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

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| 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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# JOINT REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC. AND RETAIL ENERGY SUPPLY ASSOCIATION

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## I. INTRODUCTION

Under well-understood law, the Public Utilities Commission of Ohio will approve an agreement resolving issues in a contested case if the agreement is a product of serious bargaining among capable and knowledgeable parties, as a package benefits ratepayers and the public interest, and does not violate any important regulatory principle or practice.[1] Although the Office of the Ohio Consumers' Counsel argues otherwise,[2] the initial briefs filed by Duke Energy Ohio, Inc. ("Duke"), Commission staff, suppliers, customer groups, and others demonstrate that the Stipulation and Recommendation

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[1] See *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n,* 68 Ohio St.3d 559 (1994).

[2] Initial Brief for Consumer Protection by the Office of the Ohio Consumers' Counsel (Oct. 31, 2022) ("OCC Brief").

("Stipulation") filed in this case on September 19, 2022 satisfies those requirements.[3] Accordingly, the Commission should approve the Stipulation.

## II. ARGUMENT

Much of the effort that OCC expended in attacking the benefits of the Stipulation has already been answered in initial briefs. The focus here is on one argument that OCC raises for the first time in its brief that is without record support and OCC's failure to demonstrate any reasoned basis for bill format changes or a new requirement for Duke to provide aggregated billing information for customers taking electric generation service from competitive suppliers. Additionally, OCC has elected to abandon several objections.

### A. The Commission should reject OCC's attempt to inject an alternative criterion for rejecting the Stipulation that is not based on the record

Although the record demonstrates that the Stipulation is the product of serious bargaining among capable and knowledgeable parties,[4] OCC's initial brief tries to inject a new argument that the Commission should reject the Stipulation because it "results from a 'redistributive coalition.'"[5] Under this theory, the Stipulation should not be adopted because the settling parties have used the regulatory process for self-gain instead of advancing the interests of a class of customers.[6] OCC, however, does not present a sound reason for injecting a new legal standard for review of stipulations.

[3] Post Hearing Brief of Duke Energy Ohio, Inc. (Oct. 31, 2022) ("Duke Brief"); Initial Brief Submitted on Behalf of The Staff of Public Utilities Commission of Ohio (Oct. 31, 2022); Initial Joint Brief of Interstate Gas Supply, Inc. and Retail Energy Supply Association (Oct. 31, 2022) ("IGS and RESA Brief"); Post-Hearing Brief of the Ohio Energy Group (Oct. 31, 2022); Joint Post-Hearing Brief of the Ohio Manufacturers' Association Energy Group and The Kroger Co. (Oct. 31, 2022); and City of Cincinnati's Post-Hearing Brief (Oct. 31, 2022).

[4] See, e.g., IGS and RESA Brief at 4-6 and Duke Brief at 11-26.

[5] OCC Brief at 10.

[6] Id.

OCC's attempt to overturn the standard for reviewing stipulations is premised on a factual claim the record does not support. Although OCC asserts a redistributive coalition was at work, the only support OCC offers is a reference to the City of Cincinnati's interests in the case, which it claims was limited.[7] Yet, OCC's own witness conceded that Cincinnati's interests include those of its residential customers.[8] Further, other signatories such as Ohio Partners for Affordable Energy, People Working Cooperatively, and Commission staff shared OCC's interest in assuring that the residential customer class was not unfairly burdened.[9] Absent from OCC's argument is any demonstration that the gains these parties received that benefit residential customers should be discarded; OCC just wants more. Wanting more out of the settlement, however, is true for every party that gave up something to reach an agreement. It does not demonstrate that the resulting settlement is unreasonable.

Given the wholly inadequate showing of a problem with the process that led to this stipulation, OCC has failed to demonstrate the conditions that would justify overturning the Commission's three part test. Because stability and predictably are important to the legal system, prior precedent should be overturned only if it is demonstrated that the decision sought to be overturned was wrongly decided at the time or changes in circumstances no longer justify continued adherence to the decision, the decision defies practical workability, and abandoning the precedent would not create undue hardship for

[7] OCC Brief at 8 and 10. According to OCC, the City's interests are limited to its franchise fee, streetlighting and bill assistance. This truncated list excludes the fact that the City also has a broader concern about its residential customers.

