

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO ESTABLISH A
STANDARD SERVICE OFFER PURSUANT
TO R.C. 4928.143 IN THE FORM OF AN
ELECTRIC SECURITY PLAN.

CASE NO. 24-278-EL-SSO

IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO AMEND TARIFFS,
INCLUDING ITS CERTIFIED SUPPLIER
TARIFF, P.U.C.O. No. 20 AND TO
IMPLEMENT NEW TARIFFS.

CASE NO. 24-279-EL-ATA

IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY OHIO, INC. FOR
ACCOUNTING AUTHORITY, INCLUDING
ANY NECESSARY DEFERRALS.

CASE NO. 24-280-EL-AAM

OPINION AND ORDER

Entered in the Journal on May 14, 2025

I. SUMMARY

{¶ 1} The Commission adopts the Stipulation filed by various parties and authorizes Duke Energy Ohio, Inc. to establish its fifth electric security plan.

II. PROCEDURAL BACKGROUND

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers,

including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} Most recently, in Case No. 17-1263-EL-SSO, et al., the Commission approved, pursuant to a stipulation filed in that case, Duke's application for its fourth ESP to commence on June 1, 2018, and to continue through May 31, 2025, pursuant to R.C. 4928.143. *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., Opinion and Order (Dec. 19, 2018).

{¶ 5} On April 1, 2024, Duke filed an application that, if approved, would establish its fifth ESP for a period to commence on June 1, 2025, and continue through May 31, 2028.

{¶ 6} A technical conference was held on May 21, 2024, to allow interested persons the opportunity to better understand Duke's application.

{¶ 7} By Entry issued June 12, 2024, the administrative law judge (ALJ) scheduled two local public hearings, one for September 4, 2024, and the other for September 10, 2024. The ALJ also set a procedural schedule.

{¶ 8} The local public hearings were held, as scheduled, on September 4, 2024, in Middletown, Ohio, and September 10, 2024, in Cincinnati, Ohio.

{¶ 9} By Entry dated October 3, 2024, the ALJ granted intervention to the following parties: Ohio Energy Group (OEG); Ohio Environmental Council (OEC); Ohio Energy Leadership Council (OELC); Office of the Ohio Consumers' Counsel (OCC); One Energy Enterprises Inc. (One Power¹); The Ohio Manufacturers' Association Energy Group (OMAEG); Interstate Gas Supply, LLC (IGS); Walmart, Inc. (Walmart); Environmental Law & Policy Center (ELPC); Constellation Energy Generation LLC and Constellation

¹ On October 28, 2024, One Energy Enterprises Inc. filed notice of a name change to One Power Company.

NewEnergy Inc. (together, Constellation); Citizens Utility Board of Ohio (CUB); The Kroger Co. (Kroger); Retail Energy Supply Association (RESA); City of Cincinnati (Cincinnati); Ohio Partners for Affordable Energy (OPAE); and Nationwide Energy Partners, LLC (NEP).

{¶ 10} By Entries dated September 20, October 7, October 17, and November 7, 2024, the ALJ modified the procedural schedule because the parties were pursuing settlement negotiations. The November 7, 2024 Entry vacated and held in abeyance the remaining procedural schedule, and instructed Duke to provide an update on the status of settlement discussions by November 14, 2024. Duke provided status updates on November 14 and November 22, 2024, indicating that the filing of a settlement was imminent.

{¶ 11} On November 27, 2024, Duke filed a stipulation and recommendation (Stipulation) purporting to resolve all issues in the proceedings. The Stipulation was executed by Duke, Staff, OCC, Cincinnati, Constellation, IGS, Kroger, OEG, OELC, OMAEG, RESA, OPAE, and Walmart as signatory parties, and by One Power as a non-opposing party (collectively, Signatory Parties). OEC, ELPC, CUB, and NEP did not sign the Stipulation (collectively, Opposing Parties).

{¶ 12} By Entry dated December 5, 2024, the ALJ established a new procedural schedule which ordered testimony supporting the Stipulation to be filed by December 17, 2024; testimony opposing the Stipulation to be filed by January 10, 2025; and the evidentiary hearing to be held on January 22, 2025.

{¶ 13} An evidentiary hearing in this proceeding commenced on January 22, 2025, and concluded on January 23, 2025.

{¶ 14} Initial briefs were filed by Duke, Staff, OELC, OPAE, IGS, OEC and ELPC, OMAEG and Kroger, NEP, OCC, OEG, CUB, Walmart, and RESA on February 24, 2025.

With the exception of OP&E, Walmart, and OELC,² the parties who filed initial briefs filed reply briefs on March 14, 2025.

III. DISCUSSION

A. Summary of the Stipulation

{¶ 15} On November 27, 2024, the Signatory Parties submitted the Stipulation for the Commission's consideration. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. The Stipulation provides, *inter alia*, the following terms:

- a. **ESP Term.** Duke agrees to an ESP term of three years, from June 1, 2025, to May 31, 2028;
- b. **SSO Procurement.** Duke will continue its auction-based SSO procurement with two changes to help address price risk and to mitigate supplier risk premiums: (1) the use of a capacity proxy price with a true-up process for periods where PJM has not yet conducted its base residual auction; and (2) procurement through one- and two-year products to mitigate risk premiums by wholesale suppliers;
- c. **Cost Recovery Through Supplier Cost Reconciliation Rider (Rider SCR).** Duke will withdraw its proposal to recover costs of payments to cogeneration and qualifying facilities through Rider SCR, while reserving the right to file a separate proceeding to amend the existing tariff if necessary;

² These three parties filed letters on March 14, 2025, indicating they would not file reply briefs but rather rely on the arguments they raised in their initial briefs.

