

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters.</b>	) ) ) )	<b>Case No. 15-218-GA-GCR</b>
<b>In the Matter of the Audit of the Uncollectible Expense Rider of Duke Energy Ohio, Inc., and Related Matters.</b>	) ) )	<b>Case No. 15-318-GA-UEX</b>
<b>In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Adjustment to its Interim and Temporary Percentage of Income Payment Plan Rider Case.</b>	) ) ) )	<b>Case No. 15-418-GA-PIP</b>

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**INITIAL POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.**

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**I. INTRODUCTION AND PROCEDURAL HISTORY**

R.C. 4905.302 and Rule 4901:1-14-07, Ohio Administrative Code (O.A.C.) require that the Public Utilities Commission of Ohio, (Commission) conduct periodic audits of natural gas companies. The Commission initiated this proceeding by directing its Staff to proceed with an accounting audit and a management performance audit of Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) to be conducted and filed with the Commission. Thereafter, the Staff of the Public Utilities Commission of Ohio, (Staff) issued a request for proposal that resulted in Staff retaining Exeter Associates, Inc. (Exeter) to perform the management performance audit. The accounting audit was performed by Deloitte and Touche, LLP (Deloitte). Deloitte submitted an Independent Accountants' Report of Uniform Purchased Gas Adjustment on November 13,

2015, and Exeter submitted a report on the management performance audit to the Commission on December 9, 2015.

A hearing was originally scheduled for February 9, 2016, however that evidentiary hearing date was continued twice at the request of the parties in order to permit interested parties to consider a resolution of any issues.

After discussions involving all interested parties, the Company and the Commission Staff reached a settlement of all the issues pertaining to the proceeding and submitted a Stipulation and Recommendation (Stipulation) to the Commission for its consideration. In the Stipulation, the Company and the Staff agreed to accept all of the findings of both auditors and to provide both audit reports for the record.

During the pendency of this case, the Commission issued an Opinion and Order in another proceeding wherein it referred to matters contained within the Exeter Report. As a result additional parties moved to intervene in this proceeding. Parties that sought and were granted intervention included IGS Energy, Inc. (IGS), Retail Energy Supply Association (RESA). The Office of the Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE) had intervened earlier.

Once the Stipulation and the testimony of Duke Energy Ohio witness Jeff Kern were submitted, IGS, RESA, OCC and OPAE all submitted testimony and a hearing was held on March 30, 2016.

## LEGAL STANDARD

The issue currently before the Commission is the three-part stipulation test established by [the] Commission and upheld by the Supreme Court of Ohio.”<sup>1</sup> And under that test, the Stipulation and Recommendation must be approved where: (i) it is the product of serious bargaining among capable, knowledgeable parties; (ii) as a package, the settlement benefits ratepayers and the public interest; and (iii) the settlement does not violate any important regulatory principle or practice.<sup>2</sup> As demonstrated herein, the Stipulation and Recommendation satisfies this controlling three-part test and therefore must be approved.

### **A. The Stipulation is the Result of Serious Bargaining Among Capable, Knowledgeable Parties.**

The parties to the Stipulation and Recommendation are undeniably capable and knowledgeable. In addition to Staff, two parties intervened, including the Office of the Ohio Consumers’ Counsel (OCC), and IGS Energy, Inc. (IGS). All parties were included in all settlement discussions and no party disputes this. Both of these parties have significant experience and understanding of the history of the Company and knowledge of gas distribution utility service and planning and procurement of gas supply.<sup>3</sup> The only party to specifically address this first element of the Commission’s test for evaluating stipulations was OCC. And OCC witness Michael P. Haugh’s only complaint is that in his view, the settlement does not adequately represent residential consumers.<sup>4</sup> But Mr. Haugh’s argument is premised on his claim that OCC’s recommended changes to the Stipulation were never agreed to, rather than a

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<sup>1</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C.4928.143 in the Form of an Electric Security Plan*, Case No.14-1297-EL-SSO, *et al.*, Opinion and Order (March 31, 2016), Concurring Opinion of Commissioner Haque, at p.2.

<sup>2</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C.4928.143 in the Form of an Electric Security Plan*, Case No.14-1297-EL-SSO, *et al.*, Opinion and Order, at p. 39 (March 31, 2016).

<sup>3</sup> Direct Testimony of Jeff Kern at p.2.

<sup>4</sup> OCC Exhibit 1, Direct Testimony of Michael P. Haugh at p.6.

fundamental failing of the Stipulation itself. Thus, Mr. Haugh does not actually contest the fact that the parties who negotiated the Stipulation were capable and knowledgeable. Rather, Mr. Haugh disputes the resulting Stipulation. Thus no party disputes that the Stipulation meets the requirements of this analysis.

