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 Rider FRAS.	)))	Case No. 15-0050-GA-RDR

INITIAL BRIEF
OF THE RETAIL ENERGY SUPPLY ASSOCIATION

September 4, 2015

TABLE OF CONTENTS

I. Introduction

Duke Energy Ohio, Inc. ("Duke") has provided balancing services for more than 18 years as part of the process to ensure that the natural gas supplies needed for customers in Duke's service territory are nominated, delivered, and cleared through its city gates. Duke performs this function as part of its obligations to balance the deliveries of natural gas into its system with the actual consumption of natural gas by customers on its system, which is generally called "temperature balancing." Duke provides temperature balancing for gas cost recovery ("GCR") customers directly and also provides balancing services for competitive retail natural gas service suppliers ("Suppliers"). Currently, Suppliers can either elect to receive Firm Balancing Service ("FBS") or Enhanced Firm Balancing Service ("EFBS") from Duke. EFBS allows Suppliers additional flexibility that they may require for their customers; however, it comes at a greater cost than FBS.

In January 2015, Duke filed an application in this proceeding requesting to eliminate the option for the largest Suppliers to elect FBS service. Duke claims this change is needed because of concerns related to its ability "to manage the storage balances within interstate pipeline tariff requirements."[1] Specifically, Duke claims that if enough Suppliers do not elect EFBS, Duke may face penalties relating to restrictions on storage injections and withdrawals.[2] Duke makes these claims despite the fact that several Suppliers continue to elect EFBS, and Duke was able to manage its GCR program and storage assets without incurring penalties during the previous two winters[3], which were historically cold.

While Duke has not demonstrated any actual harm in its application, Duke's proposal would actually harm Choice customers, Suppliers and the competitive market. Duke's proposal would force the largest Suppliers to use EFBS only. Such a change would substantially limit the ability of

[1] Duke Ex. 1 (Application) at 4.
[2] Duke Ex. 1 (Application) at 5.
[3] Transcript ("TR") at 66; RESA Ex. 1 (Scarpitti Direct Testimony) at 6.

the largest Suppliers to manage their own natural gas supply obligations for customers. Duke's proposal would also create an undue competitive advantage for smaller Suppliers because smaller Suppliers will still have the option to elect FBS while large Suppliers are forced into more expensive EFBS without FBS option. Finally, Duke's proposal will impose significant costs on the largest Suppliers because Suppliers may have already entered into contracts to purchase and deliver natural gas supplies to customers and timing of Duke's proposed changes fails to take into consideration the Suppliers' contractual obligations to both retail customers and upstream transmission and gas producers.

Duke originally sought to implement the change by April 1, 2015.[4] The Commission correctly recognized the significant issues related to Duke's proposal and, instead of allowing Duke's proposal to become effective in 2015, scheduled this matter for hearing. The hearing was held on August 4, 2015. Duke now requests that its proposal be effective on April 1, 2016.[5]

Duke seeks to implement this change forthwith despite the fact that the Commission is now evaluating Duke's current gas purchasing and management practices and policies, and has specifically requested a report from an outside auditor.[6] That audit report is due shortly – in November 2015. RESA opposes Duke's rash proposal and recommends its rejection. The evidence does not establish that the proposal is needed now or in the future, and Duke's proposal unjustly targets the largest Suppliers in a discriminatory and costly manner.

However, if a change to the balancing service is considered necessary, RESA has presented in this proceeding a more just and reasonable interim option to be implemented while Duke's whole system is reviewed. RESA's proposal would only necessitate that Suppliers take EFBS service, if a threshold level of EFBS was not subscribed by Suppliers on their own volition. Further, RESA's

[4] Duke Ex. 1 (Application) at 5.
[5] Tr. at 33.
[6] *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contain within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR ("2015 GCR case").

proposal would not discriminate against one group of Suppliers but rather would require *all* Suppliers with a MDQ of more than 1,000 dekatherms ("dths") to be allocated a *pro rata* share of the obligation to assist Duke in managing its storage assets over that year. In other words, RESA proposes an orderly competitively neutral policy only to be implemented if EFBS is not subscribed and only then to the degree needed to assist Duke in achieving the level of subscription it needs to avoid penalties. .

Finally, if a change to the balancing services is made, the Commission should not make this change in a vacuum. The EFBS and FBS tariffs were establish through a series of settled proceedings which required all parties, including Suppliers, to give up on issues that were important to them in order to reach an agreement. RESA thus recommends that *if* the Commission adopts Duke's proposal (which it should not), the Commission must also evaluate the Choice program as a whole and the existing anti-competitive elements of Duke's Choice program. Specifically, the Commission must also look at all the GCR-related costs currently recovered through distribution rates, and unbundle those costs and charge them directly to GCR customers. This will help mitigate the harm to the market caused by Duke's unjust and discriminatory proposal, as well as remove subsidies flowing to regulated services.

Duke frames its Application in this proceeding as a means to ensure reliability. However, a careful examination of the record in this proceeding demonstrates that the application is not really about reliability. Duke has been able to reliably serve customers under the current system. Further, RESA has submitted a proposal in this proceeding that would address any of Duke's reliability concerns without having to fundamentally alter the design of Duke's Choice program.

Rather than reliability, what really appears to be at issue in this proceeding is who should bear the costs of Duke balancing the system. When asked directly about the purpose of the application, Duke's witness even admitted directly that it was about cost allocation, not service.[7] The approved tariff presents Suppliers with the option of taking FBS. The rates for FBS have been set by the Commission[8] and there has been no evidence presented by Duke that the FBS does not in fact adequately cover the cost of temperature balancing.

