). In fact, Mr. Lacey stated that the price-to-compare provision contained in the Stipulation will have negative impacts on the competitive market, notably in that it implies price is the only attribute that matters and will result in consumers receiving delayed and inappropriate price signals that do not reflect current market expectations and may consequently lead to poor consumer decisions (RESA/IGS Ex. 2 at 13, 18-20, 23-25). Further, RESA/IGS note that Duke has argued against the implementation of a price-to-compare message on bills in other Commission cases but has not provided any justification for changing its position in these proceedings (RESA/IGS Ex. 2 at 20-22). In fact, RESA/IGS contend that the Commission has even recently rejected the idea of displaying the SCO or GCR rate on a customer's bill, given that the rate changes from month to month. *MGSS Rules Case*, Entry on Rehearing (Apr. 21, 2021) at ¶ 28. Similarly, Mr. Lacey provided testimony regarding his concerns with the shadow billing provision, alleging that shadow billing provides inaccurate information that does not represent a complete comparison of pricing and savings, as a customer may choose an energy provider for various reasons other than price. Specifically, RESA/IGS argue that shadow billing excludes volumes consumed and pricing for all choice customers not billed by Duke under its consolidated billing platform. Moreover, according to RESA/IGS, Duke does not have access to the dollar amounts charged by such competitive

retail natural gas suppliers to customers that are not billed by Duke on a consolidated billing basis for the supply of natural gas. (RESA/IGS Ex. 2 at 26-30; RESA Ex. 7; RESA Ex. 8; RESA Ex. 9.) Finally, RESA/IGS question Staff, OEG, and OCC's assertions related to the speculative benefits associated with the Stipulation, when these parties chose not to put on any witnesses in support of the Stipulation.

{¶ 116} Duke objects to the arguments raised by RESA/IGS, namely because approval of the provisions related to the SSO transition application or the price-to-compare language within the Stipulation does not grant approval in the subsequent cases where those issues will actually be considered. In fact, Duke asserts that RESA/IGS witness Lacey recognized this fact, agreeing that the transition from the GCR to an SSO will not take place until the auction application is approved by the Commission. Additionally, he agreed that when Duke files the auction application, the Commission can prescribe any price-to-compare bill language it deems fit. (Tr. at 227, 232.) Further, Duke asserts that RESA/IGS have not provided any support that approval of this Stipulation will create the mass influx of intervention requests contemplated in their briefs. OCC also responds to RESA/IGS's claims that they were prevented from arguing that the Stipulation, as a package, does not satisfy the second prong, claiming that RESA and IGS were well within their limited intervention to acknowledge the tax and MGP-related benefits, but nonetheless argue that the Stipulation fails the second prong due to the competitive market provisions. Instead, OCC asserts that these parties chose to address the merits of each competitive market provision in isolation, each of which the record evidence still demonstrates is in the public interest. Finally, in response to whether the subsequent auction application should contemplate an SSO or SCO, as suggested by RESA/IGS, Staff quickly notes this argument is irrelevant, as the Commission's test does not require an optimization of benefits; rather, the test requires that the stipulation, as a package, benefit ratepayers and the public interest. Finally, Duke notes that Ohio Adm.Code 4901-1-30 does not require every party supporting a stipulation to produce a witness in support during the evidentiary hearing.

b. Commission Conclusion

{¶ 117} The Commission notes this portion of the three-part test is not whether there are different or additional provisions that would otherwise benefit ratepayers and the public interest, but whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) at ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *See, e.g.*, *In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing the issues before the Commission, while also avoiding the considerable time and expense associated with the litigation of a fully contested case. *See, e.g.*, *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17. We, therefore, reaffirm that the Stipulation offered by the Signatory Parties in these proceedings must be viewed as a whole and, for that reason, as well as the rationale expressed above, deny the requests by RESA/IGS to reject or modify the Stipulation.

{¶ 118} As noted conclusively by the Signatory Parties, and verified by the record evidence, the Stipulation provides a significant benefit with the resolution of 18 total proceedings addressing cost recovery of more than $85 million in MGP remediation costs, while lowering customer rates and providing bill credits to natural gas customers (Duke Ex. 7 at 14-20). The Signatory Parties posit that it would not be possible to provide all of these benefits to consumers in the absence of the Stipulation (Joint Ex. 1 at 8). Further, as noted by Staff and Duke, the test for the Commission is whether the settlement as a total package

is in the public interest. *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019) at ¶ 117.

