

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the )  
Purchased Gas Adjustment Clauses )  
Contained Within the Rate Schedules of ) Case No. 15-218-GA-GCR  
Duke Energy Ohio, Inc. and Related )  
Matters. )

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**REPLY BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

Residential customers purchasing natural gas from Duke Energy Ohio (“Duke”) have saved \$7 million annually since 2012 when compared to the rates of customers who are served by marketers.<sup>1</sup> Information about these outcomes of consumers’ gas purchasing decisions should routinely be made available to Duke’s customers. Based on known outcomes of consumers’ purchasing decisions, more has to be done to ensure that Ohioans are being given the “effective choices” contemplated in state policy.<sup>2</sup> Consumers’ purchasing decisions are collectively losing money for them when they choose higher prices compared to lower prices. Duke’s natural gas – at its gas cost recovery (“GCR”) rate – is generally priced lower than marketers’ gas.

But Duke and the marketers<sup>3</sup> want the PUCO to approve a stipulation that does not provide consumers with this type of information. Instead, the marketers prefer that such important information not be readily available for consumers making decisions

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<sup>1</sup> Commission Ordered Exhibit 1 at 45 (Exeter Audit Report).

<sup>2</sup> See R.C. 4929.02.

<sup>3</sup> The retail Energy Supply Association (“RESA”) and Interstate gas Supply, Inc. (“IGS”).

about their natural gas choices. Transparency is key to a functioning competitive market. The PUCO should start making needed improvements in the functioning of natural gas markets by requiring the provision of this information to consumers. As OCC Witness Haugh pointed out: “In my experience, which includes work in government and industry, the majority of customers who look to shop (change their gas supplier) are trying to save money.”<sup>4</sup>

## II. RECOMMENDATIONS

### A. Duke mischaracterizes OCC’s testimony regarding the stipulation.

Duke mischaracterizes OCC Witness Haugh’s objections to the stipulation, which were based upon the three-part test the PUCO traditionally uses in its review. First, OCC opposed the stipulation because it fails to meet the first prong of the stipulation test. That portion of the test requires that the settlement be the “product of serious bargaining among capable, knowledgeable parties, where there is a diversity of interests among the stipulating parties[.]”<sup>5</sup> OCC Witness Haugh testified that there is a lack of diversity among the parties because residential customers are not represented by any of the signatory parties on the stipulation – Duke and Staff.<sup>6</sup>

In addressing this prong, Duke misrepresents OCC Witness Haugh’s testimony by claiming that his position was based upon the signatories’ refusal to adopt OCC’s

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<sup>4</sup> OCC Ex. 1 at 8-9 (Haugh Direct).

<sup>5</sup> *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). The Commission also often takes into account the “diversity of interests” as part of the first part of the stipulation assessment. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer, Case No. 10-388-EL-SSO*, Opinion and Order at 48 (August 25, 2010).

<sup>6</sup> OCC Ex. 1 at 6 (Haugh Direct).

recommended changes to the stipulation.<sup>7</sup> Contrary to Duke’s assertions otherwise, Mr. Haugh did not testify that the stipulation fails because Duke did not adopt OCC’s recommended changes. The PUCO should note that Duke does not even address the lack of a diversity of interests among the parties.

Second, the stipulation test’s third prong prohibits the adoption of a stipulation that violates any important regulatory practice or principle. But Duke argues that the PUCO can ignore applicable state policy regarding natural gas services.<sup>8</sup> R.C.4929.02 states that “[t]he public utilities commission . . . *shall* follow the policy specified in this section in exercising their respective authorities relative to sections 4929.03 to 4929.30 off the Revised code.”<sup>9</sup> The Ohio Supreme Court has explained that R.C. 4929.02’s “guidelines” vest the PUCO with “broad discretion” in determining how to implement state policy.<sup>10</sup> But they cannot be, and should not be, ignored. Instead, they should be relied on as authority for the PUCO to adopt OCC’s recommendation and find that the stipulation violates regulatory policy. Indeed, PUCO decisions can be overturned for not following the requirements laid out in these sections of Ohio law that delineate state policy.<sup>11</sup> In this case, State policy does not support denying customers essential

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<sup>7</sup> Initial Post Hearing Brief of Duke Energy Ohio, Inc. at 3-4 (stating that OCC’s objection is based on Duke not adopting OCC’s recommendation in the stipulation) (May 17, 2016) (*hereinafter* “Duke Initial Brief”).

