

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The East)	
Ohio Gas Company d/b/a Dominion Energy)	Case No. 22-0179-GA-ATA
Ohio for Approval of Tariff Revisions)	

In the Matter of the Application of The East)	
Ohio Gas Company d/b/a Dominion Energy)	Case No. 22-0180-GA-UNC
Ohio for Approval of a Carbon Offset)	
Program)	

**REPLY BRIEF
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

The Commission should find that the Stipulation and Recommendation (“Stipulation”) presented in this proceeding satisfies all three parts of the test for determining if a stipulation is reasonable because the stipulation: (1) is a product of serious bargaining among capable, knowledgeable parties; (2) as a package, benefits ratepayers and the public interest; and (3) does not violate any important regulatory principle or practice. The Stipulation – negotiated and signed by many knowledgeable and capable parties (and not opposed by others)¹ – will result in multiple benefits to customers, competitive retail natural gas service (“CRNGS”) suppliers and the competitive market, supports development of the competitive market and is consistent with multiple regulatory principles. The arguments from the Office of the Ohio Consumers Counsel (“OCC”) are inconsistent with Commission precedent, immaterial, speculative, and incorrect. The evidence in the record supports approval of the Stipulation without modification. The Retail

¹ The East Ohio Gas Company d/b/a Dominion Energy Ohio (“Dominion”), RESA, Interstate Gas Supply LLC (“IGS”), the NRG Retail Companies (collectively, Direct Energy Business LLC; Direct Energy Services LLC; Direct Energy Business Marketing LLC; Energy Plus Natural Gas LLC; Reliant Energy Northeast LLC; Stream Ohio Gas & Electric, LLC; and XOOM Energy Ohio, LLC), SFE Energy Ohio Inc., and Statewise Energy Ohio LLC signed the Stipulation. Commission Staff and the Northeast Ohio Public Energy Council (“NOPEC”) do not oppose the Stipulation. Dominion Ex. 1.0 at 2, 5; IGS/RESA Ex. 1.0 at 6.

Energy Supply Association (“RESA”)² urges the Public Utilities Commission of Ohio to approve the Stipulation to allow implementation of a first-of-its-kind program in Ohio.³ The Stipulated Program (called Decarbon Ohio) is a non-tariffed program under which Dominion facilitates education for customers on sustainability and the availability of carbon offsets and validates that the participating CRNGS suppliers have obtained the required carbon offsets, while the CRNGS suppliers sell, market and enroll willing customers in the carbon offset products.

II. Argument

A. **It is not required that a consumer representative sign a stipulation in order for the stipulation to have been seriously negotiated by capable, knowledgeable parties.**

OCC argues that diverse interests are lacking with the Stipulation and, therefore, there were no serious negotiations.⁴ OCC even claims that the bargaining did not result in compromise with “a real party in interest.”⁵ OCC’s arguments are incorrect. First, it is not required, in order to find that a stipulation has been seriously negotiated by capable, knowledgeable parties, that any one particular party (namely, OCC) or even a consumer representative (namely, OCC) signs a stipulation. The Commission has repeatedly rejected this argument, which OCC has made many times before.⁶ The situation in this case is no different – the Commission should reject OCC’s argument again.

² 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.

³ IGS/RESA Ex. 1.0 at 4.

⁴ OCC Initial Brief at 3.

⁵ *Id.*

⁶ *In re Application of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR et al., Opinion and Order at 52 (March 31, 2016), citing *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order at 10 (February 19, 2014); *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order at 26 (July 18, 2012);

Second, OCC's implication that RESA and the other intervenors are not "real parties in interest" in this proceeding is contrary to the Attorney Examiner's findings that RESA and the other intervenors have a real and substantial interest in the proceeding and had demonstrated a right to intervene under R.C. 4903.221 and Ohio Adm.Code 4901-1-11.⁷ Therefore, RESA and the other intervenors are real parties of interest in this case with a valid interest in entering into the Stipulation with the utility. To the extent OCC is claiming that it is a "real party in interest" as compared to RESA, RESA strongly disagrees that OCC holds any more important position in this proceeding.

Third, OCC ignores the facts and evidence in this proceeding. The Stipulation was signed by the applicant and multiple other parties who demonstrated a real and substantial interest in the proceeding, and both Staff and NOPEC do not oppose the stipulation. OCC's argument also ignores that all the evidence in the record regarding this test criteria was unanimous,⁸ and confirms that the Stipulation is the product of serious bargaining among capable and knowledgeable parties. While OCC may disagree with the Stipulation's provisions and did not join the Stipulation, that is not a basis to say it was not seriously bargained. The Commission should reject OCC's argument.

B. Distracting rhetoric does not change the fact that the Stipulation will benefit customers and the public interest.

OCC makes extraordinary claims in its initial brief (i.e., Dominion would be a "carbon-offset czar"),⁹ argues that the Stipulated Program must be a necessity in order to be approved,¹⁰ and argues that the name of the Stipulated Program (Decarbon Ohio) should prevent approval.¹¹

and *Dominion Retail, Inc. v. The Dayton Power and Light Company*, Case Nos. 03-2405-EL-CSS et al., Opinion and Order at 18 (February 2, 2005) and Entry on Rehearing at 7-8 (March 23, 2005).

⁷ Entry at ¶ 7 (December 6, 2022).

⁸ IGS/RESA Ex. 1.0 at 1, 5-6; Dominion Ex. 1.0 at 5-6; NRG Ex. at 1, 3-4.

⁹ OCC Initial Brief at 1.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 1-2.

These arguments are incorrect and improperly attempt to distract the Commission from evaluating the evidence under its test and they, therefore, should be rejected. The Stipulation will benefit customers and the public interest because (a) it will establish a program that brings *greater visibility* to sustainability and carbon-reducing efforts in Ohio – specifically, Dominion’s service territory, (b) it *responds to the public’s interest* in opportunities to reduce emissions related to energy consumption, and (c) it *promotes competition*. The record evidence establishes each of these benefits of the Stipulated Program.¹² Importantly, OCC concedes that carbon offset opportunities can provide benefits.¹³

It warrants restating that the fundamental premise for the Stipulated Program is to respond to the public – many customers are not aware of the availability of carbon-neutral natural gas offerings,¹⁴ but they have concerns for sustainability and desires for initiatives.¹⁵ The Stipulated Program creates the opportunity for education, allows the customers to act upon the information as they wish and encourages existing and new CRNGS suppliers to offer additional carbon offset products. The Stipulated Program is completely voluntary – the customers who wish to enroll in carbon offset products from suppliers can elect to do so and the suppliers who wish to participate can elect to do so. The Stipulated Program will benefit customers and the public interest.

An additional benefit of the Stipulated Program that OCC ignores is that the startup costs and ongoing administrative and IT costs of the Stipulated Program will not be recovered from ratepayers. Instead, Dominion will pay for the startup costs and expressly agreed to not recover

¹² Dominion Ex. 2.0 at ¶ 2; IGS/RESA Ex. 1.0 at 6, 7; Dominion Ex. 1.0 at 8, 11; NRG Ex. 1.0 at 2-3, 5.

¹³ OCC Ex. 1.0 at 3; OCC Initial Brief at 2.

¹⁴ IGS/RESA Ex. 1.0 at 6.

¹⁵ Dominion Ex. 1.0 at 2, 7-8; NRG Ex. 1.0 at 6.

those costs from ratepayers.¹⁶ The participating suppliers will pay for the ongoing administrative and IT costs of the Stipulated Program.¹⁷

Given the benefits of the program, the Commission should find that the program will be beneficial to customers and the public interest. OCC's distracting claims should be rejected.

C. Speculative arguments do not negate the fact that the Stipulation will benefit customers and the public interest, and will not violate regulatory principles and practices.

OCC raises several other arguments in opposition to the Stipulation that should be disregarded because they are speculation and they are incorrect. In particular, OCC claims the Stipulation will not be beneficial because participating suppliers could be given an unfair competitive advantage over other suppliers, customers might not know about other options for securing carbon offsets, and the Stipulated Program could encourage mis-marketing.¹⁸ OCC adds that the Stipulation violates regulatory principles and practices because of the unfair competitive advantage given to participating suppliers and because the Stipulated Program might possibly create customer confusion.¹⁹ These arguments should be rejected for several reasons.

First, participating suppliers will not be given an *undue or unfair* competitive advantage or violate R.C. 4929.02(A)(3) because the Stipulated Program will be open to CRNGS suppliers in Dominion's service territory, in a similar manner to Dominion's existing Monthly Retail Rate Commodity Service, known as the MRR Program.²⁰ The Commission approved the MRR

¹⁶ Joint Ex. 1.0 at 7; Dominion Ex. 1.0 at 10; IGS/RESA Ex. 1.0 at 8.

¹⁷ Joint Ex. 1.0 at 7; Dominion Ex. 1.0 at 10; IGS/RESA Ex. 1.0 at 8.

¹⁸ OCC Initial Brief at 4-7.

¹⁹ *Id.* at 7-10.

²⁰ Like the MRR Program, the Stipulated Program presents an opportunity for CRNGS suppliers to participate in a program and be identified as a CRNGS supplier participating in a program in Dominion's service territory.

Program framework in 2020, including similar participation eligibility terms.²¹ OCC cannot claim that participating marketers will have an unfair competitive advantage when the Commission has approved similar eligibility terms. To be clear, the CRNGS suppliers will elect on their own whether to participate in the Stipulated Program. There is no *undue or unfair* advantage or preference when the suppliers control and decide their own participation.²² There is also no *undue or unfair* advantage or preference when the Stipulated Program is referenced by the participating CRNGS suppliers. The Stipulation also protects against unfair advantages through the stipulated education associated with the Stipulated Program.²³ All claims of an unfair competitive advantage should be rejected.

Second, OCC wrongly speculates that, if the Stipulated Program goes into effect, customers may not know about other options. The Stipulation cannot ensure that every customer understands every competitive option available – nor should it be a requirement. Nevertheless, the Stipulated Program seeks to provide additional information that is important to the customers in Dominion’s service territory – increasing their understanding and building upon the ongoing education that is taking place in Dominion’s service now about Dominion’s Choice Program. As a result, the Stipulation is reasonably crafted to allow customers to learn about and understand their options. OCC’s “other options” argument should be rejected.

Third, OCC speculates that the Stipulation may encourage mis-marketing through “greenwashing”, but that too is wrong because no term or provision in the Stipulated Program encourages mis-marketing. Notably, OCC does not identify any such term of the Stipulated Program, and also overlooks the fact that the Commission’s existing marketing-related

²¹ See *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) adopting Joint Stipulation and Recommendation filed on February 5, 2020.

²² The Commission approved the opportunity for CRNGS suppliers to participate in Dominion’s Monthly Retail Rate.

²³ Joint Ex. 1.0 at ¶ 5.

requirements will still apply to the participating CRNGS suppliers. OCC's mis-marketing argument should be rejected.

Lastly, OCC speculates that the Stipulated Program might cause customer confusion because of Dominion's involvement with the program. OCC wrongly places no value on the education program that will occur even though it can address and clarify Dominion's role (just like what is being done today through the Choice Program education).²⁴ OCC also presented nothing concrete to establish that customer confusion will actually occur. Its brief, instead, contends at most that customer confusion may be a possibility. In contrast, the record evidence establishes the demarcation on Dominion's role under the Stipulated Program – Dominion will not be a promoter of specific suppliers or an advertiser of specific offers, or create a new customer service. The CRNGS suppliers will sell and market environmentally sustainable natural gas products to customers.²⁵ As a result, any alleged customer confusion is speculation at best, and is an insufficient reason to reject the Stipulation.

OCC's attempts to convince the Commission to reject the Stipulation based on speculation and incorrect information should be disregarded.

III. Conclusion

OCC's testimony and arguments on brief make it clear that OCC does not want any changes so that customers either learn more about CRNGS carbon offset products or enroll in CRNGS suppliers' carbon offset products. OCC also does not want to further develop the competitive market in Dominion's service territory. OCC cannot, however, limit the competitive market the way it wants. OCC is statutorily obligated to support Ohio's natural gas policies, which include promoting diversity of natural supplies and suppliers, encouraging innovation, implementing

²⁴ Dominion witness Hochstetler explained this in her testimony. Dominion Ex. 1.0 at 9.

²⁵ IGS/RESA Ex. 1.0 at 5, 6; Dominion Ex. 1.0 at 8.

flexible regulatory treatment, and facilitating additional choices for the supply of natural gas. *See* R.C. 4929.02.

The record evidence establishes that the Stipulation supports these important regulatory policies with an innovative new program. The Stipulation also provides benefits to customers, the public interest and CRNGS suppliers in a number of ways – bringing greater visibility to sustainability and carbon offsets, reducing the emissions associated with consumption, responding to concerns and requests for sustainability and clean-energy initiatives, and promoting competition, all while not imposing costs on the ratepayers. The Stipulation is the result of serious negotiations and bargaining that took place and the Commission should approve the Stipulation without modification, and reject OCC’s arguments in this proceeding.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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