BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Tariff Revisions	)))	Case No. 22-0179-GA-ATA
In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Carbon Offset Program	)))	Case No. 22-0180-GA-UNC

INITIAL BRIEF OF THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO

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Dated: August 2, 2023

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I. INTRODUCTION

In this case, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) asks the Commission to approve a Stipulation and Recommendation (the Stipulation) resolving its request for regulatory approvals over certain jurisdictional aspects of the Decarbon Ohio Program (the Program). DEO proposed the Program in response to strong customer interest in opportunities to offset the carbon emissions associated with their natural gas service. The Program will be entirely voluntary for both customers and suppliers and would provide a framework for interested DEO customers to take advantage of carbon offset rates available in DEO's service territory from verified suppliers.

The record establishes that all three elements of the Commission's standard for approving stipulations have been satisfied in this case. The Stipulation is the product of serious bargaining among capable, knowledgeable parties, as all parties met on several occasions to discuss possible resolution of the issues in this case, changes and counterproposals were circulated and integrated where appropriate, and all parties were represented by experienced counsel. The Stipulation further benefits customers and is in the public interest. The Program is fully voluntary for both suppliers and customers and will be administered at no cost to ratepayers. Once implemented, the Program will give interested customers a clear avenue to identify, evaluate, and (if they so choose) enroll in carbon offset rate offers that reduce the environmental impact of their natural gas usage. Lastly, the Stipulation does not violate any important regulatory principle or practice – rather, it furthers several Ohio policies in favor of supplier diversity and consumer choice.

Only one party – the Office of the Ohio Consumers' Counsel (OCC) – opposes the Stipulation. After numerous changes to DEO's proposals as originally filed, the remaining parties have either signed or have indicated their lack of opposition to the Stipulation. OCC, however, continues to contend (incorrectly) that the Stipulation improperly inserts DEO into the competitive supply market and could encourage deceptive marketing practices surrounding carbon offset rates. Those arguments are unfounded, especially given the many compromises and protections incorporated into the Application and Stipulation.

For the reasons explained herein, the Commission should approve the Stipulation as filed.

II. BACKGROUND

A. Procedural History.

On March 11, 2022, DEO filed an application that initiated the current proceeding (Application), requesting that the Commission approve its Decarbon Ohio Program and associated tariff revisions and bill format changes. As proposed in the Application, the Program would provide certified suppliers with the opportunity to offer carbon offset supply rates to interested Choice-eligible residential and nonresidential DEO customers. (App. ¶¶ 2, 25.) Through carbon offset commodity rates, customers can invest in projects (such as the planting of trees or carbon sequestration) that compensate for the emission of carbon dioxide or other greenhouse gases associated with their natural gas service. (*Id.* ¶ 17.)

DEO would not engage in the actual sale of carbon offsets, but would facilitate the Program by (1) educating customers on sustainability and the availability of carbon offsets; (2) reviewing supplier eligibility and compliance, customer enrollment, and maintaining customer portals; and (3) validating that suppliers obtained sufficient certified carbon offsets to fully offset emissions associated with enrolled customers. (*Id.* ¶ 2.)

As a precondition to participation in the Program, certified Energy Choice suppliers would enter into supplier agreements with DEO setting forth the terms of their relationships, and failure to abide by those terms could result in termination from the Program. (*Id.* ¶ 28.) In addition, a supplier could only participate in the Program if it (a) had been providing service for at least 12 months; and (b) met a customer or annual load minimum. (*Id.* at ¶ 29.) Further, DEO would conduct a reconciliation and review of any participating supplier's carbon offset credits to ensure that the supplier's credits were equal to or greater than the total usage for that supplier's enrolled customers. (*Id.* ¶ 33.) Participation in the Program would be fully voluntary for both customers and suppliers. (*Id.* ¶ 32.) DEO did not seek to recover any costs associated with the Program in its Application but did reserve the right to request cost recovery in the future. (*Id.* ¶ 40.)

Following the filing of DEO's Application, numerous parties requested leave to intervene: the Office of the Ohio Consumers' Counsel (OCC); the Environmental Law & Policy Center (ELPC); the Northeast Ohio Public Energy Council (NOPEC); Interstate Gas Supply, LLC (IGS); SFE Energy Ohio, Inc. and StateWise Energy Ohio, LLC (SFE Energy); Direct Energy Business LLC, Direct Energy Services LLC, Direct Energy Business Marketing, LLC, Energy Plus Natural Gas LLC, Reliant Energy Northeast LLC, Stream Ohio Gas & Electric, LLC, and XOOM Energy Ohio, LLC (the NRG Retail Companies); and the Retail Energy Supply Association (RESA).

On March 31, 2022, the Attorney Examiner issued an order setting deadlines for the filing of initial and reply comments. Entry at 3. In the initial comments that followed, several parties expressed concern regarding DEO's role in validating and monitoring suppliers, as well as educating customers about the Program and carbon offsets in general. Concerns were also raised regarding the possibility that DEO would eventually seek to recover Program costs in rates. Suppliers raised a handful of additional issues related to the Program such as use of the trademark that would appear on customers' bills, the list of third-party verifiers DEO would select, the process for reenrollment of customers, and whether governmental aggregators could participate in the Program.

In its reply comments, DEO addressed the parties' comments and communicated that it was open and willing to work with Staff and intervenors to clarify any concerns and implement modifications to the proposal, if necessary. (DEO Reply Cmts. at 13, 16.)

Consistent with that offer, DEO, Staff, and intervenors engaged in extensive settlement negotiations. An initial settlement meeting with all parties was held on July 12, 2022, and additional meetings were convened on August 23, 2022, December 13, 2022, and January 24, 2023. (DEO Ex. 1.0 at 5.) Additionally, DEO had numerous conversations with individual parties throughout that time period to answer questions about the Program and address their specific concerns, with the goal of reaching an agreement on a final stipulation. (*Id.*) Term sheets were exchanged, counterproposals were considered, and revisions to the Program were made. (*Id.*)

B. The Stipulation.

After nine months of negotiation, the Stipulation was filed on March 28, 2023. The Stipulation reflected numerous compromises among the parties regarding the contours of DEO's Decarbon Ohio Program. DEO, RESA, and all the retail suppliers who participated in this proceeding (IGS, SFE Energy, and the NRG Retail Companies) signed the Stipulation. Further, Staff and NOPEC did not oppose the Stipulation. (*Id.* at 2.) The only party who opposes the Stipulation, as stated above, is OCC.

The goals and general framework of the Program are the same as those DEO proposed in its initial Application: in response to customers' increased concerns surrounding sustainability, the Program will offer interested customers the opportunity to identify, evaluate, and enroll in carbon offset rates through verified suppliers. The Program will be fully voluntary for customers and suppliers. DEO will act as a competitively neutral facilitator to educate customers and validate that participating suppliers have obtained the required carbon offsets.

While the Program has the same goals as initially proposed, DEO has modified some of its attributes and clarified some details in light of its extensive settlement discussions with the other parties. The Stipulation proposes a non-tariffed program for which DEO will not seek to recover costs from ratepayers. Rather, DEO will fund the Program's initial startup costs, and participating suppliers will cover its ongoing administrative and IT costs. (Joint Ex. 1.0 ¶¶ 3, 6.) Funding for customer education may be drawn from an existing fee that is currently collected from suppliers and that was approved in Case No. 18-1419-GA-EXM. (*Id.* ¶ 5.) But to the extent DEO utilizes such funding, the customer education must be developed in consultation with the existing Energy Choice stakeholder collaborative. (*Id.*)

Governmental aggregators like NOPEC may participate in the Program on the same terms and conditions as competitive retail natural gas suppliers. (*Id.* ¶ 3.) Further, participating suppliers will not be required to reenroll customers under existing rate offers that otherwise qualify for the Program. (*Id.*) Suppliers will have a non-exclusive right and license to use the Decarbon Ohio trademark in connection with the Program. (*Id.*) In addition, the Signatory Parties have agreed on bill format changes related to the Program, which Staff does not oppose. (*Id.* ¶ 7.)

The Stipulation provides a list of registries that are able to provide preapproved third-party verified carbon offsets for purposes of the validation process. (*Id.* ¶ 4.) DEO reaffirms that any customer education or informational materials it provides will be competitively neutral and designed to help customers compare options rather than encouraging them to select one particular supplier over another. (*Id.* ¶¶ 3, 5.) Further, participating suppiers are required to identify qualifying rate offers in the details on the Commission's DEO's Apples to Apples chart. (*Id.* ¶ 3.)

Additionally, Staff may request that DEO provide certain information annually about the Program, including a list of participating suppliers and a list of Program costs and revenues for the prior year. (*Id.* ¶ 6.) And lastly, within four years of the Program's approval, DEO must seek reauthorization from the Commission if it elects to continue the Program. (*Id.* ¶ 8.)

III. STANDARD OF PROOF

Ohio Adm.Code 4901-1-30 authorizes parties to enter into stipulations in proceedings before the Commission. *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82 (2002) (affirming Commission's approval of stipulation regarding utility's transition plan to competitive service as having adequate record support). The terms of such agreements, although not binding on the Commission, are given "substantial weight." *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992) (appellant did not refute Commission's reasoning in adopting stipulation concerning gas transportation charges); *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157 (1978) (Commission did not err in setting a rate of return based solely upon a stipulation between the utility and Staff).

In reviewing and approving stipulations, the Commission employs a three part-test:

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 violate any important regulatory practice or principle?

See, *e.g.*, *In re Ohio Edison Co.*, 146 Ohio St.3d 222, 229, (2016) (upholding Commission approval of stipulation as satisfying three-part test); *Consumers' Counsel v. Public Util. Comm.*, 100 Ohio St.3d 394, 398-399 (2006) (evidence supported Commission approval of stipulation as satisfying three-part test).

The Supreme Court of Ohio, in its review of challenges to Commission-approved stipulations, continues to endorse the Commission's use of these criteria to resolve cases in a manner economical to ratepayers and utilities. *See*, *e.g.*, *In re Ohio Power Co.*, Slip Opin. No.

2018-Ohio-4698, ¶ 39 (2018) (finding that the Commission did not err in approving a joint stipulation in a PPA Rider case).

IV. ARGUMENT

The manifest weight of the evidence in this record supports the Commission's approval of the Stipulation without modification because it satisfies the Commission's three-part test. The Stipulation's compliance with each element of that test is discussed in turn below.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The first measure for evaluating the Stipulation is whether it is the product of serious bargaining among capable, knowledgeable parties. The unrebutted evidence shows that it was, and OCC did not contend otherwise in its testimony.

The record is clear that the parties engaged in serious bargaining over the course of several settlement meetings from July 2022 through January 2023. (DEO Ex. 1.0 at 5; IGS and RESA Ex. 1.0 at 5.) All four meetings were attended by all parties who intervened in the case, representing diverse interests. (DEO Ex. 1.0 at 5.) All of the parties were represented by attorneys who have years of experience in regulatory matters before this Commission, and all of the parties either employed or had access to technical experts with comparable experience. (*Id.*; *see also* IGS and RESA Ex. 1.0 at 6.) During the period of negotiations, the parties circulated numerous terms sheets and various drafts of the stipulation for review and comments. (DEO Ex. 1.0 at 5). DEO further answered questions from the parties, and invited feedback and counterproposals to the proposed settlement terms. (*Id.*) Counterproposals were circulated, discussed, and considered. (*Id.*) Changes to the Stipulation's drafted language were proposed and deliberated. (*Id.*) All agreed upon terms and conditions have been incorporated into the Stipulation. (*Id.*)

