

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 14-0375-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 14-0376-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 15-0452-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 15-0453-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 16-0542-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 16-0543-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 17-0596-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 17-0597-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 18-0283-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 18-0284-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017.	)	Case No. 18-1830-GA-UNC
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments.	)	Case No. 18-1831-GA-UNC
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 19-0174-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 19-0175-GA-ATA
)	

In the Matter of the Application of Duke Energy Ohio,) Inc., for Authority to Defer Environmental) Investigation and Remediation Costs.))	Case No. 19-1085-GA-AAM
In the Matter of the Application of Duke Energy Ohio,) Inc., for Tariff Approval.)	Case No. 19-1086-GA-UNC
In the Matter of the Application of Duke Energy Ohio,) Inc., for an Adjustment to Rider MGP Rates.))	Case No. 20-0053-GA-RDR
In the Matter of the Application of Duke Energy Ohio,) Inc., for Tariff Approval.)	Case No. 20-0054-GA-ATA

**POST-HEARING BRIEF OF THE
THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in these proceedings. Those recommendations are set forth below.

INTRODUCTION

On August 31, 2021, Duke Energy Ohio, Inc. (“Duke” or “Company”) submitted the Stipulation and Recommendation (“Stipulation”) that is now before the Commission for consideration. The Stipulation resolves these proceedings in a manner that is supported by Commission Staff, Duke, the Office of the Ohio Consumers’ Counsel (“OCC”), and OEG and is not opposed by the Ohio Manufacturers’ Association Energy Group, The Kroger Co, and Ohio Partners for Affordable Energy.

The Stipulation not only enjoys widespread support among the parties, but it also satisfies the Commission’s traditional standard for reviewing proposed settlements. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission

proceedings.¹ While not binding on the Commission, the terms of stipulations are accorded substantial weight.² The ultimate issue for the Commission's consideration is whether the agreement, which embodies significant 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?³

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.

As discussed below, the Stipulation satisfies this three-pronged test and the Commission should approve the Stipulation without modification.

ARGUMENT

I. The Stipulation Satisfies the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.

A. The Stipulation Is The Product Of Serious Bargaining Among Capable And Knowledgeable Parties.

The parties supporting or not opposing the Stipulation represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, industrial customers, commercial customers, and residential customers. Most if not all of those parties have extensive experience in Commission matters and were represented by competent counsel. Moreover, the parties had ample time

¹ Opinion and Order, Case No. 12-1230-EL-SSO (July 18, 2012)(“FirstEnergy ESP Order”) at 24; Opinion and Order, Case No. 11-3549-EL-SSO (November 22, 2011)(“Duke ESP Order”) at 41 (citing *e.g.* *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14,1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30,1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30,1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989), *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985)).

² Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992) and *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155,157, 378 N.E.2d 480 (1978)).

³ Duke ESP Order at 41; FirstEnergy ESP Order at 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, (68 Ohio St.3d 559, 629 N.E.2d 423 (1994) and *Consumers' Counsel* at 126).

to review and analyze Duke's proposals prior to settlement discussions. And as evidenced by the Stipulation, significant compromises were made on behalf of many of the parties in order to reach a reasonable settlement in these proceedings.

Competitive retail electric service ("CRES") providers contest the market-related provisions within the Stipulation in part on the grounds that they were not part of the settlement negotiations. However, the absence of CRES providers from settlement negotiations was not the result of any malintent by parties to this proceeding, as CRES providers suggest. It was simply the result of those CRES providers failing to intervene in any of the above-captioned proceedings over the seven-year period in which they have been pending. The absence of parties who had expressed no interest in the above-captioned proceedings from settlement discussions does not mean that serious bargaining did not occur during those discussions. Indeed, the complexity and breadth of the Stipulation ultimately achieved clearly demonstrates that the parties engaged in very serious bargaining. The Stipulation therefore satisfies the first prong of the Commission's test.

B. The Stipulation As A Package Benefits Customers And The Public Interest.

The Stipulation resolves several complex and highly contested proceedings in a balanced way that benefits both the Company and its customers. Such benefits include, but are not limited to: 1) Duke's agreement that \$11,357,579 in Manufactured Gas Plant ("MGP") investigation and remediation costs will not be recovered from customers;⁴ 2) a complete offset of MGP charges through the combined use of Tax Cuts and Jobs Act ("TCJA") savings and insurance proceedings;⁵ 3) withdrawal of Duke's request to defer post-2019 MGP investigation and remediation expense;⁶ 4) use of approximately \$3.8 million in insurance proceeds to provide bill assistance to qualifying senior and low-income residential natural gas customers;⁷ 5) significant bill credits to customers;⁸ and 6) agreement by Duke to file an application

⁴ Stipulation at 8.

⁵ Id. at 9-10.

⁶ Id. at 13.

⁷ Id. at 14-16.

⁸ Id. at 11.

proposing a transition to a Standard Service Offer (“SSO”) competitive auction process for natural gas service.⁹ In the absence of the Stipulation, these benefits to customers may not be realized. The Stipulation therefore satisfies the second prong of the Commission’s test.

C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.

None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. Rather, the Stipulation advances important policies and principles, including ensuring the availability to customers of reasonably priced retail electric service, protecting at-risk populations, ensuring diversity of electricity supplies and suppliers, and facilitating the state’s effectiveness in the global economy.

Contrary to the CRES providers’ claims, the market-related provisions within the Stipulation are not intended to harm the competitive market in Ohio. A transition to SSO competitive auction pricing in Duke’s service territory will enhance competition in that territory. Moreover, the Stipulation gives CRES providers ample opportunity to comment on that transition and to help shape its design. With respect to the billing provisions contested by the CRES providers, similar price-to-compare messaging has appeared on electric bills without demonstrably undermining the competitive electric market in Ohio. Further, the Gas Cost Recovery (“GCR”) rate is already prominently displayed on the Commission’s Apples to Apples comparison chart for purposes of helping customers’ shop in Duke’s service territory.¹⁰ Finally, the contested shadow billing provisions within the Stipulation merely involves the provision of information to OCC. CRES providers are free, as they have already done, to explain in detail to OCC their views regarding any inaccuracies associated with the information provided. The Stipulation therefore satisfies the third prong of the Commission’s test.

⁹ Stipulation at 16-17.

¹⁰ <https://energychoice.ohio.gov/ApplesToApplesComparison.aspx?Category=NaturalGas&TerritoryId=10&RateCode=1>.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail, when available) on the 9th day of December, 2021 to the following:

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Summary: Brief Ohio Energy Group (OEG) Post-Hearing Brief electronically filed by
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