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

POST-HEARING REPLY BRIEF OF DUKE ENERGY OHIO

I. INTRODUCTION

In its initial brief (the "OCC Brief"), the Office of the Ohio Consumers' Counsel ("OCC") contends that the near-unanimous, robustly negotiated Stipulation and Recommendation filed in this case (the "Stipulation") does not satisfy any of the criteria of the three-part test for settlements. OCC's arguments, however, are not supported by either the facts of this case or the substance of the Stipulation.

The Stipulation contains detailed negotiated terms, represents a myriad of benefits for customers (including residential customers), and includes several concessions made by Duke Energy Ohio, Inc. ("Duke Energy Ohio" or "the Company") to meet the needs of each of the various signatory parties (collectively, the "Signatory Parties").[1] The Signatory Parties, together, are representative of the Company's multiple consumer groups.

OCC stands alone in declining to join the Stipulation because the Signatory Parties did not adopt OCC's individual positions, which is neither the standard for accepting or rejecting a settlement nor an appropriate basis for evaluating the Stipulation. Not only does OCC fail to correctly apply the three-prong standard used by the Public Utilities Commission of Ohio (the "Commission"), but it also mischaracterizes the substantive provisions of the Stipulation as well as their practical implications. Of particular note, OCC's arguments demonstrate that it fails to understand: (1) the Company's balancing costs and policies, (2) the extent of the Company's prior commitment to propose the price-to-compare ("PTC") language at issue in this case, and (3) the Stipulation's effect on the PTC proposal included in Duke Energy Ohio's application.

OCC does not have the ability to unilaterally veto a Stipulation that is reasonable as a package, is the product of serious and extensive bargaining among a diverse set of stakeholders,

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[1] The Signatory Parties include Duke Energy Ohio, the Retail Energy Supply Association ("RESA"), Interstate Gas Supply, LLC ("IGS"), the Staff of the Public Utilities Commission of Ohio ("Staff"), and Spire Marketing, Inc. ("Spire").

results in just and reasonable rates, and ensures that Duke Energy Ohio can continue to safely and reliably serve its customers. For these reasons, the Company requests that the Commission approve the Stipulation as filed and agreed to by all but one of the parties to this case.

II. DESPITE OCC'S ARGUMENTS TO THE CONTRARY, THE STIPULATION SATISFIES THE COMMISSION'S THREE-PART TEST FOR SETTLEMENTS

As discussed in the Company's initial brief (the "Company Brief"), all stipulations entered into by parties in matters before the Commission must meet certain requirements. The Commission's three-part test for stipulations is well-established and has been consistently applied as follows:

1) Is the stipulation a product of serious bargaining among capable, knowledgeable parties;
2) Does the stipulation, as a package, benefit ratepayers and the public interest; and
3) Does the stipulation package violate any important regulatory principle or practice?[2]

The record in this case is replete with evidence that the Stipulation satisfies all three of these elements. As such, for the reasons set forth below, the Commission should reject OCC's arguments and approve the Stipulation, as filed.

A. The Stipulation Is the Product of Serious Bargaining Among Knowledgeable, Capable Parties.

In its initial brief, OCC raises for the first time the issue of whether the Stipulation is the product of serious bargaining. Not only does OCC improperly try to insert a new requirement into the Commission's settlement standard, but it fails to give credit to the various benefits residential customers will receive under the Stipulation. OCC is not the only party in this proceeding capable of representing the interests of the Company's residential customers and, even if it were, OCC had

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[2] *In re Cincinnati Gas & Elec. Co., Case No. 91-410-EL-AIR*, Order on Remand at 3-4 (Apr. 14, 1994); *see also Indus. Energy Consumers of Ohio Power Co v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 563 (1994) (noting that the Commission may place substantial weight on the terms of a stipulation).

ample opportunity to participate in settlement negotiations. As such, the Commission should reject OCC's claims and find that the Stipulation satisfies the first part of the Commission's settlement standard.

1. OCC Has Misapplied the Commission's Settlement Standard.

OCC improperly tries to add an additional provision to the Commission's settlement standard: whether the signatory parties to the settlement represent diverse interests. More specifically, OCC falsely claims that there is no signatory party to the Stipulation representing the Company's residential consumers.[3] Based on this argument, OCC claims that the Stipulation does not represent "diverse interests," and for this reason, should be rejected. However, while the Commission has, at times, underscored diversity as an important indication that serious bargaining occurred,[4] it has flatly rejected claims that diversity of signatory parties is a mandatory requirement necessary to satisfy the first prong of the test.[5] Rather, the focus is on whether the parties at the bargaining table represented a diverse set of interests and whether any particular consumer class was intentionally excluded from negotiations.[6]

Here, there is ample evidence that a diverse set of interests, including those of residential customers, was represented during negotiations in this case.[7] In fact, OCC has admitted that it was invited to, and participated in, settlement negotiations.[8]

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[3] *See* OCC Initial Brief at 3 (Oct. 24, 2023) ("Diverse interests are lacking. No representative of Duke's residential consumers joined the settlement.").

[4] *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, et al.*, Case No. 21-887-EL-AIR, et al., Opinion and Order at 42 (Dec. 14, 2022) (addressing the same argument of OCC related to diversity of interests)

[5] *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-RDR, *et al.*, Opinion and Order at 52 (Mar. 31, 2016) ("We reject [OCC's] attempt to revise the test to evaluate stipulations based on the diversity of signatory parties.").

[6] *See id.* at 53.

[7] *See* 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 10-11.

[8] OCC Initial Brief at 3.

Moreover, contrary to what OCC seems to believe, OCC is not the only party in this proceeding capable of representing the interests of residential customers. Notably, Staff, a Signatory Party to the Stipulation in this case, "impartially represents the interests of all stakeholders,"[9] including those of residential customers. Thus, even if the Commission were to evaluate the Stipulation based on the diversity of the Signatory Parties (which it should not), OCC's claim that "[n]o representative of [the Company's] residential customers joined the settlement"[10] is simply not true. Consistent with prior practice, the Commission should again decline to afford a single party the ability to thwart a settlement agreement merely by withholding its signature.[11]

Accordingly, OCC's claim that the Stipulation should be rejected because it does not represent diverse interests is supported by neither the Commission's three-part settlement standard nor the facts in this case.

2. Diverse Interests, Including Those of Residential Customers, Are Represented by the Stipulation.

Related to its first contention, OCC claims that the Stipulation serves the narrow interests of the Company and marketers at the expense of customers.[12] This argument, however, is also entirely unsupported by the facts of this case. Not only were customer interests represented during the entire course of negotiations, but those negotiations also resulted in several provisions in the Stipulation which will directly benefit customers, including residential customers.

As discussed in more detail in the Company Brief and the testimony of Brady Gould, residential customers will benefit from the Stipulation in a number of ways. These benefits include,

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[9] *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).
[10] OCC Initial Brief at 3.
[11] *In the Matter of the* Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Rates; Case no 22-507-GA-AIR et. al., Opinion and Order at 11 (November 1, 2023).
[12] *Id.* at 3,4.

among many others: (1) providing customers natural gas at a competitive price,[13] (2) ensuring all customers pay uniform storage and balancing fees, without any mark-up or built-in risk premiums,[14] and (3) requiring data be provided to Staff in order to monitor the impact of the proposed changes.[15] It is noteworthy that OCC supports the most significant modification being made in this case—the creation of the SSO construct to procure natural gas. It is simply not credible for OCC to claim there are no benefits to customers when OCC supports the most significant component of this case.

By entirely ignoring these benefits, OCC's argument mischaracterizes the terms of the Stipulation. OCC is not entitled to negate the heavily negotiated Stipulation simply because it does not contain certain individual terms OCC would have liked to have seen.

3. The Parties Engaged in Serious Bargaining Regardless of OCC's Decision Not to Sign the Stipulation, and No Single Party Had Superior Bargaining Power.

Finally, OCC claims that no "serious" bargaining occurred. OCC cites nothing in the record to support this contention and instead supplants its own definition for what constitutes "serious" bargaining. Specifically, in its brief, OCC contends that "it is not enough to simply hold a series of meetings and invite parties to attend."[16] However, in making this claim, OCC mischaracterizes what constitutes serious bargaining and fails to give credit to the negotiations that took place in this case.

By definition, a bargain is "an agreement between parties, settling what each gives or receives" and bargaining is "to negotiate over the terms of … [an] agreement."[17] The Stipulation

[13] Gould Supp. Test. (Company Ex. 3) at 8-9.
[14] *See* 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 6.
[15] Staff Initial Brief at 4 (Oct. 24, 2023) ("[T]he Stipulation benefits customers and the public interest by requiring data to be provided to Staff to monitor the impact of the changes.").
[16] OCC Initial Brief at 3.
[17] *Bargain*, Merriam-Webster Dictionary available at: https://www.merriam-webster.com/.

clearly reflects different parties' concessions on a variety of issues in multiple directions, which could not have been achieved without giving and receiving by each of the Signatory Parties. In other words, the Stipulation, on its face, makes clear that serious bargaining took place. OCC had the opportunity to present objections and issues to all of the parties, and to persuade any of the parties to adopt its recommendation. Just because OCC failed to convince others that its recommendations were reasonable does not mean that serious bargaining did not take place.

Without disputing that all parties in this proceeding were represented by capable and knowledgeable counsel, OCC further attempts to undermine the substantial negotiations between the parties by claiming there was an imbalance in bargaining power between Duke Energy Ohio and residential customers.[18] However, OCC's arguments that the Company exerted unequal and unfair bargaining power are illogical. Under OCC's reasoning, by virtue of the Company being a utility, it has unequal and unfair bargaining power that prevents serious bargaining among the parties. If this were the case, stipulated agreements could never be approved, as there would never be serious bargaining. This interpretation would render O.A.C. 4901-1-30(A), which authorizes parties to enter into stipulations, meaningless, as utilities inherently participating in their own cases would become an insurmountable obstacle to reasonable settlement.[19] That is obviously not the case, and the Commission should once again, disregard OCC's baseless claims that the Company has outsized negotiating leverage.[20]

B. The Stipulation, as a Package, Benefits Customers and Is in the Public Interest.

[18] *See* OCC Initial Brief at 3-4.

[19] *See* O.A.C 4901-1-30(A) (authorizing 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.").

[20] *See e,g. In the Matter of the* Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Rates; Case no 22-507-GA-AIR et. al., Opinion and Order at 10 (November 1, 2023).,

OCC's next contention is that the Stipulation does not benefit customers or the public interest. However, there are substantial gaps in OCC's analysis that render its conclusions meritless. First, OCC disregards the requirement that the Stipulation be considered "as a package" rather than based on the merits of each individual provision. Second, OCC fails to understand storage and balancing fees, the Company's policies regarding balancing, and the true drivers of imbalances on Duke Energy Ohio's system.

1. The Components of the Stipulation Opposed by OCC Are Each in the Public Interest, But Even If They Were Not, the Stipulation Must be Considered as a Package.

OCC singles out two individual components of the Stipulation as harmful to customers and not in the public interest. However, the second part of the Commission's three-part test for settlements requires the Commission to consider whether the Stipulation, "as a package, benefits consumers and the public interest."[21] Thus, the Stipulation must be considered as a whole, and any analysis which fails to do this does not do the Stipulation's terms – or the test – justice. The provisions of the Stipulation were designed by the Signatory Parties to resolve a number of issues in this case, all of which are interrelated. They cannot be isolated from one another, nor should they be. OCC's indication that the Stipulation's terms can be viewed in a vacuum ignores these important principles. As highlighted in the previous section, a true settlement requires both give and take by the parties, and this is exactly what happened in developing the Stipulation.

2. Contrary to OCC's Belief, the Stipulation Does Not Shift All Storage and Balancing Costs and Risks from Suppliers to Customers.

As made clear in the Company Brief, the proposed method of allocating storage and balancing costs under the Stipulation will not result in the negative consequence outlined in the OCC Brief. This is primarily because OCC fails to understand (1) what storage and balancing fees

[21] *In Re Cincinnati Gas & Elec. Co*., Case No. 91-410-EL-AIR, Order on Remand at 4 (Apr. 14, 1994).

consist of; (2) that Duke Energy Ohio's policies protect customers from suppliers who may "game the system;" and (3) many of the driving factors of imbalances on the Company's system have nothing to do with the choices of suppliers. Further, OCC's proposal to have all suppliers, including both SSO and competitive suppliers, become responsible for storage and balancing fees would likely result in both shopping and non-shopping customers paying higher rates than they would under the Stipulation.

a. OCC's Arguments Demonstrates that It Does Not Understand the Nature and Content of Storage and Balancing Fees.

OCC relies exclusively on its witness Mr. Kumar to support its contention that the proposed method of allocating storage and balancing fees is somehow "worse" for customers. However, Mr. Kumar has admitted that he has no personal knowledge regarding how Duke Energy Ohio tracks and assigns balancing costs.[22] Further, despite discussing in depth his beliefs regarding the consequences of imbalances on the Company's system, Mr. Kumar also admits that he is not familiar with either the interstate pipeline companies serving Duke Energy Ohio or those companies' policies regarding storage and balancing.[23] These gaps in Mr. Kumar's knowledge demonstrate why his testimony fails to correctly describe the practical implications of the Stipulation.

As explained in the Company Brief, storage and balancing fees include (1) a fixed reservation fee to maintain the transportation and storage facility; (2) commodity costs, fixed by FERC jurisdictional rates, associated with injecting or withdrawing gas from storage; and (3) fuel charges totaling less than one million dollars each year.[24] The majority of these costs are incurred by Duke Energy Ohio, regardless of whether or not there are imbalances.[25]

[22] Transcript Vol. I, at 166-167.
[23] *Id.* at 180-181.
[24] *Id.* at 26-27, 186.
[25] *See id.* at 26-27.

However, in its brief, OCC cites concerns regarding additional costs associated with "daily supply imbalances."[26] At the hearing, Mr. Kumar provided more detail regarding these "costs."[27] Specifically, Mr. Kumar stated that he believes customers will be charged "the costs of the gas itself, what [the Company] pays for the cost of the gas, and how much gas is supplied by the supplier."[28] But storage and balancing charges do not include the price of the gas injected or withdrawn from storage.[29] In fact, Mr. Kumar himself acknowledged this fact when he admitted that the Company's FRAS Tariff anticipates that suppliers will be charged for any additional gas required as a result of imbalances.[30] Further, to the extent that daily imbalances cause the Company to incur penalties from interstate pipeline providers, associated costs paid by customers will be minimal since the proposed Storage Balancing Charge Rider ("Rider SBC") will ultimately be credited with payments by the supplier at fault.[31]

Thus, the "substantial consumer costs due to storage charges" that OCC is concerned about are either nonexistent or minimal.

b. Both SSO and Competitive Suppliers Remain Subject to Various Penalties for Causing Imbalances Under the Stipulation.

OCC's arguments also fail to take into account the Company's policies regarding balancing, which are unchanged by the Stipulation. In its brief, OCC contends that gas suppliers will be "exempt" from all storage and balancing costs[32] and the Company does not assess any penalties for a supplier's failure to change intraday nominations and balance on a daily basis.[33] According to OCC, this leaves suppliers free to "game the system," supplying more gas when prices are low and

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[26] OCC Initial Brief at 11.
[27] *See* Transcript Vol. I, at 183.
[28] *Id.*
[29] *Id.* at 27.
[30] *Id.* at 184.
[31] Stipulation and Recommendation (Stipulation) (Joint Ex. 1) (Aug. 25, 2023) at 7.
[32] OCC Initial Brief, at 10.
[33] *Id.* at 11-12.

less when prices are high.[34] However, OCC witness Mr. Kumar admitted at the hearing that none of these contentions are true.

Specifically, Mr. Kumar confirmed that, under the Company's current policies, "if a supplier fails to deliver gas as scheduled by [Duke Energy Ohio], the supplier is required to pay the higher of the fair market value for that period, or the highest incremental cost of gas actually incurred by [the Company]."[35] Mr. Kumar also agreed that, should a supplier nominate too much or too little gas, the Company has the ability to issue an Operational Flow Order ("OFO") and "if a supplier fails to comply with the OFO, they can face financial penalties."[36] In addition, Mr. Kumar confirmed that "if a supplier fails to comply with [Duke Energy Ohio's] nomination requirements, or OFO, [the Company] can terminate that supplier's access to their system."[37] Finally, Mr. Kumar admitted that "if a penalty is assessed to [the Company] from an interstate pipeline provider, that penalty will be billed to the supplier which caused the penalty."[38]

Mr. Kumar acknowledges that the Stipulation changes none of these policies.[39] Thus, based on the testimony of its own witness, OCC's contentions that suppliers are "exempt" from any storage and balancing costs or penalties are entirely unsupported by the facts of this case. Rather, suppliers *are* subject to penalties for causing imbalances and those penalties ensure that the risks and costs associated with balancing remain with suppliers.

c. The Actions of Suppliers Are Not the Only Cause of Imbalances.

In addition to disregarding Duke Energy Ohio's balancing policies, OCC also incorrectly assumes that suppliers are the sole cause of imbalances on the Company's system.[40] In its brief,

[34] *Id.* at 11.
[35] Transcript Vol. I, at 171-172.
[36] *Id.* at 174.
[37] *Id.* at 174-175.
[38] *Id.* at 170-171.
[39] *See id.* at 189-190.
[40] *See* OCC Initial Brief at 10-12.

OCC claims that the Stipulation "would shift all the storage and balancing costs and risks from marketers – who can control and limit such costs – to consumers – who do not cause the costs and risks and over which they have no control.[41] However, this argument ignores the fact that even if a supplier nominates the exact amount of gas required by the Company, it is still possible for there to be imbalances. This was acknowledged by OCC witness Mr. Kumar, who agreed not only that such a situation was possible, but that "[i]n most cases that would happen. It's very rare when supplies would match."[42]

Mr. Kumar also admitted that imbalances can be caused by a number of factors, most of which are entirely outside of a supplier's control. These factors include "time-of-day use, temperatures, appliance efficiencies, and consumer usage" – all of which Mr. Kumar agreed were "not in the supplier's control."[43] In addition, Mr. Kumar admitted that suppliers have no way of matching supply to consumption in response to these factors, as suppliers currently do not have access to real-time consumption data.[44]

Further, contrary to his testimony that customers "have no control" over imbalances, Mr. Kumar acknowledged at the hearing that customers can, in fact, control some of the above-listed factors.[45] Specifically, Mr. Kumar admitted that "customer[s] can elect to obtain more efficient appliances" and "could turn down or turn up a thermostat depending on the weather."[46] Even more inconsistent with his stated positions, Mr. Kumar asserts that "if none of [Duke Energy Ohio's] customers shopped, then customers would be the ones which caused storage and balancing costs to

[41] *Id.* at 10.
[42] Transcript Vol. I, at 175.
[43] *Id.* at 203.
[44] *See id.* at 195-196.
[45] *Id.* at 203-204.
[46] *Id.* at 203-204.

be incurred."[47] Mr. Kumar fails to explain how this situation would be any different for shopping customers.

Thus, even if it were true that the Stipulation imposed the risks and costs of balancing on customers (which, for the reasons stated in the prior section, it does not), OCC's characterization that only suppliers have control over storage and balancing costs is entirely unsupported by how balancing operates.

d. OCC's Proposal to Have All Suppliers Pay the Costs of Storage and Balancing Would Harm Customers.

In its brief, OCC proposes that all suppliers, both SSO and competitive, be directly responsible for storage and balancing fees. However, for the reasons explained below, this proposal would harm customers by imposing additional costs on customers – the exact result OCC is seeking to avoid.

The Stipulation does not change what will be included in storage and balancing fees.[48] Instead, it only changes how customers are charged for those fees.[49] OCC does not contest that non-shopping customers currently pay these fees directly through the GCR or that shopping customers indirectly pay for balancing as part of the rates paid to their competitive suppliers.[50] Similarly, OCC does not contest that, under the Stipulation, all customers would begin paying such fees directly to the Company. Finally, OCC does not contest that the Company will pass through storage and balancing fees without markup to customers.

