

**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

REPLY BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

Ohio Partners for Affordable Energy (“OPAE”) hereby submits this Reply to select arguments made by the Office of the Ohio Consumers’ Counsel (“OCC”) in its Initial Brief.

I. The Settlement Satisfies the Public Utilities Commission of Ohio Three Part Test for Considering Settlements.

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?¹

The Commission has also considered whether the parties to a settlement represent a diverse group of interests, though it is not an element of the three-prong test.²

¹ 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 v. Pub, Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992)).

² *Consumers' Counsel v. Pub, Util. Comm.*, 64 Ohio St.3d at 126.

In its opposition, OCC argues that the Stipulation fails each of the three prongs. Despite OCC's universal attack, OPAE's Reply focuses on prong one: OCC's argument that although it was signed by every party excluding OCC, the Stipulation is not the product of serious bargaining and represents only a narrow group of interests.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties representing a diverse group of interests.

The Stipulation was signed by parties representing the following interests:

- the utility,
- a municipality,
- electric suppliers,
- customer representatives of the residential classes,
- customer representative of the commercial class,
- customer representatives of the industrial classes, and
- Staff.

OCC attempts to explain away support of the residential customer advocates (OPAE, Citizens Utility Board of Ohio, and People Working Cooperatively) by continuing its oft-repeated, but never substantiated, argument that it is the singular entity who can truly representing residential customers' interests.³ OCC characterizes OPAE as a "low-income weatherization provider"⁴ in a confused and misguided attempt to discredit OPAE's advocacy of residential customers.

OCC is wrong to characterize OPAE as a low-income weatherization provider. OPAE is not a provider of weatherization services and does not claim to be one. As OCC is well aware, OPAE is an Ohio non-profit corporation with a stated purpose of advocating for affordable energy policies for low- and moderate-income Ohioans. Moreover, many of OPAE's members are Community Action Agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964,

³ OCC Initial Brief at p. 8.

⁴ Id. at 4.

Community Action Agencies are charged with advocating for low-income residents of their communities. Like OCC's state statutory charge to advocate for residential customers, OPAE's member agencies were authorized by the federal government as part of the United State's War on Poverty.

Yet, in OCC's opinion, its statutory mandate means no other entity is qualified to represent residential customers and no position besides those taken by OCC should be seen as valid advocacy. Unfortunately for OCC, but fortunately for Ohio's residential customers, the Commission has repeatedly rejected OCC's position that it is the sole arbiter of what is right for residential utility customers.⁵ In *Ohio Power* OCC made the same claims it is making here: a stipulation should be rejected for lack of residential customer representation. And in *Ohio Power*, the Commission rejected that argument stating:

In addition, the Commission notes that OPAE members operate bill assistance, weatherization, energy efficiency, and consumer education programs throughout Ohio. On that basis, the Commission reasons that OPAE's ultimate clientele is primarily low and moderate-income residential consumers. Further, the Commission has previously considered OPAE an advocate on behalf of low and moderate-income customers. See, e.g., *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26. Opposing intervenors have failed to offer any reason that the Commission should not regard OPAE in the same manner in these proceedings.⁶

The Commission should again reject OCC's attempts to discredit other residential customer advocates as it has done so in the past.

In addition to attacking the diversity of the Signatory parties, OCC also claims the Stipulation was not the product of serious bargaining.⁷ OCC and its witness claim the utility

⁵ *In the Matter of the Application of Ohio Power Co.*, 14-1693-EL-RDR et al., Opinion and Order (March 31, 2016) at p. 53; *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at p. 26.

⁶ *Ohio Power* at p. 53.

⁷ OCC's Initial Brief at p. 5.

“dangles money in front of parties” in exchange for participation in the settlement.⁸ Yet, OCC cannot and did not identify any money offered or being sent to OPAE because of OPAE’s participation in the Stipulation. Instead, their witness pointed to an Audit Report from 2018 to demonstrate OPAE had received contracts from Duke in the past.⁹ It is unclear how receiving funding four years ago is relevant or supportive to OCC’s argument that signatory parties are bought and paid for today.

