

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INITIAL POST-HEARING BRIEF
OF
DUKE ENERGY OHIO, INC.**

I. INTRODUCTION

The Commission should approve, without modification, the Stipulation and Recommendation filed in these proceedings on August 25, 2023 (the “Stipulation”).¹ As a total package, the Stipulation represents a well-negotiated balance of the issues raised and achieves a reasonable outcome. Contrary to the claims of the Office of the Ohio Consumers’ Counsel (“OCC”), the Stipulation provides numerous and significant benefits to all interested stakeholders, is in the public interest, and does not violate any important regulatory practice or procedure.

Specifically, OCC’s two bases for opposing the Stipulation lack any merit and should be rejected. First, allowing the Commission to decide the merits of the price-to-compare (“PTC”) proposal not only complies with the commitment made by Duke Energy Ohio, Inc., (“Duke Energy Ohio or the Company”) in Case No. 14-375-GA-RDR, *et al.*, but was expressly anticipated during those proceedings. In that case, Duke Energy Ohio committed to filing an application seeking approval to include certain PTC language on its customer bills. Consistent with this obligation, Duke Energy Ohio filed such an application in this case. OCC cannot now rely on its own, subsequent interpretation of that commitment to impose new, unanticipated obligations on Duke Energy Ohio in this case.

Second, OCC’s arguments against the proposed method of allocating storage and balancing fees are completely undermined by its failure to understand those fees and Duke Energy Ohio’s related policies. Because customers already pay storage and balancing fees in their current rates, the Stipulation will not result in customers paying any additional costs. Further, suppliers who cause imbalances will continue to be subject to penalties under Duke Energy Ohio’s policies, ensuring that suppliers, not customers, bear the operational risks and costs associated with balancing.

¹ Stipulation and Recommendation (Stipulation) (Joint Ex. 1) (Aug. 25, 2023).

For these reasons, the Commission should reject OCC's arguments and approve the Stipulation, as filed.

II. FACTUAL BACKGROUND

As a matter of background, on April 20, 2022, the Commission approved² the Stipulation and Recommendation filed in Case No. 14-375-GA-RDR, *et al.* (the "Global Settlement"), resolving various complex issues related to (1) the MGP Cases³ and (2) disputes regarding refunds to customers associated with the Tax Cuts and Jobs Act ("TCJA").⁴ Among other things, the Global Settlement required Duke Energy Ohio to file an application to transition to a competitive Standard Service Offer ("SSO") auction format for the procurement of natural gas, and to include in that application a proposal to add certain PTC language to customer bills.⁵ Interstate Gas Supply, LLC ("IGS") and the Retail Energy Supply Association ("RESA") opposed adoption of the Global Settlement and subsequently filed applications for rehearing in those proceedings. Both of these applications for rehearing remain pending before the Commission.⁶

On April 27, 2022, pursuant to the terms of the Global Settlement, Duke Energy Ohio filed an application (the "Application") in this proceeding.⁷ In that Application, the Company requested Commission approval to (1) transition from its current Gas Cost Recovery ("GCR") process for acquiring gas to that of a wholesale SSO auction, (2) implement a SSO reconciliation rider to recover all costs associated with SSO auctions, (3) implement a mechanism to recover the costs Duke Energy

² *In re the Application of Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR, *et al.*, Opinion and Order (Apr. 20, 2022).

³ The "MGP Cases" refers to *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates*, Consolidated Case Nos. 14-0375-GA-RDR, *et al.*, Case Nos. 15-0452-GA-RDR, *et al.*, Case Nos. 16-0542-GA-RDR, *et al.*, Case Nos. 17-596-GA-RDR, *et al.*, Case Nos. 18-283-GA-RDR, *et al.*, Case No. 19-0174-GA-RDR *et al.*, and Case No. 20-0053-GA-RDR.

⁴ See *In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1830-GA-UNC, *et al.*

⁵ *In re the Application of Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR, *et al.*, Stipulation and Recommendation (Aug. 31, 2021) (Global Settlement) (Company Ex. 4).

⁶ *In re the Application of Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR, *et al.*, Entry on Rehearing (June 15, 2022).

⁷ Application of Duke Energy Ohio, Inc. (April 27, 2022) (Application) (Company Ex. 1).

Ohio will incur in transitioning to a competitive SSO auction construct, and (4) revise the PTC message on its natural gas customer bills to include the additional language⁸ decided upon in the Global Settlement.⁹ Duke Energy Ohio's Application was subject to months of investigation by the Staff of the Public Utilities Commission of Ohio ("Staff") and extensive discovery by many intervening parties.¹⁰ These intervening parties included OCC, IGS, RESA, and Spire Marketing, Inc. ("Spire").¹¹

After comprehensive and exhaustive negotiations, nearly all of the parties to these proceedings reached an agreement to resolve the matters raised in the Company's application. The terms of that agreement are presented in the Stipulation. The signatory parties to the Stipulation (the "Signatory Parties")¹² include all but one of the intervening parties to these proceedings and, together, represent all customer classes and various other stakeholder interests. If approved, this Stipulation will resolve all issues raised related to Duke Energy Ohio's transition to a competitive SSO auction process.¹³ However, the Stipulation does not resolve the PTC issue.¹⁴ Instead, the Stipulation leaves the PTC proposal, as it was written in the Application, to the Commission for consideration.¹⁵

None of the parties in this proceeding have opposed the transition to the competitive SSO auction format proposed in the Application, as modified by the Stipulation. However, OCC, the only party to oppose the stipulation, takes issue with two of the Stipulation's other provisions.

⁸ The proposed language is as follows: "In order for you to save money, a natural gas supplier must offer you a price lower than \$X.XX per Ccf for the same usage that appears on this bill." *Id.* at 8.

⁹ Supplemental Testimony of C. Brady Gould on behalf of Duke Energy Ohio, Inc., in Support of Settlement (August 29, 2023) (Gould Supp. Test.) (Company Ex. 3) at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² The Signatory Parties include Duke, IGS, RESA, Spire, and Staff.

¹³ Gould Supp. Test. (Company Ex. 3) at 4.

¹⁴ Stipulation (Joint Ex. 1) at 9.

¹⁵ *Id.*

Following a two-day evidentiary hearing, the Company has demonstrated that the Stipulation is reasonable and passes muster under the Commission's three-part test for settlements. Accordingly, the Commission should approve the Stipulation as filed.

III. SUMMARY OF THE STIPULATION

The Stipulation resolves all of the matters set forth in Duke Energy Ohio's Application other than the PTC proposal.¹⁶ Matters addressed by the Stipulation include a new method of assessing storage and balancing fees, a new SSO Gas Peaking Supply Service, and the PTC proposal, as well as other, more administrative matters.

A. Storage and Balancing Fees

Currently, Duke Energy Ohio's non-shopping customers directly pay balancing fees for storage through the GCR.¹⁷ Shopping customers indirectly pay these costs to the extent that Competitive Retail Natural Gas Service ("CRNGS") providers include in the rates they charge customers the balancing fees they pay to Duke via the Firm Balancing Service ("Rider FBS") and the Enhanced Firm Balancing Service ("Rider EFBS").¹⁸ Under the Stipulation, Duke Energy Ohio will modify this method of assessing balancing fees and will instead bill these charges directly to all customers, regardless of their shopping or non-shopping status, through the new nonbypassable Storage and Balancing Charge Rider ("Rider SBC").¹⁹ Rider SBC will be trued up quarterly and will be credited with revenues from the Interruptible Monthly Balancing Service ("Rate IMBS").²⁰ In addition, penalties from interstate pipeline storage providers will be allocated and billed to the

¹⁶ See generally Stipulation (Joint Ex. 1).

¹⁷ Stipulation (Joint Ex. 1) at 6.

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.*

supplier who caused the penalty, and the revenue from that supplier will be credited to Rider SBC.

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In order to implement this change, Duke Energy Ohio will notify customers of the change via bill message.²² Similarly, all CRNGS providers will be notified of the change and will be required to submit an affidavit to Duke Energy Ohio stating that they have modified their customer rates to remove any charges associated with balancing fees.²³ Duke Energy Ohio will notify Staff if any CRNGS providers do not submit such an affidavit within six months of the Commission order approving the change.²⁴ Also associated with Rider SBC are several proposed modifications to the Company's Supplier Tariffs regarding Rider FBS, the Full Requirements Aggregation Service ("Rate FRAS"),²⁵ and Rider EFBS.²⁶

B. SSO Gas Peaking Supply Service

The Application will be amended so that SSO suppliers will be required to participate in a newly created Duke Energy Ohio-obtained Gas Peaking Supply Service ("GPSS"), which will operate similarly to the peaking service currently in place for the GCR.²⁷ Participating in the GPSS will assist SSO Suppliers in supplying deliveries to help supplement system demands during the winter months of December through February.²⁸

C. PTC Proposal

The Signatory Parties were unable to reach an agreement regarding the PTC language included in Duke Energy Ohio's Application.²⁹ Accordingly, the Stipulation does not resolve any

²¹ *Id.*

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 8.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 9.

disputes relating to the PTC proposal.³⁰ Instead, the PTC portion of the Application remains before the Commission to consider and decide.³¹

D. Other Matters

The Stipulation also addresses various other matters. These matters include (1) monitoring by Staff of Duke Energy Ohio's exit from the merchant function;³² (2) modifications to the Company's bill format to separate gas cost charges from distribution rates;³³ (3) revisions to the Rate SSO tariff and the proposed SSO Supplier Agreement regarding retroactive nominations;³⁴ (4) revisions to the Rate SSOS tariff to allow gas to be delivered by zone during normal operating circumstances;³⁵ (5) scheduling of the final audit of Duke Energy Ohio's GCR process to occur following the SSO transition, after April 1, 2024; and (6) implementation of a Management and Performance audit by Staff three years following the start of the SSOR to evaluate the costs and credits of the various riders as well as the impacts to customers.³⁶

In addition, following approval of the Stipulation without material modification, IGS and RESA have agreed to withdraw their pending applications for rehearing in the Global Settlement cases.³⁷ In doing so, they are also giving up their right to seek an appeal of the Commission's decision approving the resolution of those complex and numerous proceedings.³⁸

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 10.

³³ *Id.*

³⁴ *Id.* at 10-11.

³⁵ *Id.* at 11.

³⁶ *Id.*

³⁷ *Id.* at 12.

³⁸ *Id.*

IV. ARGUMENT

A. The Stipulation is Reasonable and Meets the Commission-Established Criteria.

Ohio Administrative Code (O.A.C.) 4901-1-30(A) authorizes parties to Commission proceedings to enter into a stipulation, providing that “[a]ny two or more parties may enter into a written or oral stipulation concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding.”³⁹ The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.⁴⁰ The ultimate issue for the Commission’s consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted.⁴¹ Contrary to OCC’s position, the question is not whether any individual issue or component, on a stand-alone basis, passes the test.⁴² Rather, the only issue for the Commission to decide at this juncture is whether the totality of the settlement, as a package, is reasonable. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?
- Does the settlement package violate any important regulatory principle or practice?⁴³

³⁹ O.A.C. 4901-1-30(A).

⁴⁰ See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

⁴¹ See e.g., *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR et al., Opinion and Order ¶ 95, (Nov. 17, 2021).

⁴² See *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, et al., Opinion and Order at ¶ 131 (Nov. 17, 2021) (“We emphasize that the Commission must evaluate the benefits of the Stipulation as a package and each provision of the Stipulation need not provide a direct and immediate benefit to ratepayers and the public interest.”).

⁴³ *Id.*

Although not binding on the Commission, the terms of a stipulation are “accorded substantial weight” by the Commission.⁴⁴ The Supreme Court of Ohio has endorsed the Commission’s use of these criteria to resolve cases in a manner economical to ratepayers and public utilities, and has affirmed that the Commission may place substantial weight on the terms of a stipulation.⁴⁵ As explained below, the record supports that the Stipulation satisfies the three-part test.

B. The Stipulation Is a Product of Serious Bargaining Among Capable, Knowledgeable Parties.

The evidentiary record in these proceedings is replete with evidence of serious bargaining between the Signatory Parties, and of the inclusion of all parties to the case in negotiations. The Signatory Parties to the Stipulation comprise all stakeholder interests impacted by this proceeding.⁴⁶ Notably, the Commission has previously held that Staff, a Signatory Party to the Stipulation in this case, “impartially represents the interests of all stakeholders,”⁴⁷ including those of customers. Further, IGS, Spire, and RESA represent competitive providers that will be affected by the changes proposed in the Stipulation.⁴⁸ All of these parties were represented by experienced and competent counsel and regularly participate in rate proceedings before the Commission.⁴⁹ These parties and their counsel are highly knowledgeable in regulatory matters and competitive natural gas markets, including the implementation of procurement auctions.⁵⁰ Accordingly, the interests of all stakeholders are adequately represented in the Stipulation.

⁴⁴ *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, citing *City of Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

⁴⁵ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers’ Counsel* at 126.

⁴⁶ Gould Supp. Test. (Company Ex. 3) at 10.

⁴⁷ *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR, et al., Opinion and Order at 20-21 (September 7, 2016).

⁴⁸ Gould Supp. Test. (Company Ex. 3) at 10.

⁴⁹ *Id.*

⁵⁰ *Id.*

The settlement process encouraged serious bargaining among all parties to the proceeding. These proceedings have been pending for more than two years, and all parties have had the opportunity to conduct significant discovery, with ample time to review the Company's Application, Direct Testimony, and discovery responses.⁵¹ Further, the settlement process in this proceeding allowed for robust discussion of the issues among the parties.⁵² All participants, including OCC, were provided an opportunity to express their concerns and raise issues, with those issues being thoroughly reviewed and resolved during negotiations.⁵³ This process culminated in the Stipulation, which addresses all but one of the issues raised by the Signatory Parties in this proceeding.⁵⁴ Moreover, the Commission has repeatedly rejected contentions that any one class of customers (or any party) can effectively veto a stipulation and that the agreement of OCC (or any party) as a signatory party is a requirement in order to satisfy the first prong of the Commission's settlement standard.⁵⁵

Finally, the terms of the Stipulation also demonstrate that serious bargaining took place. The Stipulation results in material changes to the Company's Application which improve the initial proposal and resolve concerns raised by the Signatory Parties.⁵⁶ One example of such a change is the final language of Section IV(A) of the Stipulation, which addresses storage and balancing fees and was the product of substantial negotiations between the parties.⁵⁷ Additionally, the Stipulation

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See, e.g., *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation to Extend and Increase Its Infrastructure Replacement Program*, Case No. 16-2422-GA-ALT, Opinion and Order at 32 (Jan. 31, 2018); *In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019*, Case No. 16-743-EL-POR, Opinion and Order at 25 (Nov. 21, 2017); *Dominion Retail v. Dayton Power & Light Co.*, Case No. 03-2405-EL-CSS, Opinion and Order, at 18 (Feb. 2, 2005).

⁵⁶ Gould Supp. Test. (Company Ex. 3) at 10.

⁵⁷ Direct Testimony of Joseph Bird in Support of the Stipulation, on Behalf of Interstate Gas Supply, LLC and The Retail Energy Supply Association (August 29, 2023) (Bird Direct Test.) (IGS/RESA Ex. 1) at 5.

will resolve RESA and IGS's pending motion for rehearing in the Global Settlement cases, providing finality to those proceedings that will, in turn, provide certainty to all stakeholders, including both Duke Energy Ohio and customers.⁵⁸

C. The Stipulation, As A Package, Benefits Ratepayers and Is in The Public Interest.

The Stipulation is a comprehensive settlement package that benefits ratepayers and is in the public interest. If approved without material modification, the Stipulation will provide complete resolution of all issues, other than the PTC proposal, raised in these proceedings among the Signatory Parties. As discussed below, the Stipulation provides numerous and significant benefits for all interested stakeholders, including customers. Further, the Commission should reject OCC's claims that the Stipulation contains provisions that will be harmful to customers.

i. The Stipulation Provides Significant Benefits for All Interested Stakeholders, Including Customers.

Overall, the Stipulation will provide a number of benefits to both customers and other interested stakeholders. As detailed in Mr. Gould's testimony, the Stipulation will provide certainty to both customers and Duke Energy Ohio by enabling the Company to smoothly transition to an auction-based procurement process for non-shopping customers.⁵⁹ Further, the establishment of an SSO auction process will give customers the advantage of a competitive, market-based supply cost.⁶⁰ The competitive auction format will also enable Duke Energy Ohio to provide enhanced transparency regarding the cost of gas while still preserving the same reliable delivery of gas that it has provided in the past.⁶¹

⁵⁸ Gould Supp. Test. (Company Ex. 3) at 11.

⁵⁹ *Id.* at 16.

⁶⁰ *Id.* at 8.

⁶¹ *Id.* at 8-9.

Additionally, the Stipulation provides for enhancements to the competitive natural gas market in the Company's service territory, providing direct benefits to both customers and other stakeholders.⁶² Under Duke Energy Ohio's current approach, non-shopping customers directly pay storage and balancing fees through the GCR.⁶³ On the other hand, shopping customers pay these fees indirectly through their competitive suppliers' rates.⁶⁴ Competitive suppliers currently bear the risks and obligations related to balancing, meaning that shopping customers could be paying additional rate premiums associated with those risks.⁶⁵ By modifying the method Duke uses to allocate its storage and balancing fees, the Stipulation ensures that all customers will be charged a uniform rate for such costs through Rider SBC, thereby eliminating the imposition of such rate premiums on shopping customers.⁶⁶ Further, the stipulated terms ensure that implementation of Rider SBC will occur with ample lead time, with vetted messaging to both customers and suppliers, and with confirmation so that customers are not double-charged for storage and balancing costs.⁶⁷

The stipulated changes will also alleviate issues with EFBS service that arose in Duke Energy Ohio's most recent audit report.⁶⁸ In that case, the Auditor recommended that EFBS charges be reconciled to actual upstream costs.⁶⁹ However, as Mr. Bird describes in his testimony supporting the Stipulation, such reconciliation would be "akin to attempting to unscramble an egg."⁷⁰ The Stipulation, by moving the recovery of storage-related demand costs to a customer charge for all customers, will enable much simpler reconciliation of revenues to costs in the future.⁷¹

⁶² *Id.* at 17.

⁶³ Stipulation (Joint Ex. 1) at 6.

⁶⁴ *Id.*

⁶⁵ Bird Direct Test. (IGS/RESA Ex. 1) at 6.

⁶⁶ *Id.*

⁶⁷ *Id.* at 6-7.

⁶⁸ *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio*, Case No. 21-218-GA-GCR.

⁶⁹ Bird Direct Test. (IGS/RESA Ex. 1) at 6.

⁷⁰ *Id.*

⁷¹ *Id.*

Finally, the Stipulation will provide certainty to all interested parties regarding the Global Settlement cases, which have been pending rehearing for some time now.⁷²

ii. Customers Are Not Harmed by Allowing the Commission to Decide the Merits of the PTC Proposal.

The Stipulation's treatment of the PTC proposal does not violate the terms of the Global Settlement. Contrary to OCC's claims, the Global Settlement merely required the Company to include in its Application a proposal to add additional PTC language to its customer bills. Duke Energy Ohio did so in its Application, and the Stipulation leaves that portion of the Application for decision by the Commission. This treatment was contemplated, and in fact anticipated, by both the signatory parties to the Global Settlement⁷³ and the Commission in those proceedings. Accordingly, the Commission should reject OCC's arguments and find that the Stipulation is consistent with the Global Settlement and, as such, satisfies the second prong of the Commission's settlement standard.

1) The Global Settlement Did Not Require Staff and Duke to Stipulate to the PTC in This Proceeding.

As admitted by OCC's witness Mr. Adkins,⁷⁴ settlements should be enforced according to their actual terms, not what the parties may have wished they negotiated for or what certain parties may have individually interpreted the terms to mean.⁷⁵ Otherwise there would be no point to settlement negotiations in the first place.⁷⁶ In relevant part, Section C, Paragraph 24 of the Global Settlement provides:

The Signatory Parties agree that Duke Energy Ohio shall add the SSO price-to compare on its natural gas bills for customer information. Such billing system change shall commence with the second billing month that a customer is billed based upon

⁷² Gould Supp. Test. (Company Ex. 3) at 9.

⁷³ The signatory parties included: Duke, Staff, OCC, and Ohio Energy Group.

⁷⁴ Transcript Vol. I, at 131 ("A. I believe the totality of the settlement should be enforced based on the words encompassed in the documents.").

⁷⁵ See, e.g., *Cincinnati v. Gas Light & Coke Co.*, 53 Ohio St. 278, 284, 41 N.E. 239, 241 (1895).

⁷⁶ Testimony Recommending Modification of the Stipulation of Kerry J. Adkins, on behalf of Office of the Ohio Consumers' Counsel (Sept. 7, 2023) (Adkins Test.) (OCC Ex. 2) at 12-13.

the SSO. Duke Energy Ohio shall include this billing format change as part of its Auction Application.⁷⁷

In his testimony, OCC witness Mr. Adkins repeatedly singles out the first sentence of this section (Duke Energy Ohio “shall add the SSO price-to-compare”) as requiring the Stipulation to provide for inclusion of the PTC message on customer bills.⁷⁸ In doing so, Mr. Adkins fails to address the implications of the final sentence of Paragraph 24 (Duke Energy Ohio “shall include this billing format change as part of its Auction Application”).

However, under general principles of contract interpretation, all provisions of a settlement must be read together, and the intent of each provision should be determined based on a consideration of the whole.⁷⁹ Thus, a proper interpretation of the Global Settlement would consider the entirety of Section C, Paragraph 24, and not merely a single sentence of that section. Under this approach, the plain language of Section C, Paragraph 24, read as a whole, merely required Duke Energy Ohio to include the PTC proposal as part of its Application in this proceeding.

This reading of the Global Settlement is consistent with the understanding of the signatory parties to the Global Settlement. Specifically, in those proceedings, the signatory parties explained that the Global Settlement “include[d] provisions that commit [Duke Energy Ohio] to make future applications before the Commission to seek...Commission authorization to include a price-to-compare calculation on [Duke Energy Ohio’s] natural gas bills.”⁸⁰ Further, in its Order approving the Global Settlement, the Commission explicitly agreed with the parties that “the commitment to include within [the Application] proposed

⁷⁷ Global Settlement (Company Ex. 4) at 18.

⁷⁸ See Adkins Test. (OCC Ex. 2) at 9; see also Transcript, Vol. I, at 133.

⁷⁹ See, e.g., *Foster Wheeler Enviresponse, Inc. v. Franklin Cnty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 361, 678 N.E.2d 519, 526 (1997).

⁸⁰ *In re the Application of Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR, et al., Opinion and Order (Apr. 20, 2022) at 55.

price-to-compare messaging to be included on customer bills [] [was] merely [a] commitment[] to file the proposal[] in a future proceeding.”⁸¹ Despite this clear language, OCC, a signatory party in that case, did not seek rehearing of this order on the grounds that it did not reflect the agreement of the parties or their understanding of the commitments imposed by the Global Settlement.⁸² As such, OCC cannot now argue that the Global Settlement now requires additional commitments by Duke Energy Ohio.

Neither the plain terms of the Global Settlement, the parties’ understanding of the Global Settlement, nor the Commission’s order approving the Global Settlement support OCC’s contention that the Global Settlement required Duke Energy Ohio to stipulate to the PTC in this proceeding.

2) Nothing in the Stipulation is Contrary to the Commitments of the Global Settlement.

Pursuant to its commitment in the Global Settlement, Duke Energy Ohio included in its Application a proposal to add the PTC message to its customer bills.⁸³ OCC witness Mr. Adkins agrees that Duke Energy Ohio’s Application, as initially filed, was consistent with the terms of the Global Settlement.⁸⁴ Mr. Adkins further concedes⁸⁵ that nothing in the Stipulation withdraws the PTC portion of the Application.⁸⁶ In fact, the Stipulation explicitly leaves the PTC proposal, as included in the Application, for Commission consideration.⁸⁷

However, even though he has admitted that the Application was consistent with the Global Settlement and that the Stipulation does not alter the initial PTC proposal, Mr. Adkins now argues it

⁸¹ *Id.* at 63.

⁸² *See* Transcript, Vol. I, at 148-149.

⁸³ Application (Company Ex. 1) at 8.

⁸⁴ Transcript Vol. I, at 139-140 (“Q...Do you believe that the Application filed by Duke Energy in this proceeding was consistent with the terms of the Global Settlement? ... A. Yes.”).

⁸⁵ *Id.* at 149.

⁸⁶ Stipulation (Joint Ex. 1) at 9.

⁸⁷ Stipulation (Joint Ex. 1) at 9; Transcript Vol. I, at 149.

is a violation of the Global Settlement for the Commission to consider that very same proposal. In support of this argument, Mr. Adkins' primary contention is that the PTC proposal is not subject to the Commission's three-part settlement standard.⁸⁸ According to Mr. Adkins, since the Stipulation does not resolve the PTC issue, the PTC issue will be subject a "different and more stringent standard."⁸⁹ Mr. Adkins neither defines this standard nor cites any support for this standard.

OCC takes issue with something beyond Duke Energy Ohio's control. The Company has no ability to unilaterally change its bill format. Such changes must first be approved by the Commission. Neither the Global Settlement nor the Commission's order approving the Global Settlement resolved the merits of the PTC issue.⁹⁰ Similarly, nothing in either the Global Settlement or the associated Commission order addressed potential settlement in this case or the legal standard that should be applied in this case. These facts are undisputed by Mr. Adkins.⁹¹ As such, the legal standard the Commission will apply to the PTC proposal as a result of the Stipulation is the exact same standard that it would have applied had there been no stipulation filed in the first place. Accordingly, OCC's contention that consideration of the PTC proposal separate from the Stipulation constitutes a violation of the Global Settlement is misplaced and without merit.

Regardless of the legal standard applied to the PTC proposal, Duke Energy Ohio has fulfilled its obligation under the Global Settlement by proposing the PTC message in this case. Duke Energy

⁸⁸ Adkins Test. (OCC Ex. 2) at 11-12.

⁸⁹ *Id.*

⁹⁰ *In re the Application of Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR, et al., Opinion and Order (Apr. 20, 2022) at 73.

⁹¹ See Transcript, Vol. I at 136 (Q. Duke Energy has no ability to add the Price to Compare to customer bills without Commission approval, correct? A. That is correct."); see also Transcript, Vol. I, at 143 ("Q. Now, nothing in the Global Stipulation discusses the potential settlement, correct? A. ... if you're asking me does it speak to the words, then the answer is no."); see also Transcript, Vol. I, at 144-145 (Q. Nothing in the Global Stipulation addresses the legal standard which must be applied by the Commission to the Price to Compare proposal, correct? ... A. I don't think it's specified in the document what the legal standard is."); see also Transcript, Vol. I, at 148 ("Q. Mr. Adkins, nothing in the Commission's Opinion and Order indicated that Duke and Staff were obligated to reach a stipulation with OCC in this proceeding, correct? A. That is correct."); see also Transcript Vol. I, at 148 ("Q. And nothing in the Commission's Opinion and Order indicated that the SSO and Price to Compare issues would be subject to the three-part settlement standard, correct? A. That is correct...").

Ohio's position is not to oppose the PTC proposal. Rather, Duke Energy Ohio's intention is to rely on the Commission's determination regarding the merits of the PTC proposal. If the Commission believes it appropriate to include the PTC message on customer bills, then the Company will do so.⁹² For these reasons, the Commission should reject OCC's contention that the Stipulation must resolve the PTC issue.

iii. Customers Are Not Harmed by Charging Storage and Balancing Fees Directly Through the Proposed Rider SBC.

The Stipulation's storage and balancing proposal will not harm customers. In its arguments against this proposal, OCC mischaracterizes the nature of storage and balancing fees. All customers currently pay these fees, whether directly or indirectly, and the proposal will not change the amount of these charges. In fact, to the extent that competitive suppliers include risk premiums associated with storage and balancing in their rates, the proposal may actually reduce balancing charges paid by shopping customers. Further, OCC's concerns regarding suppliers "gaming the system" at the expense of customers are not well founded given the various penalties suppliers would be subject to for engaging in such behavior.

1) OCC Fails to Understand What Storage and Balancing Costs Represent.

OCC's primary contention with respect to this issue is that the Stipulation's proposed method of assessing storage and balancing fees will be "worse" for customers.⁹³ However, OCC fails to understand the nature of storage and balancing costs and what those costs actually represent. In fact, OCC witness Mr. Kumar admits that he has no personal knowledge of how Duke Energy Ohio tracks and assigns storage and balancing costs.⁹⁴

⁹² Gould Supp. Test. (Company Ex. 3) at 9.

⁹³ Transcript Vol. I, at 173, 174.

⁹⁴ *Id.* at 166.

Balancing service charges are used to manage the differences between the Company's required daily supply delivery and the actual customer's consumption.⁹⁵ It is OCC witness Mr. Kumar's belief that Duke Energy Ohio's balancing charges solely consist of costs related to imbalances on the Company's system.⁹⁶ However, as testified by Mr. Gould, storage and balancing charges are comprised of several categories of costs. These costs predominantly consist of fees Duke Energy Ohio will incur regardless of whether or not there are imbalances.⁹⁷ Specifically, Duke Energy Ohio's balancing costs include the cost of maintaining storage and of transporting gas in and out of storage.⁹⁸ Storage costs include a fixed reservation fee to maintain the transportation and storage facility, as well as commodity costs associated with injecting or withdrawing gas from storage.⁹⁹ These commodity costs are volumetric charges based on the volume of gas moved.¹⁰⁰ They do not include the cost of the natural gas itself¹⁰¹ and are determined by FERC jurisdictional rates for injections and withdrawals. Because of this, they do not change with the market.¹⁰² In addition to these charges, storage and balancing costs also include fuel charges, which are associated with cycling storage and total less than one million dollars each year.¹⁰³

OCC witness Mr. Kumar appears to also believe that there are additional balancing charges associated with annual reconciliation.¹⁰⁴ However, annual reconciliation does not cause the storage and balancing costs identified above to change. In fact, balancing is an entirely separate concept from annual reconciliation in Duke Energy Ohio's tariffs. Further, storage and balancing costs do not

⁹⁵ Stipulation (Joint Ex. 1) Attachment B, Rate FRAS, at 19.

⁹⁶ Transcript Vol. I, at 167.

⁹⁷ *Id.* at 26-27.

⁹⁸ *Id.* at 26.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 27.

¹⁰¹ *Id.*

¹⁰² *Id.* at 167.

¹⁰³ *Id.* at 186.

¹⁰⁴ See Testimony Recommending Modification of the Stipulation of Jatinder Kumar, on behalf of Office of the Ohio Consumers' Counsel (Sept. 7, 2023) (Kumar Test.) (OCC Ex. 3) at 10.

change depending on the extent of the imbalances on the Company's system in a given year. This is because, regardless of whether or not there are imbalances, Duke Energy Ohio is required to cycle gas in and out of storage.

As such, the additional "imbalancing costs" that Mr. Kumar believes will be imposed on customers as a result of the Stipulation are either nonexistent or minimal and, thus, will not negatively impact customers.

2) Customers Are Currently Paying for Storage and Balancing Costs, Which Remain Unchanged by the Stipulation.

Regardless of what exactly storage and balancing fees include, customers will not be facing additional charges under the Stipulation because Duke Energy Ohio's customers already pay these fees as part of their current rates. Specifically, Duke Energy Ohio's non-shopping customers currently pay storage and balancing fees directly through the GCR.¹⁰⁵ Similarly, shopping customers indirectly pay these fees through the rates charged by competitive suppliers, who pass along to customer the storage and balancing fees they pay Duke Energy Ohio under Rider FBS and Rider EFBS.¹⁰⁶

Under the Stipulation, the only difference with respect to these charges is that shopping customers will now pay storage and balancing fees directly to Duke Energy Ohio rather than indirectly through their competitive suppliers. Non-shopping customers will continue to directly pay for these fees, just through Rider SBC rather than through the GCR. As such, the Stipulation only modifies how customers pay storage and balancing fees. It does not change how these rates are calculated or what they include.¹⁰⁷

¹⁰⁵ Stipulation (Joint Ex. 1) at 6; Admitted by Mr. Kumar at Transcript Vol. I, at 168.

¹⁰⁶ Stipulation (Joint Ex. 1) at 6.

¹⁰⁷ Transcript Vol. I, at 14-15.

Contrary to OCC's claims, having shopping customers pay storage and balancing fees directly will not harm customers. In fact, the opposite is true – customers are likely to see measurable benefits from the proposed change. The Stipulation will ensure that all customers, regardless of their shopping or non-shopping status, pay a uniform rate for storage and balancing fees.¹⁰⁸ Further, to the extent that competitive suppliers have included any kind of risk premium in their rates, shopping customers will likely benefit as balancing costs will now be passed through to customers without any sort of added premium. The terms of the Stipulation ensure this result by mandating that all competitive suppliers submit an affidavit to Duke Energy Ohio stating that they have modified their customer rates to exclude storage and balancing related fees.¹⁰⁹ Staff will be informed of any supplier who fails to comply with this requirement.¹¹⁰

Finally, Rider SBC will be credited with revenue from Rate IMBS as well as any pipeline penalties related to storage that are passed on to suppliers.¹¹¹ In this way, customers will not be forced to pay additional costs associated with pipeline penalties caused by suppliers.

Because customers will not be charged additional fees associated with balancing, the proposed method of allocating storage and balancing fees is reasonable and should be approved by the Commission.

3) Duke Energy Ohio's Current Policies, Which Are Unchanged by the Stipulation, Contain Various Safeguards Which Protect Customers from Any Supplier Who Attempts to "Game the System."

OCC's next contention is that, by charging customers directly for storage and balancing fees, Duke Energy Ohio is placing all of the risk associated with balancing on customers,¹¹² leaving suppliers free to "game the system" by providing more gas when prices are low and less gas when

¹⁰⁸ Stipulation (Joint Ex. 1) at 6.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 6-7.

¹¹¹ *Id.* at 6.

¹¹² Kumar Test. (OCC Ex. 3) at 10.

prices are high.¹¹³ This position, however, mischaracterizes the terms of the Stipulation and fails to recognize the various safeguards built into Duke Energy Ohio's policies that guard against this sort of behavior.

Under Duke Energy Ohio's current policies, the Company has the ability to instruct suppliers regarding the volume of gas delivered on a given day. For instance, if it determines that a supplier's nomination is too low or too high, Duke Energy Ohio can reject that nomination and issue an Operational Flow Order ("OFO") requiring the supplier to correct any over/under nomination.¹¹⁴ If that supplier fails to comply with that OFO, they will be subject to specific penalties, including daily penalties for each day the OFO is in effect, the payment of a gas cost equal to the highest incremental cost paid by Duke Energy Ohio on the day of non-compliance, and payment of all other charges incurred by the Company as a result of the supplier's violation.¹¹⁵ These policies also allow Duke Energy Ohio to pass onto the supplier who causes an imbalance any penalties assessed to Duke Energy Ohio by interstate pipeline storage providers.¹¹⁶ Finally, suppliers who fail to comply with an OFO or otherwise violate Duke Energy Ohio's policies regarding balancing may have their access to the Company's system suspended or even terminated.¹¹⁷

The Stipulation in no way changes any of these policies. Thus, under the Stipulation, suppliers, not customers, continue to bear the risks and costs associated with the imbalances they cause. Because of these policies and the potential penalties suppliers face for causing imbalances, OCC's position that the Stipulation shifts all risks associated with balancing away from suppliers and onto customers is simply not well founded.

¹¹³ *Id.* at 8-9.

¹¹⁴ Stipulation (Joint Ex.1), Attachment A, Rate SSOS, at 8-10; Attachment B, Rate FRAS, at 20-22.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

4) The Stipulation Does Not Violate the Principle of Cost Causation.

Finally, OCC witness Mr. Kumar places great emphasis on the principle of cost causation, claiming that this principle requires suppliers to bear the costs of storage and balancing.¹¹⁸ However, as discussed in the prior section, this contention fails to recognize that suppliers will remain responsible for the added costs associated with imbalances they cause and that supplier penalties will be credited to customers. Thus, customers in no way will be held responsible for imbalancing costs caused by suppliers.

Mr. Kumar's contentions also fail to recognize that supplier choices are not the only cause of imbalances and that imbalances can occur even if suppliers act in complete accordance with Duke's balancing policies. Under the Stipulation, all suppliers will be required to provide a target amount of gas, set by Duke Energy Ohio on a daily basis.¹¹⁹ However, even if those suppliers provide the exact amount required by Duke Energy Ohio, it is still possible for there to be a difference between the target amount and the amount of gas actually consumed by customers on a given day, resulting in an imbalance. These imbalances can be caused by a number of factors outside of a supplier's control, such as unanticipated weather or customer choices.¹²⁰ Mr. Kumar explicitly recognized these realities at the hearing.¹²¹ Therefore, Mr. Kumar's unconditional claim that suppliers cause imbalances and thus should pay all costs associated with balancing should be rejected.

OCC fails to understand (1) what storage and balancing fees actually consist of, (2) what about storage and balancing fees the Stipulation actually modifies, and (3) what consequences suppliers face for causing imbalances. However, once examined under an accurate light, it becomes

¹¹⁸ See Kumar Test. (OCC Ex. 3) at 7-8.

¹¹⁹ Stipulation (Joint Ex. 1), Attachment A, Rate SSOS; Attachment B, Rate FRAS. See also Transcript Vol. I, at 172, 175.

¹²⁰ Transcript Vol. I, at 175-176.

¹²¹ *Id.*

clear that the Stipulation's proposed method of allocating storage and balancing fees will not harm customers and, therefore, should be approved.

D. The Stipulation Package Does Not Violate Any Important Regulatory Principle or Practice.

Finally, the Stipulation does not violate any important regulatory principle or practice. As supported by the testimony of Duke Energy Ohio witness Mr. Gould, the Stipulation complies with all relevant and important principles and practices.¹²² In fact, as further described in Mr. Gould's testimony, the Stipulation furthers a number of the important Ohio policy considerations outlined in R.C. 4929.02. These supported policies include, among many others: (1) promoting the availability of adequate, reliable, and reasonably priced gas, (2) promoting diversity of natural gas supplies and suppliers, (3) encouraging cost-effective and efficient access to information regarding the operation of the distribution system, and (4) facilitating additional choices for the supply of natural gas for residential customers.¹²³ Further, just as with OCC's claims that the Stipulation will harm customers, OCC's contentions that the Stipulation violates regulatory principles should be rejected.

i. The Stipulation's Treatment of the PTC Proposal Does Not Violate the Global Settlement and, As Such, Does Not Violate Any Regulatory Principle or Practice.

OCC's contentions regarding the Stipulation's treatment of the PTC proposal are based on the assertion that the Stipulation violates the terms of the Global Settlement.¹²⁴ However, as established above, allowing the Commission to decide the merits of the PTC proposal not only complies with the terms of the Global Settlement but was also explicitly contemplated by the parties and the Commission in that case. Once it becomes clear that the Stipulation does not violate the

¹²² Gould Supp. Test. (Company Ex. 3) at 11.

¹²³ *Id.* at 11-16.

¹²⁴ *See* Adkins Test. (OCC Ex. 2) at 3-4.

Global Settlement, any claim by OCC that the Stipulation violates regulatory principles and practices on that basis necessarily fails and should be rejected.

ii. The Proposed Method of Allocating Storage and Balancing Fees is Reasonable and Does Not Violate Any Regulatory Principle or Practice.

OCC's claim that the proposed method of allocating storage and balancing fees violates certain regulatory practices and principles similarly fails. Specifically, Mr. Kumar cites three principles in his testimony: cost causation, the shifting of utility operational risks, and the provision of necessary and adequate facilities and services at just and reasonable rates.¹²⁵ However, for the reasons identified in the previous section, none of Mr. Kumar's contention have merit.

Because suppliers are subject to penalties for causing imbalances and customers will be credited with revenue from suppliers' payments of those penalties, customers will not be subject to additional costs caused by suppliers. Similarly, these penalties ensure that the operational risks and costs associated with balancing remain with suppliers. Finally, the Stipulation will result in reasonable rates because customers are already paying storage and balancing fees, whether directly or indirectly, as part of their current rates¹²⁶ and the Stipulation does not change these fees or impose any additional costs related to balancing onto customers.¹²⁷

As such, the Commission should reject OCC's claims and find that the Stipulation does not violate any important regulatory principle or practice.

V. CONCLUSION

For the foregoing reasons, the Stipulation and Recommendation filed by the Signatory Parties should be approved and adopted by the Commission.

¹²⁵ Kumar Test. (OCC Ex. 2) at 7.

¹²⁶ See Stipulation (Joint Ex. 1) at 6.

¹²⁷ Transcript Vol. I, at 14-15.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 24th day of October, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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