

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval to)	
Modify Rider FBS, Rider EFBS, and)	Case No. 15-0050-GA-RDR
Rider FRAS)	

**MOTION TO INTERVENE AND MOTION TO REVISE PROCEDURAL SCHEDULE
AND IN THE ALTERNATIVE MOTION TO CONSOLIDATE
AND MEMORANDUM IN SUPPORT OF IGS ENERGY**

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On January 15, 2015, Duke Energy Ohio (“Duke”) filed an application under R.C. 4909.18 for approval to increase the rates in Rider Firm Balancing Service (“FBS”) and Rider Enhanced Firm Balancing Service (“EFBS”). Application at 1. Duke also seeks to require that larger competitive retail natural gas (“CRNG”) providers utilize EFBS, which would eliminate a larger supplier’s option to make an annual election between EFBS and FBS. *Id.* Duke is also seeking to modify certain of the terms under Rate FRAS (Full Requirements Aggregation Service) and Rate GTS (Gas Trading Service) to coincide with the changes sought in respect of Rider FBS and Rider EFBS. *Id.* at 1-2. Duke Requested approval to implement these changes, via a Commission decision issued no later than February 27, 2015, and that the Commission retroactively apply these changes to supersede any prior CRNG provider election.

On January 22, 2015, the Attorney Examiner issued a procedural schedule establishing a deadline for intervention, as well as a schedule for comments and reply comments:

- (a) February 12, 2015 – deadline for the filing of motions to intervene.

(b) February 12, 2015 – deadline for the filing of initial comments by Staff and intervenors.

(c) February 19, 2015 – deadline for the filing of reply comments by all parties.

The Attorney Examiner provided three weeks for parties to draft comments, did not require expedited discovery, and did not set the matter for hearing.

Pursuant to R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code (“OAC”), Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) moves to intervene in the above captioned proceeding. As set forth in the attached Memorandum in Support, IGS submits that it has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and that it is so situated that the disposition of this proceeding without IGS’s participation may, as a practical matter, impair or impede IGS’s ability to protect that interest. IGS further submits that its participation in this proceeding will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in this proceeding.

IGS’s interests will not be adequately represented by other parties to this proceeding; and, therefore, IGS is entitled to intervene in this proceeding with the full powers and rights granted to intervening parties.

Additionally, IGS moves to revise the procedural schedule and set this matter for hearing because the Application appears to be unjust and unreasonable. Moreover, more information is necessary to properly evaluate Duke’s proposals. Thus, the Commission should direct Duke to file testimony in support of its Application, allow

CRNG providers to participate in discovery and to submit testimony. Therefore, IGS requests that the Commission adopt the following schedule:

- Duke files testimony on March 16, 2015;
- CRNG providers file testimony on April 30, 2015;
- Staff files testimony on May 14, 2015;
- If no settlement is reached, a hearing on May 21, 2015

In the alternative, IGS requests that the Commission consolidate this case with Duke's upcoming Gas Cost Recovery ("GCR") management performance audit case to more efficiently consider the inter-related issues.

For the reasons set forth in the attached memorandum in support, IGS requests that the Commission grant this Motion.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Riders EFBS and FBS are the result of the Commission's approval of a stipulation and recommendation entered into between Duke and several parties in the merger of Cinergy Corp. and Duke Energy Corporation (Case Nos. 05-732-EL-MER).¹ In that case, Duke committed to hold collaborative workshops to develop improvements to its gas choice program. As a result of those workshops, Duke filed another stipulation creating the *option* for CRNG providers to annually elect between Rider Firm Balancing Service (FBS) or the then new Rider Enhanced Firm Balancing Service (EFBS). The latter option effectively provides CRNG providers with an option to take virtual storage assets, whereas the former did not.² Under the terms of EFBS, "This annual election shall be made on or before January 15 of each year to become effective on April 1 of each year."³

¹ *In the Matter of the Joint Application of Cinergy Corp., on Behalf of The Cincinnati Gas & Electric Company, and Duke Energy Holding Corp. for Consent and Approval of a Change of Control of The Cincinnati Gas & Electric Company*, Finding and Order at 18 (Dec. 21, 2005) (hereinafter "*Merger Case*").

² *Merger Case*, Stipulation and Recommendation at Exhibits C and D (Mar. 1, 2007); *Merger*, Entry at 2 (Mar. 21, 2007).

³ *Merger Case*, Stipulation and Recommendation at Exhibit D p. 1 of 7 (Mar. 1, 2007).

Duke claims that CRNG provider participation in Rider EFBS has decreased in recent years, and this decreased participation has diminished its ability to manage its storage assets. To address the issue, Duke seeks to eliminate the option it agreed to in the *Merger Case* stipulation and to require *only* the largest CRNG providers to pay for Rider EFBS, while allowing all other CRNG providers to select between the two services. Duke does not propose to modify any other aspect of that stipulation. Duke does not provide testimony or record evidence to support its proposal. And Duke fails to discuss any potential alternatives to the discrimination against larger CRNG providers which is inherent in Duke's proposal.

Duke did not file its proposed tariff modifications until January 15, 2015, the same day as the deadline for CRNG providers to elect between FBS and EFBS service. Duke, however, requests that the Commission approve its proposal no later than February 27, 2015, and that the Commission retroactively apply these changes to supersede any prior CRNG provider election. Despite the fact that CRNG providers may have entered into multiyear contracts in reliance on the option to elect between Riders FBS and EFBS. Duke provides no indication as to why it waited until the 11th hour to file its Application.

With its Application Duke is seeking to unilaterally modify an agreed upon Stipulation between parties in a previous proceeding and retroactively apply the modification to its filed rates and tariffs. Moreover, Duke's proposed tariff modifications will materially disadvantage only certain CRNG providers in the market. As a practical matter, Duke's proposal would retroactively increase the rates it charges to larger CRNG providers. To make matters worse, Duke is proposing to do so after giving little

notice to effected CRNG providers. On its face, Duke's proposal is unjust and unreasonable.

The Commission should not grant Duke's request for expedited approval of its proposed tariff modifications filed in this proceeding. Rather, as discussed below, the Commission should grant IGS's Motion to Intervene because IGS has a real and substantial interest in this proceeding. Additionally, because Duke's request is unjust and unreasonable, the Commission should set this matter for hearing.

II. INTERVENTION

For purposes of considering requests for leave to intervene in a Commission proceeding, the Commission's rules provide that:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: (1) A statute of this state or the United States confers a right to intervene. (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.⁴

Further, RC 4903.221(B) and Rule 4901-1-11(B), OAC, provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(1) The nature and extent of the prospective intervener's interest; (2) The legal position advanced by the prospective intervener and its probable relation to the merits of the case; (3) Whether the intervention by the prospective intervener will unduly prolong or delay the proceedings; (4) Whether the prospective intervener will significantly contribute to full development and equitable resolution of the factual issues.

IGS has over 25 years of experience serving customers in Ohio's competitive

⁴ Rule 4901-1-11(A), OAC.

markets. IGS serves over 1 million customers nationwide and sells natural gas and electricity to customers in 11 states and in over 40 utility service territories. In Ohio, IGS currently serves natural gas customers in the Dominion East Ohio, Duke Energy Ohio, Columbia Gas of Ohio, and Vectren Energy Delivery Ohio service territories.

IGS has a substantial interest in this proceeding, as it may impact the balancing service that IGS is required to take from Duke. Thus, IGS respectfully submits that it is entitled to intervene in this proceeding because IGS has a real and substantial interest in this proceeding, the disposition of which may impair or impede its ability to protect that interest.

IGS's intervention will not unduly delay this proceeding. Further, IGS is so situated that without IGS's ability to fully participate in this proceeding, its substantial interest will be prejudiced. Others participating in this proceeding do not represent IGS's interests. Inasmuch as others participating in this proceeding cannot adequately protect IGS's interests, it would be inappropriate to determine this proceeding without IGS's participation.

Finally, the Supreme Court of Ohio has held that intervention should be liberally allowed for those with an interest in the proceeding.⁵ In light of the liberal interpretation of the intervention rules, IGS clearly meets the standards for intervention in this proceeding.

For the reasons set forth above, IGS respectfully requests the Commission grant this Motion to Intervene.

⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, (2006) 111 OhioSt.3d 384, 388.

III. MOTION TO REVISE PROCEDURAL SCHEDULE AND SET MATTER FOR HEARING AND IN THE ALTERNATIVE CONSOLIDATE THIS CASE WITH DUKE'S GCR MANAGEMENT PERFORMANCE AUDIT CASE

Duke's Application appears to be unjust and unreasonable. Therefore it must be set for hearing. Issues related to Duke's storage procurement will also be reviewed in Duke's upcoming GCR management performance audit case. Thus, in the alternative to setting this matter for hearing, it may be more efficient to consolidate this case with Duke's upcoming GCR case to more efficiently consider the inter-related issues.⁶

Under R.C. 4909.18, "if it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing." (emphasis added). As discussed below, there are several reasons why Duke's proposal appears to be unjust and unreasonable and therefore must be set for hearing, as opposed to an expedited comment schedule that provides no opportunity for discovery or additional analysis of the Application.

Specifically, the Application appears to be unjust and unreasonable for the following reasons:

- Duke proposes to discriminate against large CRNG providers. Duke's proposal thus may impact competitive conditions in Duke's service territory;
- It is not clear that an alternative approach would not more reasonably alleviate Duke's alleged concerns;
- Duke proposes to unilaterally modify a portion of a stipulation that it entered into without record evidence and without considering additional modifications;
- Duke should not have waited until the 11th hour to file its Application, given that its proposed relief could, as a practical

⁶ *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case Nos. 11-346-EL-SSO, *et al.*, Entry at 4-5 (Sep. 16, 2011) (hereinafter "AEP ESP Case").

matter, undermine customer contracts

- CRNG providers have made elections in accordance with Duke's filed rates and tariffs. Duke's Application requests that the Commission retroactively modify CRNG provider elections, which will also retroactively modify the rates that CRNG providers pay to Duke—that request, in itself, is unjust, unreasonable, and unlawful. *Keco Industries v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957); see also *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, at ¶¶8-21 (2011).

Moreover, Duke provided no testimony and very little information to support the Application. It would be unjust and unreasonable to approve Duke's proposal based upon such thin factual support.

The Commission's procedural entry provided only 21 days to evaluate Duke's Application and to draft comments. As a practical matter, the Commission's entry precluded parties from participating in the discovery process, given the standard 20 day discovery turnaround. Thus, parties have not had an opportunity to utilize the discovery process to fill analytical and factual gaps contained in Duke's application. Therefore, IGS requests that the Commission revise the procedural schedules as set forth below:

- Duke files testimony on March 16, 2015;
- CRNG providers file testimony on April 30, 2015;
- Staff files testimony on May 14, 2015;
- If no settlement is reached, a hearing on May 21, 2015

In the alternative, IGS requests that the Commission consolidate Duke's Application with the Duke's upcoming GCR management performance audit case. The Commission will grant consolidation for good cause shown.⁷ Consolidation has been

⁷ *In the Matter of the Long-Term Forecast Report of Columbia Gas of Ohio, Inc. and Related Matters*, Case Nos. 02-121-GA-FOR, *et al.*, Entry at 1 (Feb. 21, 2003)

granted in the past when the issues among the consolidated cases were similar or closely related.⁸ As discussed below, this proceeding and Duke's GCR case contain inter-related issues that may be more efficiently addressed on a consolidated basis.

Rider EFBS and Rider FBS relate to Duke's use of storage assets and pipeline capacity for the provision of balancing services to CRNG providers. GCR customers pay for these assets net of charges paid by CRNG providers under Rider EFBS and Rider FBS. Duke claims that it must modify Riders EFBS and Rider FBS to avoid the possibility that there is "an inappropriate subsidy of the Choice Program by GCR customers." Thus, Duke's Application is largely based upon the claim that the balancing service it provides to CRNG providers will impact costs that are charged to default service customers through the GCR. A determination in that respect, however, cannot be determined in a vacuum. It can only be determined in conjunction with an evaluation of the costs that will flow through the GCR and Duke's management and performance decisions related thereto. Accordingly, this proceeding and Duke's upcoming GCR management performance audit will contain the same or similar issues. Consolidating these proceedings would provide for a more efficient and reasonable resolution of these issues.

In considering this request for a hearing or in the alternative consolidation, the Commission should give little weight to Duke's request for an order by February 27, 2015. Duke claims that the change must be effective this year because "[i]f all supplier/aggregators were to choose Firm Balancing ServiceIt would not be possible to manage storage under this scenario, without taking extreme measures in the

⁸ *AEP ESP Case*, Entry at 4-5 (Sep. 16, 2011); see also *In the Matter of the Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corporation*, Case Nos. 96-999-EL-AEC, *et al.*, Entry at 3 (Dec. 23, 2005).

spot market” Application at 5. Duke made this statement prior to knowing what balancing service each CRNG provider would elect. Duke, however, has not updated its Application to indicate how many CRNG providers selected Rider EFBS. If at least one CRNG provider has elected Rider EFBS, Duke’s reasoning for an expedited decision no longer has merit.

Moreover, Duke alone controlled the timing of its filing—nothing prevented Duke from filing its Application six months or a year ago. Instead, it waited until the 11th hour to request the Commission’s authorization to impose retroactive conditions and a retroactive rate increase on CRNG suppliers—conditions that deviate from a prior stipulation which is the product of a bargained for exchange among several parties and that may upset existing long-term contracts with customers. Thus, the Commission should modify the procedural schedule to allow parties to submit testimony regarding the justness and reasonableness Duke’s proposal and potential alternatives that would better suit customers of Duke and CRNG providers.

IV. CONCLUSION

For the reasons stated herein, IGS respectfully requests that the Commission grant IGS intervention in this proceeding, revise the procedural schedule, set this matter for hearing or in the alternative consolidate this matter with Duke’s upcoming GCR management performance audit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Motion to Intervene and Motion to Revise Procedural Schedule and in the Alternative Motion to Consolidate and Memorandum in Support of IGS Energy* was served this 5th day of February 2015 via electronic mail upon the following:

/s/ Joseph Olikar

Joseph Olikar

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Summary: Motion to Intervene and Motion to Revise Procedural Schedule and in the Alternative Motion to Consolidate and Memorandum in Support electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy