BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Natural Gas Rates.	)))	Case No. 22-507-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Form of Regulation.	)))	Case No. 22-508-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)))	Case No. 22-509-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 22-510-GA-AAM

INITIAL POST HEARING BRIEF OF INTERSTATE GAS SUPPLY, LLC

June 16, 2023

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I. INTRODUCTION

On April 27, 2023, a diverse group of parties submitted a Joint Stipulation and Recommendation ("Stipulation") to the Public Utilities Commission of Ohio ("Commission") in order to resolve the outstanding issues in this proceeding. The signatory parties include the Staff of the Public Utilities Commission of Ohio ("Staff"), Duke Energy Ohio, Inc. (Duke), The Ohio Energy Group ("OEG"), The Retail Energy Supply Association ("RESA"), Interstate Gas Supply, LLC ("IGS" or "IGS Energy"), and People Working Cooperatively. The case presents the Commission with the clear choice of approving a near unanimous Stipulation that would be see benefits across all customer classes and clear many long outstanding issues related to Duke's natural gas service for both shopping and non-shopping customers.

The Stipulation is the product of serious bargaining, will benefit the public interest, and does not violate any regulatory policy or practice. Because the Stipulation provides for an equitable resolution to all outstanding issues in this case, IGS urges the Commission to approve it. The Stipulation and Recommendation undeniably meets the longstanding Three Prong Test ("Test") and resolves numerous lingering issues within Duke's service territory.

II. BAKGROUND

On June 14, 2022, Duke Energy filed an application seeking an increase in rates ("Application"). Over the course of the subsequent ten months, all the parties in the case engaged in voluminous settlement meetings and conducted in-depth discovery under the Commission's rules. On April 27, 2023, a diverse group of parties submitted a comprehensive settlement that resolved the outstanding issues in the case. The

Stipulation was hard fought, and each party was required to negotiate in good faith to ensure an equitable outcome.

Pursuant to rule 4901-1-30, Ohio Administrative Code ("OAC"), parties to Commission proceedings may enter into stipulations to resolve contested issues in cases, including in rate increase cases. Stipulations have long been held to a test, colloquially known as the "Three Prong Test." As demonstrated below, the Stipulation filed in this case clearly meets the standards outlined in that test.

III. ARGUMENT:

Under 4901-1-30, OAC, parties to Commission proceedings may enter into stipulations to resolve contested issues. Although the Stipulation filed in this case is non-binding to the Commission, the terms of the agreement are accorded substantial weight. In considering the reasonableness of stipulations the Commission often relies on a test, colloquially known as the "Three Prong Test" ("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?[1]

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

The Stipulation in this case is a result of considerable time and effort on behalf of the signatory parties and satisfies or exceeds each of these criteria. Therefore, it should be adopted by the Commission.

A. The Stipulation is the product of serious bargaining among capable, knowledgeable parties.

The Stipulation filed in this case is the result of months of thoughtful bargaining between the signatory and the single non-signatory party, OCC. While not every party to the negotiations signed the Stipulation, every party was invited to the negotiating table and provided the opportunity to make their views and opinions known over many months. Staff witness Lipthratt stated in his testimony, "The Stipulation is the product of an open process in which all 11 intervenors were given an opportunity to participate. All parties were represented by experienced and competent counsel, many of whom have participated in numerous regulatory proceedings before the Commission. There were extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests."[2]

The list of intervenors in the case present a diversity of interests at the negotiating table. Although OCC chose not to sign the Stipulation, the Commission has long held that not all parties must sign to represent a comprehensive settlement. A diversity of interests must be present at the bargaining table to negotiate a Stipulation but not all need sign to meet the first prong. The Commission has flatly rejected the claim that there must be a

[2] Staff Ex. 8 at p. 4, ln. 10-16.

diversity of signatory parties in order to satisfy the first prong; stating “We reject OCC/APJN's attempt to revise the test to evaluate stipulations based on the diversity of signatory parties.” As noted above, the focus of the first prong is upon the diversity of the parties at the bargaining table. No evidence is presented that purports to show that any party was excluded from the bargaining table. Each party had an opportunity to provide input into the Stipulation on an equal footing and no customer class was excluded from negotiations, the Commission should determine that the Stipulation clearly satisfies the first prong.

B. The stipulation benefits the public interest.

The Stipulation is a just and reasonable resolution put before the Commission by Duke in this case. The stipulated revenue increase of $31,689,742 is lower than the increase Duke requested of $48,745,464. While a lower number does not automatically equate to positive public interest, as part of a greater package the negotiated numbers present a favorable outcome for all interested parties. Additionally, the stipulated rate of return of 6.96 percent is lower than the requested 7.33 percent, as requested by Duke in its initial application to increase rates. The return on equity in the stipulation of 9.6 percent is lower than Duke’s requested 10.3 percent return.

The Stipulation also houses other benefits to customers, including the continuation of the Gas Surcredit Rider (Rider GSR) and the elimination of switching fees[3]. Rider GSR ensures that shopping customers are not double charged for the PUCO and OCC budget assessments. Given that Competitive Retail Natural Gas Service (“CRNGS”) suppliers all

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[3] Joint Ex. 1 at 10.

pay the PUCO and OCC assessment, it follows logically that customers taking competitive service should not also be assessed the same fee for the portion associated with Duke's non-shopping customer base. Ensuring that customers are not double charged and fostering a healthy competitive market is key to supporting the public interest. Duke witness Spiller furthers this point in supplemental testimony identifying Rider GSR specifically as a benefit and a resolution to an outstanding issue.[4]

C. The Stipulation does not violate any regulatory practice or principle.

The Stipulation does not violate any regulatory policy or principle and moreover the inclusion of Rider GSR in the Stipulation explicitly corresponds with the requirements of Revised Code Section 4905.10(A) and 4911.18(A). The Rider GSR element of the Stipulation ensures that Duke does not run afoul of the clear and plain language in the revised code requiring no passthrough of the PUCO or OCC assessment to Suppliers until a portion is removed directly attributable to Duke's commodity sales in its service territory.

Duke's current tariffs contemplate how to appropriately alter the credit amount of Rider GSR to ensure the correct amount flow through the rider to avoid shopping customers from being double charged or credited incorrectly.[5] The continuation of Rider GSR is a vital element of the Stipulation. If Rider GSR were not continued, Duke's Application would run afoul of important regulatory principles and fail to satisfy the third prong of the Three Prong Test.

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[4] Duke Ex. 4 at 6.

[5] Tariff Sheet 66.2, (effective June 4, 2008).

IV. CONCLUSION

For the reasons presented above IGS urges the Commission to adopt the Stipulation and Recommendation filed in this docket without modification. The Stipulation has overwhelming support among all but one party to the case. The Stipulation clearly satisfies the longstanding Three Prong Test. As filed, the Stipulation resolved numerous issues in a fair and equitable manner in compliance with important regulatory principles. The Commission should adopt the Stipulation without modification.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Reply Brief of Interstate Gas Supply, LLC.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on June 16, 2023. The Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

/s/ Evan Betterton
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