

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Regulation of the)	
Purchased Gas Adjustment Clauses)	Case No. 18-0218-GA-GCR
Contained within the Rate Schedules of)	
Duke Energy Ohio Inc., and Related)	
Matters.)	

In the Matter of The Audit of the)	
Uncollectable Expense Rider of Duke)	Case No. 18-0318-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. 18-0418-GA-PIP
Adjustment to its Interim and Temporary)	
PIPP Plan and Rider Case.)	

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

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TABLE OF CONTENTS

INTRODUCTION	1
DISCUSSION.....	2
I. This Commission should agree with the independent auditor and find the Stipulation to be reasonable.	2
CONCLUSION	5
CERTIFICATE OF SERVICE.....	6

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INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is presented with a Stipulation and Recommendation (Stipulation) that meets the Commission's three-part test for determining a stipulation's reasonableness. For the reasons outlined in the Commission initial brief, it should be approved. Further, as outlined below, it is also a reasonable agreement in the auditor's expert opinion, and this Commission should weigh the auditor testimony appropriately and approve the Stipulation as reasonable.

DISCUSSION

I. This Commission should agree with the independent auditor and find the Stipulation to be reasonable.

This Commission should agree with the independent auditor and find that the Stipulation, which adopts most of the findings of the auditor, is a reasonable agreement.

Staff concedes that the Auditor is an officer/agent of the Commission. *See* R.C. 4905.13 and R.C. 4901.16 (these statutes divide the individuals operating under the authority of the Commission into two categories: employees and officers/agents). Accordingly, as an agent of the Commission, the auditor is given the power to inspect and the duty to keep confidential the findings of its inspections as outlined in R.C. 4905.13 and R.C. 4901.16. However, the auditor is not an employee of the Commission as is Staff. *See also*, Staff's March 23, 2018 Request for Proposal ("RFP") – it clearly and repeatedly makes a distinction between Staff and the auditor. Instead, he is an independent contractor¹ whose limited agency is outlined by R.C. 4905.302, Ohio Adm.Code 4901:1-14-07, and the RFP.

The auditor's limited and relevant duties were to provide an audit report for the participants of this proceeding and to "present expert testimony *during the course of the hearing* at which the audit report is considered." *See* RFP at p.1, Section II (B) and p.5,

¹ It would be impossible for the auditor to be "Staff" and yet remain an independent contractor. In fact, "Staff" only has authority over the auditor in very limited ways – mainly Staff makes sure that the auditor completes his assignment under the RFP and has access to the draft reports, work papers, and final report of the auditor. *See* the RFP. However, Staff in no way controls the findings and recommendations of the auditor. Further, "Staff" per the Stipulation is required to support the Stipulation. If the auditor were considered "Staff", he would have to support the Stipulation no matter the finding and recommendations in his audit report.

Section IV (I) (Emphasis added). The auditor was paid by Duke, through Order of the Commission, to perform its limited duty – no more, no less. *See* RFP and May 9, 2018 Commission Entry². And that limited duty did not include pre-filed testimony in support of nor in opposition to any stipulation reached in these proceedings.

Further, it was only the participants to the proceedings that were given a deadline for filing pre-filed testimony in support or in opposition to the Stipulation. *See* Service Notice for the July 26, 2019 Commission Entry (the Entry sets the dates for pre-filed testimony regarding the Stipulation – auditor was not sent a copy of the Entry). Accordingly, even the July 26, 2019 Commission Entry imposed no duty upon the auditor to file pre-filed testimony.

Given the above, one can only conclude that it was perfectly appropriate and anticipated that the auditor would file its audit report at the required deadline before the hearing and then later have its project manager potentially appear at hearing to be asked questions by the hearing participants. Staff’s counsel appropriately asked the project manager (Mr. Jerome D. Mierzwa, Principle and Vice President of Exeter Associates) questions³ concerning his audit report in light of the stipulation that was entered into after

² The Entry outlines what the auditor is to be paid for, stating, “The total cost of the audit shall not exceed \$85,000 and an additional \$8,000 for travel costs. These amounts do not include expenses and costs associated with the preparation and presentation of expert testimony before the Commission *during the hearing*. The costs for the preparation and presentation of testimony are to be billed separately by the auditor and will be recoverable to a maximum of \$25,000.” (Emphasis added). Accordingly, this Commission Entry is consistent with the RFP, the auditor was only supposed to provide direct expert testimony during the hearing.

³ The rationale and scope of questioning argued for by Staff’s counsel at the hearing is completely consistent with this Reply Brief, stating, “In response, the auditor is not a party; therefore, he is not required to file prefiled testimony. He was solely ordered by the Commission

the audit report was filed with the Commission.⁴ The answers Jerome D. Mierzwa provided in response to these questions should not be stricken, but instead appropriately weighed in this Commission's determination of the reasonableness of the Stipulation.

And to that end, the independent auditor believes that the Stipulation is reasonable, noting that the Stipulation adopts most of the auditor's recommendations, and to the extent that it differs, the Stipulation is still reasonable.⁵ Staff believes that the Commission should agree with the auditor and approve the Stipulation.

to perform an audit report. As with any witness that we would put on the stand, the typical question would be whether or not in light of anything that you reviewed... you would change anything. The auditor has become aware of the Stipulation since he's done his audit report, and the pertinent question that I need to ask the auditor is in light of the Stipulation, whether or not he believes it's reasonable to the extent that it adopted his recommendations or modified his recommendations." Transcript at p. 25, lines 1-19.

⁴ The audit report was filed on Jan 24, 2019. *See* Commission Docket. The Stipulation was filed on July 26, 2019. *Id.*

⁵ The Stipulation provides for the prospective recovery of propane costs, instead of the prospective and retroactive recovery of such cost during the review period. Transcript at p. 30, lines 1-25.

CONCLUSION

The Commission should adopt the Stipulation as its order in this case. The Stipulation meets all prongs of the three-part test. The testimony provided by the auditor should not be stricken, but instead weighed appropriately. The independent auditor working under the authority of the Commission believes the Stipulation to be reasonable in its partial adoption of the recommendations in the audit report. Indeed, it is reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 29th day of October, 2019.

/s/ Robert Eubanks

Robert Eubanks

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Summary: Reply Post-Hearing Brief electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO