

**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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**REPLY BRIEF OF  
PEOPLE WORKING COOPERATIVELY, INC.  
IN SUPPORT OF THE JOINT STIPULATION AND RECOMMENDATION**

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**I. INTRODUCTION**

People Working Cooperatively, Inc. (“PWC”) is a non-profit organization that has served low-income residential customers in Ohio, including in the Duke Energy Ohio Inc. (“Duke”) service territory, for decades. PWC owns and maintains the equipment necessary to provide weatherization and energy management services to its clients, low-income residential consumers. Duke’s funding has helped PWC perform the energy conservation and weatherization services for its low-income clients in Duke’s service territory for many years.

On September 19, 2022, as corrected on September 26, 2022, a Stipulation and Recommendation (“Stipulation”)<sup>1</sup> signed by Duke, the Staff of the Public Utilities Commission of Ohio (“Commission”), Ohio Partners for Affordable Energy, Ohio Energy

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<sup>1</sup> Joint Exs. 1 and 2.

Group, the City of Cincinnati (“the City”), PWC, Retail Energy Supply Association (“RESA”), Walmart Inc. (“Walmart”), Interstate Gas Supply, Inc. (“IGS”), One Energy Enterprises, Inc., Nationwide Energy Partners, LLC, Citizens Utility Board of Ohio, the Kroger Co. (“Kroger”), Ohio Manufacturers’ Association Energy Group (“OMAEG”), and ChargePoint, Inc. (jointly referred to herein as the “Signatory Parties”)<sup>2</sup> was filed in these proceedings.<sup>3</sup>

On October 31, 2021, Duke, Commission Staff, One Energy Group, the City, RESA and IGS, OMAEG and Kroger, Walmart, and OCC filed initial post-hearing briefs.

In its initial brief, OCC takes issue with the Stipulation provision that protects low-income populations by providing funding for PWC to help perform the energy conservation and weatherization services for its low-income clients in Duke’s service territory. OCC’s arguments are unpersuasive as they overstate the role of OCC in stipulation proceedings, contending that, without OCC’s assent, the Stipulation should be rejected because the Signatory Parties do not represent the interests of residential customers or otherwise represent diverse interests. Notably, the weatherization funding for PWC was previously determined to be reasonable in Duke’s prior distribution rate cases.<sup>4</sup> This funding will allow PWC to continue providing quality services to low-income, elderly, and disabled customers in Duke’s service territory. Accordingly, PWC respectfully requests that the Commission approve and adopt the Stipulation notwithstanding the unfounded objections from OCC.

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<sup>2</sup> The Kroger Co., the OMAEG, and ChargePoint, Inc., signed as Non-Opposing Parties agreeing not to challenge the Stipulation.

<sup>3</sup> The only party to these proceedings that did not sign the Stipulation was the Office of the Ohio Consumers’ Counsel (“OCC”).

<sup>4</sup> See e.g., *In re Application of Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, *et al.*, Opinion and Order (Dec. 19, 2018) at 52; *In re Application of Duke Energy Ohio, Inc.*, Case No. 12-1682-EL-AIR, *et al.*, Opinion and Order (May 1, 2013) at 9.

## II. LAW AND ARGUMENT

Pursuant to Ohio Adm.Code 4901-1-30(A), parties to Commission proceedings may enter into stipulations to resolve contested issues. Although stipulations are not binding on the Commission, the terms of these agreements are given substantial weight by the Commission.<sup>5</sup> This standard of review for considering the reasonableness of a stipulation has been discussed in a number of Commission proceedings.<sup>6</sup> Thus, in considering the reasonableness of stipulations, the Commission relies on the following three-prong test:

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.

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria and stated that the Commission may place substantial weight on the terms of a stipulation.<sup>7</sup> The Stipulation in this case should be adopted by the Commission because it satisfies the three-prong test.

**A. The Stipulation satisfies part one of the three-part test for the reasonableness of stipulations and is the product of serious bargaining among capable and knowledgeable parties.**

Contrary to arguments raised by the OCC, the record clearly demonstrates that the

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<sup>5</sup> See *Consumer' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

<sup>6</sup> See e.g., *In re Application of Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Application of Ohio Edison, Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

<sup>7</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126.

Stipulation is the product of serious bargaining among capable and knowledgeable parties.<sup>8</sup> OCC argues that the Commission’s settlement standard should include a review for a “diversity of interests” among the Signatory Parties and that such diversity is lacking in this Stipulation such that the Commission should reject the Stipulation.<sup>9</sup>

OCC misstates the legal requirements needed for the approval of a stipulation. While the Commission has stated that signatory parties representing a broad range of interests is an indication of good-faith and serious bargaining, it has long held that no single party should be afforded veto power under the first part of the three-part test.<sup>10</sup> Consistent with longstanding precedent, the Commission should not allow any single party, namely OCC in this case, the ability to preclude a settlement simply by withholding its signature.