Although several parties did not sign the Stipulation, as noted above, Staff and NOPEC indicated their non-opposition to the Stipulation. And while OCC opposes the Stipulation, there was recognition that an impasse had been reached. OCC's comments and participation in settlement discussions nonetheless influenced the parties' negotiations and ultimately the terms of the Stipulation, and the parties' negotiations resulted in a compromise that differs materially from the proposals supported in DEO's Application. Specifically, the Stipulation includes several commitments by DEO that were not in DEO's Application: (1) changing the Program to a non-tariffed service; (2) clarifying the source of funds for customer education, use of the DEO Apples to Apples Chart to identify the qualifying Program rates, and the role of the Energy Choice stakeholder collaborative to develop customer education and messaging; (3) clarifying Program terms concerning governmental aggregators, customer enrollment, supplier compliance, and approved verifiers; (4) providing suppliers with a license to the Decarbon Ohio trademark; (5) establishing that ratepayers would not fund startup and ongoing administrative costs; (6) agreeing on bill format changes providing transparency and clarity regarding the rate offering on participating customers' bills; and (7) requiring that DEO make an additional Commission filing within four years if it elects to extend the Program. (*Id.* at 6.)

Finally, the Stipulation is supported by parties representing a range of interests: DEO, all retail suppliers who participated in this proceeding (IGS, SFE Energy, and the NRG Retail Companies), and a leading supplier association RESA have signed on, and neither Staff nor NOPEC objects to the Stipulation. (*See* IGS and RESA Ex. 1.0 at 6). OCC's absence as signatory alone cannot establish that this first requirement was not satisfied. *See In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, et al., Opin. and Order (Apr. 9, 2008) at 32 ("No one possesses a veto over stipulations, as this Commission has noted many times."). The manifest weight of the evidence supports a Commission finding that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

B. The Stipulation, as a package, benefits ratepayers and is in the public interest.

As explained by DEO witness Ella R. Hochstetler, Director of Regulatory and Pricing, the Stipulation is in the public interest because it addresses the environmental and sustainability concerns held by many DEO customers, builds upon DEO's existing Energy Choice program, leverages existing educational resources, does not require ratepayer funding, and provides for additional Commission review after a set period of time. (DEO Ex. 1.0 at 7.)

1. <u>The Stipulation responds to increasing environmental concerns of customers, investors, regulators, elected officials, and other stakeholders.</u>

In recent years, DEO has observed a marked increase in concern for the climate, sustainability, and the associated need to reduce emissions among its customers. (*Id.*) In fact, DEO has received customer feedback indicating a strong interest in carbon-offset rates being offered in the DEO service territory. (*Id.*) These environmental concerns are not limited to DEO customers but have been observed across the board, with a 2020 Deloitte study finding that 68% of residential energy consumers overall, and 81% of millennials, were very concerned about climate change and their personal carbon footprint. (NRG Ex. 1.0 at 6.) Beyond just consumers, companies and governments are also prioritizing sustainability. Major DEO investors such as BlackRock, Vanguard, and State Street have asked companies to prioritize climate-related disclosures and address sustainability issues. (DEO Ex. 1.0 at 7.) Federal regulators have also become increasingly concerned with sustainability. (*Id.*) And a number of local governments in DEO's service area have publicly committed to addressing climate change and sustainability. (*Id.*)

This evidence indicates that sustainability is top of mind not only for many customers, but also for other important stakeholders. DEO's Decarbon Ohio Program addresses these sustainability concerns by providing an avenue for interested customers to evaluate carbon offset rates, which reduce the emissions associated with their natural gas consumption, thereby reducing their overall environmental impact. The Decarbon Ohio Program, therefore, addresses a matter of public concern and is accordingly in the public interest.

2. The Stipulation builds upon the robust competitive supply market, with added protections and clarity for customers on carbon offset rates.

DEO has successfully operated its Energy Choice program for decades. That program allows DEO customers to choose their own natural gas supplier and have that gas delivered by DEO.[1] Through this program, customers are able to evaluate the various options in the competitive market and choose the supplier that best meets their needs and priorities for natural gas commodity, allowing them more control and independence in their energy selection.

DEO is able to leverage its knowledge and experience from operating that program to the Decarbon Ohio Program. DEO recognizes that there is an existing competitive supply market for carbon offsets and seeks only to facilitate customer evaluation of different suppliers and supplier offerings, giving them the tools they need to choose the one that is right for them. (DEO Ex. 1.0 at 8-9.) DEO has committed to doing so by educating customers about the various carbon offset rates in a competitively neutral manner and verifying supplier compliance to encourage accountability and increase customer confidence. (*Id.*)

DEO's approach in this regard promotes competition and serves the public interest by leveraging the existing competitive market. Although DEO could have offered a carbon-offset product directly, DEO believed that a collaborative approach between itself and suppliers would be the most effective means of meeting customer interest in sustainable gas offerings. (IGS and RESA Ex. 1.0 at 6.) This additional visibility will better serve interested customers and accordingly

[1] *See* https://www.dominionenergy.com/ohio/start-stop-service/energy-choice.

"encourage market participants to develop and offer a host of environmentally sustainable rate and product offerings that are currently unavailable in the market." (*Id.* at 7.)

DEO's role in validating supplier offerings is also beneficial. (DEO Ex. 1.0 at 3, 7, 9; *see also* App. ¶¶ 32-36.) The validation process ensures that the environmental benefits customers have purchased are actually being realized. DEO plans to monitor participating suppliers and confirm that their carbon offset credits are equal to or greater than the total usage for the supplier's enrolled customers. Pursuant to the Program's terms, suppliers must offset the customers' full usage and may not double count carbon offset credits, meaning that customers can be confident their entire natural gas usage is truly being offset by new investment in environmental projects. Every Mcf of gas used by a participating customer is fully offset. The supplier validation process, therefore, provides even more benefit to customers, and combined with the overall aim of the Program to address their sustainability concerns, demonstrates that it is in the public interest.

3. <u>The Stipulation leverages existing resources to further customer education on sustainability and carbon offsets.</u>

Increased education is another reason the Program is in the public interest. DEO has significant experience in educating customers regarding their natural gas supply service, as it has supervised and administered numerous customer education campaigns including education about its Energy Choice program. (DEO Ex. 1.0 at 9.) DEO would utilize that experience while building on its educational approach. (*Id.*) Accordingly, DEO plans to make the necessary tools available to customers interested in the Decarbon Ohio Program so they can identify participating suppliers, investigate available rate offerings, and ultimately make an informed decision when choosing a supplier and rate. (*Id.*) Currently, DEO customers may not know which suppliers offer carbon offset rates in DEO's service territory or that carbon offset rates are even available. DEO's goal would be to increase awareness of the available rate offers and the means for contacting suppliers to learn more and enroll. (*Id.*)

The Stipulation further provides that DEO may leverage existing funds from the $0.01/Mcf fee currently collected from suppliers in Case No. 18-1419-GA-EXM and utilize that funding to develop customer education for the Decarbon Ohio Program in consultation with the existing Energy Choice stakeholder collaborative. (*Id.*) In that way, the Program not only leverages DEO's prior experience and educational resources, but also existing funding sources.

4. <u>The Stipulation provides that ratepayers will not be responsible for Program funding.</u>

One of the primary concerns with DEO's initial Application was the possibility that DEO would recover Program costs from ratepayers. While DEO did not explicitly request authorization to recover such costs from ratepayers in its Application, it reserved the right to pursue recovery in a future proceeding.

The Stipulation clarifies, however, that DEO will *not* seek to recover Program costs from ratepayers. (Joint Ex. 1.0 ¶ 6; DEO Ex. 1.0 at 10.) Rather, DEO will fund the Program's startup costs and initial IT costs, and participating suppliers will fund the ongoing administrative and IT costs. (*Id.*)

There is thus no financial burden on ratepayers associated with establishing and administering the Program. It provides a benefit without an attendant cost and is therefore in the public interest.

5. <u>The Stipulation provides for additional Commission review in the near future.</u>

Finally, the Stipulation provides that DEO must make a reauthorization filing within four years if it seeks to continue the Program. While DEO believes it has reasonably and fairly designed the Decarbon Ohio Program, it also recognizes that the Program involves new concepts and responsibilities. (DEO Ex. 1.0 at 10). The reauthorization filing benefits the public because it provides a chance for the Commission, Staff, and other stakeholders to review the Program's administration, status, and success, and identify any lessons learned or opportunities for improvement. (*Id.*).

In sum, the evidence demonstrates that the Stipulation benefits ratepayers and is in the public interest. It addresses customers' concerns regarding sustainability without increasing distribution rates, promotes competition and accountability among suppliers, and leverages DEO's existing knowledge and experience. The second prong of the analysis is satisfied.

C. The Stipulation does not violate any important regulatory principle or practice.

Finally, the Stipulation does not violate any important regulatory principle or practice. On the contrary, the Stipulation supports several important regulatory principles and practices, including (1) encouraging compromise as an alternative to litigation; and (2) furthering state policies regarding natural gas service and goods.

For these reasons, and given the significant benefits provided to ratepayers described in the prior section, the Stipulation does not violate any important regulatory principle or practice.

1. <u>The Stipulation encourages compromise as an alternative to litigation.</u>

The Stipulation, as an agreed settlement, encourages compromise as an alternative to litigation. Throughout the negotiation process, DEO made numerous modifications to its initial Application that are incorporated in the Stipulation currently before the Commission. Those compromises, described in detail in Section IV.A. above, include changing the Program to a non-tariffed service, modifying the customer education approach, clarifying the verification process, providing suppliers with a license to the Program trademark, agreeing that costs would not be recovered from ratepayers, agreeing on bill format changes to increase transparency, and offering to make a reauthorization filing with the Commission. (*Id.* at 6.)

DEO continues to believe its Application was reasonable and lawful as filed but made those compromises to address the concerns of other parties. DEO hoped to reach a resolution to this proceeding that was acceptable for all parties, worked toward that aim in discussions with them, and believes that the Stipulation accomplishes that, despite OCC's objection. This collaborative process should be encouraged so that parties in future cases are incentivized to work together and make compromises.

2. <u>The Stipulation furthers State policies regarding natural gas services.</u>

The Stipulation further supports several state regulatory objectives related to natural gas service. First, the Stipulation promotes the diversity of natural gas supply and suppliers and consumer choice among available options, which is an important state policy. R.C. 4929.02(A)(3); *see also* R.C. 4929.02(A)(11) ("Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation"). DEO customers will be able to choose among a wide range of options in the event they decide to purchase carbon offsets through the Program – any supplier that meets the Program's basic criteria can participate. And it is truly the customer's choice – each customer can decide whether to purchase from participating suppliers, non-participating suppliers selling carbon offsets on the market, or to forgo a carbon offset offer entirely. Second, the Stipulation supports Ohio policy favoring innovation and market access for cost-effective natural gas service. *See* R.C. 4929.02(A)(4); R.C. 4929.02(A)(6) ("Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment"). Since DEO chose not to offer carbon offsets directly to customers but rather to facilitate their purchase from other suppliers, the Stipulation is designed to encourage those suppliers to develop a variety of offerings that are not currently available in order to remain competitive. (IGS and RESA Ex. 1.0 at 7; *see also* NRG Ex. 1.0 at 5). In that way, the Stipulation encourages innovation.

In sum, the Stipulation does not violate any regulatory principle, and the third prong is satisfied.

V. CONCLUSION

In summary, the evidence shows that the Stipulation complies with all three parts of the Commission's test. For these reasons, the Commission should approve the Stipulation as filed.

Dated: August 2, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing pleading was served by electronic mail this 2nd day of August, 2023, to the following:

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