OCC’s argument is meritless, so it resorts to grasping at straws to draw connections that do not exist. OPAE supported this case because it achieved beneficial outcomes for low-to-moderate-income Ohioans. The Stipulation keeps the low-income residential customer charge fixed at its current level. That certainty is important for low-income Duke customers in a time of rising costs.¹⁰ Further, the Stipulation provides other benefits for low-to-moderate income Duke customers like weatherization services¹¹ and bill payment assistance¹². None of those enumerated benefits provide a pecuniary benefit to OPAE, rather they just help the Ohioans that OPAE and its member agencies advocate to support.

The Commission should reject OCC’s attempts to discredit the support of the Signatory parties and find the Stipulation is the product of serious bargaining among capable, knowledgeable parties which represent a diverse group of interests.

II. Conclusion

OPAE respectfully requests that the Commission approve the Stipulation without modification.

⁸ Id. at p. 7.

⁹ Id.; OCC Ex. 3 p.6 lines 1-9.

¹⁰ Joint Ex. 1 pp. 5-6.

¹¹ Id. p. 16 & 24.

¹² Id. p. 24.

Respectfully submitted,

/s/ Robert Dove

Robert Dove (0092019)

Nicholas S. Bobb (0090537)

Kegler Brown Hill + Ritter Co., L.P.A.

65 E State St., Ste. 1800

Columbus, OH 43215-4295

Office: (614) 462-5443

rdove@keglerbrown.com

(Willing to accept service by email)

Attorneys for OPAE

CERTIFICATE OF SERVICE

I certify that *Reply Brief Ohio Partners for Affordable Energy* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on November 14, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties subscribed to these proceedings. Additionally, notice was provided to the parties listed below.

/s/ Robert Dove
Robert Dove

SERVICE LIST

Alex.kronauer@walmart.com
Ambrosia.wilson@occ.ohio.gov
angela.obrien@occ.ohio.gov
cgrundmann@spilmanlaw.com
cpirik@dickinsonwright.com
dborchers@bricker.com
dparram@bricker.com
dromig@nationwideenergypartners.com
dwilliamson@spilmanlaw.com
ebraama@taftlaw.com Elyse.akhbari@duke-
energy.com Evan.betterton@igs.com
Fdarr2019@gmail.com gjewell@calfee.com
gwhaling@calfee.com
jdunn@oneenergyllyc.com
Jeanne.kingery@duke-energy.com
jkylercohn@bkllawfirm.com
jlang@calfee.com john.jones@OhioAGO.gov
kboehm@bkllawfirm.com
todonnell@dickinsonwright.com
trent@hubaydougherty.com

bojko@carpenterlipps.com
paul@carpenterlipps.com
kernstein@bricker.com
kherrnstein@bricker.com
kruffin@bricker.com
ktreadway@oneenergyllyc.com
Larisa.vaysman@duke-energy.com
Matthew.sandor@puco.ohio.gov
Michael.nugent@igs.com
mkurtz@bkllawfirm.com
mmcdonnell@dickinsonwright.com
mwarnock@bricker.com
Nicholas.walstra@puco.ohio.gov
paul@carpenterlipps.com
robert.eubanks@OhioAGO.gov
Rocco.dascenzo@duke-energy.com
sfranson@calfee.com
Shaun.lyons@OhioAGO.gov
werner.margard@OhioAGO.gov

Attorney Examiners:

Nicholas.Walstra@PUCO.Ohio.gov
Matthew.Sandor@PUCO.Ohio.gov

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

11/14/2022 4:49:02 PM

in

Case No(s). 21-0887-EL-AIR, 21-0888-EL-ATA, 21-0889-EL-AAM

Summary: Reply Brief electronically filed by Mr. Robert Dove on behalf of Ohio
Partners for Affordable Energy