<sup>8</sup>Duke Initial Brief at 3-4 (stating that OCC’s objection is based on Duke not adopting OCC’s recommendation in the stipulation), 5-6 (stating that OCC’s objection “is a matter of policy that the Commission may choose to adopt or not . . .”).

<sup>9</sup> R.C. 4929.02 (B) (*italics added*).

<sup>10</sup> See *Ohio Consumers’ Counsel v. Pub. Utilities Comm’n*, 125 Ohio St.3d 57, 64 (2010).

<sup>11</sup> See *Elyria Foundry v. Pub. Utilities Comm’n*, 114 Ohio St. 3d 305, 316 (2007)(It was found that a PUCO order had violated the state policy requirements for the electric industry laid out in R.C. 4928.02(G)).

information that would enable them to make informed choices when deciding on their gas supplier.

Further, Duke's refusal to continue to provide this information could violate the GCR requirements in Ohio law. Under the requirements of the Purchased Gas Adjustment clause in Ohio law, Duke cannot charge consumers if it "has followed imprudent or unreasonable procurement policies and practices, has made errors in the estimation of cubic feet sold, *or has employed such other practices, policies, or factors as the commission considers inappropriate.*"<sup>12</sup> By failing to provide the information to consumers, Duke is following a practice that the PUCO should find inappropriate under this law. Consumers need to have access to this information, which is vitally helpful to making the complex decision regarding their natural gas service.<sup>13</sup> Preventing consumers from having access to this information is inappropriate.

The PUCO should adopt OCC's recommendation. At a minimum, information regarding the bill impacts of customers' choices in the market should be made available to consumers on the PUCO's Energy Choice Ohio website and all natural gas utilities websites.<sup>14</sup>

**B. RESA and IGS's arguments against providing information to consumers should be rejected.**

RESA contends that OCC's proposal to provide more information to consumers is "flawed and misleading."<sup>15</sup> But RESA's argument downplays the importance of this

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<sup>12</sup> R.C. 4905.302 (italics added).

<sup>13</sup> See OCC Ex. 1 at 14 (Haugh Direct).

<sup>14</sup> See *id.*

<sup>15</sup> Joint Post-Hearing Brief of the Retail Energy Supply Association and Interstate Gas Supply, Inc. at 20-21 (May 17, 2016) (*hereinafter* "Initial RESA and IGS Brief").

information for consumers. This information is vitally important. As OCC Witness Haugh testified, “[i]n the absence of sufficient information for consumers to make informed and wise choices about natural gas offers, natural gas choice may simply not work for consumers.”<sup>16</sup>

RESA first argues that the information currently available on the Energy Choice Ohio website is sufficient to inform customers and that there are currently offers below the GCR available on that site.<sup>17</sup> But RESA leaves out some important details. The Energy Choice Ohio website does not include all the offers that are currently available, nor does it reflect the prices that customers are *actually paying* over time. As OCC Witness Haugh testified:

There should be a difference noted that between offers on the Apples to Apples and rates that are charged to customers where a number of the offers out on the Apples to Apples [Energy Choice Ohio website] will offer some variable rate offers that may offer savings for one to two months and then are increased after that... the Apples to Apples [Energy Choice Ohio website] doesn't offer a complete picture of what rates are being charged to customers. And this -- what my recommendation would show is the rates being charged against the GCR.<sup>18</sup>

RESA fails to take into account the fact that many of the offers that are lower than the GCR are in fact introductory (or teaser) rates. The Energy Choice Ohio website does not show the rates that customers pay *after* the introductory rates expire. A comparison between the GCR and the rates consumers *actually pay over time* is essential. Information

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<sup>16</sup> OCC Ex. 1 at 7 (Haugh Direct).

<sup>17</sup> Id.

