

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for Approval of its ) Case No. 13-431-EL-POR  
Energy Efficiency and Peak-Demand )  
Reduction Portfolio Programs. )

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Amy B. Spiller and Elizabeth H. Watts, 2500 Atrium II, 139 East Fourth Street, Cincinnati, Ohio 45201, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Devin D. Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Michael J. Schuler and Kyle L. Kern, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Carpenter, Lipps & Leland, LLP, by Rebecca L. Hussey, 280 North High Street, 280 Plaza, Suite 1300, Columbus, Ohio 43215, on behalf of EMC Development Company.

Carpenter, Lipps & Leland, LLP, by Mallory M. Mohler and Kimberly W. Bojko, 280 North High Street, 280 Plaza, Suite 1300, Columbus, Ohio 43215, on behalf of the Kroger Company.

Jeremy Faust, 200 West Fourth Street, Suite 600, Cincinnati, Ohio 45202, on behalf of the Greater Cincinnati Energy Alliance.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody Kyler Cohn, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Trent A. Dougherty, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of Ohio Environmental Council.

Nicholas McDaniel, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of the Environmental Law and Policy Center.

Williams, Allwein, and Moser, LLC, by Christopher J. Allwein, 1500 West Third Avenue, Suite 330, Columbus, Ohio 43212, on behalf of the Natural Resources Defense Council.

Williams, Allwein, and Moser, LLC, by Christopher J. Allwein, 1500 West Third Avenue, Suite 330, Columbus, Ohio 43212, on behalf of the Sierra Club.

Williams, Allwein, and Moser, LLC, by Todd M. Williams, Two Maritime Plaza, Third Floor, Toledo, Ohio 43604, on behalf of the Ohio Advanced Energy Economy.

#### OPINION:

##### I. Background

On April 15, 2013, as amended on May 9, 2013, Duke Energy Ohio, Inc. (Duke) filed its application in this case for approval of its energy efficiency and peak-demand reduction portfolio of programs, pursuant to Ohio Adm.Code 4901:1-39-04 (Duke Exs. 2-3).

By Entry issued June 13, 2013, the attorney examiner established the procedural schedule in this case. Specifically, July 1, 2013, was set as the deadline for objections to the application and for the filing of motions to intervene, and the deadlines for the filing of testimony on behalf of intervenors and Staff were set for August 20, 2013, and August 27, 2013, respectively. By this same Entry, the evidentiary hearing was scheduled to commence on September 4, 2013, and Duke was ordered to publish notice of the hearing.

Objections to the application were filed on July 1, 2013, by the Ohio Environmental Council (OEC), the Environmental Law and Policy Center (ELPC), the Greater Cincinnati Energy Alliance, Inc. (Energy Alliance), the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Ohio Energy Group (OEG), the Kroger Company (Kroger), EMC Development Company, Inc. (EMC), and the Natural Resources Defense Council (NRDC).

By Entry issued August 19, 2013, the following parties were granted intervention in this case: OEC, ELPC, Energy Alliance, OCC, OPAE, OEG, Kroger, EMC, NRDC, Ohio Advanced Energy Economy (Ohio AEE), and the Sierra Club. In addition, this Entry

granted the motion to extend the procedural schedule, thus, requiring that testimony by intervenors and Staff be filed by August 27, 2013, and September 4, 2013, respectively. With regard to the commencement of the evidentiary hearing, in the August 19, 2013 Entry, the attorney examiner determined that the hearing would go forward, as scheduled, on September 4, 2013, to provide an opportunity for the public to testify; the hearing would then be adjourned and reconvened on September 11, 2013, for the evidentiary portion of the hearing.

On September 6, 2013, as amended on September 9, 2013, a stipulation and recommendation (Stipulation) (Jt. Exs. 1-2), signed by Duke, Staff, OEC, ELPC, Energy Alliance, OCC, OPAC, Kroger, EMC, NRDC, Ohio AEE, and the Sierra Club was filed. The Stipulation purports to resolve all of the issues raised by the signatory parties relative to the instant application filed by Duke. OEG was not a signatory party to the stipulation.

The hearing in this matter commenced, as scheduled, on September 4, 2013, for the purpose of receiving public testimony. No public members testified. The hearing reconvened on September 11, 2013, for the evidentiary portion of the hearing. At the hearing, Duke witness Timothy Duff (Duke Ex. 4A) testified in support of the Stipulation.

## II. Applicable Law

Duke is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6). R.C. 4928.66(A)(1)(a) and (b) provide, in pertinent part, that, beginning in 2009, an EDU shall implement:

- (a) energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one percent of the total, annual average, and normalized kilowatt-hour (kWh) sales of the EDU during the preceding three calendar years to customers in this state. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one percent in 2010, seven-tenths of one percent in 2011, eight-tenths of one percent in 2012, nine-tenths of one percent in 2013, one percent from 2014 to 2018, and two percent each year thereafter, achieving a cumulative, annual energy savings in excess of 22 percent by the end of 2025.
- (b) peak-demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional 75 hundredths of one percent reduction each year through 2018.

Further, in accordance with R.C. 4928.66, the Commission adopted the rules contained in Ohio Adm.Code 4901:1-39, Energy Efficiency and Demand Reduction Benchmarks.

### III. Summary of the Application

In its application, Duke explains that the Commission approved its last energy efficiency and peak-demand reduction portfolio in *In re Duke Energy Ohio, Inc.*, Case No. 11-4393-EL-RDR, Opinion and Order (Aug. 15, 2012) (*2011 Portfolio Case*). Duke notes that, in the order in the *2011 Portfolio Case*, the Commission directed Duke to file a new portfolio of programs to align its portfolio with its cost recovery mechanism in April 2013. (Duke Ex. 2 at 1.)

Duke submits this application, in compliance with the Commission's directive in the *2011 Portfolio Case* and the requirements set forth in Ohio Adm.Code 4901:1-39-04(A). In addition, in this application, Duke requests a one-year extension of the approved shared savings cost recovery mechanism approved in the *2011 Portfolio Case*. According to Duke, this one-year extension of the shared savings cost recovery mechanism will align with the portfolio; therefore, both would expire on December 31, 2016. (Duke Ex. 2 at 3.)

It is Duke's intent to continue the program portfolio plan approved in the *2011 Portfolio Case*, in addition to adding a new nonresidential program, Energy Management and Information Services, as well as additional measures to the SmartSaver Residential program. Duke believes that its portfolio of programs represents a comprehensive peak-demand reduction and energy efficiency plan of action. In addition, Duke points out that it also offers the Self Direct program to qualifying mercantile customers. According to Duke, the implementation of its programs will enable Duke to meet or exceed the statutory benchmarks for peak-demand reduction and energy efficiency for January 1, 2014 through December 31, 2016. (Duke Ex. 2 at 4-5.)

In compliance with the requirements of Ohio Adm.Code Chapter 4901:1-39, Duke states that it filed an updated assessment of potential, entitled The Market Assessment and Action Plan for Electric DSM Programs (market study) (Duke Ex. 1), in this docket on February 19, 2013. Duke explains that the market study identifies levels of technical, economic, and achievable market potential, and the results are compared with the programs previously developed through the Duke Energy Community Partnership Collaborative (Collaborative). Duke states that, based on these findings, adjustments were made to the portfolio programs. Duke indicates that the Collaborative was given an overview of the market study and the Collaborative has reviewed the portfolio of programs presented in this case. (Duke Ex. 2 at 3, 5-6.)

### IV. Summary of Objections and Testimony Prior to Stipulation

Staff, OCC, Kroger, and OPAE expressed concern with extending the recovery of the shared savings mechanism determined in the *2011 Portfolio Case* to continue through

2016. In addition, OCC believed Duke should net the energy efficiency, peak-demand reduction residential and nonresidential program measurement and verification costs from the programs' avoided costs, in order to yield the shared savings pool that is divided between consumers and Duke. (Staff Ex. 1 at 2; OCC Ex. 2 at 5; Kroger Ex. 1 at 2; OPAE Ex. 1 at 2.) Energy Alliance supported Duke's continuation of the shared savings model (Energy Alliance Ex. 1 at 13). ELPC opined as to the overall reasonableness of Duke's programs and portfolio plan, recommending that incentive levels for some of the programs be adjusted (ELPC Ex. 2 at 2). Kroger stated that Duke should establish a reasonable cap on the amount of incentives it can collect through the shared savings mechanism (Kroger Ex. 1 at 5). OEG submitted that Duke's request to extend the current incentive mechanism should be rejected (OEG Ex. 1 at 1).

ELPC submitted that Duke should include a data centers program and a combined heat and power (CHP) pilot program in its plan. OEC agreed that there should be a program devoted to CHP. Also, ELPC recommended Duke's program results be quantified and reported as net energy savings, including free ridership and spillover impacts as part of its evaluation, measurement, and verification activities. (ELPC Ex. 2 at 3; OEC Ex. 1 at 1.) OEG stated that Duke's application does not provide sufficient price protections for large energy-intensive industrial customers (OEG Ex. 1 at 3). NRDC recommended Duke work with the Collaborative to design the following pilot programs for commercial and industrial customers: an assistance program; a continuous commissioning program; and a data center, server room, and server closet program. NRDC also proposed Duke investigate a cool roof measure for commercial and industrial customers and work to rebalance the portfolio in favor of long-lived, cost-effective measures. (NRDC Ex. 1 at 1-2, 4.) Energy Alliance objected to Duke's: failure to adequately consider coordinated program development and integration; lack of inclusion of a pay-for performance model to enhance utilization and value to the programs; failure to offer customers access to supportive financing programs to help bolster cost-effective achievement of energy efficiency goals; and Duke's program selection process (Energy Alliance Ex. 1 at 3, 8-10, 12).

In addition, Staff, OCC, OPAE, OEC, and ELPC made recommendations relating to bidding the capacity component of Duke's energy efficiency programs into the PJM Interconnection, Inc. (PJM) Base Residual Auctions (BRAs). (Staff Ex. 1 at 2; OCC Ex. 2 at 5; ELPC Ex. 1 at 2; OPAE Ex. 1 at 5-6; OEC Ex. 1 at 3.) EMC objected that the application did not address the extent to which Duke would bid its energy efficiency resources in the capacity auctions. Moreover, EMC stated that Duke's participation in capacity auctions may create significant risks for ratepayers, may not be cost effective, and may disrupt a market that is presently operated in a transparent, competitive manner. (EMC Ex. 1 at 3; EMC Ex. 2 at 3.)

## V. Summary of the Stipulation

As stated previously, on September 6, 2013, as amended on September 9, 2013, the Stipulation signed by Duke, Staff, OEC, ELPC, Energy Alliance, OCC, OPAAE, Kroger, EMC, NRDC, Ohio AEE, and the Sierra Club was filed. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation:

- (1) The portfolio of energy efficiency and peak-demand reduction programs and measures in the application should be adopted and approved, except as modified by the Stipulation.
- (2) The mechanism for recovering costs from Duke's customers, including recovery of prudent program costs incurred,<sup>1</sup> lost distribution revenues and an incentive mechanism, shall expire at the end of 2015, as controlled by the stipulation in the *2011 Portfolio Case*.
- (3) As controlled by the stipulation in the *2011 Portfolio Case*, all interested parties, no sooner than the third quarter of 2014, are permitted to assess the reasonableness and effectiveness of the incentive mechanism to consider whether or not they support its further use, as structured or modified, for the remaining year, 2016, of the five-year portfolio. If the interested parties reach an agreement for implementing an incentive mechanism for the year 2016, they will jointly file their recommendation, related only to the incentive recovery mechanism, to seek the Commission's approval in 2015 for use in 2016. If no such agreement is reached, interested parties may seek the Commission's determination of whether an incentive mechanism should be implemented for the remainder of the portfolio plan period, for the year 2016. Nothing in this Stipulation should be construed to alter, amend, or supersede the terms, conditions, and/or responsibilities contained in the stipulation in the *2011 Portfolio Case*. Nothing in this Stipulation limits the recommendation that a signatory party may make to the Commission on the appropriateness of implementing an incentive mechanism for the year 2016.

