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

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.

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TABLE OF CONTENTS

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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("OAC"), Interstate Gas Supply, Inc. ("IGS Energy" or "IGS") respectfully submits this Application for Rehearing of the Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") on January 6, 2016 for the following reasons:

1. **The Order unlawfully and unreasonably took administrative notice of, and relied upon, an audit report issued in a separate proceeding after the record and briefing was completed in this case. The Order violated R.C. 4903.09 and due process because it relied upon an record audit report that is not part of the record. *Tongren v. Pub. Util. Comm'n Ohio*, 85 Ohio St.3d 87 (1999). The Order further violated R.C. 4903.09 by failing to address contested legal issues, including failing to address Mr. Scarpitti's proposal to allocate any EFBS undersubscription, with written findings fact and conclusions of law based upon the record;**
2. **The Order is unlawful, unjust, and unreasonable because it undermines the contracts of suppliers and will leave suppliers with stranded excess pipeline capacity. The Commission should adopt either Mr. Scarpitti's proposal or delay the mandatory EFBS election date until April 2018;**
3. **To the extent that EFBS is determined to be mandatory in any year, the Order should reduce the threshold to 1,000 dekatherm ("dth") per day. The Order's selection of 6,000 dth per day is arbitrary, unlawful, and unreasonable and not supported by the record evidence;**
4. **The Order is unlawful and unreasonable because it modified Duke's gas balancing tariffs without a comprehensive review of Duke's rate**

structures, including the existing subsidies in distribution rates identified by witness White.

As discussed in the Memorandum in Support attached hereto, IGS respectfully requests that the Commission grant this Application for Rehearing and correct the errors identified herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On January 6, 2016, the Commission issued an Order modifying and approving Duke's proposal to alter the terms under which suppliers receive firm balancing service. In reliance upon an audit report submitted in a separate proceeding[1] and not subject to cross-examination, the Order eliminates the option of competitive retail natural gas suppliers ("Suppliers") with a maximum daily quantity ("MDQ") of 6,000 dekatherms per day ("dth/day") or greater to take Firm Balancing Service ("FBS") beginning April 1, 2017. Consequently, these suppliers will be required to take Enhanced Firm Balancing Service ("EFBS")—a more expensive balancing option with different delivery requirements.

While IGS appreciates that the Order rejected Duke's proposal to make EFBS mandatory starting on April 1, 2016, the Order did not provide sufficient time for suppliers to incorporate these changes into existing retail contracts or to unwind existing

[1] *In the matter of the regulations of the purchased gas adjustment clauses contained within the rate schedules of Duke Energy Ohio and related matters*, Case No. 15-218-GA-GCR, Report on the management and performance audit of Duke Energy Ohio's gas procurement practices and policies for the audit period September 2012 through August 2015 (Dec. 9, 2015) (hereinafter "Audit Report").

capacity commitments. As identified in the testimony of witness Scarpitti and the record, when suppliers on FBS are required to take balancing service under EFBS, it may cause a three-fold cost increase that may undermine existing contracts and capacity commitments:

- *Increased Balancing Costs*: EFBS is a more expensive balancing rate;
- *Stranded Capacity:* IGS has already contracted for capacity on a long-term basis. As IGS receives an allocation of storage, it will no longer need this capacity, but IGS has no ability to de-contract this capacity;
- *Additional Capacity:* As Duke assigns storage to suppliers on EFBS, Duke will then contract additional FT capacity. Through the FRS tariff, a portion of that capacity will be assigned to suppliers.

On rehearing, the Commission should either adopt the proposal submitted by witness Scarpitti, or, in the alternative, extend the deadline for forcing FBS suppliers onto EFBS by one additional year—until April 1, 2018.

Notably, neither the audit report nor the Commission's Order actually address the storage allocation methodology proposed by witness Scarpitti. While Mr. Scarpitti's proposal represents IGS's preferred outcome, adoption of either of the above balancing structures would potentially moot the Commission's unlawful and unreasonable reliance upon the extra-record Audit Report and failure to address Mr. Scarpitti's proposal with written findings of fact and conclusions of law based upon the record as required by R.C. 4903.09.

II. BACKGROUND

A. Duke's Application

On January 15, 2015, Duke filed an application under R.C. 4909.18 for approval to increase the rates for FBS and EFBS. The rate change was not contested. But, Duke also sought to require larger suppliers to take balancing service under EFBS, which would eliminate a larger supplier's option to make an annual election between EFBS and FBS.[2] Duke also sought 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.[3] 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 Supplier provider election. The Commission rejected Duke's proposal to immediately modify its balancing terms and set the matter for hearing.

In its Application and testimony, Duke expressed concerns about its ability to cycle through its storage given the change in the mix of its capacity and storage portfolio and the decreasing size of the default/gas cost recovery ("GCR") load.[4] Duke claimed that 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. Moreover, Duke believed that, if no Suppliers, or not enough Suppliers, elect EFBS, Duke will have too little Firm Transportation ("FT") available to use.[5]

[2] Application at 4-6.

[3] *Id.* at 1-2.

[4] Duke Ex. 1 (Application) at 4; Duke Ex. 2 (Kern Direct Testimony) at 5-6.

[5] Duke Ex. 2 (Kern Direct Testimony) at 6.

While Duke witness Kern expressed concern about enough Suppliers subscribing to EFBS service, 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:[6]

2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
60,480	62,160	60,030	68,730	63,000	63,900	41,400	32,400	51,000+

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 run the system. If the weather were warmer than normal, it would sell into the market. If the weather were colder than normal, it would purchase on the spot market[7] just like suppliers do in such circumstances.[8]

In order to forcibly change its capacity and storage portfolio mix, Duke proposed to eliminate the FBS service option for Suppliers that have more than 20,000 dth MDQ on the Duke system. Duke proposed 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.[9]

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.[10] Under Duke's Choice program rules, Suppliers are required to pay for a portion of costs

[6] RESA Ex. 3; Tr. at 33-34.

[7] 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.

[8] Tr. at 134-35.

[9] Duke Ex. 1 (Application) at 5-6.

[10] Tr. at 64.

of the FT that Duke purchases. Further, Duke's data reflects that it won't be a small purchase of FT; instead, Duke will have to purchase more than 80,000 dth of FT.[11]

B. The Suppliers' Proposal

In its testimony, RESA witness Tom Scarpitti (an IGS employee) recommended an interim resolution that would provide the parties until April 2018 to reach a permanent solution.[12] Mr. Scarpitti's recommendation was a compromise solution that would ensure that Duke could still manage its system reliability in the event fewer suppliers elected EFBS, but also would allow suppliers to maintain the option to retain FBS if the EFBS elections remained at current levels.

Specifically, Mr. Scarpitti recommended Duke 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.[13] More specifically, RESA recommended that the Commission set a baseline amount of storage that will be assigned to Suppliers with an MDQ over 1,000 dth,[14] if the baseline amount is not met

[11] RESA Exs. 3 and 4—compare the FT capacity amount in 2014/15 with the FT Capacity amount under the Mandatory EFBS.

[12] RESA Ex. at 11-12.

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

[14] IGS 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.

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.[15]

While Mr. Scarpitti did not accept that Duke is unable to manage its storage assets if less storage was assigned to Suppliers, he recommended 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.[16] Even Duke has acknowledged that the 2013/2014 subscription levels were sufficient to allow Duke to manage its system.

Under Mr. Scarpitti's proposal, Suppliers could deliver natural gas in and out of storage pursuant to a preset schedule that will allow Duke to cycle through its storage assets.[17] Furthermore, Mr. Scarpitti noted other advantages of this interim contingency plan—it would ensure that nearly all suppliers 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.[18] Plus, by spreading the responsibility over more Suppliers, the burden on each Supplier would be reduced.[19] Further, Mr. Scarpitti stated that his proposal is not discriminatory.[20] He added that this proposal would give Duke

[15] The 1000 dth threshold was proposed in the event the where very small Suppliers that would be assigned only a de-minimums amount of storage making it not worth the effort to assign storage in the first instance.

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

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

[18] *Id*. at 5.

[19] *Id*. at 6.

[20] Tr. at 129-130.

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.[21]

Also, if a fee for the limited use of storage was developed due to Suppliers' use of FBS, Mr. Scarpitti 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.[22] Duke witness Kern agrees that Mr. Scarpitti's proposed rate is within the zone of reasonableness as an average number over that period of time.[23]

Further, Mr. Scarpitti recognized that suppliers that are allocated a portion of the responsibility of assisting Duke to cycle through its storage would potentially receive the benefit of the summer/winter price differential (assuming Duke required these suppliers to overdeliver in the summer). Mr. Scarpitti indicated that he and RESA do not object to a credit being given back to all customers (not just GCR customers) for any positive summer/winter differential.

Mr. Scarpitti, further testified that changes to the current FBS rate structure should be implemented responsibly over a appropriate time frame—no sooner than April 2018—to ensure that existing contracts are not undermined.[24] As the record reflects, it is easy to see how suppliers on FBS could be harmed by a quick elimination of that balancing option.

[21] RESA Ex. 1 (Scarpitti Direct Testimony) at 13.

[22] *Id*. at 10 and Ex. TS2.

[23] Tr. at 86.

[24] RESA Ex. 1 at 11-12.

Suppliers on FBS have two types of capacity. First, there is choice provider responsibility, which they supply themselves. Second, there is FRAS capacity, which is assigned to suppliers when Duke procures FT capacity (30% is assigned to suppliers). Mechanically, as Duke releases storage to suppliers, the amount of their own capacity (choice provider responsibility) that those suppliers are required to provide will decrease. [25] If a supplier has already contracted into a long-term capacity arrangement—like IGS has—they will be left with stranded capacity not needed to serve their requirements. These suppliers will be required to pay for this capacity in addition to the increased cost of storage they receive on EFBS. OCC too acknowledged that, if Duke's proposal is put into place, Suppliers could be holding capacity that would no longer be needed and then have to pay the more expensive EFBS rate.[26] Duke's proposal contained no provisions in the event a Supplier is unable to adjust its own contracted capacity.

Moreover, as Duke buys additional firm capacity to make up for the amount of storage that is allocated to provide EFBS, a portion of that capacity will be allocated to suppliers.[27] Duke's data reflects that it won't be a small purchase of FT; instead, Duke will have to purchase more than 80,000 dth of FT.[28] The amount is actually higher because Duke witness Kern made "an error in the spreadsheet."[29]

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[25] Tr. at 80.

[26] Tr. at 110.

[27] Tr. at 64.

[28] RESA Exs. 3 and 4 – compare the FT capacity amount in 2014/15 with the FT Capacity amount under the Mandatory EFBS; Tr. at 64-65.

[29] Tr. at 81. *See also id.* at 82.

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

C. The Parallel GCR Case Audit

During the pendency of this proceeding, the Commission commenced the review of Duke's purchase gas adjustment ("GCR") clause. RESA and IGS had initially recommended that the EFBS Case and GCR case be consolidated so that the issues in both cases could be considered collectively.[30] The Commission did not grant that request, instead allowing both cases to proceed on a standalone basis.[31]

On December 9, 2015, *after the hearing in the EFBS Case and briefing in the EFBS had concluded*, Exeter Associates issued an Audit Report regarding Duke's gas purchasing practices and policies. Among other things, the Audit Report discusses and makes recommendations with respect to Duke's gas balancing tariffs, including the ability of large suppliers to elect rate FBS. The Audit Report, however, did not discuss Mr. Scarpitti's proposal to allocate the responsibility of any EFBS undersubscription to FBS suppliers. The Audit Report did address Duke's proposal to mandate suppliers

[30] Motion to Intervene and Motion to Revise Procedural Schedule and in the Alternative Motion to Consolidate and Memorandum in Support of IGS Energy (Feb. 5, 2015).

[31] *See* Finding and Order at 3-5 (Mar. 25, 2015).

with an MDQ of 20,000 or greater to take EFBS, recommending that the threshold be set at 6,000 MDW instead.[32]

The GCR Case has yet to proceed to hearing. Commission Staff and Duke entered into a Stipulation and Recommendation on January 29, 2016 in that case. The Stipulation does not address any of the Auditor's recommendation with respect to suppliers' ability to elect EFBS or FBS.