- d. **Distribution Capital Investment Rider (Rider DCI).** Rider DCI will continue with the following new revenue caps: \$50.2 million for the period of June 1, 2025, through December 31, 2025; \$107.4 million for calendar year 2026; \$130 million for calendar year 2027; and \$63.6 million for the period of January 1, 2028, through May 31, 2028;
- e. **Electric Service Reliability Rider (Rider ESRR).** Rider ESRR will continue with new caps as follows: \$10 million for calendar year 2025; \$11 million for calendar year 2026; \$12 million for calendar year 2027; \$13 million for calendar year 2028, prorated for the term of the ESP;
- f. **Disconnection Reporting.** Duke will establish new disconnection reporting commitments to Staff and OCC;
- g. **Net Metering Recovery.** Duke will cease recovery of excess generation payments for net metering customers through Rider SCR and establish a deferral and future base rate recovery for these costs;
- h. **Base Transmission Rider (Rider BTR).** Adjusting the Rider BTR revenue requirement allocation to the following two-step process intended to reduce costs to residential customers:
 - i. First, allocate the demand-related revenue requirement between the residential and other classes based upon a 1 Coincident Peak (CP) as is currently done;
 - ii. Second, reduce the total amount of the revenue requirement for the residential class by \$4 million in 2025, \$3 million in 2026, and \$3 million in 2027, with such amounts reallocated to non-residential customers on a 1 CP basis;

- i. **Withdrawn Proposals.** Duke withdraws the following Company proposals: Transmission Time-of-Use Pilot; Solar for All program and rider; Infrastructure Modernization Rider (Rider IMR), including electric vehicle (EV) and battery storage proposals and rider; Senior Citizen Energy Assistance program and rider; and a new energy efficiency (EE) and demand-side management (DSM) portfolio and cost recovery, in these proceedings and Case Nos. 24-45-EL-POR, et al., and instead reinstating a low-income neighborhood EE program from the originally proposed portfolio with a higher budget than initially proposed, with rider recovery and a modest administrative cost recovery to enable the Company to manage the program;
- j. **Distribution Decoupling Rider (Rider DDR).** Duke will phase out its existing Rider DDR decoupling program with the final year of decoupling being calendar year 2026 and final reconciliation to occur in 2027;
- k. **Distribution Capacity Hosting Map.** Developing and maintaining a distribution capacity hosting map for Duke's distribution system, with cost recovery and milestones for deployment;
- l. **Customer Awareness.** Duke will implement a shareholder-funded customer awareness campaign of up to \$25,000 per year of the ESP, not to exceed \$75,000;
- m. **Bill Assistance.** Duke will commit \$500,000 in shareholder funds for low-income bill assistance through Duke's Share the Light fund during the ESP term, with funding commitments of \$100,000 in 2025, \$150,000 in 2026, \$150,000 in 2027, and \$100,000 in 2028;
- n. **Sharing Reliability Reports.** Duke will provide OCC and OPAE with copies of Duke's annual reliability report issued in accordance with Ohio Adm.Code 4901:1-10-11(C);

- o. **Reasonable Arrangement.** Duke will continue a specific large customer interruptible load reasonable arrangement previously approved by the Commission, with revised incentives; and
- p. **Filing Next Rate Base Case.** Duke commits to filing an electric distribution base rate case on or before June 30, 2027, with a test period no later than calendar year 2027.

B. Consideration of the Stipulation

{¶ 16} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties and resolves all issues presented in the proceeding in which it is offered.

{¶ 17} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Dominion Retail v. Dayton Power and Light*, Case Nos. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *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 Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, et al., 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). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of the Stipulation, the Commission has used the following criteria:

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

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *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.

1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 18} The Signatory Parties argue that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. According to the Signatory Parties, the Stipulation includes parties who are a cross-section of industry stakeholders. Further, Signatory Parties argue that each of the parties in the proceeding has significant experience in regulatory matters and was represented by experienced, competent counsel. They assert that the Stipulation resulted from significant negotiations, spanning several months, involving more than a dozen global settlement meetings in which all parties were invited to participate. Duke states that the settlement discussions began in August 2024 and concluded during November 2024, and Duke conducted both global settlement meetings as well as meetings with individual parties and small groups to discuss narrow issues, all while allowing Opposing Parties to express and discuss their views. According to the Signatory Parties, no intervening party was excluded from such deliberations. The Signatory Parties note that Staff met with individual parties and in small groups to engage in productive conversations, as well.

{¶ 19} According to Duke, a review of the Stipulation and the changes made from the application, whether through altered, added, or removed terms, all indicate that serious bargaining occurred. As evidence of serious bargaining, Duke points to the removal of several terms including, but not limited to, the removal of the proposed Rider IMR, a transmission customer Time-of-Use Pilot, recovery of the Development Incentive Rider incentives through the Economic Competitiveness Funder Rider, and ratepayer-funded senior citizen bill assistance. Further, Duke contends that the Stipulation reduces the annual revenue caps initially proposed for Rider DCI by tens of millions of dollars and that the caps would be reset when Duke files its next distribution base rate case. Similarly, Rider ESRR's revenue caps were reduced by millions of dollars per year as well. Duke notes that the Stipulation provides for a less robust EE and DSM program than initially proposed; however, the Residential Neighborhood Program, which focuses on low-income neighborhoods and was proposed in the application, remains, though it now has an increased budget. According to Duke, further significant evidence of serious bargaining comes from new provisions not proposed in the application, such as a commitment to file an electric distribution base rate case on or before June 30, 2027; the development and implementation of a distribution capacity hosting map; a shareholder-funded customer awareness campaign for bill payment assistance programs, payment plan options, medical certificates, and high bills; and other items. Duke also notes that a significant concession on its part was agreeing to a phase out of Duke's decoupling mechanism over the term of the ESP, a mechanism Duke argues it is expressly allowed to implement under R.C. 4928.143(B)(2)(h).

{¶ 20} OEC/ELPC argue that the Signatory Parties provided little to no evidence that actual bargaining occurred. They assert that the fact that Duke organized spaces for parties to share their perspectives and ask questions concerning settlement does not mean the utility engaged in serious bargaining. OEC/ELPC further argue that the record contains no evidence that OEC/ELPC's concerns about the unique benefits of non-low-income DSM programs were considered and incorporated into the Stipulation. CUB argues that the

Signatory Parties' arguments related to the first prong mistakenly shift the burden of proof onto the Opposing Parties when, in reality, the Signatory Parties must satisfy that burden. CUB further argues that the fact that Duke organized spaces for parties to share their perspectives to ask questions concerning the settlement does not mean the utility engaged in serious bargaining; moreover, the differences between the application and Stipulation do not, in themselves, constitute evidence of serious bargaining. NEP argues that the Stipulation includes no language to address concerns or positions raised by NEP which shows serious bargaining did not occur, as required under the first prong. Additionally, OEC/ELPC believe the Commission misinterprets Evid. R. 408, which bars evidence of settlements or settlement negotiations, when the Commission does not allow parties to offer evidence of what occurred during settlement negotiations to prove whether a settlement is the product of serious bargaining under the first prong. They argue that the Commission's interpretation renders evaluation of the first prong impossible.

