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 Service.	))))	Case No. 21-0903-GA-EXM
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	))	Case No. 21-0904-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 21-0905-EL-AAM

SPIRE MARKETING INC'S POST-HEARING REPLY BRIEF

I. INTRODUCTION

Spire Marketing Inc. ("Spire") submits this reply brief in support of the Stipulation and Recommendation ("Stipulation") submitted to the Public Utilities Commission of Ohio ("Commission" or "PUCO") in these proceedings. This reply brief addresses the Office of the Ohio Consumers' Counsel's ("OCC") initial brief. In its initial brief, OCC presents three flawed arguments regarding why the Stipulation should be modified or denied: (1) the Stipulation is not the product of serious bargaining among diverse parties because OCC did not sign the Stipulation; (2) the Commission should modify the Stipulation to adopt OCC's position on the price-to-compare ("PTC") proposal; and (3) the Commission should reject the Stipulation provision that modifies Duke's process for assessing storage and balancing fees due to potential impacts on customers.

The Commission should reject each of OCC's arguments. First, the Commission has repeatedly held that it "will not require any single party, <u>including OCC</u>, to agree to a stipulation in order to meet the first prong of the three-prong [stipulation] test." *In Re Vectren Energy Delivery of Ohio, Inc*., Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10 (emphasis added). Second, the Stipulation, as filed, satisfies the 3-prong test for stipulations and, thus, it is unnecessary for the Commission to modify the Stipulation to resolve the PTC issue. Third, the Stipulation's modification of the assessment of storage and balancing fees will not result in customers paying any additional costs because customers already pay these costs in their current rates. Finally, customers will not be negatively impacted due to supplier imbalances because Duke Energy Ohio, Inc's ("Duke") policies ensure that suppliers bear the operational risks related to imbalances.

Because each one of OCC's arguments fail, the Commission should adopt and approve the Stipulation in this proceeding.

II. LAW & ARGUMENT

A. The record shows that the Stipulation is the product of serious bargaining among diverse parties.

In its initial brief, OCC claims that the Stipulation was not the product of serious bargaining among diverse parties. OCC's only support for this argument is the fact it did not sign the Stipulation. The Commission has rejected this same argument on numerous occasions in prior cases. *In Re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10 ("…we have repeatedly held that we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test."); citing *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26, *Dominion Retail v. Dayton Power & Light Co*., Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2, 2005) at 18, Entry on Rehearing (Mar. 2005) at 7. Just because OCC chose not to sign the Stipulation does not mean it was not the product of serious bargaining.

Although OCC claims the interests of residential customers were not represented because it did not sign the Stipulation, the Commission has previously held that the interest of residential customers can be adequately considered and protected even if OCC does not to sign a stipulation. *In the Matter of the Application of Ohio Power Co. for Approval of an Advanced Meter Opt-Out Serv. Tariff,* Case No. 14-1158-EL-ATA, Opinion and Order (Apr. 27, 2016) at 7 ("Although OCC and OPAE did not ultimately sign the stipulation, the record indicates that the interests of residential customers were considered and adequately represented."). Further, when considering the first prong of the 3-prong stipulation test, the Commission has previously determined that Commission Staff adequately protects the interest of residential customers. *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Its Nat. Gas Rates., Case* No. 22-507-GA-AIR, Opinion and Order (Nov. 1, 2023) at 11 ("With regard to residential customers, we have observed previously, and reiterate here, that Staff also takes into account the interests of all customer classes, including the residential class.").

The record shows that all parties, including OCC, were actively engaged in many months of settlement discussions that resulted in a settlement package that balances the interest of various stakeholders. This evidence demonstrates that the Stipulation is the product of serious bargaining among diverse parties, and the mere fact OCC did not sign the Stipulation does not change this.

B. Because the Stipulation satisfies the 3-prong test, the Commission can approve the Stipulation as filed regardless of its consideration of the PTC issue.

OCC claims that the Stipulation should be modified to require Duke to include PTC language on natural gas customer bills. OCC is incorrect that the Stipulation needs to be modified for the Commission to consider the PTC issue. Although Spire is neutral on the PTC issue in this proceeding, Spire believes the PTC issue is wholly unrelated to the Commission's consideration of the 3-prong test for stipulations.

As Duke explained in its initial-post hearing brief, the "Stipulation explicitly leaves the PTC proposal, as included in the Application, for Commission consideration."[1] The Stipulation explicitly states that it "does not resolve any disputes regarding the [PTC] and states that the "Signatory Parties recommend that the Commission conduct an evidentiary hearing as to the adoption of the proposed PTC language in the Application."[2] On April 27, 2022, Duke filed an Application that contains PTC language that OCC supports.[3] During the hearing, the Application was admitted into the record with this PTC language.[4] OCC presented testimony supporting this proposed PTC language.[5] RESA and IGS presented testimony objecting to the proposed PTC language. Based on the evidentiary record, the Commission can adopt or reject OCC's position on the PTC language. No modification to the Stipulation is necessary for the Commission to take such action.

OCC apparently believes Staff and Duke "renege[ed] on their previous settlement commitments" by not supporting the proposed PTC language in Stipulation or at the hearing.[6] However, the Global Stipulation[7] did not explicitly require Staff or Duke to advocate for the PTC in this proceeding. Rather, it merely required that Duke include the PTC proposal as part of its Application in this proceeding, which is exactly what Duke has done.[8] In addition, this argument by OCC is entirely irrelevant at this stage because the Commission can adopt OCC's desired PTC language based on the evidentiary record. The Commission can do so <u>without</u> changing or modifying the Stipulation because the PTC issue is separate and distinct from the Commission's consideration

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[1] Duke Initial Brief at 14; Stipulation (Joint Ex. 1) at 9.

[2] Stipulation (Joint Ex. 1) at 9.

[3] Application (Duke Ex. 1) at 8 and Application Ex. IX.

[4] Application (Duke Ex. 1) at 8 and Application Ex. IX.

[5] 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 9.

[6] OCC Initial Brief at 13-14.

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

[8] Global Stipulation (Duke Ex. 4) at 18.

of the 3-prong test for stipulations. Regardless of the Commission's decision on the PTC issue, the Commission should conclude that the Stipulation satisfies the 3-prong test based upon the evidentiary record.

C. The Stipulation's proposal regarding Duke directly assessing customers storage and balancing fees will not harm customers and will not violate any regulatory practice or principle.

1. Duke's shopping and non-shopping customers are already paying costs related to storage and balancing fees in their current rates.

OCC claims that the Stipulation, if approved by the Commission, "would shift all the storage and balancing costs and risks from marketers …to consumers."[9] However, the record demonstrates that all Duke customers, including shopping and non-shopping customers, are already paying for storage and balancing fees in their current rates. Duke's non-shopping customers pay these fees directly through the GCR.[10] Duke's shopping customers indirectly pay storage and balancing fees through the rates charged by competitive suppliers.[11] OCC Witness Kumar admitted this fact.[12]

Therefore, the only difference under the Stipulation is that shopping customers will now pay storage and balancing fees directly to Duke rather than indirectly through contracts with their competitive suppliers. Non-shopping customers will continue to directly pay for these fees, just through Rider SBC rather than through the GCR. Although the Stipulation changes how customers pay storage and balancing fees, it does not result in additional costs for customers.

2. Assessing customers storage and balancing fees does not violate the regulatory principle of cost causation.

OCC fails to present any evidence that charging customers directly for storage and balancing fees will result in additional costs for customers. Rather, OCC argues that suppliers should pay the

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[9] OCC Initial Brief at 12.

[10] Stipulation (Joint Ex. 1) at 6; Transcript Vol. I, at 168.

[11] Transcript Vol. I, at 204-205.

[12] Transcript Vol. I, at 169, and 204-205

balancing and storage costs because they are the "cost causers".[13] However, as discussed above, these costs are already being passed through to both shopping and non-shopping customers. The Stipulation does not change the fact that customers bear these storage and balancing costs. It just modifies the method of how customers pay these costs.

OCC Witness Kumar's concerns regarding cost causation are due to his belief that Duke's storage and balancing fees consist solely of costs related to imbalances caused by suppliers. However, as Duke explained in its initial brief, Duke's storage and balancing fees represent a variety of costs that are unrelated to imbalances and do not necessarily change with the market. Therefore, it is untrue that suppliers are solely in control of all aspects of storage and balancing costs, which cuts against Mr. Kumar's argument that suppliers should bear 100% of these costs. Further, it is undisputed that end-use customers are the beneficiaries of natural gas storage. As OCC Witness Kumar admitted, natural gas storage provides a reliable source of supply at times of high demand which benefits end-use consumers.[14]

Because these storage assets are ultimately being used to provide a valuable benefit to end-use consumers, it is consistent with regulatory practice and principles to assess the costs of these assets to end-use consumers. This is exactly what is occurring today directly through the GCR for non-shopping customer and indirectly through competitive rates for shopping customers. As such, OCC's arguments regarding the Stipulation violating principles of cost causation are incorrect.

3. <u>Assessing customers storage and balancing fees will not result in suppliers "gaming the system."</u>

OCC Witness Kumar testified that suppliers will "game the system" by supplying "more gas to Duke on behalf of their consumers when prices are low and supply less gas when prices are high."[15]

[13] OCC Initial Brief at 22-23.

[14] Transcript Vol. I, at 203.

[15] OCC Initial Brief at 11.

OCC claims these actions by suppliers will cause imbalances on Duke's system that may result in substantial costs to customers. However, the evidence demonstrates that there are various mechanisms already in-place that protect against suppliers taking such actions. As Duke explained in its initial brief, it can reject a supplier's nomination and issue an Operational Flow Order ("OFO") requiring the supplier to correct any over/under nomination.[16] If that supplier fails to comply with that OFO, they will be subject to specific penalties. These policies also allow Duke to pass onto the supplier who causes an imbalance any penalties assessed to Duke by interstate pipeline storage providers.[17]

In addition, suppliers who fail to comply with an OFO or otherwise violate Duke's policies regarding balancing may have their access to the Duke's system suspended or even terminated.[18] These various protections help deter any supplier from "gaming the system" and prevents suppliers from negatively impacting customers due to imbalances. The record demonstrates that OCC's concerns about gaming the system are baseless.

III. CONCLUSION

Based on the foregoing, the Commission should approve the Stipulation in this proceeding. The record demonstrates that the Stipulation meets the Commission's 3-prong test for approving Stipulations.

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[16] Duke Initial Brief at 20.

[17] *Id.*

[18] *Id.*

Respectfully submitted on behalf of
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<u>CERTIFICATE OF SERVICE</u>

In accordance with O.A.C. 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Reply Brief* was sent by, or on behalf of, the undersigned counsel to the following parties of record this <u>14th</u> day of November 2023.

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