II. Description of Duke's Firm Balancing and Enhanced Firm Balancing Services

Duke is responsible, on a daily basis, for balancing the natural gas that is delivered to its city gates with the amount that actually goes through ("clears") the city gates and is delivered to customers.[9] As part of this role, each day, Duke forecasts the amount of natural gas needed for the following day and provides Suppliers with delivery requirements based on those forecasts. When the amount of natural gas that is delivered to the city gate is greater than the amount of gas that is ultimately delivered to customers for the day, an injection into its storage takes place. On the flip side, if the amount clearing the gates is less than the amount delivered, a withdrawal from Duke's storage makes up the difference.[10] The costs associated with these balancing services are paid for by the Suppliers.[11]

A. Firm Balancing Service

At the start of Duke's gas choice program in 1997, FBS was established as a means to charge Suppliers for the balancing services provided by Duke.[12] Under the FBS, Duke posts a target supply quantity ("TSQ") each day and requires all Suppliers to provide that TSQ amount based on the usage forecasts Duke develops.[13] Duke checks daily to see if the amount delivered matches the amount that clears the city gates. Any differences are either withdrawn or injected into

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[7] Tr. at 98.
[8] The Commission most recently adjusted the rates for FBS, as well as EFBS, earlier in this case. *See*, Entry (March 25, 2015).
[9] Tr. at 20.
[10] Tr. at 20-21.
[11] Tr. at 21-22.
[12] Tr. at 23-24; Duke Ex. 2 (Kern Direct Testimony) at 3; RESA Ex. 2 (White Direct Testimony) at 3-4.
[13] Tr. at 25, 76.

Duke's storage.[14] Since GCR customers pay for storage, FBS specifically recovers the estimated portion of storage costs associated with Duke's daily balancing for Suppliers and then credits the Supplier balancing service payments to Rider GCR.[15]

B. Enhanced Firm Balancing Service

As Duke's Choice program progressed, some Suppliers expressed concerns that they were paying for storage through FBS but not getting full value of the storage and could not take advantage of the winter-summer spread of gas prices.[16] The Commission ultimately agreed that improvements to the natural gas choice program were needed and collaborative discussions were held to effectuate needed changes. In 2007, following discussions through a collaborative process, Enhanced Firm Balancing Service or EFBS was implemented as a means to remedy some of the existing inequities in the Duke Choice program.[17]

With EFBS, the Supplier is allowed to deliver more or less than the daily TSQ and to manage the amounts in an EFBS bank.[18] Suppliers selecting EFBS pay the full cost of storage, not just an estimate of the portion of storage used for daily balancing. Each day, Duke compares the amount delivered over the prior day and the amount cleared over the prior day, and the differences result in injections into EFBS storage or a withdrawal from EFBS storage.[19] While there are limits on the daily amount that can be injected or withdrawn, EFBS offers Suppliers unique benefits:

[14] Duke Ex. 2 (Kern Direct Testimony) at 3; Tr. at 25-26.
[15] Duke Ex. 2 (Kern Direct Testimony) at 3.
[16] Tr. at 24.
[17] *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 in Control of The Cincinnati Gas & Electric Company*, Case Nos. 05-732-EL-MER et al., Entry (March 21, 2007), approving the March 1, 2007 Stipulation and Recommendation in which the new EFBS rider was proposed. *See, also*, Duke Ex. 2 (Kern Direct Testimony) at 3; RESA Ex. 2 (White Direct Testimony) at 4; Tr. at 121, 127.
[18] Mr. Kern refers to the injections into and withdrawals from a "bank" on Duke's system, which closely resembles Duke's storage. Duke Ex. 2 (Kern Direct Testimony) at 3. For simplicity, we will simply refer to this bank as the "EFBS storage."
[19] Tr. at 28.

- A supplier can inject natural gas into EFBS storage in the summer and use it in the subsequent winter, thereby taking advantage of purchasing and storing the natural gas in lower-cost periods.[20]
- A supplier has the flexibility to manage their injections and withdrawals to their own advantage throughout the year.[21]

However, in exchange for this increased flexibility Suppliers must pay a higher price for EFBS storage than they otherwise would for FBS service. Further the EFBS storage is restricted in a similar fashion to Duke's storage, as a portion of the Duke storage rights are used to provide EFBS. Thus, that EFBS-related portion of Duke's storage is no longer available to Duke to provide service to GCR customers.[22]

C. Mechanics of the Balancing Services

As determined in the Choice collaborative process, Suppliers must now choose either FBS or EFBS on January 15 of each year and must remain on that service until March 31st of the following year.[23] Suppliers who elect EFBS may begin to inject natural gas into EFBS storage on April 1st after the election.[24] Thus, for the April 2015-March 2016 period, the FBS or EFBS elections have already been made and cannot be altered. Duke agrees that no changes can be made to the April 2015-March 2016 service year.[25]

III. The Portfolio Mix

Duke utilizes a diverse mix of capacity resources in order to meet the system requirements for both GCR and shopping customers.[26] The peak day and peak season needs for the GCR and shopping customers in Duke's service territory are supplied by the following capacity resources:[27]

[20] Tr. at 30, 75-76; Duke Ex. 2 (Kern Direct Testimony) at 3-4.
[21] Tr. at 30.
[22] Duke Ex. 2 (Kern Direct Testimony) at 6.
[23] Tr. at 31; Duke Ex. 2 (Kern Direct Testimony) at 4.
[24] Tr. at 31.
[25] Tr. at 32.
[26] Tr. at 66, 68.
[27] Duke Ex. 1 (Application) at Attachment 5; RESA Ex. 3.

Purchased for Supplying Natural Gas to the GCR Customers	Purchased for Supplying Natural Gas to the Shopping Customers
Firm Pipeline Transportation	Suppliers' Responsibility
Peaking Service	Released Capacity[28]
Propane	Propane
Storage	EFBS Storage

In this proceeding, Duke expressed concerns about cycling through its storage given the change in the mix of its capacity portfolio. Specifically, Duke has claimed that these concerns have arisen because Duke now relies more on storage assets to meet GCR requirements and less on firm pipeline transportation ("FT"). However, Duke itself has changed the amounts it purchases in each of the above categories to provide natural gas to its GCR customers.[29] Duke has decreased the amount of FT it purchases. Duke de-contracted FT in 2014, decreasing the amount of firm transportation it purchased from Texas Gas Transmission and Columbia Gas Transmission.[30]

Duke also has a peaking service arrangement pursuant to which a supplier delivers natural gas to the city gate and Duke has the right to "call" that gas on any 25 days during the year. Duke's peaking service can offset FT.[31] The amounts of natural gas under the peaking service for the design peak day have decreased.[32]

Additionally, Duke has reduced its usage of propane in its capacity mix.[33] Duke used to have three propane plants, and would add in the propane with the natural gas when needed for peaking service. Sometime during the 2013-2014 season, one plant closed.[34] Duke currently has two propane plants that can assist with meeting design peak day needs. Mr. Kern stated, however,

[28] "Released Capacity" refers to the 30 percent of FT capacity that Duke allots to the Suppliers when a GCR customer shops and obtains natural gas from an CRNGS supplier. (Tr. at 46, 82)
[29] RESA EXs. 3 and 4.
[30] Tr. at 45-46. The new contracts with Texas Gas Transmission and Columbia Gas Transmission extend to 2018 and 2020, respectively. (Tr. at 70)
[31] Tr. at 47-48.
[32] RESA Exs. 3 and 4.
[33] *Id.*
[34] Tr. at 90.

that those plants can produce only so much.[35] Lastly, Duke has changed the amount of natural gas storage it uses.[36]

On the Suppliers' side, there have been regular *increases* in the amount of the Supplier's Responsibility, Released Capacity, propane, and EFBS storage relied upon to meet total system requirements.[37] Thus, while Duke has been reducing capacity needed to serve GCR customers, Duke has been relying more on Supplier-side capacity to meet total system requirements.

IV. Description of Duke's Proposal

A. Concern As Identified

In its Application, Duke is claiming that the increase in customer shopping and a decrease in the number of Suppliers electing EFBS have caused there to be insufficient FT in relation to storage to manage all storage balances.[38] However, when cross-examined, Mr. Kern stated that Duke is meeting its GCR load with storage and does not need a large amount of FT for the GCR load.[39] Duke claims that, nonetheless, a change is needed because *potentially* too few Suppliers could elect EFBS, which could cause Duke not to be able to cycle through its storage assets.

While Mr. Kern expresses concern about enough Suppliers subscribing to EFBS, a review of the EFBS subscription indicates that EFBS subscription by Suppliers has been fairly consistent over the years. The amount of annual EFBS volumes (in dth) elected by Suppliers have been as follows:[40]

2007/08	**2008/09**	**2009/10**	**2010/11**	**2011/12**	**2012/13**	**2003/14**	**2014/15**	**2015/16**
60,480	62,160	60,030	68,730	63,000	63,900	41,400	32,400	51,000+

[35] Tr. at 39, 40, 42.
[36] Duke Ex. 1 (Application) at Attachment 5; RESA Ex. 3.
[37] Duke Ex. 1 (Application) at Attachment 5; RESA Ex. 3.
[38] Duke Ex. 1 (Application) at 4; Duke Ex. 2 (Kern Direct Testimony) at 5-6.
[39] Tr. at 59.
[40] RESA Ex. 3; Tr. at 33-34.

Mr. Kern acknowledged that, if the current level of sign-up for EFBS were to continue in the 2016-2017 season, Duke would manage to meet the requirements of the system..[41]

Mr. Kern also noted that, *even if* no Supplier elected EFBS, Duke still has a plan in place to meet the needs of the GCR. Specifically, if no Supplier elected EFBS during the next January election:[42]

- Duke would not purchase any additional FT or any winter-only FT.[43]
- Duke would release some of the excess capacity it has to one of its affiliates and/or allow its asset manager to sell the excess capacity in the market. GCR customers, therefore, would not pay for that excess capacity.[44]

B. Proposal/Application

Duke has proposed to eliminate the FBS option for Suppliers that have more than 20,000 dth maximum daily delivery quantity ("MDQ") on the Duke system. Duke proposes that all Suppliers over 1,000 dth and below the 20,000 dth MDQ threshold still be allowed to maintain the option to elect between FBS and EFBS service.[45] Thus, despite all Suppliers having responsibility to ensure reliable gas delivery on the system, Duke's proposal would affect *only* the larger Suppliers on the system. Duke is asking that the proposed change for the balancing service start April 1, 2016.[46]

Mr. Kern testified that, if Duke's application is approved, Duke will buy additional firm capacity to make up for the amount of storage that is allocated to provide EFBS.[47] Under Duke's Choice program rules, Suppliers are required to pay for a portion of costs of the FT that Duke purchases. Further, Duke's data reflects that it won't be a small purchase of FT; instead, Duke will

[41] Tr. at 97. RESA Witness Scarpitti noted that the Suppliers have the same situation – if there is a need to nominate more natural gas than what has been planned for, Suppliers purchase natural gas on the spot market. (RESA Ex. 1 at 14; Tr. at 134)
[42] Tr. at 59-60.
[43] Tr. at 59.
[44] Tr. at 60-61.
[45] Duke Ex. 1 (Application) at 5-6.
[46] Tr. at 33. Mr. Kern noted that, originally, Duke wanted the change to start with the 2015-2016 season. However, since the Commission decided to hold a hearing, its request now is to start with April 1, 2016. (Tr. at 33)
[47] Tr. at 64.

have to purchase more than 80,000 dth of FT.[48] Thus, Mr. Kern explained that, if Duke's application is approved, the net effect will be a slightly lower costs to the GCR customers *and higher costs* to those customers served by Suppliers that must take EFBS.[49]

V. Duke's proposal is not a just or reasonable solution.

While Duke contends that its proposal will result in an "equitable sharing,"[50] RESA Witnesses Scarpitti and White explained that Duke's proposal is not just or reasonable for multiple reasons.

A. Adoption of Duke's Proposal will Fundamentally Alter the Balance of Interest Struck During the Design of Duke's Choice Program

As noted in the testimony of Matthew White, FBS was established as a result of a Stipulation entered into by parties after the Commission directed Duke to develop a reasonable balancing tariff.[51] Further, in the Duke Energy/Cinergy merger case, the Commission approved a Stipulation that required Duke to conduct a collaborative process to explore means to make Duke's Choice program more competitive.[52] At the outcome of this Choice collaborative, the Commission approved the option for Suppliers to elect between EFBS and FBS as means to enhance the competitive natural gas market in the Duke service territory.[53]

Duke's proposal now seeks to unilaterally alter the terms of negotiated settlement agreements and the negotiated collaborative process that was designed to improve the competitive market. As part of these negotiated proceedings, parties gave up their litigation positions to achieve a compromise between contrasting positions.[54]

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[48] RESA Exs. 3 and 4 – compare the FT capacity amount in 2014/15 with the FT Capacity amount under the Mandatory EFBS.
[49] Tr. at 64-65.
[50] Duke Ex. 2 (Kern Direct Testimony) at 10.
[51] RESA Ex. 2 (White Direct Testimony) at 5
[52] See <u>In Re Cinergy Corp. and Duke Energy Holding Corp.</u>, Case No. 05-732-EL-MER, et al., Entry, March 21, 2007.
[53] RESA Ex. 2 (White Direct Testimony) at 5
[54] RESA Ex. 2 (White Direct Testimony) at 6.

With its proposed tariff change, Duke is not just seeking a modest change to its Choice tariffs or its Choice program rules. Rather, as evident in this proceeding, the proposals made by Duke will fundamentally alter the way costs are allocated between GCR and Choice customers- in particular, and Choice customers served by larger Suppliers. As Mr. Kern testified, the net effect of Duke's proposal will be lower costs to GCR customers and higher costs to Choice customers.[55]

Moreover, to the extent needed, RESA's alternative proposal (as more fully explained herein) finds a more equitable compromise to ensure no one Supplier or Duke as GCR supplier is unfairly impacted by a potential under-subscribed EFBS service. Duke's modifications on the other hand not only raise costs only for large Suppliers but also are made in a vacuum without examining all of the inequities that exist within the Choice program. In other words, Duke wants a simple fix with no consideration of the impact of costs to Choice customers.[56]

B. There is no evidence that EFBS is undersubscribed

In its application, Duke claims that the changes to its balancing tariffs are needed because of concerns that not enough Suppliers will elect EFBS. However, multiple Suppliers have selected EFBS and are paying for that service right now. The evidence establishes without question that EFBS is not currently undersubscribed. As noted earlier, the January 2015 election resulted in multiple Suppliers selecting EFBS, with roughly 51,000 dth/day of volume.[57] In addition, Duke has admitted that it can manage its system with this current level of subscribership[58] and it has done so successfully at lower levels of subscribership as well. As proof of this in the two most recent gas years the EFBS subscription was at 41,400 and 32,400 dth/day respectfully[59] and Duke was able to manage its system without reliability concerns- all during two very cold winters.

[55] Duke Ex. 2 (Kern Direct Testimony) at 10.
[56] RESA Ex. 2 (White Direct Testimony) at 5, 10.
[57] Tr. at 33-34.
[58] Tr. at 97.
[59] Duke Ex. 1 (Application) at Attachment 5; RESA Ex. 3.

As a result, Duke has not established a need presently, or in the future, to eliminate a FBS service as an option for the largest Suppliers in the service territory. As Mr. Scarpitti pointed out, Duke has not claimed that it has incurred pipeline penalties because of the historical or existing EFBS subscribership. Nor has Duke demonstrated that EFBS will be undersubscribed in the future.[60] Duke's proposal is based on a hypothetical situation that has not occurred previously and may never happen.

C. Duke's proposal will Only Result in Shifting More Costs to Choice Customers and away from the GCR

Duke's alleged premise for the instant proposal is questionable. Duke claims that the increase in customer shopping and a decrease in the number of Suppliers electing EFBS have caused there to be insufficient FT in relation to storage to manage all storage balances.[61] In looking at the winters of 2013/2014 and 2014/2015, Suppliers electing EFBS reflected 41,400 dth and 32,400 dth, respectively.[62] During that time, Duke experienced the coldest winters since the inception of the Choice program. Yet, at these levels, Duke was able to manage its storage assets without incurring penalties.

Further, during that time Duke has de-contracted some of its FT.[63] In the following exchange, Mr. Kern was pressed as to whether, in 2013-2014, the lack of EFBS subscribership was the link to difficulties in managing storage balances and he said no:[64]

> Q. So you're saying for the winter of November, '13, through March, '14, because of the lower subscription rate on EFBS, the company almost incurred interstate pipeline penalties; is that correct?
>
> A. I don't know that I would characterize it that way. I think actually, you know, we came so close to exceeding the storage more from **a**

[60] RESA Ex. 1 (Scarpitti Direct Testimony) at 4.
[61] Duke Ex. 1 (Application) at 4; Duke Ex. 2 (Kern Direct Testimony) at 5-6.
[62] Duke Ex. 1 (Application) at Attachment 5; RESA Ex. 3.
[63] Tr. at 45-46.
[64] Tr. at 16.

> **function of weather forecasts not being accurate.** (Emphasis added.)

While Duke has claimed that the lack of EFBS subscribership in 2014/2015 was the link to difficulties in managing storage balances, Duke had decontracted some of its FT and the accuracy of the weather forecasts likely was a factor as well, like in 2013-2014. As a result, the evidence does not demonstrate that the premise for the requested change in balancing service is valid.

Moreover, Mr. Kern testified, that if Duke's proposal is adopted and larger suppliers are required to take EFBS service, Duke will have to purchase more FT to meet the needs of the GCR to make up for the additional storage that will be assigned to suppliers.[65] This additional purchase of FT will come at a cost to Suppliers because, under Duke's Choice rules, Suppliers must pay a portion of Duke's FT purchases. The net effect of Duke's proposal will be that larger Suppliers will be required to pay for the more expensive storage, and then also pay for the FT Duke contracts to serve GCR customers. Thus, as noted by Mr. Kern if Duke's application is approved, the net effect will be lower costs to the GCR customers but raise *costs* to those customers served by Suppliers that must take EFBS.[66]

D. Duke's proposal arbitrarily Discriminates Against Larger Suppliers

In its Application Duke has proposed that the largest Suppliers must take EFBS but the smaller Suppliers will maintain the EFBS and FBS option. Duke's proposal will penalize the largest Suppliers, while allowing the smaller Suppliers to maintain the option to elect between EFBS and FBS service.

There are approximately seven Suppliers whose quantities are above the proposed 20,000 dth/day threshold.[67] Thus, this proposal will directly affect those Suppliers – eliminating their

[65] Duke Ex. 2 (Kern Direct Testimony), at 7.
[66] Tr. at 64-65.
[67] Tr. at 65.

ability to select either FBS or EFBS. For those seven Suppliers, they will have only one "take it or leave it" balancing option to select during the January election process.

Duke has not given a credible reason why the option for EFBS and FBS must be eliminated for larger Suppliers, but smaller Suppliers should still maintain the option. Duke merely stated that "the Company is requesting that the tariff be changed so that the largest suppliers must be served under EFBS while maintaining a choice for mid-range suppliers so as not to create any barriers to entry into the Choice program."[68] However, with this statement Duke is essentially admitting that eliminating the option between EFBS and FBS will create a burden on Suppliers given that Duke perceives it to be a "barrier to entry" for smaller Suppliers to not have the option to elect between the two services.

A proposal that would favor one class of Suppliers over another is directly contrary to Ohio's pro-competitive natural gas policy and punishes a Supplier who has invested and built up a business behind Duke. This is particular true when the discriminatory proposal is arbitrary and done for no clear purpose, other than to ensure smaller Suppliers have a leg-up on the competition. Thus, there is no justifiable reason to discriminate in this manner against those larger Suppliers or to harm the competitive market in this manner.

E. Duke's proposal will place undue Burden on Suppliers that Have Already Entered into Contracts for Gas and Capacity

In addition to eliminating a balancing service option for certain Suppliers, Duke's proposal contains no provisions in the event a Supplier is unable to adjust its contracted capacity.[69] Duke's proposal will have an even more significant impact on those Suppliers forced to purchase the more expensive EFBS if they are unable to de-contract capacity.

[68] Duke Memorandum Contra at 4 (Feb. 9, 2015).
[69] Tr. at 80.

If Duke allocates storage to Suppliers, these Suppliers in turn will need less capacity to meet their peak day requirement as they will have to make use of the Duke assigned storage. The more storage Duke assigns a Supplier the greater the amount of peaking assets the Supplier now holds that will have to be decontracted. The numbers proposed by Duke are very large. Duke's chart indicates that if no Supplier elected EFBS Duke would allocate to Suppliers 80,000 dth and Suppliers would need to shed an equal amount.[70] Suppliers who have bought assets on a long term basis will not be able to shed the capacity they have in order to use the storage Duke assigns. OCC witness also acknowledged that, if Duke's proposal is put into place, Suppliers could be holding capacity that would no longer be needed and they would then have to pay the more expensive EFBS rate.[71]

In addition to holding excess capacity that they already procured, Duke's proposal would require Suppliers to take on even *more* capacity from Duke. Suppliers would take a double hit. As Mr. Kern testified, under Duke's proposal it would procure an additional 80,000 dth of FT. 30% of this FT would be released to Suppliers. Duke's projected impact of its proposal failed to identify the impact of this additional allocation of capacity, because, as Mr. Kern identified, there "is an error in the spreadsheet." Tr. at 81. *See also id.* at 82. Given that Duke's tariff conditions require *more* capacity to be released to suppliers, there is the potential for the scenario where a Supplier is required to pay a more expensive balancing rate (EFBS), pay for additional capacity released capacity, and also pay for capacity that it already contracted on a long-term basis yet no longer needs. Thus, Duke's proposal could be significantly costly to the largest Suppliers.

Further, many larger Suppliers that elect FBS likely have already entered into contracts to sell gas to customers based on the cost structure of FBS. Thus, the cost components of FBS have already been built into the fixed prices provided to certain customers. If Suppliers are required to

[70] RESA Exs. 3 and 4 – compare Choice Provider Responsibility for 2014/15 versus the Mandatory EFBS.
[71] Tr. at 110.

take EFBS, at a higher cost, Suppliers may not be able to modify the fixed prices provided to customers and likely will have to "eat" the additional costs. Thus, Duke's proposal is unreasonable as it will modify the cost components of existing contracts offered by Suppliers.

F. RESA's Interim Solution Should be Accepted While These Issues should be decided within a Broader Review of Duke's Choice Program

Mr. White pointed out that Duke is the only natural gas company in Ohio that manages the transmission and capacity via the GCR mechanism with an asset manager.[72] Other Ohio natural gas utilities are directly assigning their storage and transmission assets. The Commission is currently conducting a management/performance audit of Duke for the period of September 2012-August 2015 in the 2015 GCR case, and the audit report is due in November 2015. With a more in depth investigation going on it seems foolish to permanently change the current balancing system now. As explained by Mr. White, the information gained in the management/performance audit will be helpful to assess a long-term solution to any balancing problems and that case is really the proper forum for evaluating the long-term solutions, not this proceeding.[73] Thus, to the extent the Commission believes there is a problem to be addressed, RESA's alternative proposal as described in the testimony of Witness Scarpitti would allow for a fair solution should an undersubscription occur while a full and permanent solution is created based on a full audit. A knee–jerk, permanent solution should not be approved with so many other unanswered pieces yet to come in the auditor's report.

VI. RESA's Proposal is a more just and reasonable solution, if any change is deemed necessary at this time.

A. Description of RESA's Proposal

RESA first recommends that the Commission reject Duke's proposal. If, however, the Commission finds that a change to the balancing service is nonetheless needed at this time, Duke

[72] RESA Ex. 2 (White Direct Testimony) at 5.
[73] RESA Ex. 2 (White Direct Testimony) at 6.

should be required to implement an interim contingency plan in the event there is an undersubscription of EFBS. Mr. Scarpitti explained the interim contingency plan recommendation as mandating an EFBS-type service for just the amount needed to address the undersubscription.[74] More specifically, RESA recommends that the Commission set a baseline amount of storage that will be assigned to Suppliers with an MDQ over 1,000 dth,[75] if the baseline amount is not met through EFBS elections. The shortfall would be allocated to Suppliers with an MDQ over 1,000 dth who elect FBS on a pro-rata basis.

While RESA does not accept that Duke is unable to manage its storage assets if less storage was assigned to Suppliers, RESA recommends that the Commission select a level equivalent to the 2013/2014 level of 41,400 dth as an acceptable amount of storage allocated to Suppliers because that winter was one of the coldest on record and Duke was able to manage its storage adequately.[76]

Under RESA's proposal, Suppliers can deliver natural gas in and out of storage pursuant to a preset schedule that will allow Duke to cycle through its storage assets.[77] Furthermore, Mr. Scarpitti noted other advantages of this interim contingency plan – it would ensure that Suppliers (regardless of size) are treated fairly, it requires that nearly all are required to participate, and any cost increases will be known far enough in advance to ensure Suppliers are not hit with last-minute, unknown charges.[78] Plus, by spreading the responsibility over more Suppliers, the burden on each Supplier will be reduced.[79] Mr. Scarpitti stated that the RESA proposal is not discriminatory,

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[74] RESA Ex. 1 (Scarpitti Direct Testimony) at 5.

[75] RESA believes that 1,000 dth would provide an even playing field because the current Duke FRAS tariff has a 1,000 dth/day level as the threshold a Supplier must hit to have the option to elect EFBS. Suppliers under the 1,000 dth/day MDQ threshold must receive balancing under rider FBS. The purpose of such a threshold is to avoid *de minimis* allocations of capacity and storage while taking into account the need to ensure a level playing field for all suppliers. RESA Ex. 1 (Scarpitti Direct Testimony) at 8-9. Duke acknowledges that its system could handle it if EFBS was mandatory for suppliers with other volumes. There are some lower-load customers that are process-only customers, who would have to be excluded, but Duke can identify them and appropriately carve them out. (Tr. at 87-88.)

[76] RESA Ex. 1 (Scarpitti Direct Testimony) at 6-7; Tr. at 120.

[77] RESA Ex. 1 (Scarpitti Direct Testimony) at 6.

[78] *Id.* at 5.

[79] *Id.* at 6.

whereas the proposal from Duke is discriminatory among Suppliers.[80] He added that this proposal would give Duke increased certainty as to the amount of load that would be available to cycle through storage by guaranteeing the Supplier capacity requirement will be met with storage.[81]

In addition, RESA does not object to a credit being given back to all customers (not just GCR customers) for any positive summer/winter differential. Also, if a fee for the limited use of storage was developed due to Suppliers' use of FBS, RESA recommended that it be based on (a) historical seasonal NYMEX price differentials between summer and winter, and (b) throughput into storage. Mr. Scarpitti calculated it to be $0.21, based on many years of actual historical data.[82]

B. Duke's Criticisms are not valid.

Mr. Kern contends that there are several problems with RESA's proposal and it will not work.[83] He takes issue with the proposed allocation threshold, the proposed credit back, the flexibility of the proposal, and the costs/efforts needed for just an interim solution. Each of those criticisms is wrong and should not be accepted.

First, Mr. Kern claims that the 41,400 dth/day threshold ignores Duke's excess capacity and spot market purchases in the year selected. When those are also taken into considerations, Mr. Kern claims that the threshold should become 100,000 dth/day.[84] This criticism is without merit. The excess capacity and spot market purchases should not both be added in because that would be mixing apples and oranges. It also ignores that fact that Duke managed the system with that 41,400 dth/day level in one of the coldest winters on record, which illustrates that it is a reasonable amount of storage for developing the interim solution.

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[80] Tr. at 129-130.
[81] RESA Ex. 1 (Scarpitti Direct Testimony) at 13.
[82] *Id.* at 10 and Ex. TS2.
[83] Tr. at 93-96.
[84] Tr. at 94.

Next, Mr. Kern contends that the RESA proposal leaves the GCR customers still paying the bulk of the demand charges for the storage, even with the $0.21 credit back. In his view, if the GCR customers are paying the demand charges for storage, then only they should be credited, not all customers. He added that the future summer-winter spread prices are available, and they are closer to $0.33 cents.[85] Mr. Kern overlooks the fact that RESA's proposed summer-winter differential credit is being paid for by Suppliers, and thus may be passed on to the Suppliers' customers through increased costs. As a result, the credit should rightly be given to all customers. As to the future summer-winter spread prices being available, they are speculative. It is more reasonable to rely, as Mr. Scarpitti has, on multi-year actual historical data rather than only one single year.

Third, Duke argues that the RESA proposal does not provide enough flexibility.[86] This is an ironic criticism since Duke's own proposal absolutely eliminates flexibility for the largest Suppliers in the name of solving a problem that may never actually need to be solved. This criticism also overlooks the fact that it will have the Suppliers set up – if and when the subscribership of EFBS is lacking – to fill the gap to the extent needed, based on historically cold winters. RESA's proposal will actually provide Duke the flexibility it says it needs plus more because it ensures Duke full subscription at a known amount and payment. Now, under the guise of a criticism, Duke claims that flexibility is not enough. The Commission should see right through this weak claim and reject it.

Lastly, Duke contends that the RESA proposal is just a temporary solution, and it will require extensive programming, personnel, and system changes for Duke to be able to carry it out. Mr. Kern explained that its current set-up assumes that Suppliers will be either totally FBS or totally

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[85] Tr. at 94-95.
[86] Tr. at 95.

EFBS.[87] This final criticism also does not amount to any justification for rejecting RESA's proposal. Any changes that Duke would have to make will only take place if the subscribership of EFBS is too low. Thus, it as RESA suspects EFBS sign ups continue on the historic level, the time and expense associated with the RESA proposal will never incur.

C. Concern that gas cost recovery customers have/will pay higher than necessary amounts is not based on fact and not justification for approval of Duke's proposal.

OCC raised several questions regarding whether Duke's difficulty in balancing storage and the 2014-2015 Duke's spot market purchases caused additional costs to GCR customers.[88] Further, Duke has cited its need to make spot market purchases as justification to make the tariff changes requested in this proceeding.[89] It appears that OCC may argue that the EFBS subscribership must be mandated so that the alleged balancing issues do not result in added costs to GCR customers.

First, the evidence in the record does not demonstrate what the cost of the spot market purchases in the 2014-2015 period. Mr. Kern stated that the spot market purchases were at market prices (as opposed to above-market prices),[90] but the critical details were not presented. So, we do not know what dollar amounts or the amount of spot market purchases that were even involved. Moreover, we do not know whether Duke's customers as a whole are better off by Duke having bought the spot gas, as opposed to Duke having committed to paying additional costs to purchase long-term additional FT. Nonetheless, as already noted, Duke de-contracted some of its previous FT holdings which also likely contributed to Duke's need to make spot purchases.

Second, the spot market purchases in 2014-2015 (during an extremely cold winter) do not establish that, because of a difficulty in balancing storage, Duke will in fact make future spot market purchases that result in extra costs to GCR customers. Rather, the record evidence simply

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[87] Tr. at 96.
[88] Tr. at 16-18.
[89] Duke Ex. 1 (Application), at 5.
[90] Tr. at 16.

indicates the 2015-2016 EFBS subscribership has increased, as compared to the prior year, and Duke has stated that it can manage its system at that level.[91]

Third, Duke believes that it holds an amount of storage that is necessary to avoid penalties.[92] Additionally, if RESA's proposal is implemented, it will minimize the risk that Duke will have to purchase in the spot market as well as minimize the risk that Duke will have to sell supply in the spot market due to not getting storage to the levels required by the storage providers at the end of the season.[93]

Mr. Scarpitti testified, it is not unusual for a utility or a Supplier to have to make spot purchases during colder than normal winters. While a utility or Supplier may make delivery plans with existing capacity resources based on the assumption of normal temperature conditions, when colder than normal conditions occur, and more deliveries are required, often the difference is made up on the spot market.[94]

Finally, OCC's claim fails to take into account that customers of larger Suppliers will pay addition costs under Duke's proposal. OCC also seemingly ignores the fact that Duke's proposal will place more costs on customers of some Suppliers than others. RESA's proposal is intended to treat all customers and Suppliers fairly while a full audit is completed.

In sum, there is no evidence that Duke has, or will, incur penalties as a result of exceeding its authorized storage withdraws. And to the extent Duke is in danger of incurring penalties for exceeding storage withdraws during colder weather, Duke has shown that it can prevent from doing so by purchasing on the spot market which is not an unusual practice for an entity with gas supply requirements. Further, there is no evidence presented that spot purchases are not reasonable, as the

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[91] Tr. at 97.
[92] Tr. at 16, 83.
[93] RESA Ex. 1 (Scarpitti Direct Testimony) at 18.
[94] Duke Ex. 1 (Application), at 5; Duke Ex. 2 (Kern Direct Testimony), at 6.

market price for gas can sometimes be less costly than procuring gas utilizing other capacity resources.

Accordingly, any allegations that GCR customers have or will pay too much for service have not been established by the evidence in this record, and are not a basis for discriminating against customers of large Suppliers by approving Duke's unjust and unreasonable proposal.

VII. Timing of any changes to the balancing services

As noted earlier, Duke is proposing to modify its balancing service without a more complete review of the operation of the Duke system. Moreover, it had proposed to implement those changes on an expedited basis.[95] A more holistic and thorough view of Duke's portfolio and balancing tariffs is expected to take place in Duke's 2015 GCR case, and the audit report in that case is due in November 2015. However, that proceeding is unlikely to be resolved by the January 2016 balancing service election for the 2016-2017 period particularly because the hearing in that case is currently scheduled to start on February 9, 2016.[96]

As already noted, RESA recommends that the Commission reject Duke's unnecessary proposal and look to make holistic changes to Duke's Choice program in the future proceedings discussed above. However, if the Commission believes that some measures need to be taken to address Duke's immediate concerns, RESA recommends that the Commission approve RESA's interim proposal through the 2017-2018 period to allow the more thorough review of this issue to take place in the 2015 GCR case. Doing so will also provide certainty to Suppliers over the next two years, which is critical to ensure that the competitive market functions as it should, and will

[95] Duke filed its application on the same day that Suppliers were making their 2015-2016 balancing elections and wanted to critically change the balancing services after they had made their one-year elections.
[96] 2015 GCR Case, Entry at Request for Proposal page 11 (February 25, 2015).

allow Suppliers a sufficient timeline for implementing any changes that may potentially be adopted.[97]

In addition, Mr. Scarpitti explained that the 2017-2018 time period fits well with the arrangements already in place/in the works with the storage arrangements on the interstate pipelines on which Duke holds storage rights. For the 2015-2016 period, the storage rights have been allocated and Suppliers have contracted to bring natural gas supplies in. For the 2016-2017 period, arrangements and planning are under way now, and there are numerous contracts which are based on Duke's current balancing tariffs.[98] Thus, it is RESA's contention that a major change in the balancing service should not commence until after 2017-2018 to allow for both a careful examination of the options and so that Suppliers can appropriately plan for any change.

VIII. If the Commission approves Duke's proposal, the Commission must ensure that competition is not adversely affected by requiring Duke to unbundle its gas cost recovery costs in its natural gas distribution rates.

Duke's proposal to modify the balancing service is changing a fundamental aspect of Duke's Choice program because it limits the balancing options available, restricts the flexibility for Suppliers to serve their customers, and impacts the competitiveness of the Choice market. As Mr. White testified, if the Commission examines this issue and determines that such a change should take place, the Commission should examine the entirety of the costs associated with the Choice program.[99] Section 4929.02(A)(7), Revised Code, makes clear that natural gas distribution utilities should remove, not add, obstacles that retail customers face when purchasing natural gas in the marketplace. Section 4929.029(A)(7) states that it is the policy of Ohio to:

> Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for

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[97] RESA Ex. 1 (Scarpitti Direct Testimony) at 11.
[98] RESA Ex. 1 (Scarpitti Direct Testimony) at 12.
[99] RESA Ex. 2 (White Direct Testimony) at 7; Tr. at 148, 172-173.

> regulation of natural gas services and goods under Chapters 4905. and 4909 of the Revised Code[.]

Moreover, Section 4929.02(A)(2), Revised Code, states that it is the policy of Ohio to "[p]romote the availability of unbundled and comparable natural gas services."

There are a variety of costs included in Duke's natural gas distribution rates that are GCR-related, but they are recovered from all distribution customers – both GCR customers and shopping customers. Those costs include: scheduling and balancing, providing GCR customer information for commodity, cash working capital, calculating GCR bills, GCR-related legal and regulatory costs, and others.[100] As a result, GCR rates are currently being subsidized by distribution customers..[101] Shopping customers incur these same costs when they pay their CRNGS supplier and are paying twice for these types of services. Mr. White further explained:[102]

> [W]hat the whole evolution of the Choice Program has been about is identifying inequities that currently exist to make it a barrier to entry to and developing means to resolve those inequities. And it has been an evolution and that is the impetus of the order that came out in 2005 that established the Choice collaborative, and we continue to look at those issues to see if there are ways we can make the markets even more competitive and break down the remaining barriers which include subsidies that are currently in – being covered through distribution rates.
>
> And my point is that we should not go backwards and remove a mechanism that was designed to move the markets forward without examining the current mechanism – the current problems that exist through subsidies * * *.

Thus, if the Commission decides to fundamentally alter the competitive equity of the Choice program by eliminating the option of larger Suppliers to elect FBS, the Commission should also look at the broader context of subsidies flowing to the GCR. These GCR-related costs should be identified and then credited in such a way that they are paid for by only GCR customers, consistent with the state of Ohio's policy. Mr. White explained that a credit to all customers, in similar

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[100] RESA Ex. 2 (White Direct Testimony) at 8; Tr. at 147, 167-168, 169.
[101] Tr. at 153, 154.
[102] Tr. at 160-161.

fashion to what is underway in Pennsylvania, can accomplish this goal.[103] Thus, if the Commission chooses to adopt Duke's proposal, RESA recommends that the Commission open a new docket to address the existing subsidies in Duke's distribution rates in order to calculate and establish a credit for all customers.

IX. Conclusion

The Duke proposal is merely seeking to improve the GCR by mandating a transfer of unwanted storage assets to only large Suppliers and their shopping customers. Thus, at its most basic level, Duke's proposal in this case is strictly about cost allocation. Given that basic concern, the Commission should reject Duke's proposal and evaluate in the 2015 GCR hearing (with all parties having a chance to provide their view) the optimal mix of storage, firm transportation, propane, peaking, and conservation for the Duke service area as a whole. The proper approach is to first analyze what is best for all customers, including the 50% of the load that shops, and then design the assets to match the optimal design.

Furthermore, any change in the assets or pricing should be done with enough forward notice so the transitions can be done smoothly and not have a negative impact on the market participants, including the Suppliers. This too supports the idea of addressing the issue within the context of the 2015 GCR case. Finally, because it is theoretically possible that all GCR customers could become shopping customers tomorrow, it does make sense to have a contingency plan in place if the number of remaining GCR customers did not support the storage. For this reason, RESA has put forth a simple and straightforward interim proposal. RESA proposes a contingency plan that basically has all Suppliers fill storage and use it in accordance with direction from Duke if in fact the election of EFBS falls below the level selected (the level that existed during 2013-2014). The past demonstrates that that level is reasonable -- During 2013-2014, the winter weather was colder than

[103] RESA Ex. 2 (White Direct Testimony) at 9.

normal and there was no problem with that EFBS subscribership level, absent the purchase of storage gas which in the aggregate for all customers in Duke may have been more advantageous cost-wise than the mandatory EFBS plan proposed by Duke.

In sum, Duke's unjust and unreasonable proposal in this proceeding should be rejected. If the Commission nonetheless finds that some change is needed now for the balancing service, RESA recommends its interim proposal, and recommends that the Commission initiate a separate proceeding to unbundle the GCR costs currently recovered through Duke's distribution rates.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 4th day of September 2015 upon the persons listed below.

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