{¶ 21} Signatory Parties contend that OEC/ELPC witness Cebulko admitted he was not testifying regarding the first prong of the stipulation analysis and that NEP witness Lacey did not testify as to whether any of the Signatory Parties were capable and knowledgeable. Signatory Parties argue that NEP's argument that serious bargaining did not occur because the Stipulation should have addressed, in some manner, NEP's proposal contravenes Commission precedent regarding one party possessing veto power over a Stipulation. Signatory Parties further argue that OEC/ELPC's and NEP's lack of serious bargaining arguments fail to consider the significant compromises between the parties demonstrated above within the Stipulation. In response to OEC/ELPC's arguments regarding the first prong, Signatory Parties assert that OEC and ELPC had every opportunity to raise their concerns during settlement discussions and that the fact that their positions did not convince Duke or other parties does not reflect on the validity of serious bargaining. Duke believes what OEC/ELPC actually seek, similar to NEP, is a veto of the Stipulation since their preferred positions were not included. Finally, regarding OEC/ELPC's argument concerning Evid. R. 408, Signatory Parties argue that OEC/ELPC

fail to reconcile this request with their decision to forego introducing evidence and testimony on the first prong and emphasize that the Commission rejected this proposal in its recent review of procedural rules related to the admissibility of settlement negotiations.

{¶ 22} The Commission determines that the first prong of the test is met, as it is evident that the Stipulation is the result of serious bargaining among knowledgeable, capable parties. It is undisputed that the Signatory Parties and the Opposing Parties were invited to and afforded the opportunity to participate in the settlement negotiations. No class of customers were excluded from settlement negotiations. *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio3021, 54 N.E.3d 1218; *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). The parties were represented by counsel who are regular and frequent participants in Commission proceedings. The Opposing Parties do not challenge the abilities or experience of counsel for any party, or technical experts, or their familiarity with Commission proceedings. The record evidence supports a finding that all parties are represented by capable and knowledgeable counsel familiar with Commission proceedings. (Staff Ex. 1 at 3; Duke Ex. 9 at 25-26; OCC Ex. 7 at 4-5; Duke Ex. 13 at 23-24; Tr. Vol. II at 235, 387.)

{¶ 23} Regarding serious bargaining, the Opposing Parties contend that testimony offered in support of this first prong is conclusory, that conducting numerous settlement conferences does not evidence serious bargaining, and that differences between the application and Stipulation, themselves, do not constitute serious bargaining. These arguments are unavailing. Here, testimony showed that the parties participated in negotiations from August 2024 through November 2024, with over a dozen “global” settlement meetings where each party was invited to attend and discuss their concerns; moreover, both Duke and Staff conducted other smaller group/individual party conferences concerning narrower issues (Duke Ex. 13 at 23-24; OCC Ex. 7 at 4-5; Staff Ex. 1 at 3). The record also demonstrates serious bargaining considering the resulting agreement involved numerous concessions from Duke and significant alterations from the initial application. Taken together, both the number of settlement conferences conducted as well

as the concessions and alterations demonstrated in the Stipulation when compared to the application, in contrast to the Opposing Parties' argument, can and do evidence a degree of bargaining the Commission reasonably characterizes as "serious." *In re Duke Energy Ohio, Inc.*, Case No. 22-507-GA-AIR, et al., Opinion and Order (Nov. 1, 2023) at ¶ 33 (where the Commission found that numerous concessions, including a significant reduction from its original revenue requirement request, in the stipulation when compared to the initial distribution base rate application helped demonstrate serious bargaining.). For example, among other various changes, the Stipulation withdraws several riders initially proposed by Duke in the application, reduces the annual revenue caps for both Rider DCI and Rider ESRR, includes a new shareholder-funded customer awareness campaign for bill payment assistance programs, includes a commitment from Duke to file an electric distribution base rate case on or before June 30, 2027, and includes an agreement to phase out Duke's decoupling mechanism over the term of the ESP (Jt. Ex. 1 at 7, 9, 11, 13-21; Duke Ex. 2 at 8-9, 21; Duke Ex. 9 at 13; Duke Ex. 13 at 5, 13-15, 19). These concessions and additional terms are not inconsequential and help support our finding that serious bargaining has occurred.

{¶ 24} Further, OEC/ELPC contend that no evidence shows that their concerns about non-low-income DSM programs were considered or incorporated into the Stipulation. Similarly, NEP argues that serious bargaining did not occur because the Stipulation contains no language addressing concerns related to NEP's proposal. We agree with the Signatory Parties' response to these arguments that serious bargaining can still occur despite the Stipulation not including provisions addressing, in some respect, the concerns raised by the Opposing Parties. First, we note that, at times, we have underscored diversity in proceedings where a large number of parties were able to achieve a settlement agreement that reflects a broad coalition of competing interests as being one indicator that serious bargaining occurred. Here, the Stipulation includes such diversity of interests considering the different stakeholders comprising the Signatory Parties (Staff Ex. 1 at 3; Duke Ex. 9 at 25-26; OCC Ex. 7 at 4-5; Duke Ex. 13 at 23-24). However, the logical end of the Opposing Parties' contentions is that a party who fails to reach an agreement with parties signed onto

a stipulation could essentially veto the stipulation if such party's litigation position, in some sense, is not addressed by the agreement. The Commission has often stated that no single party is afforded veto power under the first part of the three-part test. *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶ 50; *See, e.g., In re Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18 ("The Commission will not require OCC's approval of stipulations."); *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 04-571-GA-AIR, et al., Opinion and Order (Apr. 13, 2005) at 9 ("There is no requirement that any particular parties execute stipulations in order for the first prong of the test for stipulations to be met."); *In re Columbia Gas of Ohio, Inc.*, Case No. 07-478-GA-UNC, et al., Opinion and Order (Apr. 9, 2008) at 32 ("No one possesses a veto over stipulations, as this Commission has noted many times."). Accordingly, we find that serious bargaining occurred concerning the Stipulation.

{¶ 25} Regarding OEC/ELPC's argument that the Commission's interpretation of Evid. R. 408 makes examining serious bargaining under the first prong of the stipulation analysis impossible, we find this argument without merit. First, the Supreme Court of Ohio has long established that the Commission is not strictly confined by the Ohio Rules of Evidence. *Greater Cleveland Welfare Rights Org., Inc., v. Pub. Util. Comm.*, 2 Ohio St.3d 62, 442 N.E. 2d 1288 (1982); *see also, Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 14 Ohio St.3d 49, 50, 471 N.E.2d 475 (1984); *Chesapeake & Ohio Ry. Co. v. Pub. Util. Comm.*, 163 Ohio St. 252, 263, 126 N.E.2d 314 (1955). Second, we have already rejected this OEC/ELPC argument regarding Evid. R. 408 in *In re Columbia Gas of Ohio, Inc.*, Case No. 21-637-GA-AIR (*Columbia Gas Case*), Opinion and Order (Jan. 26, 2023) at ¶ 129-131. OEC/ELPC acknowledge this previous ruling in the *Columbia Gas Case*, but then they reiterate their same arguments. We again reject OEC/ELPC's argument and adopt the entirety of the same reasoning provided in the *Columbia Gas Case*, essentially that, among other points, "...even if Evid. R. 408 strictly applied to the Commission, which it does not, we would not construe Evid. R. 408 to allow the introduction of evidence regarding the content of settlement negotiations, as allowing such evidence would run too great a risk of chilling settlement discussions in cases before

the Commission.” *Id.* at ¶ 129. In a rule review proceeding, the Commission rejected a proposed amendment to the Commission’s procedural rules that would have included a rebuttable presumption to what was a newly proposed default standard that serious bargaining did not occur under the first prong of the Stipulation analysis, a process which is the practical form of what OEC/ELPC argues. *In re the Rev. of the Ohio Adm.Code Chapter 4901-1 Rules Regarding Practice and Procedure Before the Comm.*, Case No. 18-275-AU-ORD, et al., Finding and Order (Oct. 18, 2023) at ¶ 177. The Commission rejected the rebuttable presumption and the newly proposed default standard because such a procedure, which also included a requirement to evaluate each provision of a stipulation, would be illogical considering “[n]egotiating parties evaluate the stipulation as a whole by prioritizing certain issues and giving way in others.” *Id.* Consequently, consistent with our previous rulings, we find OEC/ELPC’s argument regarding Evid. R. 408 unavailing.

2. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 26} Signatories and Staff submit that the Stipulation, as a package, benefits ratepayers and the public interest in numerous ways. Notable benefits identified by the parties are discussed below.

{¶ 27} Initially, Duke, RESA, and OCC point out that the Stipulation allows for the continuation of a competitive auction process to procure generation. Duke asserts this process provides predictability, certainty, and stability to customers and SSO suppliers. The Company, as well as OCC and RESA, emphasize that the Stipulation provides new enhancements to the procurement process to help mitigate volatility. Specifically, these enhancements include the use of a capacity proxy value process when there is not an established wholesale capacity price in PJM. The Stipulation also incorporates procurement contracts with shorter terms to mitigate the use of risk premiums by auction suppliers.

{¶ 28} Multiple parties also highlight proposed changes to Duke’s Rider BTR that will benefit residential ratepayers. Duke, Staff, and OCC explain that Rider BTR will

continue to be calculated based on a 1 CP allocation of transmission costs between residential and non-residential customers. After that initial allocation, the residential portion will be reduced and re-allocated to the non-residential classes. For the three-year term, residential ratepayers' portion will be reduced by a total of \$10 million that Duke, Staff, and OCC maintain will benefit residential ratepayers.

{¶ 29} Another beneficial component of the Stipulation, as identified by various parties, is reasonable revenue caps for the Rider PF, Rider ESSR, and Rider DCI. Duke, Staff, OCC, RESA, and Wal-Mart highlight that the proposed revenue caps are consistent with recent Commission precedent. Duke avers that the riders benefit ratepayers by allowing the Company to continue to adequately and timely invest in the reliability of its distribution system and the caps ensure that incremental rate increases are reasonable. According to OCC, the caps benefit ratepayers as they are significantly lower than what Duke originally proposed in its application.

{¶ 30} Staff, Wal-Mart, OCC, and OEG assert that ratepayers benefit from riders not included in the Stipulation. They point out that Duke's original application included proposals for Rider IMR and the proposed Solar-For-All Rider. By excluding these riders from the Stipulation, OCC asserts that ratepayers benefit by saving over \$74 million.

{¶ 31} Another beneficial component of the Stipulation, according to Duke, Staff, RESA, and OCC, is assistance for low-income customers. Duke states the Company is committing \$575,000 of shareholder funding for bill assistance programs and a consumer EE program, the Residential Neighborhood Program, targeted to low-income residential neighborhoods. As part of these programs, Duke cannot collect lost revenues or shared savings. In total, the Company is providing \$7.2 million for these programs.

{¶ 32} Additionally, multiple Signatory Parties point out that the Stipulation requires Duke to file a base rate case by June 30, 2027. Staff, OCC, and Wal-Mart assert this is beneficial to ratepayers as it ensures a recent accounting as to whether Duke's expenses

are just and reasonable. OCC explains that this assurance was not a part of the Company's original application.

{¶ 33} OEG specifically highlights that the Stipulation allows for the continuation of a reasonable arrangement between Duke and Cleveland Cliffs.³ OEG contends that the arrangement benefits ratepayers by ensuring that Cleveland Cliffs' Middletown Works facility serves as an interruptible resource for Duke during the term of the ESP. Further, according to OEG, Middletown Works benefits the local economy by providing employment to almost 2,600 people and generating over \$97 million in annual state and local taxes.

{¶ 34} Finally, while not all intervenors signed the Stipulation, multiple parties assert that by resolving most issues in this proceeding, a protracted hearing and extensive, unnecessary litigation was prevented, thus avoiding excessive costs and needless delays, to the benefit of ratepayers.

a. Arguments in opposition from ELPC/OEC and CUB

{¶ 35} ELPC/OEC and CUB submit that the Stipulation does not benefit ratepayers. The focus of their arguments center on a portfolio of EE and DSM programs (collectively, EE/DSM programs) that were originally proposed in Duke's application⁴ but were ultimately excluded from the Stipulation. ELPC/OEC and CUB maintain that, without these programs, the Stipulation cannot be beneficial to consumers. Initially, CUB advocates holistically about the benefits of EE/DSM programs. CUB asserts that through appliance rebates, weatherization, and demand response programs that reduce peak demand,

³ OEG avers that the reasonable arrangement was originally approved by the Commission in 2018 in Case No 18-450-EL-AEC.

⁴ Duke's portfolio of EE/DSM programs was additionally proposed, separately, in Case No. 24-45-EL-POR, et al. As part of the Stipulation, Duke agrees to withdraw its application in those proceedings.

households can lower their utility bills. Further, households' reduced energy usage enhances grid stability by reducing peak demand stress and limiting the need for new generation or upgraded infrastructure. According to both CUB and ELPC/OEC, energy costs have skyrocketed in recent years, and EE/DSM programs are an effective strategy to mitigate those impacts. CUB avers that EE/DSM programs are best implemented by EDUs, who have a wider reach and are able to offer the programs at scale. Additionally, CUB and ELPC/OEC contend that EE/DSM programs are extremely cost-effective and create more benefits than costs.

{¶ 36} As to the exclusion of the EE/DSM programs from the Stipulation, CUB states the Signatory Parties fail to demonstrate how removing the programs is beneficial to ratepayers. ELPC/OEC and CUB maintain that the Signatory Parties have an obligation to show that the package offered in the Stipulation provides a net benefit, but no quantifiable evidence was offered to demonstrate that not including the EE/DSM programs was beneficial. As asserted by ELPC/OEC, the originally proposed EE/DSM programs were projected to create \$126 million in net savings. Regarding the benefits of the package offered in the Stipulation, ELPC/OEC submits the Signatory Parties overstate the financial savings provided by the Stipulation. ELPC/OEC assert that various parties look at the costs proposed in Duke's original application and compare those expenses to the cost associated with the Stipulation in order to quantify the benefits of the Stipulation. However, as argued by ELPC/OEC, there is no guarantee that Duke's application would have otherwise been approved as-is and that EDUs are incentivized to overstate ESP implementation costs in order to have a substantial buffer for negotiating.

{¶ 37} Further, CUB asserts that various Signatory Parties wrongly insinuate that effective EE/DSM programs can already be found in the competitive market. As argued by CUB, little evidence was provided to show that competitive markets are providing products that are comparable to what a utility could provide. ELPC/OEC agrees, stating that competitive markets do not offer the same benefits. As explained by ELPC/OEC, the products offered by the competitive markets should be a supplement to what is offered by

EDUs, not a replacement. ELPC/OEC further state that programs offered by the competitive market are not required to report savings and are not subject to external evaluation. According to ELPC/OEC, while the Commission has lately deferred to the competitive market to provide EE/DSM programs, the Commission considers EE/DSM proposals on a case-by-case basis and has recently authorized various programs for other utilities.

{¶ 38} In reply, various parties assert that the arguments of CUB and ELPC/OEC should be disregarded. Multiple parties emphasize that the second prong of the Commission's test analyzes the Stipulation as a total package. Duke, Staff, OCC, RESA, IGS, and OMAEG/Kroger all aver that the Commission assesses whether the entirety of a stipulation is beneficial to ratepayers and in the public interest. Those parties contend that CUB and ELPC/OEC are misapplying the test by asking the Commission to consider the benefits of individual components. Here, as CUB and ELPC/OEC advocate specifically for the inclusion of the EE/DSM programs, Duke maintains that it is irrelevant whether those programs would be beneficial to ratepayers. As explained by Duke, it can be true that the Stipulation, as a package, is beneficial to ratepayers and that the EE/DSM programs are beneficial to ratepayers. The exclusion of a potentially beneficial component does not mean the proposed package, as a whole, is not beneficial. Along those lines, RESA submits there is no need for the Signatory Parties to explain why the EE/DSM programs were not a part of the proposed Stipulation.

{¶ 39} Multiple parties further state the inclusion of the EE/DSM programs would not be in the public interest. OCC and RESA point to the costs associated with the programs, which would be borne by the ratepayers. They assert the costs are significant and the benefits associated with the programs are unknown and may not benefit all ratepayers. Duke explains that the Company has not had an EE/DSM portfolio since such programs stopped being statutorily mandated several years ago. Thus, according to Duke, EE/DSM programs are not something being taken away from consumers. Duke highlights that the Stipulation does create an EE program for low-income ratepayers, the Residential

Neighborhood Program. Multiple parties further assert that the competitive market is able to provide EE/DSM programs for consumers. RESA, IGS, and OCC state that, through competitive market offerings, consumers that want to take advantage of EE/DSM programs are able to access the specific programs that they want. Additionally, the cost of the programs is not forced on all ratepayers. RESA, IGS, and OCC acknowledge that the Commission has regularly found that the EE/DSM programs are best provided through the competitive marketplace. Going further, IGS asserts that EE/DSM programs directed by EDUs go against state policy, citing R.C. 4928.02.

b. Arguments in opposition from NEP

{¶ 40} NEP argues that the Stipulation should be modified to include NEP's proposal to allow property owners to purchase utility-owned equipment that is no longer used and useful, or, alternatively, the Commission should require Duke to incorporate a process into its ESP for customers to purchase equipment from the utility in certain circumstances. Specifically, NEP proposes that Rider DCI should include a provision that includes a methodology for a property owner to purchase utility equipment on its premises where such utility equipment is no longer needed by the utility for electric service. NEP requests that the provision include a good faith negotiating process such that a purchase agreement could be reached that ensures a flow of funds, in the form of a credit, back to Rider DCI. NEP envisions that the purchase process would be available to any commercial or industrial customer where the utility equipment is located on the customer's premises, is solely used to provide electricity service to that premise, and is no longer needed by Duke to continue to provide utility service to those customers. According to NEP, the customer must demonstrate to Duke that the customer has or will contract for the technical expertise necessary to safely operate and maintain such equipment. NEP states that the equipment is inclusive of and located behind the utility's meter, such as transformers, transformer pads, switches, primary and secondary enclosures, secondary pedestals, and primary and secondary wires. NEP further suggests that the customer would pay the lower of the book

value or market value to purchase the equipment, reasoning that, given the asset is no longer used and useful, Duke has already been compensated for the depreciated value of the equipment and has already earned a return on equity of the asset.

{¶ 41} NEP also discusses how it believes this proposal is consistent with Ohio policy under R.C. 4928.02 and supports Duke's ESP objectives. NEP argues that the proposal will help evolve the grid, as Duke often trumpeted in testimony, and, in different ways, enhances the regulatory model, increases Duke's commitment to enhancing customer experience, provides benefits to at-risk populations, and further improves Duke's ability to provide safe and reliable electric service. NEP contends that customers will benefit from this proposal in that they will have full ability and more flexibility in managing and maintaining the equipment without Duke's involvement, and the customer will have greater control to more efficiently optimize its energy resources. NEP argues that Duke's other customers will experience a benefit through a credit to their Rider DCI charges, and Duke, itself, will benefit since it will not need to pay for the removal or maintenance of the equipment. NEP believes that nothing present in the record requires the Commission to reject NEP's proposal. NEP emphasizes that the proposal just provides the customer an opportunity to purchase the equipment; it does not, as Duke contends, force Duke to sell the equipment. Finally, NEP suggests that, in the alternative, the Commission should issue an order opening a rulemaking establishing regulations surrounding utility equipment sales and processes.

{¶ 42} Duke contends that NEP's argument regarding its proposal centers on why the proposal should have been included in the Stipulation; however, Duke points out that the Commission's task is to assess whether the Stipulation, as it exists as a total package, is reasonable and satisfies the three-part test. Therefore, the efficacy of the proposal as well as its potential benefit to consumers is irrelevant to the Stipulation submitted before the Commission. Even if the Commission were to weigh the specifics of NEP's proposal, which Duke believes it should not, it emphasizes that, as admitted by NEP witness Lacey, neither NEP nor Mr. Lacey performed any kind of quantitative analysis to support its statement

that the proposal would lead to downward price impacts over the term of the ESP and specifically to Rider DCI. Duke notes that, on cross-examination, Mr. Lacey's testimony revealed he only had a superficial understanding of the mechanics of Rider DCI. For example, according to Duke, the purchase of utility equipment that may otherwise be retired or refurbished would already be represented in Rider DCI as salvage value, yet NEP's proposal did not seem to incorporate or understand this concept; moreover, despite any such credit, Duke forecasts that its costs will exceed Rider DCI caps in the coming years. Regarding the sale of utility equipment, Duke argues that NEP's clients can purchase equipment in accordance with the National Electric Code, a set of regulations that govern how non-utilities should safely use and maintain electrical equipment; however, Duke, who must follow the National Electric Safety Code since it specifically governs how utilities use electrical equipment, does not engage in the sale of its equipment to its customers for multiple reasons, part of which is because doing so would require somehow reconciling the different levels of compliance needed under the different codes. Duke also argues that its tariff does not explicitly allow for the sale of its equipment to customers.

{¶ 43} OCC points out that only a utility can amend its own tariff and that R.C. 4909.18 sets forth the procedure to be followed when a utility seeks to modify such a tariff. According to OCC, by making its proposal in the ESP docket, the proposed amendment to Duke's tariff avoids notice provisions in R.C. 4909.19, meaning only those stakeholders who intervened in this ESP case would have been informed about the tariff amendment proposal. OCC also explains its position that, by adopting NEP's proposal, it would encourage further submetering at apartment complexes. OCC believes that submetering, in general, harms consumers for various reasons, such as it leads to consumers losing certain protections under Title 49 of the Revised Code.

c. Commission conclusion

{¶ 44} The Commission initially must emphasize that the second part of the three-part test is not whether there are different or additional provisions that would better benefit

ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest. *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) ¶ 73; *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *See, e.g., In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing the issues before the Commission, while also avoiding the considerable time and expense associated with the litigation of a fully contested case. *See, e.g., In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus S. Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17.

{¶ 45} Accordingly, considering the Stipulation as a package, the Commission affirms that the Stipulation is beneficial to ratepayers and in the public interest. The benefits of the agreement are numerous and, essentially, uncontested. One notable benefit is the extension of the competitive auction process (Jt. Ex. 1 at 4). While the competitive auction process continues to be beneficial to ratepayers, the various enhancements made to the process that mitigate volatility in the marketplace are particularly helpful to ratepayers (Duke Ex. 13 at 4-6). As the Stipulation allows for the continuation of various distribution-related riders that allow Duke to raise sufficient capital to quickly and efficiently ensure reliability, we recognize that established revenue caps make sure that the financial impact to consumers is limited (Staff Ex. 1 at 4-5; Duke Ex. 13 at 13-15). Additionally, Duke will be required to file a new base rate case during the term of this ESP (Jt. Ex. 1 at 17). As part of that proceeding, the caps for both Rider DCI and Rider ESSR will reset, to the benefit of Duke's consumers (Duke Ex. 13 at 13-14).

{¶ 46} The Commission also distinguishes the benefits provided to low-income ratepayers. This includes an EE program directly targeted to low-income consumers as well as \$575,000 in contribution from Duke shareholders, which comprises \$500,000 for bill assistance programs (Jt. Ex. 1 at Duke Ex. 13 at 20-21).

{¶ 47} In addition to the benefits enumerated above, parties highlighted numerous other advantages associated with the Stipulation. None of these benefits were challenged. Opposing Parties thus allege that, without the inclusion of their specific provisions, the Stipulation cannot be in the public interest. In sum, the Commission disagrees.

{¶ 48} As discussed, ELPC/OEC and CUB submit that absent the addition of Duke's initially-proposed EE/DSM portfolio the Stipulation cannot be in the public interest. However, as we found previously, the Stipulation, as a package, offers a host of undisputed benefits to ratepayers and serves the public interest. Because the Stipulation has been proved to offer a beneficial package to consumers, the Commission need not weigh the pros and cons of an EE/DSM portfolio offering. While Duke included such a portfolio in its original application, such EDU-directed programs are not currently offered. Therefore, the exclusion of these programs from the final agreement is not a significant change from what ratepayers expect. Furthermore, and consistent with recent precedent, we agree with several of the points raised by parties in opposition to these programs and find they are better suited for the competitive market, where both residential and non-residential customers will be able to obtain products and services to meet their individual needs. *See, e.g., In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 23-301-EL-SSO, Opinion and Order (May 15, 2024) at ¶230; *In re the Commission's Investigation into the Implementation of the Federal Infrastructure Investment and Jobs Act's Demand Response PURPA Standard*, Case No. 22-1024-AU-COI, Finding and Order (Nov. 1, 2023) at ¶28; *Columbia Rate Case*, Opinion & Order (Jan. 26, 2023) at ¶56; *DEO Alternative Rate Plan Case*, Opinion & Order (Oct. 4, 2023) at ¶49; *In re the Application of Duke Energy Ohio, Inc.*, Case Nos. 20-1013- EL-POR, et al., Entry (June 17, 2020); *2021 Duke Rate Case*, Opinion and Order (Dec. 14, 2022) at ¶¶71–72, 173); *In re the Application of Duke Energy Ohio, Inc.*, Case

Nos. 16-576-EL-POR, et al., Entry (Dec. 30, 2020) at ¶9. Moreover, although OEC/ELPC seek an expanded EE/DSM program from that proposed in the Stipulation, we note that the Stipulation still contains the Residential Neighborhood Program initially proposed in the application and, in fact, the Stipulation increases the budget of that DSM program compared to the application. (Duke Ex. 1 at 25-27; Jt. Ex. 1 at 16-17.) Thus, the Commission finds that the exclusion of these requested provisions from the Stipulation does not impact our assessment of the proposed agreement and our finding that, overall, the package is beneficial to ratepayers and in the public interest.

{¶ 49} NEP requests that we consider modifying the Stipulation to include its proposal regarding requiring Duke to provide customers with an opportunity to purchase used utility equipment on the customer's property; however, weighing such a proposal would contradict the well-established Commission precedent recited above, which clearly spells out our task at hand – to review whether the Stipulation as presented by the Signatory Parties, as a package, benefits ratepayers and the public interest. Again, whether there are different or additional provisions that would benefit ratepayers and the public interest, such as NEP's proposal to add a provision to the existing Stipulation, is not part of the analysis of the second prong of the three-part test. On this basis alone, we reject NEP's attempt to modify the Stipulation. Moreover, as already detailed above, we have found the Stipulation to satisfy the second prong of the stipulation analysis, further rendering examination of NEP's proposal unnecessary. In the same vein, the Commission, at this time, sees no reason to indulge NEP's alternative request to open a rulemaking into utility equipment sales and processes and, therefore, rejects that request.

{¶ 50} Thus, upon review and consideration, the Commission finds that the second prong is satisfied.

d. Procedural issues

{¶ 51} In the evidentiary hearing, both RESA and OMAEG made motions to strike portions of ELPC/OEC witness Cebulko's testimony. Mr. Cebulko's testimony, in part, relied on the prefiled testimony of Duke witnesses Duff and Ziolkowski. RESA and OMAEG assert that, at the beginning of the hearing, Mr. Ziolkowski's written testimony, under a stipulated agreement, was entered into evidence only for the limited purpose of meeting certain filing requirements and to demonstrate bargaining. Pursuant to that agreement, Mr. Ziolkowski was not subject to cross-examination. RESA further states that Mr. Duff's prefiled testimony was not entered into evidence.⁵ As Mr. Ziolkowski's and Mr. Duff's testimony were not entered into evidence as the truth of the matter asserted, RESA and OMAEG contended that Mr. Cebulko's reliance on those witnesses' analyses is inadmissible hearsay. At that time, the ALJ denied the motions to strike. Consistent with Ohio Adm.Code 4901-1-15(F), RESA and OMAEG dispute the ALJ's ruling and renew their arguments. Further, in OMAEG's reply brief, it submits that certain portions of ELPC/OEC's initial brief should be struck as their brief centers on Mr. Cebulko's testimony, which, in turn, is reliant upon assessments from Mr. Ziolkowski and Mr. Duff, which were not offered into the record for the truth of the matter asserted.

{¶ 52} The Commission declines to grant the motions to strike. Given our conclusions above, we find that the discussion is moot. First, the Commission is granted broad discretion in the conduct of its hearings and is not bound by the Ohio Rules of Evidence. *Greater Cleveland Welfare Rights Org. Inc. v. Pub. Util. Comm.*, 2 Ohio St.3d 62, 68 (1982). Second, Mr. Cebulko's testimony considering the analyses conducted by the Duke witnesses was obviously not persuasive and, more importantly, was not relevant to our determinations.

⁵ Mr. Duff appeared as a witness.

3. DOES THE SETTLEMENT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLES OR PRACTICES?

{¶ 53} The Signatory Parties assert various arguments in support of a finding that the Stipulation, as a package, complies with the Ohio Revised Code, the Ohio Administrative Code, and Commission precedent such that it should be approved. Moreover, many of these parties also contend that that the Stipulation promotes state policy as codified in R.C. 4928.02.

{¶ 54} Duke argues that the Stipulation satisfies the third prong by complying with all requirements of R.C. 4928.143. Duke also argues that the Stipulation aligns with the well-established regulatory principle of cost causation, since the Stipulation leaves existing, approved rate structures unchanged; and the new Rider DSM, which recovers the cost and administration fee for the Residential Neighborhood Program, applies costs to customers on whose behalf they are incurred. Duke also contends that the Stipulation reflects the regulatory principle of gradualism by resulting in an approximately two percent annual increase in overall customer bills. Duke also argues that this ESP is more favorable in the aggregate than an MRO for reasons that are quantitative (including \$500,000 in shareholder funding for bill payment assistance and reductions to low-income customers through the low-income EE program) and qualitative (facilitating investments in reliability, promoting economic development in Ohio, creating a hosting capacity map, and requiring Duke to file a base rate case).

{¶ 55} Staff also argues that the Stipulation satisfies the third prong, stating that it facilitates just and reasonable rates, promotes investments designed to provide safe and reliable service to customers, supports competitive generation rates through the Company's SSO, and promotes administrative efficiency in resolving numerous complex issues raised in this proceeding. According to Staff, the Stipulation requires Duke to place sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system, satisfying R.C. 4928.143(B)(2)(h).

{¶ 56} In support of the third prong, OCC notes several consumer savings realized in the Stipulation, one example of which is the change to Rider BTR. Based on a new methodology for Rider BTR, residential customers can expect \$10 million over the three-year term of the ESP.

{¶ 57} OEG argues that the Stipulation advances important policies and principles, including: ensuring the availability to consumers of reliable, efficient, and reasonably priced electric service; ensuring diversity of electricity supplies and suppliers by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities; ensuring that an electric utility's transmission and distribution system is available to distributed generation resources; protecting at-risk populations; and facilitating the state's effectiveness in the global economy.

{¶ 58} OEC argues that the Stipulation violates the regulatory principle found in R.C. 4905.70 that the Commission should initiate programs that will promote energy conservation and reduce the growth rate of energy consumption. By not adopting the DSM programs other than low-income DSM, OEC contends, the Stipulation fails to promote energy conservation and provides minimal benefits to all Duke customers. Also, OEC argues that the Stipulation violates 4928.02(A)'s requirement to ensure availability of efficient retail electric service to customers by eliminating proposals that would reduce customer demand. In general, OEC argues that despite the rollback of EE mandates, the voluntary opportunities for Commission-approved EE and DSM programs for all customers remain state policy as enshrined in R.C. 4905.70 and 4928.02.

{¶ 59} In reply to ELPC/OEC's argument, Duke disputes that any regulatory principles are violated by the Stipulation. Duke contends that ELPC/OEC's reliance on R.C. 4905.70 is misguided. Duke states that statute does not pertain to ESPs and, further, while EE programs were previously statutorily mandated, that is no longer the case. Similarly, concerning R.C. 4928.02, the Company avers that statute outlines numerous state policies

that the Commission is to consider, but none of them requires that specific EE/DSM programs be included in an EDU's ESP. Despite that, Duke points out that the Company's current ESP contains no EE/DSM programs while the Stipulation, if approved, would authorize the Residential Neighborhood Program, an EE program for low-income ratepayers.

