

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of a)	Case No. 21-903-GA-EXM
General Exemption of Certain Natural)	
Gas Commodity Sales Services or)	
Ancillary Services.)	
)	
In the Matter of the Application of Duke)	Case No. 21-904-GA-ATA
Energy Ohio, Inc., for Tariff Approval.)	
)	
In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval to)	Case No. 21-905-GA-AAM
Change Accounting Methods.)	

**INITIAL BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services.)	Case No. 21-903-GA-EXM
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 21-904-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 21-905-GA-AAM
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I. LEGAL STANDARD FOR STIPULATIONS

Pursuant to Ohio Adm.Code 4901-1-30, parties to the Public Utilities Commission of Ohio’s (Commission) proceedings may enter into a stipulation. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.¹

The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Commission proceedings.² The ultimate issue is whether the

¹ *Consumers’ 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 1555, 157, 378 N.E.2d 480 (1978).

² See, e.g., *In the Matter of the Application Seeking Approval 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-AAM (Opinion and Order) (March 31, 2016) at 48-49 (“PPA Case”).

agreement is reasonable and should be adopted by the Commission. In considering the reasonableness of a stipulation, the Commission has used the following criteria:³

- (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; and
- (3) Does the settlement package violate any important regulatory principle or practice?

II. THE STIPULATION SATISFIES THE THREE-PART TEST FOR COMMISSION STIPULATIONS.

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

In considering whether there was serious bargaining among capable and knowledgeable parties, the Commission evaluates the level of negotiations that appear to have occurred and takes notice of the experience and sophistication of the negotiating parties. The Stipulation and Recommendation (Stipulation) is the product of an open process in which all 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

³ The Commission's use of these three criteria to evaluate reasonableness of a stipulation has been endorsed by the Supreme Court of Ohio. See, e.g. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373; *AK Steel Corp v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 2002-Ohio-1735.

negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by the parties with diverse interests.⁴

The parties to the Stipulation are the Staff of the Public Utilities Commission of Ohio (Staff), Duke Energy Ohio, Inc. (Duke or Company), Interstate Gas Supply, LLC (IGS), Spire Marketing, Inc. (Spire), and the Retail Energy Supply Association (RESA) (collectively, the Signatory Parties). The Office of the Ohio Consumers' Counsel (OCC) did not join the Stipulation, but did take part in settlement discussions.

The fact the OCC did not sign the Stipulation does not indicate a lack of serious bargaining. The Commission has found that there is no requirement that any particular party must join a stipulation in order for the first part of the test to be met.⁵ The record demonstrates that serious bargaining did occur between capable and knowledgeable parties.

B. The Stipulation benefits customers and the public interest.

The Stipulation benefits customers and is in the public interest. Duke's witness Brady Gould provides supplemental testimony in support of the Stipulation and speaks to the benefits to customers and the public interest.⁶

The Stipulation provides enhancements to the competitive natural gas market in Duke's service area that provides a direct benefit to customers.⁷ The Stipulation will

⁴ Supplemental Testimony of C. Brady Gould (Company Ex. 3), p 10-11.

⁵ *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, *et al.*, Opinion and Order (April 13, 2005) at 9.

⁶ Company Ex. 3, p 8-9.

⁷ Company Ex. 3, p 17, lines 1-3.

provide customers the benefit of a competitive market-based supply cost and better transparency of their cost of gas.⁸

Witness Gould's testimony also states the Stipulation provides certainty to Duke Energy Ohio and will allow the Company smoothly to transition to an auction-based procurement process for natural gas service for customers that do not, or cannot, shop for their natural gas service.⁹

Furthermore, the Stipulation benefits customers and the public interest by requiring data to be provided to Staff to monitor the impact of the changes. In addition, the Stipulation resolves additional cases currently pending rehearing.¹⁰ Staff respectfully submits that the record adequately demonstrates that the Stipulation, taken as a package, benefits customers and is in the public interest.

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

This Stipulation does not violate any important regulatory principle or practice. On the contrary, as Company witness Gould testified, the Stipulation will further many important Ohio policy considerations. For example, the Stipulation facilitates the state's competitiveness in the global economy by providing a competitively bid process for determining natural gas supply for all customers, including those that do not choose to shop themselves. Additionally, nothing in this Stipulation hinders this state policy goal.¹¹

⁸ Company Ex. 3, p. 8-9.

⁹ Company Ex. 3, p. 16, lines 19 – 22.

¹⁰ See Stipulation, section IV.H.

¹¹ Company Ex. 3, p. 16, lines 3-6.

The Stipulation promotes diversity of natural gas supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers,¹² encourages innovation and market access for cost-effective supply and demand-side natural gas goods and services,¹³ and helps to facilitate the state's competitiveness in the global economy by providing a competitively bid process for determining natural gas supply for all customers, including those that do not choose to shop themselves.¹⁴ The Stipulation adheres to long-standing Commission practice, and should be approved.

III. CONCLUSION

The Stipulation represents a fair, balanced, and reasonable compromise of the issues in this proceeding. Staff believes that the Stipulation satisfies all of the Commission's criteria for adoption of settlements, and it is Staff's recommendation that the Commission issue an order approving the Stipulation.

¹² Company Ex. 3, p. 12-13; R.C. 4929.02(A)(3).

¹³ Company Ex. 3, p. 13; R.C. 4929.02(A)(4).

¹⁴ Company Ex. 3, p. 16; R.C. 4929.02(A)(10).

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following parties of record, this 24th day of October 2023.

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PUCO.