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<sup>1</sup> Staff, OCC, and OPAAE contest the calculation of allowable program costs in the calculation of shared savings, and have filed comments to that effect in *In re Duke Energy Ohio, Inc.*, Case No. 13-753-EL-RDR, and incorporate those comments in the Stipulation.

- (4) The specific requirements for Duke's proposed PJM Pilot Program are:
- (a) Duke will create a PJM Pilot Program that captures all the costs and benefits of the PJM Reliability Pricing Model (RPM), *i.e.*, capacity market, participation.
  - (b) Duke will bid at least 80 percent of eligible projected cost-effective approved Program Portfolio resources into the PJM BRA occurring during the term of the 2014-2016 Program Portfolio. These resources will be identified and discussed with the Collaborative within 120 days of an order approving the Stipulation. Duke will identify and discuss, in the Collaborative, any and all changes in those resources by February 14 of the year before each respective BRA. Further, for purposes of including 2017 energy efficiency and demand response resource megawatts (MWs) in the BRAs held during the 2014-2016 Program Portfolio, Duke will utilize projected MWs from the 2017 program year to be equal to at least 50 percent of the eligible MWs in the 2016 plan year.
  - (c) The BRAs occurring during the term of the 2014-2016 Program Portfolio are: the BRAs taking place in 2014, for the PJM delivery year 2017-2018; the BRA taking place in 2015, for the PJM delivery year 2018-2019; and the BRA taking place in 2016, for the PJM delivery year 2019-2020.
  - (d) Duke will participate in the PJM Incremental Auctions (IAs) by bidding in the eligible, projected cost-effective, approved Program Portfolio resources that were not captured in the corresponding BRA, as applicable, based on the availability of the resources as determined by Duke.
  - (e) Pursuant to the PJM Pilot Program, auction proceeds will be considered the avoided cost benefit of the program, and the reasonable

incremental measurement and verification and administrative costs, including costs associated with any PJM audit of resources, associated incremental auction purchase and replacement capacity, and prudently incurred PJM penalties will be considered the program costs. PJM auction proceeds, less the reasonable incremental measurement and verification and administrative costs; PJM IA or replacement capacity purchase, revenues or costs; and prudently incurred PJM penalties, will fall within the existing cost recovery and incentive mechanism under Rider Energy Efficiency and Demand Response (EE-PDR). The resulting auction revenue or revenue short-fall shall be netted against cost recovery under the rider and distributed or assessed proportionally to how many MWs each customer class contributed to the PJM auction obligation.

- (f) If the PJM Pilot Program costs associated with prudently-incurred penalties, incremental measurement and verification costs, and administrative costs are greater than the corresponding PJM revenue, the net costs will be recovered from customers through Rider EE-PDR. Costs that are prudently incurred beyond the 2014-2016 Program Portfolio will be recovered through Rider EE-PDR, or its successor, in the succeeding Program Portfolio or other rider as determined in a future proceeding.
- (g) If Duke estimates it will fall short of the energy efficiency and/or demand response resources committed to the PJM BRA or IA for any delivery year, Duke may purchase the shortfall from an IA or other PJM acceptable source with a delivery year corresponding to the applicable PJM BRA or IA in which the shortfall cleared. The balance of the purchase, whether positive (purchase capacity at a price lower than the PJM BRA or IA) or negative (purchased capacity at a price higher than the PJM BRA or IA) shall be credited or charged against the overall PJM auction proceeds



for that delivery period. IA costs that are prudently incurred beyond the 2014-2016 Program Portfolio period will be recovered through Rider EE-PDR, or its successor, in the succeeding Program Portfolio or other rider as determined in a future proceeding.

- (h) Duke will share information with the Collaborative regarding the PJM bidding process, including: the number of MWs bid into the PJM BRA and IAs; the basis for calculating the MWs bid; the price at which those MWs were bid; and the administrative and measurement and verification costs associated with the bid. In addition, resources not bid into either the PJM BRA or IAs will be identified and discussed with the Collaborative.
- (i) Duke will work with the Collaborative to explore the potential for Duke to bid a greater number of projected resources from years beyond the term of the 2014-2016 Program Portfolio. No later than the third quarter of 2014, Duke will present to the Collaborative the results of the 2017-2018 BRA. Not later than the fourth quarter of 2014, Duke will present the Collaborative Duke's: analysis of the feasibility and potential benefits of bidding a greater number of projected resources from the 2017 and 2018 program years; and proposed bid of projected resources from the 2017 and 2018 program years into the 2018-2019 BRA.
- (j) Duke, in its third quarter 2014 Collaborative meeting, will propose potential alternatives to modify the PJM Pilot Program, including transitioning the administration of the program to a third-party administrator or vendor to aggregate and fully qualify the energy efficiency projects as qualified capacity resources for purposes of bidding approved Program Portfolio resources into the PJM capacity auctions on behalf of Duke. The Collaborative will evaluate the cost effectiveness of these alternatives and any other

considerations. If the Collaborative determines that transitioning the administration of the PJM Pilot Program is a potentially cost-effective modification, the Collaborative will recommend desired requirements and the scope of the work to be incorporated into a request for proposal (RFP). Duke will issue the RFP for the purposes of selecting a third-party administrator or vendor to administer the PJM Pilot Program as soon as practicable, with the intent of having a qualified vendor in place in time for Duke's participation in the 2015 BRA. A third-party administrator or vendor will not be selected to administer the PJM Pilot Program unless it demonstrates, in its RFP bid, that it will administer the PJM Pilot Program in a more cost-effective manner than agreed upon in this Stipulation, resulting in administrative savings to customers.

- (5) Until such time as the Commission develops regulations for the counting of energy savings from CHP and waste energy recovery (WER), under R.C. 4928.66(A)(1)(a), or the Commission develops a CHP/WER pilot program or other mechanism, Duke shall work with interested customers in developing CHP, to create a potential incentive or reasonable arrangement mechanism to be jointly filed with the Commission for approval.
- (6) Duke will work with NRDC to develop a pilot program targeting effective information technology (IT) system efficiency, to be presented to the Collaborative for its consideration in the second quarter of 2014. Duke will investigate with NRDC the potential IT system energy efficiency measures described in NRDC's objections to the application.
- (7) Duke will work with NRDC to develop a pilot program for continuous commissioning/monitoring-based commissioning of large buildings (greater than 100,000 square feet), where building performance is optimized with a combination of installed measures and operational changes (and then monitored over time to ensure persistence of savings). The

pilot program will be presented to the Collaborative for its consideration in the second quarter of 2014.

- (8) Duke will work with NRDC to develop a cool roofs measure, to be presented to the Collaborative for its approval in the second quarter of 2014.
- (9) Duke will work with ELPC to develop an outdoor lighting LED program to be presented to the Collaborative for consideration in the second quarter of 2014.
- (10) Duke will provide the Collaborative an update on the impact that the implementation of the Energy Independence and Security Act of 2007 standards has on the lighting component of its SmartSaver Residential Program, including updated information on market saturation and development. This update will occur at the 2014 third quarter Collaborative meeting and will include discussion of the different lighting technologies being incentivized under the program offered, as well as the potential use of new and different delivery channels to cost effectively reach customers given the new market conditions. Specifically, Duke will consider changes to the program based on the outcome of that analysis, including potential modification to the delivery of customer incentives, program structure, and the shifting of funds to the CFL buy-down or discount program. Nothing herein allows for increasing the total costs to customers that are outlined in Duke's energy efficiency portfolio that was filed on April 15, 2013.
- (11) Duke agrees to work with Energy Alliance to develop proposals, to be submitted to the Collaborative, for a partnership and coordination between the two organizations regarding the following:
  - (a) The recruitment and training of contractors to participate in Duke's energy efficiency programs.
  - (b) The potential development of a pilot program that coordinates Duke's and Energy Alliance's efforts related to the home energy improvements that deliver electric energy efficiency in Duke's service territory. Any pilot program will address the leveraging of existing resources and assets,

and the creation of a single source mechanism to process multiple incentives.

