

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Authority) Case No. 21-637-GA-AIR
to Increase the Rates and Charges for Gas)
Services and Related Matters.)**

**In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Approval) Case No. 21-638-GA-ALT
of an Alternative Form of Regulation.)**

**In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Approval)
of a Demand Side Management Program) Case No. 21-639-GA-UNC
for Its Residential and Commercial)
Customers.)**

**In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Approval) Case No. 21-640-GA-AAM
to Change Accounting Methods.)**

**JOINT REPLY BRIEF
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
AND
INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ and Interstate Gas Supply, Inc. (“IGS”) jointly respond to two arguments separately raised in the Initial Briefs of the Citizens’ Utility Board of Ohio (“CUB”) and Ohio Partners for Affordable Energy (“OPAE”). CUB and OPAE not only attack the proposed Stipulation and Recommendation (“Stipulation”) in these proceedings, but their two arguments—if approved—also would negatively impact the way in

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

which parties can resolve issues in *any* case before the Public Utilities Commission of Ohio (“Commission”).

CUB and OPAE claim, respectively, that the proposed Stipulation does not satisfy the Commission’s three-part test² because not every Signatory Party “signed on” to every provision in the Stipulation and because not every proposal in the application was resolved substantively (some would be withdrawn if the Stipulation is approved). Neither CUB nor OPAE present arguments sufficient to upend longstanding Commission precedent regarding the reasonableness of negotiated agreements. For the reasons described below, CUB and OPAE’s arguments should be rejected.

First, although there are provisions in the Stipulation to which certain Signatory Parties did not join, credible evidence in the record demonstrates that serious bargaining took place and resulted in the proposed Stipulation. Second, the Commission has found serious bargaining took place in its review of other stipulations where not every signatory party “signed on” to *every* term in the Stipulation. Third, there are current and future benefits to RESA, its members, IGS and others from the stipulated withdrawal of the Carbon Reduction Rider proposal. Many of those same benefits result from the stipulated withdrawal of other rider proposals too. Fourth, a finding

² The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Commission proceedings. *See, 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 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). 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?

The Ohio Supreme Court has endorsed the Commission’s analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers’ Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126).

that there are no benefits from the stipulated withdrawal of multiple rider proposals would wrongly require parties to resolve every part of an application substantively (preventing stipulated withdrawals), create unnecessary delay and litigation expense, and generally frustrate the bargaining process. The Commission should not impede negotiations and settlements in such a manner.

The Stipulation in these proceedings should be accepted by the Commission without modification. As explained in the RESA/IGS Joint Initial Brief, the exit-the-merchant-function taskforce provision (Section II.E) is consistent with the policies set forth in R.C. § 4929.02 and will further the development of the competitive retail natural gas service (“CRNGS”) market in Ohio, the withdrawal of the Carbon Reduction Rider proposal (and no implementation of the Staff’s alternative) (Section II.B.1) is similarly beneficial to the CRNGS market and its participants in that it adheres to Ohio law and policy, and the on-line option related to the eligible customer list (Section II.J) is reasonable.

II. ARGUMENT

A. Not every Signatory Party has to “sign on” to every term in the Stipulation in order for serious bargaining to have taken place.

CUB claims that the footnotes in the Stipulation, pursuant to which certain parties did not agree with certain provisions, make it “difficult” to conclude that there was serious bargaining or are somehow evidence that there was not serious bargaining. CUB Initial Brief at 10-11. CUB is incorrect for several reasons. First and foremost, the footnotes in the Stipulation demonstrate that multiple parties seriously considered the terms in the Stipulation and ultimately concluded that they could not join in certain terms but could join in the vast majority of the Stipulation. Second,

other undisputed evidence in the record establishes that the parties – including those Signatory Parties listed in the footnotes – extensively discussed and bargained for settlement:

- The negotiations occurred over many months – five and one-half months. Columbia Ex. 35 at 3; Tr. 76-77, 78.
- There were numerous settlement meetings held. Tr. 44, 65.
- All parties were invited to the numerous settlement meetings. Tr. 79.