Under OCC's proposal, however, all customers, both shopping and non-shopping, would begin to pay for storage and balancing indirectly through their rates.[51] Specifically, OCC states

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[47] *Id.* at 192.
[48] *Id.* at 14-15.
[49] *Id.*
[50] OCC Initial Brief at 10,13.
[51] *Id.* at 13.

that, under its proposal, "marketers could (as they do now) build any storage and balancing costs into prices charged consumers under their contracts" and "[s]tandard service offer suppliers could build any storage and balancing costs into their standard service offer auction bids." [52] But this proposal fails to take into account that, in building such costs into their rates, competitive suppliers often include additional rate premiums associated with the risk of balancing.[53] The effect of these premiums is to impose the risks and costs associated with storage and balancing onto customers. OCC witness Mr. Kumar acknowledged that this was true when he agreed at the hearing that "as of today, shopping customers…bear the risk of storage and balancing because the cost[s] of storage and balancing are built into the rate shopping customers pay under their contracts with their suppliers."[54]

If OCC's proposal were adopted, all suppliers would begin building the costs of storage and balancing into their rates (or bids), meaning that both shopping and non-shopping customers would likely be forced to pay additional risk premiums as part of their ultimate rates. This would mean that all customers would begin to bear the risks and costs associated with storage and balancing – the exact result OCC seeks to avoid. Under the Stipulation, however, all customers, regardless of their shopping or non-shopping status, will pay a uniform rate, without any additional mark-up or premiums – effectively insulating customers from the risks of balancing.

Because it would impose additional costs on customers, the Commission should reject OCC's proposal and instead approve the method of allocating storage and balancing fees proposed in the Stipulation.

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

[52] *Id.*
[53] *See* 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 6.
[54] Transcript Vol. I at 204-205.

OCC's final contention is that the Stipulation violates important regulatory principles and practices, singling out two individual provisions as problematic. First, OCC mischaracterizes the scope of the Company's prior commitment regarding the PTC proposal and fails to recognize that the PTC proposal, as it was included in the Application, remains before the Commission for decision in this proceeding. Second, in its arguments against the proposed storage and balancing methodology, OCC fails to give due credit to the Company's balancing policies, which protect customers from the risks associated with that service.

1. Duke's Actions in This Case Are Consistent with the Global Settlement – OCC's Position Otherwise Is Not Supported by the Facts of Either this Case or the Global Settlement Case.

One of OCC's primary contentions is that the Stipulation does not comply with the Stipulation and Recommendation filed in Case No. 14-375-GA-RDR, *et al.* (the "Global Settlement). This argument, however, is not supported by either the facts of this case or those surrounding the Global Settlement.

a. The Stipulation is consistent with both the terms of the Global Settlement and the Commission's Order Approving the Global Settlement.

OCC cherry-picks portions of the Global Settlement and associated Commission order to support its contention that the PTC proposal should have been included in the Stipulation.

With respect to the Global Settlement, OCC relies on two provisions to support its position that Duke was required to stipulate to the PTC in this proceeding. First, OCC focuses on the first two sentences of Section III(C), Paragraph 24 of the Global Settlement.[55] In doing so, however,

[55] "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 the SSO."

OCC writes off the third and final sentence of that paragraph ("[Duke Energy Ohio] shall include this billing format change as part of its Auction Application") as merely a timing requirement.[56]

OCC's analysis, however, misses the mark, completely disregarding the fact that Duke Energy Ohio simply cannot implement the PTC change without first receiving Commission approval. OCC also fails to acknowledge that the Global Settlement in no way addresses the potential for settlement in this case.[57] But even OCC witness Mr. Adkins recognizes that "the totality of [a] settlement should be enforced *based on the words encompassed in the documents*."[58] Thus, applying Mr. Adkins' own standard, there is simply no way for the Global Settlement to have required the Company to stipulate to the PTC when it did not even mention the prospect of settlement in this case. Rather, based on the actual terms of the Global Settlement, Duke Energy Ohio was only required to file an application proposing the PTC message for consideration by the Commission in this case.

The second provision of the Global Settlement that OCC relies on is Section IV, Paragraph 34, which provides that the signatory parties to the Global Settlement "will support the reasonableness of [the Global Settlement] before the Commission and in any appeal that it participates in from the Commission's adoption and/or enforcement of [the Global Settlement]." However, as demonstrated above, Duke Energy Ohio's only commitment with respect to the PTC was to include the PTC proposal in its application in this proceeding. OCC witness Mr. Adkins admits that the Company's application in this proceeding was consistent with the Global Settlement[59] and that nothing in the Stipulation changes or withdrawals the original PTC proposal.[60] OCC also ignores the basic fact that neither the Company nor Staff, both parties to the

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[56] *See* OCC Initial Brief at 18.
[57] Transcript Vol. I, at 144-145.
[58] *Id.* at 131.
[59] *Id.* at 139-140.
[60] *Id.* at 149.

Global Settlement, are currently opposing any portion of the PTC proposal. OCC cannot rely on its own, subsequent interpretation of the Global Settlement's terms to now impose additional obligations on the Company.

Finally, OCC relies on certain portions of the Commission's order approving the Global Settlement as requiring Duke Energy Ohio to include the PTC proposal in the Stipulation. However, in doing so, OCC omits any mention of the portions of that opinion that do not support its position. For example, in describing the PTC-related provisions of the Global Settlement, the Commission stated, "it appears these commitments and related settlement terms merely state what was agreed upon during settlement negotiations as to what, at a minimum, should be included in the Company's subsequent application." [61] This statement directly contradicts OCC witness Mr. Adkins' claim that the Global Settlement required something "more" than proposing the PTC in this case.[62] The Commission also repeatedly emphasized in that decision that it had made no decision regarding the merits of the PTC proposal and would do so only after an evidentiary hearing in this proceeding – another position which contradicts OCC's position.[63] Further, as with the terms of the Global Settlement, nothing in the Commission's order discussed settlement in this proceeding.[64]

Thus, both the terms of the Global Settlement and the Commission's order approving the Global Settlement make clear that Duke Energy Ohio's commitment in this proceeding was to file

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[61] *In re the Application of Duke Energy Ohio, Inc.,* Case No. 14-375-GA-RDR, et al., Opinion and Order (Apr. 20, 2022) at 63.
[62] *See* Transcript Vol. I at 133
[63] *See 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 ("To reiterate our earlier findings, the Commission takes no position today on the merits of these terms and our decision in these proceedings should not be construed as a predetermination of the outcome in *In re 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, et al. We merely find that the commitments in the Stipulation are not unlawful or unreasonable."). *see also id.* at 74 ("We will not speak to the merits of that application, the preliminary contents of which are described in the Stipulation (Joint Ex. 1 at 16-19). Rather, we will focus on the terms subject to our approval today.").
[64] Transcript Vol. I, at 148.

the PTC proposal as part of its application. The Company satisfied this commitment by including the PTC proposal in its application, which currently remains before the Commission for consideration.

b. Contrary to OCC's Claims, the PTC Proposal Remains Before the Commission for Review in this Proceeding.

OCC also falsely asserts that the PTC proposal no longer remains before the Commission for consideration, claiming that "through the present settlement, [Duke Energy Ohio] seeks to withdraw the price-to-compare from this proceeding and have the option to remain neutral or even oppose its own price-to-compare language in a future proceeding." This argument, however, disregards both the express terms of the Stipulation and the evidence presented at the hearing in this case.

Section IV(C) of the Stipulation provides that the Stipulation "does not resolve any disputes regarding the price to compare language *and that aspect of the Application remains before the Commission in accordance with the [Global Settlement]*." [65] The Stipulation further recommended that "the Commission conduct an evidentiary hearing as to the adoption of the proposed PTC language in the Application."[66] Even OCC witness Mr. Adkins agreed "[n]othing in the Stipulation withdraws the Price to Compare proposal from [the Company's] Application" and that "the Price to Compare proposal, as proposed in the Application, is still proposed for consideration by the Commission."[67] This understanding was also reflected at the hearing in this proceeding, in which several parties, including OCC, presented evidence in favor of and against the PTC proposal.