<sup>18</sup> Tr. at 150-151 (Haugh Redirect).

regarding the outcomes that customers pay over time is already required to be provided and made public by Commissions in New York<sup>19</sup> and Connecticut.<sup>20</sup>

RESA contends that marketers offer value-added products bundled with their offerings that are not reflected in rates.<sup>21</sup> But RESA fails to acknowledge that those value-added products often come at the cost of *higher* gas rates. As OCC Witness Haugh specified:

[T]he offer that alleges the so-called fee thermostat is higher than the non-free thermostat offer. So you are paying for the thermostat. Instead of paying for it up front as you would at Lowe's or any other store, you are paying for it over the term of the contract. So, yes, I guess in looking at it the way I do, the cost of the thermostat is included in the commodity price which is another issue all together.<sup>22</sup>

Consumers should have the benefit of more information when they use the Energy Choice Ohio website to shop for offers. Accordingly, the PUCO should modify the stipulation to make the comparison between the historical outcomes for the GCR rates and marketer's rates available to consumers on the Energy Choice Ohio website and natural gas utility websites.

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<sup>19</sup> See OCC Ex. 1 at 10 (Haugh Direct) (The New York Public Service Commission requires this sort of historical pricing information to be made public for the electricity choice programs).

<sup>20</sup> Connecticut law requires this information be provided for the electricity choice programs, and the Public Utilities Regulatory Authority makes it public in Case No. 06-10-22, *PURA Monitoring of the State of Competition in the Electric Industry*. The information is required by Conn. Gen. Stat. §16-245p (b).

<sup>21</sup> Initial RESA and IGS Brief at 21.

<sup>22</sup> Tr. at 127 (Haugh Cross).

**C. The “solutions” of RESA and IGS for the balancing system do not adequately protect GCR customers from subsidizing marketers.**

RESA and IGS suggest some “solutions” to change the manner in which Duke is currently balancing its system. But the “solutions” do not provide sufficient protection for Duke’s GCR customers.

The first solution that is proposed by the marketers is to adopt a “contingency plan” that would require suppliers to take service under the Enhanced Firm Balancing service “for just the amount needed to address the undersubscription.”<sup>23</sup> This proposal was explained as unfounded by Duke Witness Kern. He said that it does not provide sufficient flexibility, and it still requires GCR customers to pay for all the demand charges related to storage.<sup>24</sup> This proposal should be rejected by the PUCO.

The marketers also suggest that Duke should reduce its storage levels by 20 percent.<sup>25</sup> While the Exeter Audit Report does mention this, the auditor provided detail when he testified at hearing:

I think the overriding point to consider here is it's a cost allocation issue. If Duke is able to reduce its storage, that benefit should not entirely accrue to suppliers, the competitive suppliers. It should accrue to both GCR customers and Choice customers. It's more of an equity argument in cost allocation. Just because you can reduce your storage you don't -- suppliers shouldn't then get the benefit of all that by not having to purchase EFBS.<sup>26</sup>

There are a number of additional concerns that arose from the Exeter Audit Report that could affect the continued viability of storage. These include the rising cost of

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<sup>23</sup> Initial RESA and IGS Brief at 10.

<sup>24</sup> Tr. at 81 (Kern Cross).

<sup>25</sup> Initial RESA and IGS Brief at 15.

<sup>26</sup> Tr. at 39 (Mierzwa Cross).

the KO transmission line<sup>27</sup> and the continued viability of using propane.<sup>28</sup> These future events could increase Duke's need for storage to provide reliable service to its customers. Marketers should not be permitted to advocate for changing future storage levels now, in this case when so much uncertainty regarding the future exists.

### **III. CONCLUSION**

It is state policy and law that customers should be provided with the information they need to make fully informed decisions regarding their natural gas utility service.<sup>29</sup> The stipulation does not provide for this. It should. OCC therefore recommends that Duke be required to routinely provide consumers with information on how the rates consumers pay to marketers and those outcomes compare to the rates paid by customers being served by the GCR. The PUCO should modify the stipulation and adopt OCC's recommendation.

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<sup>27</sup> Exeter Audit Report at 19.

<sup>28</sup> Exeter Audit Report at 48.

<sup>29</sup> See R.C. 4929.02 (A)(3); R.C. 4929(A)(5).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Reply Brief of the Office of the Ohio Consumers' Counsel was provided to the persons listed below via electronic transmission, this 10<sup>th</sup> day of June 2016.

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