

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	:	Case No. 21-887-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	:	Case No. 21-888-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	:	Case No. 21-889-EL-AAM

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

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

**INTRODUCTION**

On September 19, 2022, Duke Energy Ohio, Inc. (“Duke” or “Company”) submitted the Stipulation and Recommendation (“Stipulation”) that is now before the Commission for consideration.<sup>1</sup> The Stipulation resolves these proceedings in a manner that is either supported or not opposed by nearly all parties to this proceeding and Commission Staff. Not only does the Stipulation enjoy 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.<sup>2</sup> While not binding on the

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<sup>1</sup> Joint Exs. 1 and 2 (Stipulation and Recommendations and Corrected Attachment No. 4).

<sup>2</sup> 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

Commission, the terms of stipulations are accorded substantial weight.<sup>3</sup> 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?<sup>4</sup>

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, Knowledgeable Parties.**

The parties supporting/not opposing the Stipulation represent a wide variety of diverse interests, including the interests of the utility, residential customers, commercial customers, industrial customers, municipalities, and electric suppliers. Most, if not all, of the parties have extensive experience in Commission matters and are represented by competent counsel.

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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)).

<sup>3</sup> 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))).

<sup>4</sup> 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).

Moreover, the parties had ample time to review and analyze Duke's proposals prior to settlement discussions and were provided multiple opportunities to participate in settlement meetings.

The sole party opposing the Stipulation – the Office of the Ohio Consumers' Counsel ("OCC") – claims that the Stipulation fails the first prong of the Commission's test. OCC disparages the signatory parties and the PUCO settlement process generally and alleges that no consumer advocate representing the broad interests of all residential customers joined the settlement.<sup>5</sup> But in doing so, OCC acknowledges no less than *four* signatory parties representing residential interests that joined the settlement.<sup>6</sup> Moreover, OCC fails to explain how Commission Staff, which is charged with protecting the interests of all customers, did not reflect the interests of residential customers in negotiating its recommended resolution of this proceeding.<sup>7</sup>

As the Commission recently reiterated, "*no single party should be afforded veto power under the first part of the three-part test.*"<sup>8</sup> Indeed, the Commission has expressly stated that it "*will not require OCC's approval of stipulations.*"<sup>9</sup> 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. Indeed, the complexity of the Stipulation ultimately achieved

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<sup>5</sup> OCC Ex. 3 (Supplemental Testimony of James D. Williams) at 5:13-8:11.

<sup>6</sup> OCC Ex. 3 at 6:1-8:8.

<sup>7</sup> PUCO Mission and Commitments, *available at* <https://puco.ohio.gov/about-us/resources/mission-and-commitments> ("Our mission is to assure all residential and business consumers access to adequate, safe and reliable utility services at fair prices, while facilitating an environment that provides competitive choices.")

<sup>8</sup> *In the Matter of the Application of Campbell Supply Soup Supply Company L.L.C. for the Approval of a Reasonable Arrangement for Its Napoleon, Ohio Plant*, Case No. 21-1047, Opinion and Order (June 1, 2022) at 20; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶ 50 (citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18 ("The Commission will not require OCC's approval of stipulations."); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9 ("There is no requirement that any particular parties execute stipulations in order for the first prong of the test for stipulations to be met."); *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GAUNC, et al., Opinion and Order (Apr. 9, 2008) at 32 ("No one possesses a veto over stipulations, as this Commission has noted many times.").

<sup>9</sup> Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18 ("The Commission will not require OCC's approval of stipulations.").

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 this proceeding in a balanced way that benefits both the Company and its customers. Such benefits include, but are not limited to: 1) a significantly reduced base rate increase of \$22.6 million as compared to the approximately \$55 million requested by Duke;<sup>10</sup> 2) reduction in Duke's return on equity ("ROE") from its currently authorized 9.84% to 9.5%;<sup>11</sup> 3) movement toward cost-of-service based rates among the customer classes;<sup>12</sup> and 4) caps on Duke's recovery under the Distribution Capital Investment Rider tied to satisfying reliability metrics.<sup>13</sup> 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 adequate, reliable, and 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.

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<sup>10</sup> Joint Ex. 1 at 3.

<sup>11</sup> Joint Ex. 1 at 3-4.

<sup>12</sup> Joint Ex. 1 at 4-5.

<sup>13</sup> Joint Ex. 1 at 7-9.

## **CONCLUSION**

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

Respectfully submitted,

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October 31, 2022

## **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 31<sup>st</sup> day of October, 2022 to the following:

/s/ Michael L. Kurtz

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Summary: Brief Post-Hearing Brief of the Ohio Energy Group (OEG) electronically  
filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group