{¶ 119} Turning to the specific provisions, the Stipulation reduces Duke's charges to consumers for MGP remediation costs by nearly $11.4 million (Joint Ex. 1 at 8). Furthermore, according to the Stipulation, Duke's natural gas customers are currently owed refunds for Duke's unprotected EDIT, which customers will now receive as an immediate credit for the full $28.1 million. This amount will be used to offset charges that customers would have otherwise paid for Duke's MGP remediation efforts. Moreover, Duke is required to use $45.8 million of the $50 million of insurance proceeds it received for claims related to MGP remediation efforts to further offset these charges. (Joint Ex. 1 at 9; Duke Ex. 6 at 17.) The Stipulation also provides a commitment for Duke to terminate Rider MGP, and further provides limitations on the ability for Duke to request to charge customers in the future for MGP remediation costs (Joint Ex. 1 at 13; Duke Ex. 7 at 23). Finally, as noted by the Signatory Parties, the approximately $4.8 million in insurance proceeds remaining after the full offset of charges to customers for MGP remediation efforts will be used to benefit consumers who have been impacted by the coronavirus pandemic, including approximately $3.8 million to be used for bill payment assistance for qualifying low-income residential consumers and seniors (Joint Ex. 1 at 14-17; Duke Ex. 7 at 24).

{¶ 120} Similarly, all of the Signatory Parties agree that Duke's customers will begin receiving credits for Duke's protected EDITs from the passage of the TCJA, which will provide more than $147 million in credits to customers (Joint Ex. 1 at 10-11). Moreover, under the Stipulation, Duke will provide residential customers with their allocated share of the more than $54 million in credits related to the change in income tax rates under the TCJA. As agreed in the Stipulation, this will take effect in an immediate, one-time credit, which is expected to be a credit of at least $107.27 per customer. (Joint Ex. 1 at 5-6, 11; Duke Ex. 7 at 23.) Additionally, as stated by the Signatory Parties, Duke's base distribution revenue requirement will be reduced by approximately $12.9 million per year to account for the difference in the federal income tax rate, amounting to a 5.35 percent reduction in

charges to consumers for natural gas service (Joint Ex. 1 at 12; Duke Ex. 6 at 17; Duke Ex. 7 at 23). Based on the record evidence, as discussed above, there is no question that these provisions related to the *Duke MGP Proceedings* and the *Duke TCJA Proceedings* benefit ratepayers and the public interest. The only remaining issue is to determine whether the competitive market provisions require us to find that the Stipulation does not benefit ratepayers and the public interest, despite these uncontested benefits related to the MGP remediation costs and TCJA.

{¶ 121} In response to the arguments raised by RESA/IGS, Duke contends that two of the competitive market provisions, i.e., the commitment to file an application to transition from the GCR mechanism to an SSO and the commitment to include within that application proposed price-to-compare messaging to be included on customer bills, are merely commitments to file the proposals in a future proceeding. The Commission agrees and finds these provisions of the Stipulation to be of no adverse consequence to the opposing parties or the retail market, in general. Any intervenors in that case will be afforded an opportunity for input and comment on the eventual SSO application. The Commission will, at that point, fully consider the SSO application and the comments before any decision is reached in that case. We, therefore, decline to eliminate these provisions from the Stipulation. Furthermore, it appears these commitments and related settlement terms merely state what was agreed upon during settlement negotiations as to what, at a minimum, should be included in the Company's subsequent application to transition from the GCR mechanism to an SSO. We emphasize that our decision today does not predetermine any outcome related to that subsequent application and, as stated by Duke, the Commission remains free to approve, modify, or reject whatever the Company may ultimately file.

{¶ 122} The Commission finds that no valid reason has been presented to justify elimination of the shadow-billing provision from the Stipulation pursuant to part two of the test to evaluate stipulations. Even still, and as the Commission noted in the *Ohio Power Rate Case*, the report of shadow-billing data "may serve to confirm information otherwise available about the competitive market or highlight issues for further review and analysis."

