

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. 18-218-GA-GCR
Duke Energy Ohio, Inc. and Related Matters.)	
In the Matter of the Audit of the)	
Uncollectible Expense Rider of Duke)	Case No. 18-318-GA-UEX
Energy Ohio, Inc., and Related Matters.)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval of an)	Case No. 18-418-GA-PIP
Adjustment to its Interim and Temporary)	
Percentage of Income Payment Plan Rider Case.)	

REPLY BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke Energy Ohio), the Staff of the Public Utilities Commission of Ohio (Staff), and IGS Energy, Inc. (IGS) submitted a stipulation and recommendation (Stipulation) that resolves important issues raised in this case and provides numerous, valuable benefits to customers. The Office of the Ohio Consumers' Counsel (OCC) overlooks the benefits provided and instead argues that it is insufficient for reasons only OCC finds compelling. The Stipulation provides financial benefits and systemic improvements to customers and is a good resolution of the issues raised. The Stipulation fully satisfies the requirements of the Public Utilities Commission of Ohio (Commission) for such cases. The Commission should approve this Stipulation as filed.

II. DISCUSSION

The Management and Performance Audit, performed for the Staff by Exeter Associates, Inc. (Audit Report) consisted of an audit of the gas purchasing practices and policies of Duke Energy Ohio for the period September 2015 through August 2018. The Audit Report detailed its findings in an executive summary that includes 21 categories relevant to the audit that indicate whether the Auditor recommended action or not. The Stipulation submitted by the Duke Energy Ohio, IGS Energy and the Staff includes the Company's acceptance of virtually all of the recommendations included in the audit. Although the Stipulation provides acceptance of all but one of the Auditor's recommendations, OCC wishes to find fault because the negotiating parties were unwilling to accept additional requirements that only OCC found necessary. OCC's additional unfounded demands are ill-conceived and unnecessary.

One of the areas reviewed by the auditor was the assignment of propane commodity costs. The Company uses propane to maintain distribution operating pressures during peak demand. The auditor found that during the audit period, only GCR customers paid the incremental costs associated with the propane used and the auditor found this to be unreasonable and recommended that such costs be recovered from all firm customers.¹ The Stipulation includes a provision wherein the Company agreed with the auditor's recommendation to assign the propane costs to its Contract Commitment Cost Recovery Rider so that both choice and non-choice customers will be allocated the costs and pay their fair share.²

OCC finds this insufficient because the agreement does not include a retroactive provision for the audit time period. At hearing, Duke Energy Ohio witness Jeff Kern explained that the decision to charge propane costs to choice suppliers only when they elect to utilize propane per

¹ Management and Financial Performance Audit by Exeter Consulting, Inc. at pg.6-24.

² Stipulation and Recommendation at para.7.

the FRAS tariff was made sometime in 2005.³ Thus, the Company's practice of charging for propane costs was set forth in a tariff approved by the Commission. The Company is not able to charge customers otherwise, absent a change in the tariff again approved by the Commission. The Company has agreed to seek such approval. Although the auditor recommended a retroactive change, such change is impractical. OCC witness Michael P. Haugh admitted that he did not provide any proposal for how such a refund process would be accomplished.⁴ Mr. Haugh also admitted that customers move in and out of Duke Energy Ohio's service territory.⁵ Accordingly, there is no practical way to credit the same group of customers after time has passed as each day there is a different population of customers.⁶ Moreover, the Company cannot make such a change on its own. It will seek to change its tariff by seeking Commission approval as agreed to in the Stipulation. OCC's insistence on a retroactive refund is impractical and unnecessary.

OCC next argues that the Company should engage in an auction process for natural gas in lieu of a Gas Cost Recovery mechanism.⁷ However, OCC's expert witness failed to make a compelling argument in this regard. Among other things, Mr. Haugh admitted that the comparison of rates on his Table 9 should include comparisons over time. It can't be a "snapshot in time," which is exactly what the witness offered. Indeed, his snapshot in time is further undermined by the fact that Duke Energy Ohio's witness testified that his comparison of Duke Energy Ohio's GCR rate to other Ohio gas utilities for the 12 months ended August 2019 showed results for Duke Energy Ohio that were lower by about 20 cents compared to the averages of both Vectren and Columbia of Ohio.⁸

³ Transcript at pg.18.

⁴ Transcript at pg.54.

⁵ *Id.*

⁶ *Id.*

⁷ OCC Initial Brief at pg.4.

⁸ Transcript at pg.21. (Mr. Kern may have said 2018 on the record, or it may have been transcribed incorrectly. The correct year should be 2019.)

Additionally, OCC's recommendation to the Commission that it "order" Duke to transition from a gas cost recovery to a competitive auction for the provision of the standard service offer is legally unsupportable. The Commission has explained this to OCC in previous cases, but still OCC persists. In a recent rulemaking case, OCC recommended that all large natural gas companies with 100,000 or more customers be required to procure and price natural gas supply through an auction.⁹ As recently as January 3, 2019, the Commission responded to this recommendation and thoroughly explained why it was contrary to law. The Commission explained that nothing in R.C. 4905.302 precludes a natural gas company with more than 100,000 customers from utilizing a purchased gas adjustment clause as the means of supplying natural gas to its customers.¹⁰ Additionally, the Commission cited arguments by Dominion and IGS and pointed out that OCC's recommendation is also inconsistent with R.C.4929.04, which requires the Commission to afford due process and make certain findings before granting a *requested* exemption authorizing a natural gas company to use a method other than the purchased gas adjustment clause to procure supply.¹¹ Thus, OCC's arguments in this regard have already proven to be legally flawed.

Finally, Mr. Haugh argues that the Stipulation is insufficient because it does not include a provision requiring Duke Energy Ohio to provide information about this "discrepancy" in costs to customers so that they can use it to shop for a competitive supplier. But this argument fails as the analysis on which it is premised is fatally flawed. Mr. Haugh included a table on page 13 of his testimony wherein he attempts to illustrate that in the aggregate, Duke Energy Ohio's GCR customers paid less for natural gas than market customers by \$11.3 million. But Mr. Haugh mixed

⁹ *In the Matter of the Review of The Uniform Purchases Gas Adjustment Clause Rules in Chapter 4901:1-14 of the Ohio Administrative Code*, Case No.18-1291-GA-ORD, Comments by The Office of the Ohio Consumers' Counsel, (November 9, 2018) at pg.6.

¹⁰ *In the Matter of the Review of The Uniform Purchases Gas Adjustment Clause Rules in Chapter 4901:1-14 of the Ohio Administrative Code*, Case No.18-1291-GA-ORD, Finding and Order (January 3, 2019) at pg.7.

¹¹ *Id.*

apples and oranges by comparing volumes of gas to all choice customers to dollars billed only to customers who are billed *on a consolidated billing basis*.¹² Although this was explained to Mr. Haugh in the discovery responses he received and cited in his testimony, he failed to notice the explanation and therefore provided faulty information.

In fact, the data needed to make the comparison Mr. Haugh seeks to make is simply not available. Accordingly, shadow billing, or providing a comparison price to customers is not possible. Moreover, as Mr. Haugh admitted, when customers make a comparison there are other terms and conditions that must be considered, such as how long a contract term might be, whether the contract includes an early termination fee, whether the rate is variable, etc.¹³ So simply providing a single number on a customer's bill is an inadequate and potentially misleading way to determine whether a customer should choose to exercise his/her option to shop. Shadow billing is potentially unfair to customers and an administrative burden on the Company so should be rejected.

IV. CONCLUSION

The Stipulation in this case satisfies the criteria applied by the Commission in examining such agreements. It was accomplished through serious bargaining by capable, knowledgeable parties; it does not violate any regulatory principles or practices and as a package; and it benefits customers and the public. OCC's arguments are unpersuasive and should be rejected. The Commission should approve the Stipulation submitted by its own Staff, IGS Energy and the Company, in its entirety.

¹² Transcript at pg.59.

¹³ Transcript at pg.53.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Duke Energy Ohio, Inc., was served via regular US Mail postage prepaid, or by electronic mail service, this 29th day of October, 2019, upon the following:

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Summary: Reply Reply Brief of Duke Energy Ohio, Inc. electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Watts, Elizabeth