

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

This case concerns an audit that is required pursuant to R.C. 4905.302 and Rule 4901:1-14-07, Ohio Administrative Code (O.A.C.) by the Public Utilities Commission of Ohio, (Commission). An audit was ordered, conducted, and all the recommendations contained within the audit were agreed to by the Staff of the Public Utilities Commission of Ohio (Staff), and by Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), in a stipulation and recommendation (Stipulation) that was submitted to the Commission for adoption and approval. The Commission should approve the Stipulation as submitted.

Intervenors, The Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAe), Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc. (IGS), seek to argue additional issues and requirements beyond what is necessary to

fulfill the requirement of the law and regulation. For the reasons set forth below, the Commission should adopt and approve the Stipulation as submitted by Staff and the Company and deny the extraneous requests submitted by the intervenors.

II. DISCUSSION

The issue currently before the Commission is the fulfillment of a three-part stipulation test established by the Commission and upheld by the Supreme Court of Ohio.”¹ 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.² As demonstrated below, 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.

OCC argues that the Stipulation is not the product of serious bargaining among capable, knowledgeable parties because the settlement does not adequately represent residential consumers due to a lack of diversity among the signatory parties. But as the Commission recently affirmed, “[t]he three-prong tested utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate [a] diversity of interest component... .”³ Further, “[t]he Commission has repeatedly determined that [it] will not require any single party...to agree

¹ *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.

² *Id.*, at p. 39.

³ *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, (March 31, 2016) at p. 52.

to a stipulation, in order to meet the first prong of the three-prong test.”⁴ Indeed, “it is the *quality* of the parties that is determinative, not quantity.”⁵ Moreover, OCC neglects to recognize that all parties were included in the negotiations that culminated in the settlement of the case by Stipulation. Although some parties opted not to agree to the Stipulation, all parties were included in the negotiations. The fact that some chose not to join the Stipulation after considering the content is not the determinative fact. All parties were given an *opportunity to join* the discussion. None of the remaining three intervening parties addressed this element of the three-part test in their respective briefs. Accordingly the Stipulation meets the first of the three prongs and should be approved by the Commission. Remaining arguments made by IGS and RESA that do not relate to the Commission’s review of the Stipulation are misplaced.

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.”⁶ 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.”⁷

The OCC and OPAE argue that the Stipulation does not meet this requirement because they believe the Stipulation should have included a requirement that the Company provide information that was discussed in the management performance audit report (Report), that had

⁴ *Id.*

⁵ *Id.*, Concurring Opinion of Commissioner Haque, at p.2 (emphasis in original).

⁶ *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, (March 31, 2016) at p. 77.

⁷ *Id.*, at p. 77-78 (internal citations omitted).

been prepared by Exeter Associates, Inc. (Exeter). In the Report, Exeter stated that customers have saved money as compared to shopping customers and that therefore Duke Energy Ohio had no current plans to exit the merchant function.⁸ OCC argues that the Company should perform a study to provide this same information about customer savings annually.⁹ But this is a request that goes beyond the purpose of this proceeding and beyond the requirements of the law and regulation. And as the Company has no present intention to exit the merchant function, it is a Report that is unnecessary. To the extent OCC or OPAE believe that such information is of value, they should develop the information within their own organizations.

For similar reasons, OCC's recommendation that the Company be required to provide a comparison of its GCR price to the weighted average marketer's prices for natural gas is beyond the scope of this proceeding, and unnecessary. OCC witness Haugh admitted that comprehensive supplier comparison information can be viewed by customers at the Commission's website.¹⁰ The comparison that Mr. Haugh is recommending would be less comprehensive and redundant to that which is already included in the Commission's "Apples to Apples" supplier comparison chart.

OCC also incorrectly argues that the Stipulation does not include a requirement responsive to Exeter's recommendation that the Company identify the estimated increase that may result from a KO Transmission rate case to be filed this year. However, the estimated increase is identified in Section 3.4 of the audit report, and represents a reasonable estimate until the proceeding concludes at the Federal Energy Regulatory Commission. Further, the Company and Staff responded to Exeter's concerns about a potential conflict of interest between Duke

⁸ Report to the Public Utilities Commission of Ohio on the Management and Performance Audit of Gas Purchasing Practices and Policies of Duke Energy Ohio, Inc., Case No.15-218-GA-GCR (December 9, 2015) at p. 45.

⁹ Direct Testimony of Michael P. Haugh at p. 3.

¹⁰ Transcript at p. 117.

Energy Ohio and KO Transmission by providing assurances in paragraph 8.a. of the Stipulation. Thus, OCC's argument that the Stipulation fails to address this concern and does not benefit ratepayers and the public is simply incorrect.

OPAE argues that the Commission should order the Company to issue an Request for Proposal (RFP) for Percentage of Income Payment Plan (PIPP) customers to determine if PIPP customers can be served with lower rates than the Gas Cost Recovery (GCR) rate. The Company has undertaken this commitment in recent years and will continue to do so pursuant to earlier GCR commitments.¹¹ Duke Energy Ohio witness Jeff L. Kern even explained this at hearing.¹² Thus, OPAE's argument does not impact the value of the current Stipulation. Likewise, OPAE argues that the Stipulation does not adopt certain other elements of the Exeter Report.¹³ However, OPAE is incorrect. Paragraphs 6 and 8 of the Stipulation explicitly accept all of the findings in both of the audit reports submitted in this proceeding. Indeed, the Stipulation comprehensively addresses both audit reports and the Company agreed to accept all of the respective recommendations. OCC and OPAE fail to raise any argument of merit and the Stipulation should be adopted and approved by the Commission.

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

RESA and IGS submitted a Joint Post-Hearing Brief in this proceeding so the Company responds herein to their joint arguments. However, RESA and IGS merely wished to reargue in this proceeding, matters that were addressed in a related proceeding.¹⁴ On cross-examination, IGS witness Thomas Scarpitti admitted that the issues raised by IGS in this proceeding were

¹¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Serve Percentage of Income Payment Plan Gas Customers Under the Gas Cost Recovery Rate*, Case No.14-315-GA-UNC, Finding and Order (March 26, 2014) at p. 3.

¹² Transcript at p. 91.

¹³ Ohio Partners for Affordable Energy's Post hearing Brief, at p. 3.

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider FBS, Rider EFBS, Rider FRAS, and Rider GTS*, Case No.15-50-GA-RDR, Opinion and Order (January 6, 2016).

identical to those already litigated and determined by the Commission in a related proceeding.¹⁵ Thus, the matters raised by RESA and 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. Notably, there is no reference to the Commission's three-pronged test for evaluating stipulations. Thus, RESA and IGS failed to respond to the matters at issue in this proceeding. However, as RESA and IGS persist in making the same arguments made in a previous case, the Company will respond again. Duke Energy Ohio incorporates by reference herein the substance of its arguments as provided in Case No.15-50-GA-GCR.

RESA and IGS correctly recognize that this proceeding relates to the management and performance audit of the gas purchasing practices and policies of Duke Energy Ohio for the period of September 2012 through August 2015.¹⁶ But then RESA and IGS go far beyond the scope of the proceeding and request the Commission to direct the Company in matters completely unrelated. As much of what RESA and IGS recommend goes well beyond the scope of this proceeding, the recommendations should be denied and the Commission should simply adopt and approve the Stipulation that accepts the findings of both audit reports.

i. RESA and IGS Recommendation 1 continues to be without merit.

With respect to comments offered in this proceeding, IGS and RESA continue to deny that there is currently an issue with managing storage. IGS and RESA point to the testimony of RESA witness Thomas Scarpitti wherein Mr. Scarpitti recommended a contingency plan "in the event there is an undersubscription of Enhanced Firm Balancing Service (EFBS).¹⁷ But the Exeter Report explains that Exeter's audit confirms that under the Company's existing capacity assignment procedures and balancing service options, the Company could be left with

¹⁵ Transcript at p. 99-100.

¹⁶ Joint Post-Hearing Brief of the Retail Energy Supply Association and Interstate Gas Supply, Inc., at p. 2.

¹⁷ *Id.*, at p. 4.

insufficient firm transportation capacity and this could have an adverse impact on the gas costs of GCR customers.¹⁸ The problem is not hypothetical and indeed the Company has already been required to engage in spot purchases during winters of 2013/2014 and 2014/2015 and to make off system sales in 2015/2016 in order to manage storage.¹⁹ The Commission recognized the problem and addressed it in the earlier proceeding.²⁰

Despite the existing Commission decision, RESA and IGS continue to propose alternative remedies that are self-serving and ill conceived. Mr. Scarpitti's recommendation in this case is identical to his recommendation in the earlier case that was considered by the Commission and rejected. Relying on the findings of the Exeter Report that was accepted as part of the Stipulation in this case, the Commission accepted Exeter's recommendation to set a threshold of 6,000 dekatherms (dth) per day as a threshold for suppliers to take service under EFBS. Thereafter, the Commission likewise recognized RESA and IGS' concern about timing and found it appropriate to make changes on an interim basis. Thus, the Commission has already provided significant advance notice of its intentions and there should be no need to wait until April 2018 to implement appropriate changes as the suppliers have now been on notice of the need to remedy the problem since the Company first brought the issue to the Commission in January of 2015.²¹

ii. RESA and IGS Recommendation 2 is redundant and unnecessary.

