

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of The Application of	)	
Campbell Soup Supply Company L.L.C.	)	
for The Approval of a Reasonable	)	Case No. 21-1047-EL-AEC
Arrangement for its Napoleon,	)	
Ohio Plant	)	

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

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**On Behalf of the Staff of  
The Public Utilities Commission of Ohio**

February 24, 2022

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**INTRODUCTION**

This case concerns an application by Campbell Soup Supply Company L.L.C. (Campbell Supply or Applicant) for approval of a unique arrangement with the Toledo Edison Company (TE) (Arrangement). Among other terms under the proposed Arrangement, Campbell Supply will participate in TE's Non-Market Based Services (Rider NMB) Opt-Out Pilot Program, which allows customers to obtain transmission service from a competitive supplier rather than TE. The proposed Arrangement involves two meters at Campbell's plant in Napoleon, Ohio, operating under Campbell Supply's one account with TE. If approved, the term of the proposed Arrangement would continue for the duration of the Rider NMB Pilot Program.

On December 9, 2021, Campbell Supply and Commission Staff entered into a joint stipulation and recommendation (Stipulation) that was filed on December 9, 2021. The Stipulation recommends that the Commission approve the Arrangement. A hearing in this matter was held on January 20, 2022. Pursuant to the schedule established by the Attorney Examiners, Staff and Campbell Supply filed initial briefs in support of the

Stipulation on February 10, 2022. The Office of the Ohio Consumers' Counsel (OCC) filed a brief opposing the Stipulation. Staff files this Reply Brief to address certain arguments made by OCC.

## **ARGUMENT**

### **I. Criteria for Review of Stipulations**

Parties to proceedings before the Commission are permitted by Rule 4901-1-30 of the Ohio Administrative Code to enter into stipulations.<sup>1</sup> Although the terms of such stipulations are not binding on the Commission, they are given substantial weight.<sup>2</sup> In a number of prior proceedings, the Commission has addressed the standard of review for stipulations recommended by the parties.<sup>3</sup> Essentially, the Commission considers whether the stipulation, which is the result of considerable time and effort by the parties, is reasonable and should be adopted. The Commission applies the following criteria, which have been endorsed by the Supreme Court of Ohio, in determining the reasonableness of a stipulation:

- (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?

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<sup>1</sup> Ohio Adm. Code 4901-1-309(A) ("Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of fact or the authenticity of documents.").

<sup>2</sup> *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, 1373 (1992) ("The commission, of course, is not bound to the terms of any stipulations; however, such terms are properly accorded substantial weight." (quoting *Akron v. Pub. Util. Comm.* 55 Ohio St.3d 155, 157, 378 N.E.2d 480, 483 (1978))); see also Ohio Adm. Code 4901-1-30(D) ("No stipulation shall be considered binding upon the commission").

<sup>3</sup> See, e.g. *In re Duke Energy Ohio*, Case No. 17-0032-EL-AIR (Opinion and Order) (Dec. 19, 2018); *In re Columbia Gas of Ohio*, Case No. 16-1309-GA-UNC (Opinion and Order) (Dec. 16, 2016).

- (3) Does the settlement package violate any important regulatory principle or practice?<sup>4</sup>

As Staff demonstrated in its Initial Brief, the Stipulation complies fully with the Commission's three-part test and should therefore be adopted by the Commission.

**A. The Stipulation is a product of serious bargaining among capable, knowledgeable parties.**

As John Seryak explained in his testimony, the Stipulation is the product of an open process in which all parties had an opportunity to participate and were represented by able counsel experienced in practice before the Commission.<sup>5</sup> Additionally, the Stipulation is a comprehensive settlement of the issues raised by parties with diverse interests.<sup>6</sup> The Stipulation thus is the product of serious bargaining among capable and knowledgeable parties.

OCC nevertheless criticizes the Stipulation because it was signed by only two parties, the Applicant and Staff. According to OCC, this does not satisfy the first prong because it lacks diversity. Acceptance of this argument would preclude approval of a settlement whenever there are three parties and one does not join the settlement. Such an approach is contrary to settled precedent. Moreover, it would effectively grant one party a veto over settlement terms.

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<sup>4</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 559, 561, 629 N.E.2d 423, 426 (1994); *Consumers' Counsel*, 64 Ohio St. 3d at 126, 592 N.E.2d at 1373.