[65] Stipulation (Joint Ex. 1) at 9.
[66] *Id.*
[67] Transcript Vol. I at 149.

OCC's claim that the PTC proposal is withdrawn and will be considered in a "future proceeding" defies logic, is contrary to its own witness's testimony, and, as such, should be rejected outright by the Commission.

c. In Addition to Supporting the PTC Proposal, the Stipulation Also Supports Various Other Policy Goals of the Global Settlement.

Not only does the Stipulation support the Global Settlement by presenting the PTC proposal for Commission consideration, but it also supports several of the other policy goals sought by the Global Settlement. First and foremost, the signatory parties to the Global Settlement agreed "to use best efforts to minimize any regulatory delays and to cooperate to achieve an expeditious resolution of the transition to an SSO."[68] The Commission has repeatedly recognized that a benefit of stipulations is avoiding the time and expense of additional litigation.[69] Thus, by its terms, the Stipulation achieves this policy goal, ensuring the Company's smooth and expeditious transition to a competitive SSO auction format[70] The Stipulation also brings finality to the Global Settlement case by ensuring that IGS and RESA withdraw their pending applications for rehearing in that case.[71] These achievements were all recognized by OCC witness Mr. Adkins.[72]

The facts of this case and the Global Settlement case demonstrate that Duke Energy Ohio has fulfilled its obligation under the Global Settlement. As emphasized in the Company Brief, the Company is in no way opposing the PTC proposal. If the Commission determines that the proposed PTC message should be included on customer bills, then Duke Energy Ohio will do so.[73] For these

[68] *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) at 18.
[69] *See In re Cincinnati Gas & Elec. Co., Case No. 91-410-EL-AIR*, Order on Remand at 3-4 (Apr. 14, 1994).
[70] *See generally* Stipulation (Joint Ex. 1).
[71] *Id.* at 12.
[72] Transcript Vol. I at 153-154.
[73] Gould Supp. Test. (Company Ex. 3) at 9.

reasons, the Commission should reject OCC's contention that the Stipulation must resolve the PTC issue.

2. The Proposed Method of Allocating Storage and Balancing Costs Does Not Violate Any Important Regulatory Principle or Practice.

Finally, OCC contends that the proposed method of allocating storage and balancing costs violates several important regulatory principles and practices. However, for the reasons detailed in the Company Brief and below, OCC's arguments lack merit.

OCC witness Mr. Kumar claims that the Stipulation violates the principles of cost causation and utility operational risks by shifting all risks and costs associated with storage and balancing from suppliers to customers.[74] However, as demonstrated in the prior section, this argument is not supported by either the nature of balancing on Duke Energy Ohio's system or the Company's policies regarding balancing. This is because a majority of imbalances are caused by factors outside of a supplier's control, including weather and customer usage. Further, to the extent that imbalances are caused by suppliers, the Company's policies include numerous safeguards and penalties to ensure that the supplier who caused the imbalance, and not the customer, bears the cost of those imbalances. As such, contrary to OCC's position, the Stipulation keeps costs with those who actually cause them – consistent with the principle of cost causation.

The Stipulation also ensures that the operational risks associated with imbalancing remain with suppliers. As discussed above, when customers pay storage and balancing fees indirectly through their suppliers' rates, they are often charged additional risk premiums. By having all customers pay such fees directly, without mark-up or additional risk premium, the Stipulation ensures that (1) SSO customers remain protected from imbalancing risks; and (2) shopping

[74] *See* OCC Initial Brief at 22-23.

customers are no longer burdened by those risks. This result, too, is entirely consistent with the principle of utility operational risks.

Finally, the Stipulation will result in just and reasonable rates. Not only does the Stipulation not impose any additional costs associated with balancing onto customers, but it also may reduce costs to shopping customers by eliminating risk premiums included in competitive supplier rates.

Thus, when the issues surrounding storage and balancing are viewed in an accurate light, it is clear that the Stipulation does not violate any important regulatory principle or practice.

III. CONCLUSION

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

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 14th day of November, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. A copy has also been emailed to:

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