To be clear, all of the Signatory Parties are very knowledgeable in regulatory matters and regularly participate in rate proceedings before the Commission. The Signatory Parties are represented by experienced, competent attorneys, many of whom have participated in numerous regulatory proceedings before the Commission.<sup>11</sup> Before the Stipulation was filed, numerous settlement conferences were held which included the Commission Staff, Duke, and all intervening parties. The Stipulation was signed by a diverse group of parties that represent a wide variety of interests. This diverse group includes Commission Staff, representatives of low-income residential customers, non-residential interests, the largest municipal government

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<sup>8</sup> Duke Ex. 3 at 10; Tr. II at 243.

<sup>9</sup> OCC Initial Brief at 7.

<sup>10</sup> See, e.g., *In re Campbell Supply Soup Supply Company L.L.C.*, Case No. 21-1047-EL-AEC, Opinion and Order (June 1, 2022) at ¶ 51; *In re Application of Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶ 50; *In re Application of Columbia Gas of Ohio, Inc.*, Case No. 16-2422-GA-ALT, Opinion and Order (Jan. 31, 2018) at ¶ 70; *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 16-743-EL-POR, Opinion and Order (Nov. 21, 2017) at ¶ 61; *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order, (Feb. 2, 2005) at 18.

<sup>11</sup> Staff Ex. 8 at 3-4.

in Duke's service territory, competitive marketers, and power broker and energy suppliers. These facts demonstrate that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

**B. The Stipulation satisfies the second part of the three-part test for the reasonableness of stipulations and, as a package, benefits ratepayers and the public interest.**

Contrary to the assertions of OCC, the record demonstrates that the Stipulation benefits ratepayers and the public interest. OCC alludes to PWC and other interests representing low-income residents and argues that the Commission should reject the settlement because the benefits to customers and the public interest are “too little” and “too narrow” to counterbalance the detriments to consumers and the public interest. Making the same arguments as under the first prong of the test, OCC argues that the settlement arises from a redistributive coalition and does not reflect a true diversity of interests among the residential customer class to argue the Stipulation does not benefit the public interest. In addition, it suggests that the settlement process was unfair and that did not result in serious bargaining because signatory parties only signed the agreement in exchange for money and that funding of this nature should only be dispensed in generic dockets on low-income Ohioans to receive services.<sup>12</sup>

In her testimony, Duke witness Spiller effectively counters these arguments, explaining that customers will receive various benefits as a result of the Stipulation, including, but not limited to: (1) agreement not to increase the residential low-income customer charge; (2) agreement not to increase the field collection charge; (3) lower increase to the residential customer charges than supported by the cost of service study; and (4) commitments to

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<sup>12</sup> OCC Initial Brief at 7.

continue existing funding for bill assistance and low-income energy efficiency/weatherization programs and to explore development of new programs.<sup>13</sup>

Adopting the view of public interest posited by OCC would directly contradict the Commission's long-established mission 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>14</sup> Notably, this mission is to be accomplished, in part, by "resolving through mediation, arbitration, and adjudication disputes between utilities and residential, commercial and industrial customers, as well as between competing utilities."<sup>15</sup>

OCC admits that the redistributive coalition theory it relies on to suggest the Stipulation only serves a narrow interest has not been accepted or adopted by the Commission, and OCC fails to provide sufficient justification for why this theory should be applied here.<sup>16</sup> Further, OCC concedes that programs for the at-risk consumers of utilities are "important."<sup>17</sup>

Therefore, the settlement package is reasonable and strikes an appropriate balance of benefits to customers, shareholders, and the overall public interest. PWC believes all of these benefits indicate that the Stipulation is just and reasonable, and is particularly supportive of the benefits for low-income customers. Specifically, the Stipulation includes a continuation of existing funding for weatherization programs administered by PWC.<sup>18</sup> This provision will provide funding for PWC's programs, which will support PWC's efforts to assist low-income,

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<sup>13</sup> Duke Ex.3 at 14.

<sup>14</sup> See PUCO Mission and Commitments, accessible at: <https://puco.ohio.gov/about-us/resources/mission-and-commitments>.

<sup>15</sup> *Id.*

<sup>16</sup> OCC Initial Brief at 10.

<sup>17</sup> *Id.*

<sup>18</sup> Joint Ex. 1 at 16; See Footnote 6 of Stipulation, referencing Opinion and Order, Case No. 17-32-EL-AIR, *et al.* at 52.

elderly, and disabled customers in Duke's territory. The Stipulation contains vital benefits for low-income customers that will help reduce these customers' utility costs and provide much needed assistance to low-income populations living in Duke's territory.

### **III. CONCLUSION**

Contrary to OCC's unsubstantiated assertions the first two prongs of the test used by the Commission in its consideration of a stipulation have been met. Thus, all three prongs of the test utilized by the Commission in its consideration of a stipulation have been satisfied. Based on the foregoing, the Commission should reject arguments asserted by OCC and approve the Stipulation.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below via electronic mail this 14<sup>th</sup> day of November, 2022.

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Summary: Brief - Reply Brief of People Working Cooperatively, Inc. In Support of the Joint Stipulation and Recommendation electronically filed by Christine M.T. Pirik on behalf of People Working Cooperatively, Inc.