Third, the Stipulation presents a recommended negotiated resolution of numerous complex regulatory issues, with many resolutions differing from the positions that parties presented earlier in the proceedings. Fourth, Commission precedent contradicts CUB’s allegation that there was no serious bargaining since the Signatory Parties do not join all terms of the Stipulation. Indeed, the Commission has previously found stipulations satisfied the serious bargaining element of the Commission’s test and were reasonable even when signatory parties did not join in every term in the stipulation. Below are only a few recent examples:

- *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, etc.*, Case Nos. 21-887-EL-AIR et al., Opinion and Order (December 14, 2022). In this case, the Commission found serious bargaining took place and accepted the stipulation even though the Ohio Manufacturers’ Association Energy Group (“OMAEG”) and The Kroger Co. did not join the distribution capital investment rider provisions (stipulation page 7-9).
- *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates, etc.*, Case Nos. 20-585-EL-AIR et al., Opinion and Order (November 17, 2021). In this case, the Commission found serious bargaining took place and accepted the stipulation even though Staff did not join the shadow billing provision (stipulation page 11); Ohio Consumers’ Counsel (“OCC”) did not join the electric vehicle pilot provision (stipulation page 12); and OCC did not join the basic transmission cost recovery rider pilot provision (stipulation page 17-18).
- *In the Matter of the Motion to Modify the Exemption Granted to The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 18-1419-GA-EXM, Opinion and Order (February 26, 2020). In this case, the Commission found serious bargaining took place and accepted the

stipulation even though OCC did not join the standard choice offer and monthly retail rate provisions (stipulation page 2-10).

- *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates, etc.*, Case Nos. 17-32-EL-AIR et al., Opinion and Order (December 19, 2018). In this case, the Commission found serious bargaining took place and accepted the stipulation even though OMAEG, Industrial Energy Users-Ohio (“IEU”) and The Kroger Co. did not join in the price stabilization rider provision (stipulation page 18-20).
- *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, etc.*, Case Nos. 16-1852-EL-SSO et al., Opinion and Order (April 25, 2018). In this case, the Commission found serious bargaining took place and accepted the stipulation even though the Environmental Law & Policy Center, IEU and OMAEG took no position on the renewable generation rider provision (stipulation page 4); and the Environmental Defense Fund, Ohio Environmental Council, IGS, IEU and OMAEG did not join the OVEC cost recovery provision (stipulation page 9).

In sum, the record in this case clearly reflects that the stipulated resolutions before the Commission today were reached after extensive effort and time involving serious bargaining from the parties. In addition, it is telling that CUB did not cite to any Commission precedent to support its argument that there must be unanimous support by the Stipulating Parties for all settlement terms. CUB’s inability to provide evidentiary support for its argument, along with the above-noted facts and precedent, establish that the Commission should reject CUB’s argument.

B. Columbia’s agreement to withdraw certain proposals in its application is a benefit of the Stipulation.

OPAE argued on brief that Columbia’s agreement to withdraw certain proposals is not a benefit of the Stipulation because it is not appropriate to compare the Stipulation against the application. OPAE Initial Brief at 7. RESA and IGS disagree. As reflected in their Joint Initial Brief at 5-7 relative to the withdrawal of the Carbon Reduction Rider proposal, RESA and IGS

pointed out the real and tangible benefits to RESA, its members, and IGS of the Stipulation's provision that eliminates the Carbon Reduction Rider proposal specifically:

- Avoids utility engagement in the CRNGS market by offering a CRNGS product to customers.
- Avoids violating the State policy as to natural gas services and goods.
- Saves litigation time and expense.
- Saves the Commission and its Examiners the time and effort of evaluating the Carbon Reduction Rider proposal.

Real benefits from the withdrawn proposals have already occurred. For example, the hearing was originally anticipated to be more than a week in length, but ultimately it lasted only a few hours on November 16, 2022, because there were fewer issues addressed by the parties. Only a few witnesses testified, and other time and expenses were avoided relative to those withdrawn proposals through avoided hearing preparation, witness preparation, and witness costs.³ In addition, Columbia agreed to not propose a similar Carbon Reduction Rider proposal or others until it files for its next base distribution rate case. Jt. Ex. 1 at 8. The debate with those rider proposals will, therefore, be avoided for potentially many years, particularly if Columbia waits until September 2027 to file its next base rate application.⁴ These are concrete benefits that should not be ignored. The Commission should reject OPAE's argument.

Widespread, negative repercussions would occur, and the bargaining process would be frustrated if OPAE's argument was accepted. A finding, here, that there are no benefits from the stipulated withdrawal of multiple rider proposals would establish a precedent requiring parties to

³ The Commission even recently recognized that resolving issues through a stipulation package narrows the focus and streamlines the proceedings, stating that it is "an efficient and cost-effective means of bringing the issues before the Commission, while also avoiding considerable time and expense associated with the litigation of a fully contested case." *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, etc.*, Case Nos. 21-887-EL-AIR et al., Opinion and Order at ¶ 151 (December 14, 2022).

⁴ Under the Stipulation, Columbia agreed to file its next base rate case by September 1, 2027. Joint Ex. 1 at 18.

resolve every part of an application substantively because a stipulation with withdrawals would, as OP&E contends, not pass the Commission's three-part test. The Commission should not impede negotiations and settlement terms by adopting such a narrow interpretation of its three-part test. This is an additional reason why OP&E's argument should be rejected.

III. CONCLUSION

The record in this case clearly reflects that the supplier-related provisions in Sections II.B.1, II.E and II.J of the Stipulation resulted from serious bargaining. The Stipulation itself, the other evidence in the record and Commission precedent also demonstrate that a decision to not join a specific provision in the Stipulation does not reflect a lack of serious bargaining by RESA, IGS, or any other Signatory Party. CUB's claim should be rejected. In addition, the withdrawal of the Carbon Reduction Rider proposal is a benefit of the Stipulation for RESA, its members and IGS. More generally, the proposal rider withdrawals in the Stipulation are beneficial. The scope of the issues, the evidentiary hearing, and the briefs were already streamlined. Litigation about the proposed riders was avoided and will be avoided in the future – potentially for years – if the Stipulation is approved. Importantly, the withdrawal of the Carbon Reduction Rider proposal avoids the possibility of unlawful activity (utility engagement in the CRNGS market) and violation of the State of Ohio natural gas policy. The Stipulation's supplier-related provisions are reasonable and fair outcomes that further develop the CRNGS market in Ohio, prevent implementation of a

new tariff in conflict with Ohio law, and implement a new process for customers. RESA and IGS respectfully request that the Commission approve the Stipulation without modification.

Respectfully Submitted,

/s/ Gretchen L. Petrucci
Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
Telephone: 614-464-5462
mjsettineri@vorys.com
glpetrucci@vorys.com

Counsel for the Retail Energy Supply Association

/s/ Michael Nugent, per authorization on 12/27/2022, by GLP
Michael Nugent (0090408), Counsel of Record
Joseph Oliker
Evan Betterton
Stacie Cathcart
IGS Energy
6100 Emerald Parkway
Dublin, OH 43016
Telephone: 614-659-5000
michael.nugent@igs.com
joe.oliker@igs.com
evan.betterton@igs.com
stacie.cathcart@igs.com

Counsel for Interstate Gas Supply, Inc.

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 on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 27th day of December 2022 upon all persons/entities listed below:

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

Columbia Gas of Ohio	Joseph M. Clark, Counsel of Record John R. Ryan Melissa L. Thompson 290 W. Nationwide Blvd. P.O. Box 117 Columbus, OH 43216-0117 josephclark@nisource.com johnryan@nisource.com mlthompson@nisource.com	Eric B. Gallon Mark Stemm L. Bradfield Hughes Devan K. Flahive Porter, Wright, Morris & Arthur LLP 41 South High Street Columbus, OH 43215 egallon@porterwright.com mstemm@porterwright.com bhughes@porterwright.com dflahive@porterwright.com
Citizens’ Utility Board of Ohio	Trent Dougherty Hubay Dougherty LLC 1391 Grandview Ave. #12460 Columbus, OH 43212 trent@hubaydougherty.com	
Environmental Law & Policy Center	Trent Dougherty Hubay Dougherty LLC 1391 Grandview Ave. #12460 Columbus, OH 43212 trent@hubaydougherty.com	Robert Kelter Daniel Abrams Environmental Law & Policy Center 35 E. Wacker Drive, Suite 1600 Chicago, IL 60601 rkelter@elpc.org dabrams@elpc.org
Industrial Energy Users – Ohio	Matthew R. Pritchard Bryce A. McKenney McNees Wallace & Nurick LLC 21 East State Street, 17TH Floor Columbus, OH 43215 mpritchard@mcneeslaw.com bmckenney@mcneeslaw.com	

Interstate Gas Supply, Inc.	Michael Nugent Evan Betterton Joseph Olikier Stacie Cathcart IGS Energy 6100 Emerald Parkway Dublin, Ohio 43016 michael.nugent@igs.com evan.betterton@igs.com joe.oliker@igs.com stacie.cathcart@igs.com	
Northeast Ohio Public Energy Council	Devin D. Parram Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215-4291 dparram@bricker.com	Glenn S. Krassen Northeast Ohio Public Energy Council 31360 Solon Road, Suite 33 Solon, OH 44139 gkrassen@nopec.org
Ohio Consumers' Counsel	William J. Michael Angela D. O'Brien Office of the Ohio Consumers' Counsel 65 East State Street, 7th Floor Columbus, OH 43215 william.michael@occ.ohio.gov angela.obrien@occ.ohio.gov	
Ohio Energy Group	Michael L. Kurtz Kurt J. Boehm Jody Kyler Cohn BOEHM, KURTZ & LOWRY 36 East Seventh Street, Suite 1510 Cincinnati, OH 45202 mkurtz@BKLawfirm.com kboehm@BKLawfirm.com jkylercohn@BKLawfirm.com	
Ohio Manufacturers' Association Energy Group	Kimberly W. Bojko Jonathan Wygonski Carpenter Lipps & Leland LLP 280 North High Street, Suite 1300 Columbus, OH 43215 bojko@carpenterlipps.com wygonski@carpenterlipps.com	
Ohio Partners for Affordable Energy	Robert Dove Nicholas S. Bobb Kegler Brown Hill + Ritter Co., L.P.A. 65 E State St., Ste. 1800 Columbus, OH 43215-4295 rdove@keglerbrown.com nbobb@keglerbrown.com	

Ohio School Council	Glenn S. Krassen Bricker & Eckler LLP 1001 Lakeside Avenue, Suite 1350 Cleveland, OH 44114 gkrassen@bricker.com	Dane Stinson Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215-4291 dstinson@bricker.com
Retail Energy Supply Association	Michael J. Settineri Gretchen L. Petrucci Vorys, Sater, Seymour and Pease LLP 52 E Gay Street / P.O. Box 1008 Columbus, OH 43216-1008 mjsettineri@vorys.com glpetrucci@vorys.com	
Staff of the Public Utilities Commission of Ohio	Werner Margard Shaun Lyons Ohio Assistant Attorneys General 30 E. Broad St., 26 th Floor Columbus, OH 43215 werner.margard@OhioAGO.gov shaun.lyons@OhioAGO.gov	
The Kroger Co.	Angela Paul Whitfield Madeline Wilcox Carpenter Lipps & Leland LLP 280 Plaza, Suite 1300 280 North High Street Columbus, OH 43215 paul@carpenterlipps.com wilcox@carpenterlipps.com	

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AAM**

Summary: Brief - Joint Reply Brief electronically filed by Mrs. Gretchen L. Petrucci
on behalf of Retail Energy Supply Association and Interstate Gas Supply, Inc.