For a second recommendation, RESA and IGS ask the Commission to direct the Company to file reports conducted in response to recommendations in the Exeter Report. RESA and IGS maintain that the Stipulation places no real obligations on the Company and provides no

¹⁸ Exeter Report at p. 78.

¹⁹ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider FBS, Rider EFBS, Rider FRAS, and Rider GTS*, Case No.15-50-GA-RDR, Opinion and Order (January 6, 2016) at p. 8.

²⁰ *Id.*

²¹ *Id.*, Application of Duke Energy Ohio, Inc., (January 15, 2015).

meaningful opportunity for stakeholders to participate in the evaluation process.²² But this is exactly what the existing GCR audit process is designed to accomplish. Exeter, or another auditor, will be directed by the Commission Staff to review all of the Company's actions in response to the recommendations contained in the Exeter Report. If the Company neglects to comply with the terms of the Stipulation, this will most certainly be recognized and addressed. Likewise, the stakeholders in this proceeding will have an opportunity to review the next audit report and to be heard on matters relevant to the audit. Additional filing requirements would be onerous and duplicative of the existing audit and GCR hearing process. Thus, there is no need to create additional administrative burden.

iii. There is no need to involve intervenors in storage management decisions outside of normal Commission proceedings.

One of the recommendations of the Exeter Report is for the Company to explore the possibility of reducing current storage levels by 20 percent. The Company has agreed to evaluate this possibility. However, RESA and IGS seem to wish to jump the gun on this study, criticizing the process before it has even occurred. The Company and Staff have agreed in the Stipulation that the Company will comply with the recommendations set forth in the Exeter Report. Compliance with the terms of the Stipulation will be reviewed and considered in the next audit when the Commission can address the issue, and have the benefit of an additional auditor's recommendation when that occurs. The Company will execute on the finding of the required study as directed. Requiring the Company to manage storage matters with intervenor involvement could potentially drag the process out to the extent that negotiations with pipeline entities would become unmanageable. Additionally, the Columbia Gas storage contracts expire

²² Joint Post-Hearing Brief of the Retail Energy Supply Association and Interstate Gas Supply, Inc., at p. 13.

in 2020 and the Texas Gas storage contracts in 2018, so the timing is appropriate to review the company's analysis during the next audit. RESA and IGS' recommendation should be rejected.

At hearing, Duke Energy Ohio witness Jeff L. Kern was asked about provision 8.b. in the Stipulation wherein the Company has agreed to reevaluate whether its current KO Transmission capacity entitlements are reasonable, and adjust those entitlements as appropriate. Mr. Kern explained that alternatives are limited but that the Company is evaluating infrastructure improvements to improve flow of natural gas north to south.²³ Mr. Kern further explained that improvements of the system would be considered by the Company's engineering department.²⁴ But the Exeter Report and the Stipulation require that the Company examine its KO Transmission capacity requirements. RESA and IGS seek to add additional reporting requirements and seek a formal docket wherein the Commission would evaluate alternatives to KO Transmission, under the assumption that the increase in KO Transmission's rates would make shipping gas on KO Transmission more expensive than other options. However, as Mr. Kern stated in his testimony, "...that thousand percent increase is a thousand percent of a very, very small rate."²⁵ Even after the expected increase, shipping gas on KO Transmission is likely to remain a low cost option. All of this is well beyond the scope of this proceeding and well beyond what is required by either the law and regulations, or the current matters relevant in this proceeding.

iv. The Company is always considering options in respect of capacity entitlements.

RESA and IGS admit that the Company is already committed to evaluating alternatives to its pipeline capacity. Indeed, the Exeter Report recommends it and the Stipulation provides for

²³ Transcript at p. 67.

²⁴ Id.

²⁵ Transcript at p. 68.

it. Despite this admission, RESA and IGS ask the Commission again to require the Company to consider infrastructure improvements in this analysis, and to file a report in a docket within ninety days of an order in this proceeding.²⁶ At hearing, Duke Energy Ohio witness Jeff L. Kern testified that the Company's engineering department was studying the system "to give [Duke Energy Ohio] more flexibility north to south".²⁷ Any study undertaken by the engineering department within the Company can be requested for review by the auditor in the next audit proceeding. Thus, the normal Commission proceedings will allow ample time for such considerations despite RESA and IGS' request for a separate docket.

III. 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.

Respectfully submitted,

Duke Energy Ohio, Inc.



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²⁶ Joint Post-Hearing Brief of the Retail Energy Supply Association and Interstate Gas Supply, Inc., at p. 18.

²⁷ Transcript at p. 75.

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 10th day of June, 2016, to the following parties.


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Summary: Brief Reply Brief of Duke Energy Ohio, Inc. electronically filed by Mrs. Kristen Ryan on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. Mrs. and Watts, Elizabeth Mrs.