{¶ 60} Upon review, the Commission finds that the third prong is satisfied. As noted above, almost all parties were in general agreement that the Stipulation is consistent with the Revised Code, the Administrative Code, and Commission precedent. The Commission agrees and determines that the evidence demonstrates that the Stipulation is in line with all rules and regulations. We are not persuaded by ELPC/OEC's contention that exclusion of certain EE/DSM programs from the Stipulation runs contrary to any state policy. In response to ELPC/OEC's arguments, R.C. 4928.143(B)(2) states that an ESP *may* provide for among other things, energy efficiency programs. Similarly, as noted by Duke, R.C. 4905.70 and 4928.02 do not require an ESP to specifically provide EE/DSM programs. That being said, here, the Stipulation continues to promote EE by initiating a low-income neighborhood EE program with a higher budget than initially proposed. Accordingly, the Commission finds that the Stipulation meets the third part of the three-part test.

C. Administration of the More Favorable in the Aggregate Test

{¶ 61} R.C. 4928.143(C)(1) provides that the Commission shall approve, or modify and approve, an application for an ESP if it finds that the ESP so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code (MFA Test).

{¶ 62} Duke asserts that its original application, as filed, presented an ESP that was more favorable than an MRO. Thereafter, Duke maintains that the agreement creating a Stipulation generated an ESP that is even more favorable than an MRO. According to the

Company, a number of processes and riders from the previous ESP will carry over. Specifically, Duke points out that the process for procuring power for SSO service and for pricing SSO service will be settled for the next three years. Further, Duke avers that Rider SCR will continue to ensure Duke and its customers are made whole.

{¶ 63} Duke also highlights that the Stipulation continues Riders DCI and ESSR. While the riders allow Duke to more readily ensure reliability in the system, established spending caps require the bill impact to be minimal. Additionally, Duke will be required to file a base rate case within three years and, as part of that filing, the spending caps for the riders will be reset.

{¶ 64} Staff points out that the general results of a comparison between the ESP proposed in the Stipulation and an MRO would be the same, as both consist of market-based SSO auctions. However, according to Staff there are numerous qualitative and quantitative benefits associated with the Stipulation that make it the more favorable option. Staff specifically acknowledges the \$500,000 investment from shareholders for a bill assistance program and also emphasizes investments in reliability.

{¶ 65} No party argued that an MRO is more favorable than the proposed ESP in the Stipulation.

{¶ 66} R.C. 4928.143(C)(1) provides that the Commission should approve, or modify and approve, an application for an ESP if the Commission finds that the ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO pursuant to R.C. 4928.142. In making this determination, the Commission is not bound to a strict price comparison. Rather, consistent with the statute's directives, the Commission considers pricing, as well as all other terms and conditions, under the ESP. *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, 27; *In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 22. Consequently, the Commission

evaluates the ESP, in its entirety, as modified by the Stipulation, and undertakes both a quantitative and a qualitative analysis. Upon consideration of the ESP, as proposed in the Stipulation, including its pricing and all other terms and conditions, we find that the ESP recommended in the Stipulation is more favorable in the aggregate than the expected results under an MRO, pursuant to R.C. 4928.142. In conducting the comparison, the Commission looks at the relative price to be paid by SSO customers for generation service under both the proposed ESP and a hypothetical MRO, whether there are quantitative benefits to the ESP that would not exist in an MRO, and whether there are qualitative benefits to the ESP that would not exist in an MRO.

{¶ 67} In examining the relative price between the proposed ESP and a hypothetical MRO, the Commission notes that, under the proposed ESP as modified by the Stipulation, the rates to be charged SSO customers will be established through a competitive auction process which is similar to, if not identical with, the bidding process under an MRO (Staff Ex. 1 at 9). Next, the Commission considers other quantitative benefits. This includes the \$500,000 shareholder investment into a bill assistance program for low-income consumers (Jt. Ex. 1 at 19-20; Staff Ex. 1 at 9). The proposed ESP also includes numerous qualitative advantages, such as obligations to address reliability and a commitment file a rate case within three years (Staff Ex. 1 at 9).

{¶ 68} Based on the foregoing, the Commission finds that the proposed ESP is more favorable in the aggregate than an MRO.

IV. CONCLUSION

{¶ 69} Accordingly, the Commission, based on the foregoing, finds that the Stipulation submitted by the Signatory Parties should be adopted.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 70} Duke is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 71} On April 1, 2024, Duke filed an application for an SSO in accordance with R.C. 4928.141. More specifically, Duke's application was filed pursuant to R.C. 4928.143, which authorizes the Company to file its SSO as an ESP.

{¶ 72} Pursuant to published notice, local public hearings were held in Middletown, Ohio on September 4, 2024, and in Cincinnati, Ohio, on September 10, 2024.

{¶ 73} By Entry dated October 3, 2024, the ALJ granted intervention to OEG, OEC, OELC, OCC, One Power, OMAEG, IGS, Walmart, ELPC, Constellation, CUB, Kroger, RESA, Cincinnati, OPAE, and NEP.

{¶ 74} On November 27, 2024, Duke filed the Stipulation, which purported to resolve all issues in the proceedings.

{¶ 75} An evidentiary hearing in this proceeding commenced on January 22, 2025, and concluded on January 23, 2025.

{¶ 76} The Commission finds that the Stipulation meets the three criteria for approval of a stipulation, is reasonable, and should be adopted.

{¶ 77} The proposed ESP, as modified by the Stipulation, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142.

VI. ORDER

{¶ 78} It is, therefore,

{¶ 79} ORDERED, That the ESP, as set forth in the Stipulation, be adopted and approved. It is, further,

{¶ 80} ORDERED, That the Company shall file final tariffs consistent with this Opinion and Order and that the revised final tariffs shall be approved effective June 1, 2025, subject to final review by the Commission. The new tariffs shall be effective the later of the date of filing or June 1, 2025. It is, further,

{¶ 81} ORDERED, That the Company file in final form two complete copies of tariffs consistent with this Opinion and Order. One copy shall be filed in this case docket, and one shall be filed in the Company's TRF docket. Duke shall also update the Company's respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

{¶ 82} ORDERED, That the Company shall notify their customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date. A copy of this notice shall be submitted to the Commission's Service Monitoring and Enforcement Department at least 10 days prior to its distribution to customers. It is, further,

{¶ 83} ORDERED, That Duke take all steps necessary to implement the ESP, as proposed in the Stipulation and adopted by the Commission. It is, further,

{¶ 84} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

MJS/dr

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Case No(s). 24-0278-EL-SSO, 24-0279-EL-ATA, 24-0280-EL-AAM

Summary: Opinion & Order adopting the Stipulation filed by various parties and authorizes Duke Energy Ohio, Inc. to establish its fifth electric security plan electronically filed by Debbie Ryan on behalf of Public Utilities Commission of Ohio.