D. The Commission's Order

On January 6, 2016, the Commission issued an Order in this proceeding modifying and approving Duke's application to modify the terms applicable to its balancing tariffs. In that Order, the Commission took administrative notice of the Audit Report, and based its determination on the recommendations contained therein. The Order largely approved Duke's Application, making only two modifications: (1) delaying the implementation date of mandatory EFBS to April 2017; (2) reducing the threshold for mandatory EFBS from 20,000 MDQ to 6,000 MDQ, stating:

> Accordingly, the Commission finds that Exeter's recommended 6,000 dth/day threshold is reasonable, properly balances the parties' positions, and should be adopted. The Commission, however, acknowledges RESA's concerns regarding the timing of changes to Duke's balancing services and the potential impact on suppliers' current contracts (RESA Ex. 1 at 11-12). For this reason, we find it appropriate to adopt Staff's recommendation on an interim basis, such that, for the 2016-17 heating season, choice suppliers should take either the same level of service under Rider EFBS that they elected for 2015-16, or more if they prefer.[33]

[32] Order at 9.

[33] Order at 9 (footnote removed).

Also, the Order implicitly determined that the existing amount of EFBS elections for the 2015/2016 heating season (approximately 51,000[34]) would provide a sufficient level of EFBS subscriptions to allow Duke to cycle through its storage. In reaching these determinations, the Order did not evaluate or consider Mr. Scarpitti's proposal to allocate any EFBS underscription to FBS Suppliers.

III. ARGUMENT

A. The Order unlawfully and unreasonably took administrative notice of, and relied upon, an audit report issued in a separate proceeding after the record and briefing was completed in this case. The Order violated R.C. 4903.09 and due process because it relied upon a record audit report that is not part of the record. *Tongren v. Pub. Util. Comm'n Ohio*, 85 Ohio St.3d 87 (1999). The Order further violated R.C. 4903.09 by failing to address contested legal issues, including failing to address Mr. Scarpitti's proposal to allocate any EFBS undersubscription, with written findings fact and conclusions of law based upon the record.

1. The Order improperly and unlawfully took administrative notice of the audit report. Relying upon the audit report is therefore a violation of due process and R.C. 4903.09.

The Order is fundamentally flawed inasmuch as it relied upon an extra-record Audit Report from another proceeding. The Order did not cure this defect by taking administrative notice of the Audit Report, because such notice was not proper or lawful. Therefore, the Order violated due process and R.C. 4903.09, which requires the Commission to issue written findings of fact and conclusions of law based upon the record.

The Supreme Court of Ohio has established factors to determine whether administrative notice is proper: "[T]he factors we deem significant include whether the complaining party had prior knowledge of, and had an adequate opportunity to explain

[34] Tr. at 33-34.

and rebut, the facts administratively noticed." *Allen v. Pub. Util. Comm'n Ohio*, 40 Ohio St. 3d 184, 186 (1988); *see also Canton Storage and Transfer Co. v. Pub. Util. Comm'n Ohio*, 72 Ohio St.3d 1, 8 (1995) ("the commission may take administrative notice of facts if the complaining parties have had an opportunity to prepare and respond to the evidence, and they are not prejudiced by its introduction."). In other words, administratively noticed facts must be introduced at the hearing and parties must be given an opportunity to rebut the evidence, otherwise taking administrative notice violates due process. *Forest Hills Utility Co. v. Pub. Util. Comm'n,* 39 Ohio St. 2d 1, 3 (1974). As the Supreme Court of the United States previously admonished *this* Commission, "[a] hearing is not judicial, at least in any adequate sense, unless the evidence can be known." *West Ohio Gas v. Pub.Util. Comm'n Ohio*, 294 U.S. 63, 69 (1935).

The Order clearly violated the criteria set forth by the Supreme Court of Ohio and the Supreme Court of the United States. The Audit Report was not introduced into evidence in the hearing in this case. Rather, it was issued in a different proceeding *after* the hearing concluded and the record closed—in fact, the Order took administrative notice only after the briefing in this proceeding had concluded. Because no party had the opportunity to explain or rebut the evidence contained in the Audit Report, it was improper to take administrative notice of it.

The Court has determined that a party is prejudiced if an administratively noticed fact reduces the burden of proof of another party. *Canton Storage* at 8. Here, the Order relied upon the Audit Report to reduce Duke's burden of modifying its balancing tariffs. As the Order states:

- "Exeter notes that its audit confirms that, under Duke's existing capacity assignment procedures and balancing service options, the Company may be left with insufficient firm transportation capacity;"
- "Exeter further notes that it did not identify any alternatives to Duke's assignment of storage to choice suppliers through enhanced firm balancing service that would maintain a balance in the allocation of capacity costs to GCR customers and firm transportation customers;"
- "Accordingly, the Commission finds that Exeter's recommended 6,000 dth/day threshold is reasonable, properly balances the parties' positions, and should be adopted."[35]

Accordingly, the Order relied upon the Audit Report to reduce Duke's burden of demonstrating that it is necessary to modify its Duke's balancing tariffs, as well how to modify those tariffs. Because suppliers like IGS opposed any modification to Duke's balancing tariffs, IGS was prejudiced by the Order's administrative notice and reliance upon the Audit Report.

Moreover, R.C. 4903.09 requires the Commission to issue written findings of fact and conclusions of law based upon record evidence. "The Public Utilities Commission must base its decision in each case upon the record before it." *Tongren v. Pub. Util. Comm'n Ohio*, 85 Ohio St.3d 87, 91 (1999) (quoting *Ideal Transportation Co. v. Pub. Util. Comm'n Ohio*, 42 Ohio St. 2d 195, 199 (1975). The Commission cannot rely upon evidence not part of the record in the proceeding. *Tongren* at 91 (Holding the Commission's determination was unsupported by the record in the record of the case.) As the Supreme Court of the United States stated in response to the Ohio Commission's reliance upon price trends not contained in the record, "[t]his is not the fair hearing essential to due process. It is condemnation without trial." *Ohio Bell Telephone Co. v. Pub. Util. Comm'n Ohio*, 301 U.S. 292, 300-301 (1937); *see also id* at

[35] Order at 9.

305. Because the Audit Report is not record evidence, the Order's reliance thereupon was unlawful and unreasonable.

2. The Order violated R.C. 4903.09 by failing to address Mr. Scarpitti's proposal to allocate any rate EFBS subscription to Suppliers on rate FBS.

R.C. 4903.09 requires the Commission to address competing arguments and provide a record upon which the Supreme Court of Ohio may evaluate the Commission's decisions. The Court has stated that an appellant "needs to show at least three things to prevail under R.C. 4903.09: first, that the commission initially failed to explain a material matter; second, that [the appellant] brought that failure to the commission's attention through an application for rehearing; and third, that the commission still failed to explain itself." *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011).

As discussed throughout this Application for Rehearing, the Order failed to address Mr. Scarpitti's proposal to allocate any EFBS undersubscription. Rather, the Order modified and approved Duke's proposal without addressing the merit of Mr. Scarpitti's reasonable solution. Because the Order implicitly dismissed Mr. Scarpitti's proposal without any analysis, the Order failed to properly explain a contested legal matter in violation of R.C. 4903.09.

As discussed below, on rehearing, the Commission can rectify its error by adopting Mr. Scarpitti's alternative proposal or delaying the deadline for mandatory EFBS until April 2018—ideally longer, given that Suppliers like IGS have entered into long-term capacity arrangments beyond 2018 that they cannot de-contract.

B. The Order is unlawful, unjust, and unreasonable because it undermines the contracts of suppliers and will leave suppliers with stranded excess pipeline capacity. The Commission should adopt either Mr. Scarpitti's proposal or delay the mandatory EFBS election date until April 2018.

In recognition of the potential to undermine the contracts of suppliers on rate FBS, the Order delayed the requirement to make EFBS mandatory until April 2017.[36] While IGS appreciates the Commission's consideration of this issue, unfortunately, the Order did not delay the mandatory date for EFBS long enough. Suppliers, like IGS, have already entered into long-term contracts based upon the existing FBS rate structure, as well long-term capacity arrangements that they have no hope of decontracting prior to 2017. Instead of undermining these contracts and leaving suppliers with stranded capacity, the Commission should grant rehearing and either adopt the proposal in Mr. Scarpitti's testimony or extend the deadline for mandatory EFBS until April 2018.

As Mr. Scarpitti testified:

> I recommend that the Commission approve my proposal through the 2017-2018 gas year. Providing this certainty is critical to ensure that the competitive market functions as it should and to allow CRNGS providers a sufficient timeline for implementing any changes that may potentially be adopted.
>
> ****
>
> For the storage season 2015-2016, the storage rights have been allocated and CRNGS providers have contracted to bring supplies in. Further, the cost of the service utilized in designing the current retail contracts are based on the current tariff and supply arrangements. For the storage season 2016-2017 arrangements and planning are under way now, and there are numerous contracts which are based on the current tariff. Thus, a major change in the balancing service should not commence until after 2017-2018 to allow for both careful examination of the options and so that CRNGS providers can rationally plan for the change. In other words, the proposed increased cost was not factored into current contracts and

[36] Order at 9.

> CRNGS providers may not have mechanism in those contracts to recover that cost.[37]

The Order has already taken the first step to adopting Mr. Scarpitti's proposal by determining that Duke can maintain the integrity of its system based upon the existing level of EFBS elections (approximately 51,000 dth). On rehearing, the Commission should simply adopt the allocation methodology of the undersubscription proposed by Mr. Scarpitti, or, in the alternative, extend the date for mandatory EFBS until April 2018.

C. To the extent that EFBS is determined to be mandatory in any year, the Order should reduce the threshold to 1,000 dekatherm ("dth") per day. The Order's selection of 6,000 dth per day is arbitrary, unlawful, and unreasonable and not supported by the record evidence.

The Order determined that suppliers should with an MDQ of 6,000 dth per day or greater must take EFBS on April 2017. The Order cited no evidence to support this amount other than the Audit Report, stating, "[a]ccordingly, the Commission finds that Exeter's recommended 6,000 dth/day threshold is reasonable, properly balances the parties' positions, and should be adopted."[38] As discussed above, the Audit Report was not lawfully admitted into evidence or subjected to cross-examination.

Further, as noted by witness Scarpitti, a 1,000 dth/day threshold is reasonable and in line with the current tariff election process for EFBS:

> 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. The threshold level of 1,000 achieves this.[39]

[37] RESA Ex. 1 at 11-12.

[38] Order at 9.

[39] RESA Ex. 1 at 8-9, 15.

Accordingly, to the extent that the Commission determines that EFBS shall be mandatory, it should set the threshold level at 1,000 dth/day. 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.[40] IGS would not object to exempting process-based load from this requirement.

D. The Order is unlawful and unreasonable because it modified Duke's gas balancing tariffs without a comprehensive review of Duke's rate structures, including the existing subsidies in distribution rates identified by witness White.

The Order has changed a fundamental aspect of Duke's Choice program by modifying the balancing service without undertaking any thorough and comprehensive review. This is unreasonable and unlawful.

The Commission should have examined the entirety of the costs associated with the Choice program.[41] R.C. 4929.02(A)(7) provides that natural gas distribution utilities should remove, not add, obstacles that retail customers face when purchasing natural gas in the marketplace. R.C. 4929.02(A)(7) states that it is the policy of Ohio to: "[p]romote 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 regulation of natural gas services and goods under Chapters 4905 and 4909 of the Revised Code[.]" And, R.C. 4929.02(A)(2) also states that it is the policy of Ohio to "[p]romote the availability of unbundled and comparable natural gas services."

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[40] Tr. at 87-88.

[41] RESA Ex. 2 (White Direct Testimony) at 7; Tr. at 148, 172-173.

As RESA witness White testified, there are a variety of costs included in Duke's natural gas distribution rates that are GCR-related but are recovered from both GCR customers and shopping customers, such as: scheduling and balancing, providing GCR customer information for commodity, cash working capital, calculating GCR bills, GCR-related legal and regulatory costs, and others.[42] Because the Commission has now decided to fundamentally alter the competitive equity of the Choice program by eliminating the option of larger suppliers to elect FBS, it should have looked at the broader context of subsidies flowing to the GCR.

IV. CONCLUSION

For the reasons stated herein, IGS urges the Commission to grant this application for rehearing and to correct the errors identified therein. Rather than underming Suppliers existing contracts and leaving Suppliers with stranded capacity, the Commission should grant rehearing and either adopt the proposal in Mr. Scarpitti's testimony or extend the deadline for mandatory EFBS until April 2018.

Respectfully submitted,

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[42] RESA Ex. 2 (White Direct Testimony) at 8; Tr. at 147, 167-168, 169.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Application for Rehearing and Memorandum in Support of IGS Energy* was served this 5th day of February 2016 via electronic mail upon the following:

/s/ Joseph Oliker
Joseph Oliker

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Mr. Joseph E. Oliker on behalf of IGS Energy