- (c) A plan for Duke to work with Energy Alliance to leverage the Greater Cincinnati Home Energy Loan Program in order to potentially enable customers to implement more robust energy efficiency projects and facilitate more customer participation in Duke's energy efficiency programs.
- (d) A plan that would allow Duke to potentially support Energy Alliance's deployment of a property assessed clean energy program within Duke's service territory. All of these proposals will include an explicit recommendation and plan addressing the attribution of impacts from the coordinated activities.
- (e) Duke and Energy Alliance will jointly present these proposals to the Collaborative within 120 days of the Commission's Order approving the Stipulation.
- (f) Duke will begin working with Energy Alliance as soon as practicable.

(Jt. Ex. 1 at 6-13.)

## VI. Consideration of the Stipulation

R.C. 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). 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 & Electric Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1004); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.* (Dec. 30, 1993); *In re Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); *In re Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 26, 1985). 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?

The Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Supreme Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

Duke witness Duff testified that the signatory parties are represented by capable, knowledgeable counsel, who regularly participate in rate proceedings before the Commission and are very knowledgeable in regulatory matters. Furthermore, Mr. Duff explains that the signatory parties represent a broad range of interests and that all of the issues raised by the signatory parties in the proceeding were thoroughly reviewed and addressed during negotiations. According to Duke witness Duff, the settlement discussions leading up to the Stipulation resulted in beneficial modifications and compromises from the original application. The witness believes the Stipulation is a compromise resulting from the negotiations and represents a product of the efforts of capable, knowledgeable parties. (Duke Ex. 4A at 4-5.) Upon review of the terms of the Stipulation, based on our three-prong standard of review, the Commission finds that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

Duke witness Duff opines that the Stipulation, as agreed to by the signatory parties, provides benefits for all customer groups and interested stakeholders, while advancing and remaining consistent with state policy (Duke Ex. 4A at 5). Upon review of the Stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

Mr. Duff opines that, based on his experience, involvement in the proceeding, and review of the Stipulation, the Stipulation complies with all relevant and important regulatory principles and practices. Specifically, Mr. Duff explains that the Stipulation

further important regulatory principles and practices through the advancement of energy efficiency and peak-demand reduction that is consistent with Ohio energy policy. (Duke Ex. 4A at 5.) The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, the Stipulation meets the third criterion.

Based on our review, we find that the Stipulation meets the three-pronged test, is reasonable, and should be approved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is an electric light company, as defined in R.C. 4905.03 and a public utility under R.C. 4905.02.
- (2) On April 15, 2013, as amended on May 9, 2013, Duke filed its application in this case.
- (3) Objections to the application were filed on July 1, 2013, by the OEC, ELPC, Energy Alliance, OCC, OPAC, OEG, Kroger, EMC, and NRDC.
- (4) On August 19, 2013, September 12, 2011, OEC, ELPC, Energy Alliance, OCC, OPAC, OEG, Kroger, EMC, NRDC, Ohio AEE, and the Sierra Club were granted intervention.
- (5) A Stipulation signed by Duke, Staff, OEC, ELPC, Energy Alliance, OCC, OPAC, Kroger, EMC, NRDC, Ohio AEE, and the Sierra Club was filed on September 6, 2013, as amended on September 9, 2013. OEC did not sign the stipulation.
- (6) The hearing in this matter was held on September 4 and 11, 2013.
- (7) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

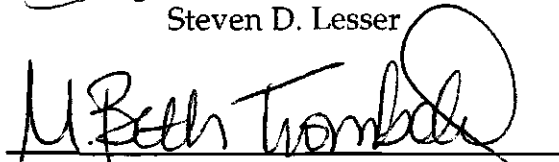

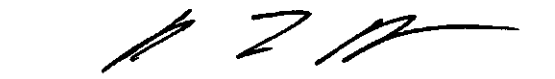
ORDERED, That the Stipulation of the parties be adopted and approved. It is, further,

ORDERED, That Duke take all necessary steps to carry out the terms of the Stipulation and this Order. It is, further,

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

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

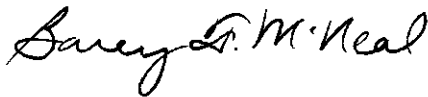
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Todd A. Snitchler, Chairman  
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Steven D. Lesser  
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M. Beth Trombold  
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Lynn Slaby  
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Entered in the Journal

**DEC 04 2013**

  
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Barcy F. McNeal  
Secretary