

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the :
Purchased Gas Adjustment Clause : Case No. 15-218-GA-GCR
Contained Within the Rate Schedules of :
Duke Energy Ohio, Inc., and Related :
Matters. :

In the Matter of the Uncollectible : Case No. 15-318-GA-UEX
Expense Rider of duke energy Ohio, Inc., :
and Related Matters. :

In the Matter of the Percentage of Income : Case No. 15-418-GA-PIP
Payment Plan Rider of Duke Energy :
Ohio, Inc. :

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

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**On behalf of the Staff of
The Public Utilities Commission of Ohio**

May 17, 2016

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INTRODUCTION

The Stipulation and Recommendation (Stipulation) presented in this matter benefits the ratepayers of Duke Energy Ohio (Duke or the Company), while efficiently resolving the issues presented in this case. The Stipulation represents compromises by Duke and the Staff (the Parties) of the Public Utilities Commission of Ohio (Commission) to resolve those issues efficiently and mitigate the costly risk to ratepayers inherent in these proceedings. The Commission should approve the Stipulation and give consumers certainty moving forward.

DISCUSSION

Rule 4901-1-30, Ohio Adm. Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.¹ The ultimate issue for the Commission's consideration is whether the agreement 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?²

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.³ When the Commission reviews a contested stipulation, as is the

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

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

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

case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission “may place substantial weight on the terms of a stipulation,” it “must determine, from the evidence, what is just and reasonable.”⁴

The signatory parties respectfully submit that the stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

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

The Stipulation was the product of serious bargaining among capable, knowledgeable parties. The signatory parties, Staff and Duke, represent diverse interests. The Stipulation is the result of a transparent negotiation process in which Staff, the Company, IGS Energy, and the Ohio Consumers’ Counsel⁵ participated. All parties were represented by experienced counsel during the negotiations.

B. The Stipulation benefits consumers and the public interest.

The Stipulation benefits consumers and the public interest in many ways. The Company has agreed to adopt the findings of a financial audit performed by Deloitte & Touche, LLP, and a management and performance audit performed by Exeter Associates,

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

⁵ IGS Energy and OCC were the only parties that intervened in this case prior to the Stipulation being filed.

Inc.⁶ Both of the audits were performed by a neutral third party contracted to ensure reasonable accounting and management of Duke's gas procurement practices and policies, thus protecting Duke's consumers and the public from imprudent costs and practices.

Specifically, the Stipulation provides that:

- Duke will ensure that, in the event KO Transmission files for an increase in base rates, personnel representing KO Transmission and Duke will be functionally separate (Sec. 8(a));
- Duke will reevaluate and, if necessary, adjust its current KO Transmission capacity entitlements (Sec. 8(b));
- Duke will develop and refine a design day model that utilizes daily data (Sec. 8(c));
- Duke will assess the potential for losing the two remaining propane facilities and evaluate the optimal portfolio necessary for replacing the loss of supply (Sec. 8(d));
- Duke will include \$237,245 in the Contract Commitment Cost Rider for one year, which is credited to the GCR, and to investigate the potential for a supplier to avoid the assignment of capacity (Sec. 8(e));
- Duke will reevaluate whether it could meet its firm customers' balancing requirements at reduced storage levels (Sec. 8(f));
- Duke will assess whether adopting daily balancing tolerances for IT service would improve the Company's ability to manage storage and/or reduce its contract storage capacity entitlements, and to investigate making changes to the rates charged for interruptible monthly balancing service (Sec. 8(g)).

These provisions benefit Duke's consumers and the public interest. Staff asks that the Commission exercise its discretion to find that the Stipulation, as a whole, benefits the public interest.

⁶

Stipulation at 5.

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

The Stipulation does not violate any important regulatory principle or practice. In fact, the Stipulation reasonably and efficiently resolves the issues presented in this case, avoiding the need for protracted litigation. Because, as a whole, it is favorable to consumers, the Commission should approve the Stipulation.

CONCLUSION

The Stipulation meets all prongs of the three-part test. It is the product of serious bargaining among knowledgeable, capable parties; it benefits consumers and the public interest; and it does not violate any important regulatory principle or practice. Therefore, the Commission should approve the Stipulation in this case.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 17th day of May, 2016.

/s/ Natalia V. Messenger

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Summary: Brief Post-Hearing Brief submitted by Assistant Attorney General Natalia Messenger on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio