

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REGULATION OF
THE PURCHASED GAS ADJUSTMENT
CLAUSE CONTAINED WITHIN THE RATE
SCHEDULES OF DUKE ENERGY OHIO, INC.
AND RELATED MATTERS.

CASE NO. 15-218-GA-GCR

IN THE MATTER OF THE UNCOLLECTIBLE
EXPENSE RIDER OF DUKE ENERGY OHIO,
INC. AND RELATED MATTERS.

CASE NO. 15-318-GA-UEX

IN THE MATTER OF THE PERCENTAGE OF
INCOME PAYMENT PLAN RIDER OF DUKE
ENERGY OHIO, INC.

CASE NO. 15-418-GA-PIP

OPINION AND ORDER

Entered in the Journal on September 7, 2016

I. SUMMARY

{¶ 1} This Opinion and Order adopts and approves the stipulation and recommendation between Duke Energy Ohio, Inc. and Staff that resolves all issues relating to the management/performance, gas cost recovery, uncollectible expense, and percentage of income payment plan audits.

II. HISTORY OF THE PROCEEDINGS

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) is a natural gas company as defined in R.C. 4905.03 and a public utility under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.302, the Commission promulgated rules for a uniform purchased gas adjustment clause to be included in the schedules of gas or natural gas companies subject to the Commission's jurisdiction. These rules, which are contained in Ohio Adm.Code Chapter 4901:1-14, separate the jurisdictional cost of gas from all other costs incurred by a gas or natural gas company, and provide for each company's recovery of these costs.

{¶ 4} R.C. 4905.302 also directs the Commission to establish investigative procedures, including periodic reports, audits, and hearings; to examine the arithmetic and accounting accuracy of the gas costs reflected in a company's gas cost recovery (GCR) rates; and to review each company's production and purchasing policies and their effects upon these rates. Pursuant to such authority, the Commission adopted Ohio Adm.Code 4901:1-14-07, which identifies how periodic financial audits of gas or natural gas companies shall be conducted. Ohio Adm.Code 4901:1-14-07 also requires an independent auditor and/or consulting firm selected by the Commission to perform a management/performance (m/p) audit of a gas or natural gas company's compliance with the provisions of Ohio Adm.Code Chapter 4901:1-14.

{¶ 5} By two Entries issued on February 25, 2015, the Commission initiated Case No. 15-218-GA-GCR (*2015 Duke GCR Case*), established the financial and m/p audit periods, and established the dates upon which the financial and m/p audit reports must be filed. The Commission also scheduled a hearing date of February 9, 2016, and directed Duke to publish notice of the hearing. In accordance with the directives in both of the February 25, 2015 Entries, the financial audit report (Comm.-ordered Ex. 1) was filed on November 13, 2015, and the m/p audit report (Comm.-ordered Ex. 2) was filed on December 9, 2015.

{¶ 6} On December 21, 2005, the Commission authorized Duke to establish an uncollectible expense (UEX) rider, which was initially set at zero. *In re The Cincinnati Gas & Elec. Co.*, Case No. 05-732-EL-MER, et al., Finding and Order (Dec. 21, 2005) at 18. Since that time, the UEX rider rate has been updated. Most recently, by Finding and Order issued in Case No. 15-318-GA-UEX (*2015 Duke UEX Case*) on September 16, 2015, the Commission authorized a decrease in Duke's UEX rider to \$0.04185 per thousand cubic feet (Mcf). Further, in the February 25, 2015 Entry, the Commission established the audit period for Duke's UEX rider. The UEX audit report (Comm.-ordered Ex. 3) was filed on November 13, 2015, in the *2015 Duke UEX Case*.

{¶ 7} By Finding and Order issued on December 2, 1993, the Commission approved a stipulation authorizing Duke to recover percentage of income payment plan (PIPP) arrearages associated with providing natural gas service through its PIPP rider. *In re Review of PIP Plan Riders*, Case No. 88-1115-GE-PIP, et al., Finding and Order (Dec. 2, 1993). In Case No. 15-418-GA-PIP (*2015 Duke PIPP Case*), Duke's most recent application to adjust its PIPP rider to \$0.02570 per Mcf was approved through the Commission's automatic approval process for PIPP riders. Additionally, in the February 25, 2015 Entry, the Commission established the audit period for Duke's PIPP rider. The PIPP audit report (Comm.-ordered Ex. 4) was filed on November 13, 2015, in the *2015 Duke PIPP Case*.

{¶ 8} Motions to intervene in the *2015 Duke GCR Case* were filed by the Ohio Consumers' Counsel (OCC) on June 16, 2015, Interstate Gas Supply, Inc. (IGS) on January 14, 2016, Retail Energy Supply Association (RESA) on February 4, 2016, and Ohio Partners for Affordable Energy (OPAE) on February 5, 2016 (collectively, Intervenor). The attorney examiner granted the motions to intervene filed by OCC, IGS, RESA, and OPAE by Entries dated January 26, 2016, and March 2, 2016.¹

{¶ 9} On January 29, 2016, a stipulation and recommendation (Stipulation) was filed in these cases. In the Stipulation, Duke and Staff (Signatory Parties) represent that the Stipulation (Jt. Ex. 1) resolves all of the issues between Duke and Staff in the *2015 Duke GCR Case*, the *2015 Duke UEX Case*, and the *2015 Duke PIPP Case*. On March 14, 2016, Duke also filed the testimony of Jeff L. Kern (Duke Ex. 1) in support of the Stipulation.

{¶ 10} On March 21, 2016, OCC filed the testimony of Michael P. Haugh (OCC Ex. 1) and RESA filed the testimony of Thomas Scarpitti (RESA Ex. 1).

{¶ 11} Ohio Adm.Code 4901:1-14-08(A) requires the Commission to hold a public hearing at least 60 days after the filing of the GCR and m/p audit reports. By Entries issued February 3, 2016, and March 29, 2016, the hearing was continued twice and

¹ OPAE's request to intervene in the *2015 Duke PIPP Case* was also granted.

eventually convened on April 20, 2016. At hearing, no members of the public appeared to testify.

{¶ 12} Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be published in a newspaper of general circulation throughout the gas or natural gas company's service area or by bill insert, bill message, or direct mail to customers. On February 8, 2016, Duke submitted affidavits of publication stating that notice was provided in newspapers of general circulation published in Brown, Clinton, Hamilton, Highland, and Montgomery Counties on January 18, 19, 20, and 26, 2016. Copies of the notices were included in the filing with the affidavits. Thus, notice was properly provided in accordance with the rule.

{¶ 13} Initial and reply briefs were filed by the parties on May 17, 2016, and June 10, 2016, respectively.

III. DISCUSSION

A. *M/P Audit*

{¶ 14} Exeter Associates, Inc. (Exeter) performed an m/p audit of the gas purchasing practices and policies of Duke for the period September 2012 through August 2015. Exeter's audit revealed no concerns with respect to Duke's organizational structure, the relationships and transactions between Duke and its affiliate companies, or Duke's Federal Energy Regulatory Commission (FERC) participation. Further, Exeter found that Duke's FERC intervention policy is consistent with a reasonable level of participation at a reasonable resource effort and that the Company's audit period participation in FERC proceedings was appropriately based on its intervention policy. (Comm.-ordered Ex. 2 at v, 15-16.)

{¶ 15} Exeter initially states in its audit that personnel in Duke's Gas Resources group, the organizational entity with primary responsibility for the gas procurement at Duke, are also responsible for managing the operations, billing, and FERC regulatory

activities of Kentucky-Ohio Transmission (KO Transmission), a wholly-owned subsidiary of Duke. According to Exeter, it is anticipated that, in 2016, KO Transmission will file a base rate increase at the FERC to recover its share of the costs associated with pipeline improvements being undertaken by Columbia Gas Transmission (Columbia Gas) and KO Transmission, the E-System Project.² Exeter notes that this will occur when the pipeline improvements are completed and the costs are passed through to KO Transmission. Exeter also notes that, when the rate case is filed, Duke and KO Transmission will each be required to represent their own interests in KO Transmission's proceeding and that, since the same personnel at Duke are also the personnel responsible for KO Transmission's FERC activities, this will create a conflict of interest. (Comm.-ordered Ex. 2 at v-vi, 3-9.)

{¶ 16} Exeter states that, when KO Transmission makes its base rate filing, Duke should file a report with Staff identifying the estimated increase that may result for the Company, and explain how Duke intends to address the conflict of interest. Further, Exeter believes that Duke's plan should take into consideration the amount of the proposed increase, the expected benefits associated with Duke's intervention efforts, and the level of resources required to support those efforts. Exeter notes that, in its experience, FERC's staff will adequately address any revenue requirement issues that may arise in the case, and that Duke may be required to address any rate design or cost allocation issues that may arise. Exeter states that Duke's participation and intervention activities in KO Transmission's FERC rate case should be thoroughly reviewed by the auditor in the Company's m/p audit following the rate case. In addition, Exeter notes that KO Transmission's rates for firm transportation service will increase significantly as a result of the E-System Project and that, in light of this increase, Duke should reevaluate whether its current KO Transmission capacity entitlements are reasonable, and adjust those entitlements as appropriate. (Comm.-ordered Ex. 2 at vi, 19.)

² The E-System Project is the replacement of the 23 miles of pipeline in Kentucky that extend from South Means Station to the Foster Station; it is currently co-owned by Columbia Gas and KO Transmission. The total estimated cost of the E-System Project is \$119.5 million, of which KO Transmission will be responsible for \$58.1 million. (Comm.-ordered Ex. 2 at vi, 17.)

{¶ 17} Exeter observes that Duke made a number of changes to its interstate pipeline capacity entitlements during the audit period and that the Company was able to negotiate discounted rates under several contracts. Exeter states that these entitlement changes and discounts provide a significant benefit to GCR customers, and the audit found these contract entitlement changes to be reasonable. (Comm.-ordered Ex. 2 at vi, 46.)

{¶ 18} Exeter notes that, in November 2014, Duke discovered that, due to fewer suppliers participating in its firm transportation program electing Enhanced Firm Balancing Service (EFBS), and an increase in the number of customers participating in its firm transportation program, the Company did not maintain sufficient firm interstate pipeline transportation capacity to meet the requirements of its GCR customers and to manage storage inventory balances. Exeter states that this firm transportation capacity deficiency became evident when it became necessary for the Company to make city gate gas supply purchases to reduce the rate of storage withdrawals and effectively manage storage inventory balances within the FERC tariff requirements of Duke's interstate pipeline storage service providers. Exeter states that, in *In re Duke Energy Ohio, Inc.*, Case No. 15-50-GA-RDR (2015 *Duke Rider Case*), the Company filed an application with the Commission to address this deficiency by making EFBS mandatory for suppliers serving customers with aggregate maximum daily demands greater than or equal to 20,000 dekatherms (dth) per day. Exeter further notes that, as a result of not maintaining sufficient firm interstate transportation capacity to effectively manage storage and lower the rate of storage withdrawals, Duke was required to make city gate gas purchases of 2,332,628 dth during the winter of 2014-2015. (Comm.-ordered Ex. 2 at vi-vii, 46.)

{¶ 19} According to Exeter, Duke should have recognized that it did not maintain sufficient firm interstate transportation capacity before it actually became necessary to make city gate purchases to meet GCR customer requirements and manage storage inventory balances. Exeter notes that the purchase of city gate gas supplies could have

had a significant adverse impact on the gas costs of GCR customers. However, Exeter also notes that the determination of whether Duke's city gate purchases had either an adverse or beneficial impact on the gas costs of GCR customers is contingent upon a set of uncertain assumptions, and that, regardless of which assumptions are relied upon, the likely impact of Duke's city gate purchases was not significant. (Comm.-ordered Ex. 2 at vii, 46.)

{¶ 20} Exeter states that its audit also revealed that Duke did not compare actual peak day demands with the demand estimates of the Company's design day model using actual weather to refine its model, because the design day model currently in use relies upon monthly rather than daily data. Exeter states that Duke has recently acquired software that will enable the Company to develop a design day model utilizing daily data and that, once the daily design day model is developed and determined to be effective, the Company will perform annual comparisons of forecasted and actual demands to refine its model. Exeter believes that a switch to using daily data to develop the Company's design day forecasts is long overdue because the current model, which relies upon monthly data, has not proven to be sufficiently accurate. (Comm.-ordered Ex. 2 at vii, 46.)

{¶ 21} Exeter finds in its audit that Duke utilized an expected value analysis to determine the optimal level of design day coverage. Exeter states that this analysis compared the incremental costs associated with various design day coverage levels (95 to 99 percent) with the expected value of the adverse consequences of not being covered at that particular coverage level. Further, Exeter notes that the Company's analysis indicated that the optimal design day coverage level was 99 percent and that this result was attributable to the low cost associated with incremental capacity and the significant adverse consequences of failing to cover design day requirements. Exeter states that it concurs with Duke's analysis. (Comm.-ordered Ex. 2 at vii-viii, 47.)

{¶ 22} Observing that Duke's Dicks Creek Plant propane facility is no longer operational, because of a geological failure at the Todhunter Propane Cavern, Exeter states

that the potential exists for the Company's Eastern Avenue and Erlanger Plant propane facilities also to become unavailable. Exeter states that Duke should assess the potential for this circumstance to occur and evaluate and determine its optimal interstate pipeline capacity portfolio. Exeter states that the Company's assessment and evaluation should be considered in any future decisions to adjust its interstate pipeline contract storage capacity entitlements, because it is unlikely that any storage turned back by Duke could be reacquired in the future. (Comm.-ordered Ex. 2 at vii, 48.)

{¶ 23} Exeter notes that Duke's gas procurement strategy is, within operating and contractual constraints, to maximize deliveries from its lowest-cost source of supply. Exeter states that Duke's audit period gas supply purchases were consistent with this strategy. (Comm.-ordered Ex. 2 at viii-ix, 50-53, 61.)

{¶ 24} Reporting on Duke's findings regarding the increase that occurred in lost-and-unaccounted-for gas (LUGF) for the 12 months ended June 30, 2012, Exeter states that Duke formed a measurement committee to investigate the increase in LUGF. Exeter reports that the committee found that Duke Energy Kentucky's LUGF calculations for the period should be adjusted to correct for measurement errors, but that these measurement errors had no impact on Duke's LUGF calculation. Further, the committee concluded that the increase in LUGF for the 12 months ended June 30, 2012, was attributable to normal variations in LUGF, and that LUGF for the period was not inconsistent with historical experience. Exeter concludes that the Company has adequately addressed the increase in LUGF for the 12-month period ended June 30, 2012. (Comm.-ordered Ex. 2 at ix, 59-62.)

{¶ 25} Exeter reports that, due to the city of Cincinnati establishing a municipal aggregating program for its citizens and small businesses and switching to firm transportation service in October 2012, the supplier serving the city of Cincinnati's aggregation program (Duke Energy Retail) was able to avoid an assignment of capacity effective November 1, 2012, and Duke was left with unneeded capacity. Exeter states that the costs associated with the unneeded capacity were recovered entirely from GCR

customers. Exeter's audit finds that a portion of the costs associated with the unneeded capacity should have been recovered under Duke's Contract Commitment Cost Recovery Rider (CCCR Rider), which was designed to recover a portion of the costs associated with such unneeded interstate pipeline capacity, rather than through the GCR. Exeter recommends that \$237,245 of the costs associated with the unneeded capacity be removed from the GCR and recovered under Duke's CCCR Rider. Exeter also recommends that Duke should investigate modifying its tariff to address the potential for a supplier to avoid the assignment of capacity. (Comm.-ordered Ex. 2 at ix, 65-67.)

{¶ 26} Exeter notes that, in the *2015 Duke Rider Case*, Duke maintains that, under its existing procedures for the assignment of capacity to suppliers and balancing service options, the Company could be left with insufficient firm transportation capacity to manage storage, provide balancing service, and serve its GCR customers. Further, Exeter notes that the Commission issued an Opinion and Order in the *2015 Duke Rider Case* on January 6, 2016, and the case is currently before the Commission on rehearing. As a result of its audit, Exeter confirms that, under Duke's existing capacity assignment procedures and balancing service options, the Company could be left with insufficient firm transportation capacity and that this could have an adverse impact on the gas costs of GCR customers. Exeter, however, notes that its audit did not identify any alternatives to Duke's assignment of storage through EFBS to suppliers that would maintain a balance in the allocation of capacity costs to GCR customers and firm transportation customers. (Comm.-ordered Ex. 2 at x, 68, 78-79.)

{¶ 27} According to Exeter, among the issues to be resolved in the *2015 Duke Rider Case* is whether EFBS service should be mandatory for all suppliers or only mandatory for larger suppliers serving customers with aggregate demands in excess of 20,000 dth/day. Exeter notes that large customers could intentionally reduce the number of customers served in order to avoid being required to subscribe to EFBS and that, if this were to occur, Duke could again be left with insufficient firm transportation capacity. Exeter also notes

that a proposal advanced in the 2015 *Duke Rider Case*, under which all suppliers with aggregate customer demands in excess of 1,000 dth/day would assist Duke in managing storage, could result in disproportionate allocations of storage to smaller suppliers. Exeter explains that, since EFBS delivery quantities are based on aggregate daily demand increments of 3,000 dth/day, any supplier with aggregate customer demands between 1,000 and 3,000 dth/day would be allocated 870 dth/day of EFBS. According to Exeter, for a supplier with an aggregate customer demand slightly over 1,000 dth/day, the allocated EFBS would represent 87 percent of its total aggregate daily demand. Therefore, Exeter believes that an aggregate daily demand threshold of 6,000 dth/day would be more appropriate to avoid both excess allocations of EFBS and de minimus allocations of storage to smaller suppliers. Moreover, Exeter states that this is consistent with the aggregate daily demand quantity at which capacity is assigned to suppliers under Duke's firm transportation program. (Comm.-ordered Ex. 2 at x, 79.)

{¶ 28} Exeter states that approving a lower aggregate daily demand threshold could have a detrimental effect by forcing suppliers of customers with process-only load to subscribe to EFBS. Exeter observes, however, that load for process-only customers is not weather dependent in the same way as heating customer load, and process-only load customers do not necessarily take deliveries on a daily basis. Exeter states that this would make it impractical for suppliers serving process-only load customers to manage EFBS, but that this could be addressed by including an exemption to mandatory EFBS for suppliers serving process-only load. (Comm.-ordered Ex. 2 at x, 68, 79.)

{¶ 29} Exeter notes that its audit analyzed whether Duke could serve GCR customers and meet the balancing requirements of its firm customers at a reduced level of storage and that this evaluation was based on the winter of 2013-2014 balancing requirements of firm customers, which was included in the Company's testimony in the 2015 *Duke Rider Case*. According to Exeter, its analysis indicates that Duke could potentially reduce current storage levels by 20 percent, serve its GCR customers, and still

meet the balancing requirements of its firm customers. Exeter states that this would reduce costs for both GCR and firm transportation customers. Exeter, however, points out that its analysis of storage was based on the usage of EFBS during the winter of 2013-2014 and that, therefore, this finding could change once the Commission decides how storage should be assigned in the *2015 Duke Rider Case*. Exeter recommends that Duke reevaluate whether it could meet its firm customers' balancing requirements at reduced storage levels once the *2015 Duke Rider Case* is decided and the assignment provisions of EFBS are determined. Exeter states that any decision to adjust current storage levels should also consider the results of the Company's capacity portfolio evaluation in the event that its propane facilities are no longer available. Exeter states, as it indicated previously, that Duke should not adjust its interstate pipeline contract storage capacity entitlements until the Company has evaluated the changes to its capacity portfolio that would be appropriate if its propane facilities were no longer available. (Comm.-ordered Ex. 2 at xi, 79-80.)

{¶ 30} Exeter reports that the current terms and conditions of Duke's interruptible transportation (IT) service provide for monthly balancing and require only a general obligation to daily balancing, except on those days when an operational flow order has been issued. Exeter, however, believes that Duke should 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. In support of this contention, Exeter notes that the rates applicable for interruptible monthly balancing service have remained unchanged for a number of years and that the costs associated with the contract storage purchased by the Company to provide balancing services increased during the audit period and are expected to continue to increase as a result of Columbia Gas' Modernization Program. Exeter also notes that, at present rates, IT customers are only responsible for approximately \$325,000 of the total annual demand charges associated with providing balancing service of \$8.5 million, or less than 5 percent. In addition, Exeter states that IT customers represent nearly 25 percent of total system throughput. Exeter suggests that, given the extent to which storage is used to provide

balancing service to IT customers, a more significant contribution toward the recovery of storage demand charges from IT customers would be appropriate. (Comm.-ordered Ex. 2 at xi-xii, 80.)

B. Financial Audit

{¶ 31} The financial audit was conducted by Deloitte & Touche LLP (Deloitte) in accordance with the objectives outlined in Ohio Adm.Code Chapter 4901:1-14 and Deloitte's audit report was filed on November 13, 2015. In the audit report, Deloitte notes that it examined the periodic filings of Duke that support the GCR rates for the monthly periods ended September 29, 2014, October 28, 2014, November 30, 2014, January 1, 2015, February 1, 2015, March 2, 2015, March 31, 2015, April 30, 2015, June 1, 2015, June 30, 2015, July 30, 2015, and August 30, 2015. Deloitte states that it found that Duke fairly determined, in all material respects, its GCR rates for the periods stated above, in accordance with the uniform purchased gas adjustment clause, as set forth in Ohio Adm.Code Chapter 4901:1-14, and related appendices, and properly applied the GCR rates to customer bills. (Comm.-ordered Ex. 1 at 1.)