[8] Tr. at 265-66.

[9] Duke Brief at 24.

those who have relied on it.[10] There is nothing in the record of this case that demonstrates that the Commission's use of the current test to address stipulations was wrongly decided when it was adopted, that circumstances have so changed that adherence to the standard is no longer justified, or that the standard defies practical workability. On the other hand, it is clear that reversing the standard would work a hardship on the parties to this case who have relied upon it.

As was the case when the Commission rejected this same argument in a recent case involving Dayton Light and Power, the signatory parties represent a diverse group of customers and public interest groups so that residential customers were represented.[11] Accordingly, OCC's attempt to overturn sound precedent in this case should be rejected.

**B. The Commission should reject OCC's assertion that customers are not protected because the Stipulation lacks provisions for bill format changes and aggregated price information**

OCC states that the Stipulation is contrary to the public interest based on several claims.[12] One representation is that the Stipulation should fail because it lacks OCC's desired bill formatting changes and a requirement to provide aggregated billing information.[13] Once again, however, OCC fails to address the fact that the information that the customer needs to determine the difference between a supplier's price for electricity and that available under the standard service offer is already on the bill and

[10] Galatis v. Aetna Casualty & Surety Co., 100 Ohio T. 3d 216 (2003).

[11] In the Matter of the Application of the Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution Grid, Case No. 18-1875-EL-GRD, Opinion and Order ¶ 72 (June 2, 2021).

[12] Failure to address the various public policy claims made by OCC does not indicate agreement with any of them.

[13] OCC Brief at 28-29.

that the aggregated information that OCC demands is all but meaningless.[14] As the Commission has correctly and repeatedly found, OCC's inflated claims about the need for this information do not withstand analysis.[15]

**C. The Commission should find that OCC has withdrawn several objections**

Although OCC raised many objections to the Staff Report, it briefed only a few. In particular, OCC did not support its objections concerning the Staff Report's failure to recommend continuation of the current Time of Day rate ("Rate TD"),[16] the failure to provide a current evaluation of the Rider UE-GEN (Uncollectible Expenses),[17] the failure to perform an analysis of the consumer contact information that is collects through its call center and the supplier rate information it collects on the Energy Choice Ohio website to determine if improvements in Duke's Choice Program are necessary,[18] and the failure to recommend Duke provide consumers with more options to opt-out of having their personal account information included on eligible customer lists provided to competitive retail electric service ("CRES") providers.[19] Because OCC did not address these objections in its initial brief, the Commission should determine that they are withdrawn under Rule 4901-1-28(D).[20]

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[14] IGS and RESA Brief at 8-10.

[15] Id. at 10 n.28 (citing cases in which the Commission has previously rejected OCC's recommendations for bill format changes and the provision of aggregated billing information).

[16] Objections ot the PUCO Staff Report of Investigation by Office of the Ohio Consumers' Counsel at 20 (Objection 22) (June 21, 2022).

[17] Id. at 22 (Objection 24). The Stipulation provides that Rate TD will remain available for customers only until Rate TD-CPP becomes available at which time Rate TD will be closed to new participation. Joint Ex. 1 at 14.

[18] Id. at 24 (Objection 26).

[19] Id. at 25 (Objection 27).

[20] Rule 4901-1-28(D) provides, "In a rate case proceeding, an objection to a staff report will be deemed withdrawn if a party fails to address the objection in its initial brief." See In the Matter of the Dayton Power

## III. Conclusion

Based on claims that are demonstrated to be wrong, unsupported by the record, or both, OCC attempts to undo the hard work of the other parties that reached agreement. Because the record demonstrates that the Stipulation satisfies the Commission requirements for approval of an agreement, the Commission should reject OCC's efforts and approve Stipulation.

Respectfully Submitted,

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and Light Company For an Increase in Distribution Rates, Case No. 15-1830-EL-AIR et al., Opinion and Order (September 26, 2018).

## CERTIFICATE OF SERVICE

I certify that this *Joint Reply Brief of Interstate Gas Supply, Inc. and Retail Energy Supply Association* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on Nov. 14, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties listed below.

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