<sup>5</sup> *In the Matter of the Application of Campbell Soup Supply Company L.L.C. for the Approval of a Reasonable Arrangement for its Napoleon, Ohio Plant*, Case No. 21-1047-EL-AEC, Supplemental Testimony of John Seryak at 4-5 (Dec. 14, 2021).

<sup>6</sup> *Id.*

The Commission has rejected “the notion that the Stipulation was not the result of compromise merely because of the number of participants in the case, or the fact that they negotiated matters in a manner favorable to their respective interests.”<sup>7</sup> Additionally, the Commission been clear that “no single party is afforded veto power under the first part of the three-part test.”<sup>8</sup>

OCC also disparages the Stipulation because it recommends adoption of Campbell Supply’s application without modification. There is no requirement for any such modifications, however. The focus should be on the bargaining process, not the content of the settlement.

**B. The Stipulation, as a package, benefits ratepayers and the public interest.**

OCC also contends that the Arrangement will only benefit Campbell Supply. This argument ignores the evidence showing that the Arrangement will benefit not only Campbell Supply, but all consumers. At the hearing, Mr. Seryak explained that the stipulation will benefit consumers and the public interest through helping Campbell Supply realize its transmission savings, incentivizing Campbell to continue its energy management activities, resulting in benefits to ratepayers and the electric grid.<sup>9</sup> Mr. Seryak further explained that under the proposed reasonable arrangement, Campbell Supply’s billed transmission costs will be better aligned with its share and true cost of

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<sup>7</sup> See *In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Plan to Modernize its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Opinion and Order at ¶ 47 (June 16, 2021)

<sup>8</sup> *In the Matter of the Application of Duke Energy, Ohio, Inc. for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-791-GA-ALT, Opinion and Order at ¶ 50 (Apr. 21, 2021).

<sup>9</sup> *Id.*

transmission service that it actually uses.<sup>10</sup> This will reduce Campbell Supply's subsidization of other customers' transmission costs and will also allow Campbell Supply to realize the full value of the on-site solar generation investment.<sup>11</sup> This has benefits for customers throughout the system and can provide incentives for further investments in peak load reduction. As even OCC witness Haugh noted, reducing consumption and congestion benefits all customers.<sup>12</sup>

Viewed as a package, the Arrangement will certainly benefit both Ohio ratepayers and the public interest.

**C. The settlement package does not violate any important regulatory principle or practices.**

OCC contends that the Stipulation should be rejected because Staff has not yet issued a report on the overall results of the pilot program of which Campbell Supply's proposed arrangement would be a part. Acceptance of OCC's argument would bar approval of any reasonable arrangement until the review is completed and a report filed. This would deprive all applicants, including Campbell Supply, of realizing the full benefits of investments in energy savings and therefore discourage further investments.

The Commission has never set a deadline for Staff to complete and file a study on the results of the pilot program. Nor has the Commission ever stated that no applications for reasonable arrangements would be approved until such a study has been completed.

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<sup>10</sup> *Id.*  
<sup>11</sup> *Id.*  
<sup>12</sup> Tr. at 230.

There is no compelling reason why approval of this Arrangement, with its overall benefits, should be held up.

Staff nevertheless recognizes its duty to conduct a study as directed by the Commission and is committed to initiating the study in the current calendar year. Given Staff's limited resources and current demands, this will likely entail the issuance of requests for proposals from outside firms. The result will be a thorough analysis of the effects of the pilot program for the Commission's consideration.

## **CONCLUSION**

The Stipulation fully satisfies the Commission's test for approval of stipulations. The settlement package reflects serious bargaining among capable and knowledgeable parties, it benefits ratepayers and the public interest, and it is consistent with all important regulatory principles and practices. The Stipulation should be adopted and the reasonable arrangement approved.

Respectfully submitted,

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*/s/ Thomas G. Lindgren*

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**On Behalf of the Staff of**  
**The Public Utilities Commission of Ohio**



## PROOF OF SERVICE

I hereby certify that a true copy of the Foregoing **Reply Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via United States mail or electronic mail, upon the following Parties of Record, this 24<sup>th</sup> day of February 2022.

/s/ Thomas G. Lindgren

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PUCO