{¶ 32} With regard to issues identified in its audit, Deloitte states that, due to a clerical error, in the fourth quarter 2014 (i.e., September 2014 to November 2014), the actual adjustment (AA) rate was calculated to be \$0.159 based on an incorrect input in the AA calculation. The error resulted in a difference of \$0.010/Mcf in the AA, yielding under collection by the Company during the twelve revenue periods from December 2014 through November 2015. This clerical error resulted in a misstatement of the individual monthly GCR rates calculated from December 2014 through November 2015, and it will have a dollar impact of approximately \$230,000 to \$250,000, based on annual usage figures. Deloitte notes Duke's representation that this error will self-correct, as the under collection will be included in the calculation of a new AA rate that will be a part of customer billing beginning in the revenue month March 2016 through February 2017. (Comm.-ordered Ex. 1 at 3.)

{¶ 33} Deloitte also found that, during the period from January 2015 through February 2015, the total estimated gas cost (EGC) used to calculate the EGC factor in the GCR rate was understated due to the use of an incorrect EGC rate for PIPP customers. Deloitte states that this error resulted in a misstatement of total EGC for the months of January 2015 and February 2015. However, there was no impact on the calculated EGC rate utilized in customer bills during the months of January 2015 and February 2015. Deloitte notes that the error was identified by the Company in May 2015 and the PIPP customers' EGC rates were corrected. Further, the total impact of the error was an understatement of EGC in January 2015 of (\$866.24) and February 2015 of (\$916.54).³ (Comm.-ordered Ex. 1 at 3.)

C. *UEX Audit*

{¶ 34} Deloitte reviewed Duke's UEX recovery mechanism for the period January 1, 2014, through March 31, 2015, and noted no exceptions in Duke's calculations of its write-offs, recovery, and carrying charges for uncollectible expenses during that time period. Deloitte stated that charge-offs used in the calculations related only to account types with customers subject to the UEX rider. Deloitte noted that the bad debts write-offs for this period, net of customer recoveries, totaled \$4,180,436. Further, based on a random review of 25 charge-offs reflecting the customer's billing history, including any subsequent recovery of any portion of the balance written off, Deloitte noted one finding related to a non-timely charge-off during the period of January 1, 2014, through March 31, 2015. Deloitte stated that the selected charge-off exceeded the Company's 90-day charge-off policy by five days and did not fall under allowable exceptions to the policy (i.e., weekends, holidays, etc.). (Comm.-ordered Ex. 3 at 1-2.)

D. *PIPP Audit*

{¶ 35} Deloitte reviewed Duke's PIPP recovery mechanism for the period April 1, 2014, through March 31, 2015, and proved the mathematical accuracy in Duke's

³ Numbers in parentheses indicate negative numbers.

calculations of its deferred PIPP balances, arrearages credits, and PIPP rider revenues from sales customers during the audit period. Deloitte stated that it performed audit procedures related to the application of the PIPP rider rates in effect during the audit period, the application of credits to customer balances, planned billed volumes used to calculate the PIPP rider rate, and the balance of accumulated deferrals for the PIPP rider. Deloitte noted no exceptions to its audit procedures. Further, based on a random review of ten customer bills, Deloitte stated that it compared the PIPP rider rate used in the customer's bill calculation to the applicable rate filing approved by the Commission and that each rate selected for review was in agreement. With respect to the balance of accumulated deferrals for the PIPP rider, Deloitte also noted that, as of March 31, 2015, Duke had not identified reconciling items and/or differences. (Comm.-ordered Ex. 4 at 1-3.)

IV. STIPULATION AND RECOMMENDATION

{¶ 36} As stated previously, a Stipulation (Jt. Ex. 1), signed by Duke and Staff, was filed in these dockets on January 29, 2016. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation. The Stipulation included, inter alia, the following provisions:

- (1) Duke's GCR rates for the 12-month period ending August 28, 2015, were fairly determined by the Company in accordance with the provisions of Ohio Adm.Code Chapter 4901-1-14 and related appendices of the Ohio Administrative Code during the audit period by the Company.
- (2) The GCR rates were accurately computed and the costs reflected in the GCR rates were properly incurred.

- (3) Duke's GCR rates were accurately applied to customer bills during the audit period.
- (4) A financial audit was conducted by Deloitte in accordance with the objectives outlined in Ohio Adm.Code 4901:1-14-07.
- (5) The Independent Accountants' Report on the Uniform Purchased Gas Adjustment for the 12-Month Period Ended August 28, 2015, in Response to Case No. 15-218-GA-GCR, prepared by Deloitte, was filed with the Commission on November 13, 2015, and shall be admitted into the record in these proceedings and identified as Comm.-ordered Exhibit 1.
- (6) The specific findings presented in the Summary of Findings of the Deloitte audit are reasonable and should be adopted by the Commission.
- (7) An m/p audit of Duke's gas procurement practices and policies for the audit period September 2012 through August 2015 was performed by Exeter. The audit report was filed with the Commission on December 9, 2015, and shall be admitted into the record in these proceedings and identified as Comm.-ordered Exhibit 2.
- (8) The specific findings presented in the Conclusions and Recommendations section of the Exeter audit report are reasonable and should be adopted by the Commission. Specifically, the Company agrees to the following recommendations:

- (a) In the event that KO Transmission files with FERC for an increase in base rates, the Company intends to address any conflict of interest issues involving personnel with responsibility for activities of both KO Transmission and Duke by assuring that the personnel involved in filing the case are functionally separated from the personnel responsible for intervening on behalf of Duke. The Rate Department and Gas Resources will file the case on behalf of KO Transmission with the assistance of outside legal counsel and the Company's FERC Legal Department. Duke's interests will be represented by OH/KY Regulated Legal Support, with technical assistance from the Gas Oil and Power Department located in the corporate offices in Charlotte and responsible for purchasing gas for electric generation.
- (b) The Company agrees to reevaluate whether its current KO Transmission capacity entitlements are reasonable, and adjust those entitlements as appropriate.
- (c) The Company agrees to develop a design day model that utilizes daily data, and to perform annual comparisons of forecasted and actual demands to refine its model.

- (d) The Company agrees to assess the potential for loss of the two remaining propane facilities and evaluate the optimal interstate pipeline capacity portfolio that would be required to replace the loss of supply.
- (e) The Company agrees to include \$237,245, representing the amount of avoided capacity assignment when the city of Cincinnati began purchasing gas from a third party supplier in 2012, in the CCCR Rider for one year beginning the quarter following approval of the Stipulation. All revenue collected through the CCCR Rider is credited to the GCR. The Company also agrees to investigate modifying its tariff to address the potential for a supplier to avoid the assignment of capacity.
- (f) The Company agrees to reevaluate whether it could meet its firm customers' balancing requirements at reduced storage levels, taking into consideration the possibility that the propane plants may not be available.
- (g) The Company agrees to 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 to provide a more significant contribution toward recovery of storage demand charges.

- (h) The Independent Accountants' Report on Applying Agreed-Upon Procedures detailing an audit by Deloitte that was filed with the Commission in Case No. 15-318-GA-UEX, on November 13, 2015, in relation to the UEX recovery mechanism for the 12-month period ended March 31, 2015, shall be admitted into the record in these proceedings and identified as Comm.-ordered Exhibit 3.
- (i) The Independent Accountants' Report on Applying Agreed-Upon Procedures detailing an audit by Deloitte that was filed with the Commission in Case No. 15-418-GA-PIP, on November 13, 2015, in relation to the PIPP rider for the 12-month period ended March 31, 2015, shall be admitted into the record in this proceeding and identified as Comm.-ordered Exhibit 4.

(Jt. Ex. 1 at 4-6.)

V. CONCLUSION

{¶ 37} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64

Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 38} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989). 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?

{¶ 39} The Supreme Court of Ohio 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* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

a. *Is the settlement a product of serious bargaining among capable, knowledgeable parties*

{¶ 40} Duke witness Kern submitted testimony in support of the Stipulation. Mr. Kern notes that the Signatory Parties regularly participate in rate proceedings before the Commission, are very knowledgeable in regulatory matters, and were represented by experienced, competent counsel. Mr. Kern states that all of the issues raised by the Signatory Parties were thoroughly reviewed and addressed during negotiations and that all participating parties had an opportunity to express their opinions in the negotiation process. Mr. Kern asserts that the settlement discussions resulted in beneficial modifications and compromises, thereby confirming that serious bargaining occurred at settlement meetings. (Duke Ex. 1 at 3-4.) Staff also states that the Signatory Parties represent diverse interests (Staff Br. at 3).

{¶ 41} Concerning whether the Stipulation meets the first part of the Commission's assessment, OCC first states that the Commission often takes into account the parties' "diversity of interests." See, e.g., *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 24. OCC contends that the Stipulation does not include a diversity of interests among the Signatory Parties, arguing that only two of the six parties involved in these proceedings signed the Stipulation, and that the Signatory Parties do not include parties who represent the interests of residential customers. According to OCC, the Stipulation, as a result, fails the first prong of the stipulation test, and it should be rejected by the Commission. (OCC Ex. 1 at 7.)

{¶ 42} The Commission notes that, while we do sometimes consider the parties' "diversity of interests," that phrase is not actually part of the first prong of our assessment of a stipulation. Nevertheless, in these proceedings, the Commission finds that, contrary to OCC's assertion, the Signatory Parties do indeed represent a diversity of interests. The Commission observes that, while Duke, of course, represents its own interests, Staff

impartially represents the interests of all stakeholders, including residential customers. Therefore, after considering the arguments advanced by OCC and the Signatory Parties, the Commission finds that, consistent with Mr. Kern's testimony, the Stipulation was the product of serious bargaining among capable, knowledgeable parties (Duke Ex. 1 at 3-4). We, thus, conclude that the first prong of the three-prong test for our consideration and approval of stipulations has been met.

b. Does the settlement, as a package, benefit ratepayers and the public interest?

{¶ 43} With respect to the second criterion, Duke witness Kern maintains that the Stipulation benefits ratepayers and the public interest. Mr. Kern states that, based on a review of the Stipulation and his experience and involvement in these proceedings, the Stipulation provides benefits for all of Duke's customer groups, interested stakeholders, and the public, while advancing and remaining consistent with state policy. (Duke Ex. 1 at 4.)

{¶ 44} Staff, for its part, states that each of the audits in these matters 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. Staff notes that provisions in the Stipulation adopt the findings of both audits and that those provisions benefit Duke's consumers and the public interest. (Staff Br. at 3-4.)

{¶ 45} OCC and OPAE argue that information comparing Duke's GCR rate to marketers' rates should be provided to consumers ensuring that they are fully informed regarding the costs of staying on the GCR or switching to a choice program. According to OCC and OPAE, the current information on the Commission's Energy Choice Ohio website does not contain what customers are currently or have previously been charged by marketers, and provides only a partial view of what customers are paying for gas supply to marketers. OCC and OPAE argue that the Commission should modify the

Stipulation and make information regarding the historic results of customers' purchasing decisions available to consumers and that Duke could provide the information the way it was done for the m/p audit report. (OCC Br. at 7-8; OPAE Reply Br. at 1-2.)

{¶ 46} In response, Duke states that OCC's and OPAE's recommendation that the Company be required to provide a comparison of its GCR price to the weighted average of marketers' prices for natural gas is beyond the scope of these proceedings and unnecessary. Duke states that OCC witness Haugh admitted that comprehensive supplier comparison information can be viewed by customers at the Commission's website (OCC Ex. 1 at 3). Duke argues that the recommended comparison would be less comprehensive and redundant to that which is already included in the Commission's Apples to Apples supplier comparison chart. (Duke Reply Br. at 4.)

{¶ 47} OPAE also notes that, after resolution of balancing issues in the *2015 Duke Rider Case*, Duke is preparing to send out a Request for Proposals (RFP) to competitive natural gas suppliers to serve PIPP customers. OPAE states that, if the RFP results in a rate that is competitive with or better than the GCR rate, Duke would file with the Commission to get the RFP rate approved and get PIPP customers onto that rate. However, if the RFP results in a rate that is not competitive with or will not beat the GCR rate, then PIPP customers will remain with the GCR rate. OPAE argues that the pool of PIPP customers could receive a lower rate than the Duke GCR rate if the pool of PIPP customers were bid out as has been done in the past and that the Commission should order Duke to issue an RFP for the PIPP pool to determine if the RFP results in a lower rate than Duke's GCR rate. (Tr. at 90-91; OPAE Br. at 2-3.)

{¶ 48} In response to OPAE's recommendation, Duke states that the Company has undertaken, in recent years, the commitment of issuing an RFP for PIPP customers, to determine if PIPP customers can be served with lower rates than the GCR rate, and will continue to do so pursuant to earlier GCR commitments. *In re Duke Energy Ohio, Inc., Case No. 14-315-GA-UNC (2014 Duke PIPP Case)*, Finding and Order (Mar. 26, 2014) at 3. Duke

notes that its witness, Jeff L. Kern, explained this at hearing (Tr. at 91). Duke states that OP&E's argument, thus, does not impact the value of the current Stipulation. Further, noting that OP&E argues that the Stipulation does not adopt certain other elements of the Exeter audit report, Duke states that OP&E is incorrect. Duke states that paragraphs six and eight of the Stipulation explicitly accept all of the findings in the audit reports submitted in these proceedings and that the Company agreed to accept all of the respective recommendations. Duke argues that OCC and OP&E fail to raise any argument of merit and the Stipulation should be adopted and approved by the Commission. (Duke Reply Br. at 4.)

{¶ 49} Concerning the public interest criterion of our three-part evaluation of the Stipulation, RESA and IGS maintain that the Stipulation is not just and reasonable, and is not in the public interest, because the Stipulation adopts certain unsupported and incomplete conclusions in the m/p audit report. RESA and IGS argue that the adoption of the contingency plan propounded by RESA and IGS witness Scarpitti, to allocate a pro rata amount of any EFBS under-subscription to FBS suppliers, would reduce Duke's storage assets and reduce costs for both GCR customers and suppliers on EFBS. In this contingency plan, RESA and IGS recommend that the Commission lower the maximum daily quantity (MDQ) threshold to 1,000 dth/day (or even 3,000 dth/day), which would spread the responsibility of assisting Duke to manage its storage assets over nearly all suppliers, reduce the burden on each supplier, and avoid the discrimination inherent in Duke's proposal. RESA and IGS further argue that the Commission should require Duke to work with them on the issues that will impact their costs and supply options, provide parties an opportunity to submit written comments, and meet with and incorporate supplier input into its decision process. However, RESA and IGS state that, if the Commission does not adopt Mr. Scarpitti's contingency plan, the Commission should, at a minimum, and as discussed in the application for rehearing submitted by RESA in the *2015 Duke Rider Case*, delay the deadline for forcing suppliers to take EFBS for an additional year. RESA and IGS state that this would allow suppliers additional time to

unwind their contracts and positions that were entered into based upon the option to take balancing service under Firm Balancing Service. According to RESA and IGS, Exeter identifies this issue, stating in the m/p audit report that “[w]hether any modifications are warranted to [Duke’s] proposal to account for consideration of existing contractual obligations of suppliers will be addressed by the Commission.” (RESA Ex. 1 at 6-11; IGS Ex. 1 at 5-14; RESA/IGS Br. at 9-12.)

{¶ 50} In addition, RESA and IGS note that Duke has agreed in the Stipulation to perform several evaluations, including evaluating whether it could meet its firm customers’ balancing requirements at reduced storage levels. RESA and IGS recommend that the Commission require Duke to file the results of the evaluations or investigatory analyses that were agreed to in the Stipulation in these dockets, and give the parties an opportunity to work with Duke, prior to filing, to discuss concerns, make suggestions prior to filing, and submit comments in response to Duke’s filing. Further, with regard to the agreed-on storage reduction evaluation in the Stipulation, RESA and IGS argue that there is no commitment for Duke to actually reduce storage assets, if it determines it can do so, and no obligation for Duke to file the results of its evaluation in a formal docket. RESA and IGS argue that, given the impact of Duke’s storage decisions on both GCR customers and choice customers, Duke’s next GCR audit in 2018 is too long to wait for interested parties to have any input. RESA and IGS, therefore, recommend that the Commission direct Duke to file the results of its storage reduction evaluation in a formal docket and give stakeholders an opportunity to file comments. (RESA/IGS Br. at 12-16.)

{¶ 51} In response, Duke states that Exeter confirms in the m/p audit report that, under the Company’s existing capacity assignment procedures and balancing service options, the Company could be left with insufficient firm transportation capacity and this could have an adverse impact on the gas costs of GCR customers. Duke notes, however, that the Commission recognized this problem and addressed it in the *2015 Duke Rider Case*, with the Commission accepting Exeter’s recommendation to set a threshold of 6,000

dth/day as a threshold for suppliers to take service under EFBS. Duke adds that, recognizing RESA's and IGS' concern about timing, the Commission found it appropriate to make changes on an interim basis. Duke argues that RESA and IGS, thus, have been on notice of the Commission's intentions to remedy the problem since the Company first brought the issue to the Commission in January of 2015, and there should be no need to wait until April 2018, as RESA and IGS request, to implement appropriate changes. Duke argues that Mr. Scarpitti's recommendations on these issues are identical to his recommendations on these issues in the 2015 *Duke Rider Case*, which were considered by the Commission and rejected in that proceeding. (Duke Reply Br. at 5-7.)

{¶ 52} Duke argues that the additional filing requirements recommended by RESA and IGS would be duplicative of the existing audit and GCR hearing process and create an additional administrative burden. Duke states that the next auditor will be directed by Staff to review all of the Company's actions in response to the recommendations contained in the m/p audit report in Duke's next GCR case and that any negligence in complying with the terms of the Stipulation would be recognized and addressed. Duke argues that the stakeholders in these proceedings also will have an opportunity to review the next audit report and to be heard on matters relevant to the audit. (Duke Reply Br. at 7.)

{¶ 53} Duke argues that there is no need to involve intervenors in storage management decisions outside of normal Commission proceedings. Duke states that the Company has agreed in the Stipulation to evaluate the possibility of reducing current storage levels by 20 percent and that 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. In addition, Duke notes that its Columbia Gas storage contracts expire in 2020 and its Texas Gas storage contracts in 2018, so the timing is appropriate to review the Company's analysis during the next audit. Duke argues that this recommendation of RESA and IGS should also be rejected. (Duke Reply Br. at 8-9.)

{¶ 54} OCC and OPAE also advance an issue relating to the m/p auditor's recommendation that Duke file a report with the Commission identifying the estimated increase in costs, due to upgrades in the KO Transmission pipeline, that are expected to result from KO Transmission's rate case at FERC. OCC and OPAE state that this auditor recommendation was not agreed to in the Stipulation and that this information is important because the cost increases arising from that FERC case could be passed on to the GCR customers of Duke. OCC and OPAE maintain that the Stipulation should be modified to require that this report be filed with the Commission. (OCC Br. at 11; OPAE Br. at 3.)

{¶ 55} Furthermore, with regard to the KO Transmission pipeline issue, RESA and IGS state in their brief that Duke has agreed in the Stipulation to evaluate alternatives to its KO Transmission pipeline capacity. RESA and IGS argue, however, that Duke should evaluate all reasonable alternatives to the KO Transmission pipeline, including infrastructure improvements that would allow Duke to deliver more gas to the north side of its system where multiple pipelines are located, thereby reducing dependency on the KO Transmission pipeline. RESA and IGS also argue that Duke should file a report of its evaluation in a formal docket and that stakeholders should be provided with an opportunity to submit comments. Finally, RESA and IGS argue that Duke should be required to file its evaluation report within 90 days of the issuance of an order in these proceedings, in order to have time, potentially, for infrastructure improvements to be implemented and for Duke and suppliers to unwind their KO Transmission capacity entitlements. RESA and IGS argue that, because of Duke's lack of commitment to consider all alternatives to the KO Transmission pipeline, including infrastructure improvements, the Stipulation is not in the public interest. (RESA/IGS Br. at 16-19.)

{¶ 56} Duke responds by stating that the Company has agreed in the Stipulation to reevaluate whether its current KO Transmission capacity entitlements are reasonable, and adjust those entitlements as appropriate. Duke notes that its witness, Mr. Kern, explained

at hearing that alternatives are limited, but that the Company is evaluating infrastructure improvements to improve the flow of natural gas from north to south. Further, Mr. Kern explained that improvements of the system would be considered by the Company's engineering department. Duke states that the m/p auditor's report and the Stipulation require that the Company examine its KO Transmission capacity requirements. Duke notes that Intervenors want to add additional reporting requirements, with RESA and IGS requesting a formal docket wherein the Commission would evaluate alternatives to KO Transmission, and assuming that the increase in KO Transmission's rates would make shipping gas on KO Transmission more expensive than other options. Duke indicates that any increase would be an increase in a very small rate and that, even after the expected increase, shipping gas on KO Transmission is likely to remain a low cost option. Duke further argues that this issue is beyond the scope of these proceedings and beyond current matters relevant to these proceedings. (Duke Reply Br. at 9.)

{¶ 57} For a final argument relating to the public interest criterion in our evaluation of the Stipulation, RESA and IGS note that Duke bills its customers and suppliers based upon the volume of gas they use in Mcf, but that gas is purchased by suppliers and Duke in therms, a measure of the British Thermal Unit (BTU) content or heat value of the gas. However, RESA and IGS state that, in order to convert a therm to a volume of measurement, a BTU conversion factor must be utilized, which creates risk for suppliers and Duke. RESA and IGS explain that a higher BTU conversion factor must be utilized for gas produced from the Marcellus Shale, which has a higher BTU content, and this can affect both suppliers and Duke's hedges or offsetting investments, making it more difficult for them to manage their gas purchases. RESA and IGS state that the risk associated with this issue can translate into higher prices for customers, given the increased reliance upon natural gas from the Marcellus Shale. RESA and IGS, thus, recommend that the Commission modify the Stipulation to require Duke to file an application to modify its billing practices to convert to therm billing within one year from a final order in these proceedings. (RESA/IGS Br. at 19-20.)

{¶ 58} While not specifically responding to RESA's and IGS' therm billing issue, Duke notes that the remaining arguments made by IGS and RESA, which do not relate to the Commission's review of the Stipulation, are misplaced. Duke argues that RESA and IGS go far beyond the scope of the proceedings and request the Commission to direct the Company in matters that are completely unrelated. Duke argues that, as much of what RESA and IGS recommend is outside of what is relevant to these proceedings, their recommendations should be denied and the Commission should simply adopt and approve the Stipulation that accepts the findings of both audit reports. (Duke Reply Br. at 3, 6.)

{¶ 59} In determining whether the second prong of the test is met, the Commission initially observes that, under R.C. 4905.302(C)(2), a hearing shall be "strictly limited to the gas or natural gas company's gas or natural gas production and purchasing policies." This section further provides that no m/p audit and no hearing shall extend in scope beyond matters that are necessary to determine the following: (a) that the company's purchasing policies are designed to meet the company's service requirements; (b) that the 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; and (c) that the company has reviewed existing and potential supply sources. The Commission concludes that OCC's and OPAE's request for modification of the Stipulation to provide a comparison of Duke's GCR price to marketers' prices for natural gas, as well as RESA's and IGS' issues involving therm billing and evaluation of alternatives, including infrastructure improvements, to Duke's KO Transmission pipeline, are outside of the scope of these proceedings, and have no bearing on whether the Stipulation meets the three-part test. Specifically, with regard to the KO Transmission pipeline, the Commission notes that RESA's and IGS' arguments concern the evaluation of potential improvements to Duke's distribution system, while the evaluation agreed to by Duke and Staff in the Stipulation at paragraph 8b addresses how much capacity on the KO Transmission

pipeline Duke will need to meet its GCR requirements (Tr. at 73). Accordingly, we find that all of the aforementioned recommendations should not be adopted.

{¶ 60} With regard to OCC's and OPAE's recommendation concerning an additional reporting requirement for Duke relating to the estimated rate increase that would result from upgrades to the KO Transmission pipeline, we would observe, as previously mentioned in this Opinion and Order, that Duke has agreed to all of both auditors' recommendations (Duke Br. at 4-5; Stipulation at 5-7, para. 6 and 8). While OCC and OPAE are correct in stating that the m/p auditor's recommendation concerning the KO Transmission pipeline is not among the specific listing of auditor recommendations agreed to in the Stipulation, the Commission would expect Duke to support its representation of agreement to all of the auditors' recommendations and file a report on the estimated rate increase resulting from the KO Transmission pipeline project, including Duke's participation in the FERC rate case involving the project, in these dockets when the FERC case is complete.

{¶ 61} With regard to OPAE's recommendation that Duke determine if PIPP customers can be served with lower rates than the GCR rate by issuing an RFP, the Commission observes, as Duke explained (Duke Reply Br. at 5), that OPAE's recommendation has already been agreed to and undertaken by the Company as a result of the *2014 Duke PIPP Case*. Considering that there has been no allegation by any party that Duke has not actually undertaken the agreed-on action, the Commission finds that any further action on OPAE's recommendation is unnecessary at this time.

{¶ 62} The Commission next observes that RESA's and IGS' argument concerning Duke's threshold balancing issue is exactly the same as their argument on that already-litigated issue in the *2015 Duke Rider Case*. Concerning their argument on that issue in these proceedings, the Commission would merely note that our statement in the *2015 Duke Rider Case* (footnote at 9), that the m/p auditor's recommendations regarding Duke's storage levels and any other balancing issues would be addressed in these cases, was not

intended as authorization to relitigate our decision in the *2015 Duke Rider Case* adopting the m/p auditor's recommended MDQ threshold of 6,000 dth/day for Duke's EFBS. Rather, our statement in the *2015 Duke Rider Case* merely signaled our intention, in these proceedings, to address the storage levels issue, and any other balancing issues that might arise at hearing as a result of the parties' discussion of that issue. The Commission notes that our resolution of Duke's threshold balancing issue for EFBS is pending rehearing in the *2015 Duke Rider Case* and the issue will be addressed in that proceeding.

{¶ 63} With regard to RESA's and IGS' recommendation that Duke should be required to work with stakeholders before filing the results of the evaluations or investigatory analyses that were agreed to in the Stipulation, the Commission believes that this recommendation lacks merit and should not be adopted. Adoption of such a proposal, and the involvement of Intervenor in Duke's decisions relating to storage, might well place an unnecessary strain on Duke's system by allowing Intervenor, in effect, to participate in Duke's business dealings, such as contract negotiations with pipeline companies, and thereby result in needless delay in those negotiations while the case in the Commission's docket is being litigated. However, with regard to RESA's and IGS' recommendation that Duke file the results of all of the evaluations or investigatory analyses agreed to in the Stipulation, including the storage reduction evaluation, in these dockets, the Commission believes that this recommendation of RESA and IGS does have merit. We, therefore, direct Duke to file, before the Company's next GCR audit, a report, completed with due diligence, detailing the results of the evaluations or analyses agreed to in the Stipulation. Specifically, this report filing should set forth the results obtained by Duke in compliance with paragraph 8, subparagraphs b, c, d, e, f, and g of the Stipulation.

{¶ 64} As noted previously in this Opinion and Order, Duke witness Kern states that the Stipulation is in the public interest because Duke's customer groups, interested stakeholders, and the public are benefited by the agreement, and because the Stipulation advances and is consistent with state policy (Duke Ex. I at 4). Staff confirms Mr. Kern's

testimony, stating that the Stipulation benefits Duke's customers and the public interest (Staff Br. at 3-4). Weighing the evidence, the Commission concludes that Intervenor's arguments do not refute the position taken by the Signatory Parties on this issue. Accordingly, upon review of the record in these cases, and the pleadings filed by the parties, the Commission finds that the Signatory Parties have demonstrated that the Stipulation, as a package, meets the second prong of our test for considering stipulations, and it appears to be reasonable and in the public interest.

c. Does the settlement package violate any important regulatory principle or practice?

{¶ 65} With regard to the third prong of the test, Duke witness Kern states that, based on his experience, and his personal involvement in these proceedings, the Stipulation complies with all relevant and important regulatory principles and practices. Mr. Kern asserts that he is qualified to make this determination given his role as a lead analyst in Duke's gas resources division. (Duke Ex. 1 at 1, 4.) On brief, Staff states that the Stipulation does not violate any important regulatory principle or practice. Staff also notes that the Stipulation reasonably and efficiently resolves the issues presented in these cases, thereby avoiding the need for protracted litigation. Staff believes that, as a whole, the Stipulation is favorable to consumers, and the Commission should approve it. (Staff Br. at 5.)

{¶ 66} OCC and OPAE argue otherwise. OCC and OPAE note that, in the m/p audit report, Exeter stated that Duke's GCR customers have saved money, approximately \$7 million per year in gas costs, as compared to marketers' customers and that, therefore, Duke has no current plans to exit the merchant function. OCC and OPAE argue that Duke should be required to provide consumers with both a comparison of its GCR price to the weighted average of marketers' prices for natural gas and a presentation of the aggregate savings or losses for customers who purchased gas from Duke or from a marketer. OCC and OPAE state that this information should be made available at least annually and should be provided to consumers to enable them to be fully informed when making

decisions regarding the natural gas market. Noting that the m/p auditor conducted this comparison as part of the audit in these cases, determining that customers choosing Duke's service saved approximately \$7 million per year in gas costs compared to marketers' customers, OCC and OPAE state that Duke and Staff did not agree, in the Stipulation, to provide Duke's customers with this information, which could save them money by choosing Duke's GCR service. OCC and OPAE argue that, therefore, the Stipulation does not conform to the requirements of Ohio policy by giving customers access to information about gas companies in order to promote customer choice of gas services. (OCC Br. at 8-10; OPAE Br. at 4-6.)

{¶ 67} In response, Duke states that OCC's and OPAE's argument, that the Commission should require the Company to provide annual reports to customers about the state of the natural gas retail market in Ohio, is a matter of policy that the Commission may or may not choose to adopt; however, the Stipulation does not violate any important regulatory principles or practices, and is consistent with the Commission's oversight and regulation of the Company's GCR process. Further, Duke argues that OCC's and OPAE's recommendation goes beyond the purpose of these proceedings and beyond the requirements of the law and regulation. Duke argues that such an annual report is unnecessary. Moreover, Duke argues that, if OCC and OPAE believe that such information is of value, they should provide the information from within their own organizations. (Duke Br. at 5; Duke Reply Br. at 3-4.)

{¶ 68} Concerning this issue, the Commission notes that Duke and Staff each represent that no violation of important regulatory principles and practices would result from adoption of the Stipulation. As argued by OCC and OPAE, however, adoption of the Stipulation would result in a violation of regulatory principles and practices, because the Stipulation does not guarantee all of the market choice information that OCC and OPAE believe should be provided to consumers. After citing to R.C. 4929.02(A)(3) and R.C. 4929.02(A)(5), which state, essentially, that it is state policy to promote diversity of natural

gas supplies, suppliers, and effective customer choice of natural gas services by giving consumers access to market information, OCC and OPAE simply assert that the Stipulation does not conform to the requirements of Ohio policy because Duke's customers do not receive the right kind of market choice information.

{¶ 69} On this issue, as we noted previously for other arguments under the second criterion of our test of the Stipulation, the Commission believes that OCC's and OPAE's arguments are outside of matters that are relevant to these proceedings and do not impact on our determination of whether the Stipulation is reasonable and should be adopted. Furthermore, OCC and OPAE do not cite to any evidence in these proceedings demonstrating that this alleged lack of market information for consumers has had any adverse effect on the GCR rates of Duke's customers. We, thus, are not persuaded that any increase in market choice information for Duke's customers is necessary at this time, or that the Stipulation, as submitted by the Signatory Parties, goes against state policy. Accordingly, based upon the evidence in the record of these proceedings, the Commission finds that the Stipulation does not violate any important regulatory principles or practices.

{¶ 70} The Commission observes that, under Ohio Adm.Code 4901:1-14-08(B), a gas or natural gas company shall demonstrate at its purchased gas adjustment hearing that its GCR rates were fair, just, and reasonable and that its gas purchasing practices and policies promote minimum prices consistent with an adequate supply of gas. The Commission concludes, from the evidence in these proceedings, that Duke has complied with Ohio Adm.Code 4901:1-14-08(B).

{¶ 71} Therefore, after reviewing the evidence of record in these matters, the Commission finds that the Stipulation is supported by adequate information, that it represents a just and reasonable resolution of the issues raised in these proceedings, and that it violates no important regulatory principle or precedent. Further, we find that the Stipulation is the product of serious bargaining involving knowledgeable and capable parties in a cooperative process, and undertaken by parties representing the public and the

utility company's interests, to resolve the aforementioned issues. In view of these findings, the Commission concludes that the Stipulation should be approved and adopted in its entirety. In addition, the Commission finds that, as set forth in the audit reports in the *2015 Duke UEX Case* and the *2015 Duke PIPP Case*, Duke accurately calculated the UEX and PIPP rider rates during the applicable audit periods. Accordingly, the Commission adopts the findings in the UEX and PIPP audit reports.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 72} Duke is a natural gas company, as defined in R.C. 4905.03, and a public utility, as defined in R.C. 4905.02. As such, Duke is subject to the jurisdiction of this Commission.

{¶ 73} By Entries issued February 25, 2015, the Commission initiated the financial and m/p audits of Duke, as well as the Company's UEX and PIPP audits.

{¶ 74} By Entries dated January 26, 2016, and March 2, 2016, motions to intervene filed by OCC, IGS, RESA, and OPAE were granted.

{¶ 75} On November 13, 2015, and December 9, 2015, financial and m/p audit reports were filed by Deloitte and Exeter, respectively.

{¶ 76} On January 29, 2016, Duke and Staff filed the Stipulation in these matters.

{¶ 77} On April 20, 2016, a hearing was held.

{¶ 78} The Stipulation submitted by Duke and Staff in these cases meets the criteria used by the Commission to evaluate stipulations, represents a just and reasonable resolution of the issues in these proceedings, and should be adopted.

VII. ORDER

{¶ 79} It is, therefore,

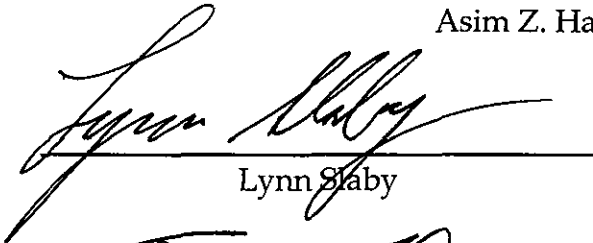
{¶ 80} ORDERED, That the Stipulation be adopted and approved. It is, further,

{¶ 81} ORDERED, That a copy of this Opinion and Order be served upon each party and interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



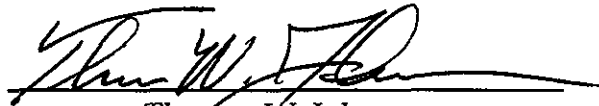
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



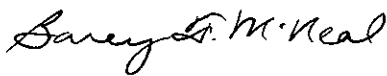
Thomas W. Johnson



M. Howard Petricoff

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Barcy F. McNeal
Secretary