Ohio Power Rate Case, Opinion and Order (Nov. 17, 2021) at ¶ 131. We similarly find that the provision of this data may benefit ratepayers and the public interest, and it is, therefore, reasonable as a term within the Stipulation's package. However, as noted in the *Ohio Power Rate Case* and within testimony presented by RESA/IGS witness Lacey, the Commission reiterates that customers may choose an energy provider for various reasons and that price is only one attribute of any offer available in the competitive market; there may be other features of the offer that are of value to customers (RESA/IGS Ex. 2 at 26-30). *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 131; *MGSS Rules Case*, Finding and Order (Feb. 24, 2021) at ¶ 69.

{¶ 123} In addition, as we noted before, the Commission's test for evaluating stipulations requires us to consider the Stipulation, *as a package*, rather than limit our analysis to any one component to the Stipulation. Recognizing this, we note that the benefit produced by the commitments of Duke to finally return to customers millions of savings attributable to the TCJA, as well as significant reductions in the amounts the Company would be authorized to recover for its MGP remediation efforts, are substantial and ensures the Stipulation will quantitatively benefit the public interest (Joint Ex. 1 at 5-6, 9-13; Duke Ex. 7 at 23). In light of our conclusions regarding any benefits associated with Duke's commitment to file a subsequent application to transition from a GCR mechanism to an SSO, we need not address the question of whether the Stipulation would be appropriate even if we found the shadow billing provision did not benefit ratepayers or the public interest, as suggested by RESA/IGS, in light of the commitments related to the savings of millions of MGP remediation costs and taxes. *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019) at ¶ 117. Accordingly, we find that the Stipulation will benefit ratepayers and the public interest.

4. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

a. Party Arguments

{¶ 124} Duke, OCC, OEG, and Staff also contend that the Stipulation violates no regulatory principle or practice (Duke Ex. 7 at 22-23). On the contrary, the Signatory Parties argue that the Stipulation represents a resolution for several pending matters before the Commission that would otherwise require significant time and resources to litigate and is consistent with the state's policy set forth in R.C. 4929.02, as well as the Commission's directives in Case No. 18-47-AU-UNC (*TCJA Investigation*). According to the Signatory Parties, the Stipulation advances important regulatory policies such as enhancing the competitive natural gas market. Additionally, Duke, OCC, OEG, and Staff all suggest that the Stipulation provides certainty to all stakeholders by resolving complex regulatory proceedings that have been pending for many years and deciding complicated cost recovery issues, while decreasing rates. (Duke Ex. 7 at 23.) Further, as explained by witness Lawler, these parties note that the Stipulation complies with important regulatory principles and practices by: (1) not creating any anti-competitive subsidies, consistent with R.C. 4929.02(A)(8), (2) being consistent with principles of gradualism, and (3) not producing rate shock (Duke Ex. 6 at 16-17).

{¶ 125} Moreover, as stated above, the Signatory Parties contend that the Stipulation, as a package, does not conflict with any of the policies set forth in R.C. 4929.02, and in fact, furthers several others, including, but not limited to, promoting: the availability of reasonably-priced natural gas services and goods, by allowing cost recovery by Duke while also providing credits to customers, which is consistent with R.C. 4929.02(A)(1); and 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 (Duke Ex. 6 at 16). Contrary to claims made by RESA and IGS, Duke again notes that the Stipulation merely involves commitments for the Company to make future filings before the Commission. According to Duke, R.C. 4929.04 authorizes a natural gas utility 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. Additionally, the Signatory Parties argue that interested parties, including IGS and RESA, will have the opportunity to raise their concerns, and present evidence either in support of, or opposition to, the application to transition to an SSO, adding that the Commission will have the opportunity to decide the application on its merits at that time. Duke argues that a commitment to take future action subject to Commission review, such as Duke's commitments with respect to the SSO and price-to-compare provisions, cannot possibly violate any regulatory principle or practice, because the Commission must approve them. Additionally, Duke notes that its proposed transition from a GCR to an SSO is consistent with the transitions of three other utilities (Dominion Energy Ohio, Vectren Energy Delivery of Ohio, Inc. d/b/a CenterPoint Energy Ohio and Columbia Gas of Ohio, Inc.), which RESA/IGS witness Crist agreed were reasonable and in line with the state's policy directives (Tr. at 297, 310). OEG adds that a transition to SSO competitive auction pricing in Duke's service territory will enhance competition in that territory and the Stipulation provides competitive retail natural gas service providers ample opportunity to comment on that transition and to help shape its design. Moreover, Duke asserts that the Commission has indicated that it is the language of the price-to-compare message that has a direct impact on whether such a statement violates an important regulatory principle or practice. *MGSS Rules Case*, Entry on Rehearing (Apr. 21, 2021) at ¶ 28. Duke also asserts that Commission regulations permit the Company to propose changes to its billing format. Ohio Adm.Code 4901:1-13-11(D). Therefore, Duke contends that neither the agreement to make a filing to modify the Company's bill format, nor the filing itself, is contrary to Ohio regulations. Again, Duke notes that this language will be subject to review and comment in a subsequent proceeding, which Duke suggests is the appropriate forum for RESA/IGS to raise their concerns.

{¶ 126} Finally, given that providing shadow billing data to OCC as part of regulatory settlements has been approved by the Commission on at least two prior occasions, Duke argues that including this provision in this Stipulation cannot possibly

result in the entire Stipulation failing the third prong of the test. *In re Columbia Gas of Ohio, Inc.*, Case No. 12-2637-GA-EXM, Opinion and Order (Jan. 9, 2013) at 43; *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 131, 198. In Columbia Gas of Ohio, Inc.'s case, Duke notes this practice has been ongoing for over seven years, arguing it is nonsensical for this to be considered as a violation of longstanding regulatory principles (Tr. at 279). As in the *Ohio Power Rate Case*, Duke asserts that the Commission is not required to evaluate the negotiation process as advocated here by IGS and RESA. Moreover, as alleged by Duke, the fact that the Stipulation contains provisions that commit the Company to make future filings does not change the result, noting that the Commission addressed IGS's identical objections to a stipulation commitment, 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." *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 108, 131. Accordingly, the Signatory Parties request that the Commission find that the Stipulation satisfies the third prong of the three-part test.

{¶ 127} RESA/IGS believe that the Stipulation fails to satisfy the third prong, as it violates important regulatory rules and practices. Similar to their earlier arguments, RESA/IGS claim that the inclusion of these wholly unrelated competitive market provisions, or as RESA/IGS witness Cawley identifies them "alien provisions," violate sound public policy by allowing no opportunity for robust debate or careful development of the concepts, as interested parties, in this case RESA and IGS, felt no need to intervene given the matters at issue in the underlying proceedings. Even further, Mr. Cawley testified that "it is standard regulatory practice to ensure that adequate notice is given and an opportunity to participate is afforded to all interested parties in proceedings affecting them," again emphasizing the omission of any competitive retail natural gas suppliers. Mr. Cawley added that, in his experience as a public utility regulator, it is extraordinarily valuable to have a broad spectrum of parties representing all interests at issues and that the absence of essential parties will certainly not promote sound decision making. RESA/IGS

witness Cawley also cautioned the Commission against formulating major policy decisions through approval of a settlement agreement; instead, Mr. Cawley would recommend that the Commission consider direct separate application proceedings for the SSO and shadow billing issues and entertain only full settlements, if any, and only after full evidentiary hearings and briefings of the issues. (RESA/IGS Ex. 1 at 11-13.) Mr. Cawley even went as far as to conclude that the Signatory Parties "acted inappropriately" by including the competitive market provisions in the Stipulation (Tr. at 185, 211). RESA/IGS also claim that, by approving the Stipulation as presented, the Commission may be setting a dangerous precedent moving forward and encouraging more parties to engage in negotiations similar to those in these proceedings, adding that this gamesmanship will only further burden the Commission and its Staff while failing to promote sound decision making (RESA/IGS Ex. 1 at 15-16). Even more, RESA/IGS claim that these proceedings will necessitate parties moving to intervene in every case before the Commission, as that would be the only way to ensure their participation in settlement negotiations that may impact their interests, thus negating the requirements of Ohio Adm.Code 4901-1-11(A)(2).

{¶ 128} Moreover, RESA/IGS argue that the Commission's directives in the *Duke MGP Proceedings* and *Duke TCJA Proceedings* did not authorize Duke to include competitive market issues in these matters. For instance, RESA/IGS note that, in response to the passage of the TCJA, the Commission had previously found that, "unless ordered otherwise, all Ohio rate-regulated utility companies should be directed to file applications 'not for an increase in rates,' pursuant to R.C. 4909.18, in a newly initiated proceeding, to pass along to consumers the tax savings resulting from the TCJA. * * * Nonetheless, in keeping with our case-by-case approach, the Commission is open to any alternative proposals by utilities, provided such proposals pass all tax savings on to customers, have the full agreement of Staff, and provide for input from other interested stakeholders." *TCJA Investigation*, Finding and Order (Oct. 24, 2018) at ¶ 29. Similarly, RESA/IGS contend that the Order in the *2012 Rate Case* Order only authorized Duke to file applications to update Rider MGP to recover investigation and remediation costs, as well as applications to extend its deferral authority

beyond the authorized recovery timeframe. As stated by RESA/IGS, the Commission, at no point, also authorized Duke to include competitive market issues in the applications to recover investigation and remediation costs through Rider MGP or the applications seeking an extension of its deferral authority. *2012 Rate Case*, Opinion and Order (Nov. 13, 2013) at 72. According to RESA/IGS, neither order authorized Duke to include competitive market issues in these proceedings, nor did Duke submit any request to the Commission to address competitive market issues in these proceedings, and the Commission should take necessary action to ensure its orders are followed. As such, RESA/IGS suggest the Commission either reject the Stipulation in its entirety as including provisions outside the limited scope of these proceedings or, in the alternative, remove the competitive market provisions from the Stipulation through modification. *MGSS Rules Case*, Finding and Order (Feb. 24, 2021) at ¶ 69 (where the Commission modified Staff's proposed price-to-compare statement).

{¶ 129} Finally, specifically speaking to the price-to-compare and shadow billing, RESA/IGS note that the Commission previously declined to adopt shadow billing in the *MGSS Rules Case*, citing the number of existing resources currently available, such as the Commission's Energy Choice Ohio website, that provide information for customers to compare available offers. *MGSS Rules Case*, Finding and Order (Feb. 24, 2021) at ¶ 131. Further, RESA/IGS maintain that the shadow billing information will be provided to OCC regardless of the outcome of any subsequent application filed by Duke. Moreover, while acknowledging that the Commission did recently approve certain shadow billing provisions in an electric distribution rate case, RESA/IGS claim that the decision in that case was based on an evaluation of the stipulation presented as a package, supported by a much different record and resulting from a diverse group of interests present at the settlement negotiations. *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 129-131. Contrary to the record in these proceedings, RESA/IGS emphasize that the stipulation presented in the *Ohio Power Rate Case* did not include provisions that were wholly unrelated and that were added during negotiations without the knowledge of those persons most impacted by such provisions. Instead of reviewing it as included in the Stipulation, RESA/IGS suggest that

the shadow billing provision should be reviewed separately pursuant to the guidance set forth in the *MGSS Rules Case*. Similarly, in regard to the price-to-compare provision, RESA/IGS claim this portion of the Stipulation also runs afoul of the Commission's decision in the *MGSS Rules Case,* when it specifically noted that "it would be problematic to display the SCO or GCR rate on the bill, given that the rate changes from month to month." *MGSS Rules Case*, Entry on Rehearing (Apr. 21, 2021) at ¶ 28. Additionally, RESA/IGS also allege that the price-to-compare provision is in violation of the Commission's longstanding principle that price is only one factor customers use to make supplier choices, adding there may be other features of a particular offer that attract a customer. In fact, as it is presented in the Stipulation, RESA/IGS go even further to argue that the price-to-compare provision contradicts Ohio Adm.Code 4901:1-1-13, which prescribes a particular billing message that emphasizes that price only represents one feature of any offer. Given that the Commission's Energy Choice Ohio website currently provides customers with much more accurate and helpful information, including supplier pricing offers, as well as Duke's GCR rate, RESA/IGS argue that the price-to-compare provision is not necessary (RESA Ex. 10). As such, RESA/IGS claim that the Stipulation fails the third prong.

{¶ 130} On a somewhat related note, RESA/IGS also suggest that the Stipulation contains a fatal structural flaw. Paragraph 35 of the Stipulation states that the Stipulation is submitted for purposes of "these proceedings only"; however, RESA/IGS note that the next sentence states "[t]he term 'these proceedings' includes the above-captioned proceedings as well as the subsequent proceeding to implement the SSO auction" (Joint Ex. 1 at 23). Then, in Paragraph 36, the Stipulation states that "[t]he Signatory Parties stipulate, agree, and recommend that the Commission issue a final Opinion and Order in these proceedings, ordering the adoption of this Stipulation, including the terms and conditions agreed to in this Stipulation by all Signatory Parties" (Joint Ex. 1 at 23). According to RESA/IGS, these provisions render the Stipulation as structurally flawed because the Signatory Parties are essentially seeking to submit a stipulation for a future proceeding, where issues have not been identified, parties have not had a chance to intervene, and there is no evidentiary

record. Thus, given the requirement in Ohio Adm.Code 4901-1-30 that a stipulation can only resolve some or all of the issues in a proceeding, and contrary to Duke's assertions that the Commission is not required to rule on the merits of the transition to an SSO auction or price-to-compare language in these proceedings, RESA/IGS contend that the Commission cannot approve the Stipulation as drafted because it would bind the Commission in a future proceeding or, at the very least, create the indication that the Commission will approve it (RESA/IGS Ex. 1 at 18; Tr. at 210). Accordingly, RESA/IGS request that the Commission either reject the Stipulation or modify the Stipulation to remove the competitive market provisions and this structurally flawed language.

{¶ 131} As to the final argument raised by RESA/IGS, Duke again contends that there is no basis for such a finding, and even if there was, the Commission would have the authority to reject it. According to Duke, Staff, and OCC, the SSO application must be approved through a subsequent proceeding, which is expressly acknowledged in supporting testimony and the Stipulation itself, and a decision in these cases would resolve only those matters the Stipulation seeks to resolve: the captioned matters (Duke Ex. 6 at 14; Duke Ex. 7 at 20). Further, OCC suggests that the Commission completely disregard the testimony of Mr. Cawley as to his theory that "alien provisions" should not be included in a proposed settlement, mainly due to the fact that he, before his participation in these proceedings, had never viewed or evaluated another settlement filed in an Ohio case, and was not familiar with the Commission's three-part test (Tr. at 168, 180-181). Moreover, OCC emphasizes this is far from the first stipulation before the Commission to include provisions unrelated to the underlying issues in the subject cases. *See*, e.g., *In re Application of the Dayton Power & Light Co. for Approval of its Plan to Modernize its Distribution Grid*, Case No. 18-1875-EL-GRD et al., Opinion and Order (June 2, 2021).

{¶ 132} In response to RESA/IGS's arguments regarding the competitive market provisions being outside the scope of these proceedings, Duke notes that stipulations and settlement agreements before the Commission are not restricted to include only terms necessarily related to the applications filed in those proceedings, as expressly admitted to

by RESA and IGS. In fact, Duke asserts there are many Commission proceedings, including proceedings which specifically relate to the TCJA, where stipulations included provisions not directly related to the reason the Commission or applicant originally initiated the case. *See*, e.g., *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019); *In re the Application of Ohio Power Co.*, Case No. 18-1007-EL-UNC, Finding and Order (Oct. 3, 2018). Further, Duke contends that Mr. Cawley's testimony as to how he would have voted if the Stipulation were before him is wholly irrelevant, as he cites no Ohio law for the proposition that the inclusion of extraneous provisions violates a regulatory principle or practice. Again, Duke notes that it is common practice before the Commission to resolve matters by serious bargaining, both of the matters directly at issue in the case, as well as with additional, bargained-for terms.

b. Commission Conclusion

{¶ 133} The Commission finds that the record demonstrates that the Stipulation does not violate any important regulatory principle or practice (Duke Ex. 7 at 22-23). Contrary to the assertions of RESA and IGS, we find that the Stipulation resolves 18 pending matters before the Commission that would otherwise require significant time and resources to resolve and is consistent with the state's policy set forth in R.C. 4929.02, as well as the Commission's directives in the *2012 Rate Case* and *TCJA Investigation*.

{¶ 134} As explained by witness Lawler, the Stipulation complies with important regulatory principles and practices set forth in R.C. 4929.02 by not creating any anti-competitive subsidies, being consistent with principles of gradualism, and not producing rate shock (Duke Ex. 6 at 16-17). Additionally, the Stipulation furthers, at the very least, the policy to promote the availability of reasonably-priced natural gas services and goods, by allowing cost recovery by Duke while also providing credits to customers, consistent with R.C. 4929.02(A)(1). Moreover, the Stipulation ensures customers will receive tax-related savings, consistent with the Commission's directives in the *TCJA Investigation*, as well as the state's policy to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably-priced natural gas service. *TCJA Investigation*, Finding and Order (Oct. 24, 2018) at ¶¶ 29-31; R.C. 4929.02(A). Further, in terms of the MGP