**B. As a Package, the Stipulation Benefits Ratepayers and the Public Interest.**

As the Commission has affirmed, “the second part of the test specifically requires that [it] evaluate the stipulation as a package.”<sup>5</sup> In this regard, the Commission “has repeatedly found value in the parties’ resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing their issues before the Commission, while also, at times, avoiding the considerable time and expense associated with the litigation of a fully contested case.”<sup>6</sup>

This Stipulation undoubtedly meets the requirements of this test in that the Company agreed in the Stipulation to accept all of the findings in an audit done on behalf of the Staff of the Public Utilities Commission of Ohio (Staff), by Exeter. The Stipulation also accepted in its totality, the Report by Deloitte that was filed in Case No.15-318-GA-UEx and 15-418-GA-PIP, thereby concluding three pending matters before the Commission and thereby obviating the need for hearings in all of them. This is a very comprehensive outcome that resolves virtually all of Staff’s review of the Company’s Gas Cost Recovery (GCR) policies and practices.

The purpose of an audit of the Company’s GCR is to ensure that the Company’s recovery of costs related to purchasing of natural gas complies in all respects with the law set forth in R.C.4905.302 and the Rules contained in O.A.C. Chapter 4901:1-14. Indeed the Commission’s

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<sup>5</sup> *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order, at p.77 (March 31, 2016).

<sup>6</sup> *Id.*, at p.77-78 (internal citations omitted).

rule explicitly states that the hearing in this matter shall be “strictly limited to the gas or natural gas company’s gas or natural gas production and purchasing policies.” The rule further provides:

No such management or performance audit and no such hearing shall extend in scope beyond matters that are necessary to determine the following:

- (a) That the gas or natural gas company’s purchasing policies are designed to meet the company’s service requirements;
- (b) That the gas or natural gas company’s procurement planning is sufficient to reasonably ensure reliable service at optimal prices and consistent with the company’s long-term strategic supply plan;
- (c) That the gas or natural gas company has reviewed existing and potential supply sources;

R.C.4905.302 (C)(2).

The Staff, at the direction of the Commission, oversees the audit process that examines the Company’s management and purchasing actions and policies. In this case, Deloitte & Touche, LLP and Exeter Associates, Inc. performed the audits. The Company agreed to accept all of the findings of both auditors. In agreeing to the Stipulation and accepting the findings of the auditors, the Company and Staff resolve any outstanding matters and there is no need for a hearing. This is the best possible outcome and the Commission should adopt and approve the Stipulation.

**C. The Stipulation Does Not Violate any Important Regulatory Principle or Practice.**

IGS does not specifically point to any law or regulation that has been violated by the Stipulation because no such violation exists. IGS merely wished to reargue in this proceeding, matters that were addressed in a related proceeding.<sup>7</sup> OCC witness Haugh argues that the Stipulation violates state policy. But Mr. Haugh points to R.C.4929.02(A)(3), to support his policy arguments that the Commission should require the Company to provide annual reports to

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<sup>7</sup> RESA Exhibit 1, Direct Testimony of Thomas Scarpitti at pgs. 99-100

customers about the state of the natural gas retail market in Ohio. This is a matter of policy that the Commission may choose to adopt or not, however the Stipulation does not, by itself, violate this policy. The Stipulation is, in all respects, consistent with the Commission's oversight and regulation of the Company's GCR process.

On cross-examination, IGS witness Thomas Scarpitti admitted that the issues raised by IGS in this proceeding were identical to those already litigated and determined by the Commission in a related proceeding.<sup>8</sup> Thus, the matters raised by IGS in this case do not specifically address the legality or integrity of the Stipulation itself, but rather IGS seeks an opportunity to re-litigate other matters. For this reason, IGS has not provided any basis upon which to argue that the Stipulation violates an important regulatory principle or practice. Since it meets the requirements of this element of the Commission's three-prong test, the Commission should adopt and approve the Stipulation.

### **CONCLUSION**

For the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission adopt and approve the Stipulation that was submitted for its consideration in this proceeding.

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<sup>8</sup> Transcript at p.99-100.

Respectfully submitted,

**Duke Energy Ohio, Inc.**

Handwritten signature of Elizabeth H. Watts in blue ink.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail on this 17th day of May, 2016, to the following parties.

  
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Summary: Brief Initial Post Hearing Brief of Duke Energy Ohio, Inc. electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.