remediation costs, we believe the provisions in the Stipulation further the objectives stated in the Order in the *2012 Rate Case*, where the Commission noted remediation efforts should be carried out in a responsible and expeditious manner, but should conclude within a reasonable time, as a finite timeframe for remediation and the subsequent recovery of costs is both "reasonable and necessary in order to protect the public interest and ensure the Company and its shareholders are held accountable." *2012 Rate Case*, Opinion and Order (Nov. 13, 2013) at 72; *In re the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, et al., Finding and Order (Dec. 21, 2016). Thus, the MGP-related provisions, specifically the disallowance of approximately $11.4 million dollars of costs incurred through 2019 and the limitations set forth for the future recovery of costs incurred through MGP remediation efforts, are consistent with the findings in the *2012 Rate Case*.

{¶ 135} Finally, speaking to the provisions that commit the Company to make future applications before the Commission to seek to transition from its GCR mechanism 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, we note nothing in these commitments by the Company violates any important regulatory principle or practice. RESA/IGS attempt to argue that Duke has declined to transition to a competitive auction or to include similar price-to-compare language before these proceedings; however, these parties have not explained how these prior positions of the Company now preclude Duke's agreement to include proposed price-to-compare language in its future application to transition to an SSO. To reiterate our earlier findings, the Commission takes no position today on the merits of these terms and our decision in these proceedings should not be construed as a predetermination of the outcome in *In re the Application of Duke Energy Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services,* Case No. 21-903-GA-EXM, et al. We merely find that the commitments in the Stipulation are not unlawful or unreasonable. The Commission will thoroughly review the application eventually filed in Case No. 21-903-GA-

EXM following an opportunity for input and comments from interested stakeholders, including RESA/IGS if they choose to participate. Moreover, this approach is consistent with recent Commission precedent. *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 199. Similarly, we also find baseless the arguments raised by RESA/IGS that Paragraphs 35 and 36 of the Stipulation somehow bind the Commission's decision in the eventual SSO application. Pursuant to the terms of the Stipulation, that future application is required to be approved through a subsequent proceeding after due process has been afforded to all interested parties (Duke Ex. 6 at 14; Duke Ex. 7 at 20). We will not speak to the merits of that application, the preliminary contents of which are described in the Stipulation (Joint Ex. 1 at 16-19). Rather, we will focus on the terms subject to our approval today.

{¶ 136} The Commission further finds that RESA/IGS have not shown that the shadow billing provisions in the Stipulation violate any important regulatory principle or practice. First, the Stipulation requires Duke to perform aggregate shadow billing calculations for residential customers and report the information to OCC and Staff (Joint Ex. 1 at 19). Although we do not here address the value of such information, we do not agree that Duke's mere provision of the calculations to OCC or Staff violates the third part of the three-part test, consistent with Commission precedent. *In re Columbia Gas of Ohio, Inc*., Case No. 12-2637-GA-EXM, Opinion and Order (Jan. 9, 2013) at 43; *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 131, 198. As Duke and OCC previously acknowledged, a utility company may, as Duke has done here, choose to engage in shadow billing by agreement. *Ohio Power Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶¶ 108, 198.

{¶ 137} In response to arguments that the competitive market provisions fall outside the enumerated scope of the *Duke MGP Proceedings* and the *Duke TCJA Proceedings*, we agree with Duke that there are many Commission proceedings, including proceedings which specifically relate to the TCJA, where stipulations included provisions not directly related to the reason the proceeding was originally initiated. *See, e.g.*, *FirstEnergy Grid Mod Case*, Opinion and Order (July 17, 2019). As such, the fact that the directives in the *Duke MGP*

Proceedings and the *Duke TCJA Proceedings*, or the Orders in the *2012 Rate Case* and the *TCJA Investigation*, did not explicitly state that parties could consider competitive market provisions is irrelevant for our purposes here today. A stipulation has been submitted for our consideration, pursuant to Ohio Adm.Code 4901-1-30, and we have evaluated whether that Stipulation satisfies our three-part test in this Opinion and Order.

{¶ 138} Further, we agree that many of the arguments raised by RESA/IGS under this third criterion replicate those addressed, and rejected, in our discussion above. Finally, we find that the parties opposing the Stipulation have failed to present any evidence demonstrating that the Stipulation violates any regulatory principle or precedent. Accordingly, we conclude the third criterion of the Commission's three-part test to evaluate the Stipulation is met.

{¶ 139} Based on the foregoing, we find that the Stipulation is reasonable and should be approved.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 140} Duke is a natural gas company, as defined by R.C. 4905.03, and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 141} On March 31, 2014, Duke filed an application in the *2013 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2013 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $8,346,698.

{¶ 142} On March 31, 2015, Duke filed an application in the *2014 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2014 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $686,031.

{¶ 143} On March 31, 2016, Duke filed an application in the *2015 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2015 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $1,061,056.

{¶ 144} On March 31, 2017, Duke filed an application in the *2016 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2016 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $1,296,160.

{¶ 145} On March 28, 2018, Duke filed an application in the *2017 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2017 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $14,652,068.

{¶ 146} By Entry issued on June 28, 2018, the attorney examiner consolidated the *2013-2017 Rider MGP Adjustments* and set a comment period.

{¶ 147} Staff filed its review and recommendations in relation to the *2013-2017 Rider MGP Adjustments* on September 28, 2018, where Staff proposed to reduce the Company's requested recovery amounts for years 2013-2017 by $11,867,900.00.

{¶ 148} On March 29, 2019, Duke filed an application in the *2018 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2018 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $19,804,031.

{¶ 149} On July 12, 2019, Staff filed its review and recommendations in the *2018 Rider MGP Adjustment*, recommending reducing the requested recovery amount by $11,366,243, in addition to other recommendations, such as netting the recommended disallowances against insurance proceeds.

{¶ 150} By Entry issued August 13, 2019, the attorney examiner consolidated the *2018 Rider MGP Adjustment* with the *2013-2017 Rider MGP Adjustments* and established a procedural schedule.

{¶ 151} An evidentiary hearing in the *2013-2018 Rider MGP Adjustments* commenced on November 18, 2019, and concluded on November 21, 2019.

{¶ 152} On May 10, 2019, Duke filed an application in Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC, seeking authorization to extend its deferral and collection of MGP investigation and remediation costs from customers beyond December 31, 2019.

{¶ 153} On March 31, 2020, as amended on July 7, 2020, Duke filed an application in the *2019 Rider MGP Adjustment*, seeking approval to adjust its Rider MGP to recover costs incurred during 2019 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to $39,435,627.

{¶ 154} On July 23, 2020, Staff filed its report for the *2019 Rider MGP Adjustment*, recommending reducing the requested recovery amount by $3,897,930.

{¶ 155} On December 21, 2018, Duke filed an application in the *Duke TCJA Proceedings* to establish its natural gas TCJA rider to address the impacts of the reduction in the corporate income tax rate from 35 percent to 21 percent for its natural gas operations, including a reduction of the federal income tax rate and creation of EDITs.

{¶ 156} A hearing was scheduled and held on August 7, 2019, in the *Duke TCJA Proceedings*.

{¶ 157} On August 31, 2021, the Stipulation was filed by the Signatory Parties in the above-captioned matters.

{¶ 158} By Entry issued October 15, 2021, the attorney examiner, citing the unique circumstances of these proceedings, granted limited intervention to RESA and IGS.

{¶ 159} The evidentiary hearing was held, as scheduled, on November 18, 2021, in the *Duke MGP Proceedings* and the *Duke TCJA Proceedings*.

{¶ 160} The Stipulation is the product of serious bargaining among capable, knowledgeable parties, advances the public interest, and does not violate any important regulatory principle or practice. The Stipulation submitted by the Signatory Parties is reasonable and should be adopted in its entirety.

{¶ 161} Duke is authorized to file final tariffs, consistent with this Opinion and Order.

V. ORDER

{¶ 162} It is, therefore,

{¶ 163} ORDERED, That the Stipulation be approved as set forth in this Opinion and Order. It is, further,

{¶ 164} ORDERED, That Duke is authorized to file tariffs, in final form, consistent with this Opinion and Order, subject to final Commission approval. Duke shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 165} ORDERED, That Duke shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 166} ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date of this Opinion and Order and the date upon which the complete copies of the final tariffs are filed with the Commission. It is, further,

{¶ 167} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 168} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJA/mef

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

Summary: Opinion & Order approving and adopting the joint stipulation and recommendation filed by Duke Energy Ohio, Inc., Staff, Ohio Energy Group, and the Ohio Consumers' Counsel. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio