

**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. 18-0218-GA-GCR
Duke Energy Ohio Inc., and Related)	
Matters.)	

In the Matter of The Audit of the)	
Uncollectable Expense Rider of Duke)	Case No. 18-0318-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. 18-0418-GA-PIP
Adjustment to its Interim and Temporary)	
PIPP Plan and Rider Case.)	

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

I. INTRODUCTION

The PUCO should reject Duke and PUCO Staff's proposed Settlement. Under it, only certain customers pay for a particular service even though *all customers* benefited from the service. That is not in the public interest and violates regulatory principles and practices. The proposed Settlement fails to bring consumers the benefits of competition, which harms consumers and is contrary to regulatory principles and practices. The proposed Settlement also deprives consumers of information that would allow them to make informed choices about their natural gas provider. This too is harmful to consumers and contrary to regulatory principles and practices.

Thankfully, the PUCO can still protect consumers because the proposed Settlement is not binding on the PUCO. The PUCO can modify the Settlement to benefit

consumers and to comply with regulatory principles and practices. To protect Duke's 400,000 residential gas customers, the Office of the Ohio Consumers' Counsel ("OCC") recommends that it do so.

II. RECOMMENDATIONS

A. Under the PUCO's Settlement standard, the Settlement should be modified because it harms consumers.

1. The PUCO should properly allocate propane commodity costs.

Under the Settlement, only GCR customers pay for a particular service (propane) even though *all customers* (including shopping customers) benefited from it. That is not in the public interest and violates regulatory principles and practices.

Duke and the PUCO Staff both argue that the proposed Settlement benefits customers and the public interest.¹ Duke argues that the Settlement is a compromise where three of the four parties found that it, as a package, benefits customers and the public interest.² Duke also asserts that OCC's arguments should be rejected because they allegedly overlook the Settlement's "positive benefits."³ Duke asserts that a "stipulation can benefit customers and be in the public interest even if it doesn't include everything that one party desires."⁴

Duke is wrong.⁵ Parties' mere agreement to settle does not mean that the result benefits consumers and the public interest.⁶ Were it otherwise, the second element of the

¹ Duke Brief at 3; Staff Brief at 1-4; *see also* IGS's Brief at 8.

² *Id.* at 3.

³ *Id.*

⁴ *Id.*

⁵ So is IGS, when it claims that avoiding litigation expense is a "benefit." *See* IGS's Brief at 8.

⁶ Duke Brief at 3.

settlement test would be meaningless.⁷ Settlements, *per se*, would benefit customers and the public interest. That is not the law.⁸

Further, neither customers nor the public interest benefit where, as here, a proposed settlement doesn't include *anything* that consumers desire and need. The only parties that "benefit" from this particular settlement are Duke (it won't have to litigate or refund money), IGS (it's shopping customers won't have to pay for a benefit they received), and the PUCO Staff (it won't have to litigate).⁹ No signatory party has provided any examples of actual *consumer* benefits or contributions to the *public* interest.¹⁰ Even the PUCO Staff acknowledges that the Settlement only "resolves issues between Staff and IGS, if not all the parties and thereby reduced litigation to some extent."¹¹ This can in no way be construed as a *consumer* benefit or in the *public* interest.

In contrast (and as OCC demonstrated in its Brief), consumers *would* benefit from properly allocating propane commodity costs.¹² The PUCO should modify the Settlement and order Duke to properly allocate the costs associated with the use of propane facilities. There is no dispute that Duke's use of its propane facilities benefited *all* customers, shopping and non-shopping alike.¹³ The PUCO should ensure that shopping customers, who received those benefits, pay their fair share.¹⁴

⁷ See, e.g., *Consumers' Counsel v. PUCO*, 64 Ohio St.3d 123, 126 (1992) (settlement test's second element is does the settlement benefit customers and the public interest).

⁸ See *id.*

⁹ Staff Brief at 4.

¹⁰ Duke Brief at 3.

¹¹ Staff Brief at 4.

¹² OCC Brief at 9-10.

¹³ *Id.* at 9; see also Hearing Transcript at 9-10. IGS's arguments OCC is seeking to "rewrite the market rules" conveniently ignores this fact. See IGS's Brief at 10.

¹⁴ OCC Brief at 9.

To do so, the PUCO should follow the recommendation of the independent auditor, Exeter, to take the incremental costs associated with using the propane facilities and include them in Duke's Contract Commitment Cost Recovery Rider ("CCCR").¹⁵ That charge was designed to collect costs associated with pipeline capacity, storage commitments, and propane costs. Duke's propane costs should have been collected through that charge all along.¹⁶

OCC is the statutory voice of consumers and the only voice that consumers have in negotiations with utilities in cases such as this.¹⁷ As the voice of Duke's nearly 400,000 residential consumers, OCC recommends that the PUCO should not approve this Settlement as filed because it is not in the public interest and does not benefit consumers. Instead, the PUCO should modify the Settlement to properly allocate the propane commodity costs to all customers that benefitted from the use of the propane.

2. To protect consumers, the PUCO should modify the Settlement to encourage Duke to transition from the gas cost recovery to a competitive auction for the Standard Service Offer.

Duke is opposed to OCC's recommendation that it should be encouraged to transition from a gas cost recovery mechanism to a competitive auction for Standard

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* Duke's concern with the purported retroactivity of OCC's recommendation has no merit. It is well-settled that where, as here, costs associated with matters *before* the audit period affect costs/rates *during* the audit period, adjustments are appropriate. *See, e.g., In re Fuel Adjustment Clauses for Columbus S. Power Co.*, 140 Ohio St.3d 253, 366-67 (2014); *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Columbus Southern Power Company and Related Matters*, 1987 Ohio PUC Lexis 123, *8-14 (1987); *In the Matter of the Regulation of the Electric Fuel Component Contained Within the Rate Schedules of the Toledo Edison Company and Related Matters*, 1986 Ohio PUC Lexis 853, *1-5 (1986).

¹⁷ R.C. 4911.

Service Offer (“SSO” service).¹⁸ To protect consumers, the PUCO should reject Duke’s arguments and adopt OCC’s recommendation.

As we explained in our Brief, consumers would be better off receiving an auction price for SSO service.¹⁹ We based this argument, in part, on Exeter’s report. It found that Duke’s GCR rates have been *higher* than the standard offers of the other three major natural gas distribution companies.²⁰ Duke’s witness during hearing confirmed that, during the audit period, Duke’s GCR was higher than the other major gas utilities standard offer.²¹ Competition results in better prices. Duke should be encouraged, through a modification to the Settlement, to transition to a competitive auction.

3. To protect consumers, the PUCO should modify the Settlement so Duke has to provide information to the public regarding the natural gas commodity price differences between what marketer and gas cost recovery customers are paying.

Duke and the PUCO Staff disagree with OCC that Duke should be required to provide information to the public (either on customers’ bills, the PUCO’s Apples to Apples page, or both) regarding price differences between what marketers and gas cost recovery customers are paying.²² But this information is critical to helping shopping customers determine if they are paying more than standard offer customers when their

¹⁸ Duke Brief at 4-5. IGS claims that OCC’s recommendation is beyond the scope of this proceeding. *See* IGS’s Brief at 10-12. Clearly, an audit of Duke’s gas management practices should encompass *how* Duke procures the commodity. As discussed *infra*, the auditor himself noted that Duke’s GCR rates have been higher than the offers of the other three major natural gas distribution companies – who use a competitive auction.

¹⁹ OCC Brief at 10-12.

²⁰ *Id.*

²¹ *See* Hearing Transcript at 10-11.

²² Duke Brief at 5-6. IGS asserts that OCC’s recommendation is beyond the scope of this proceeding. *See* IGS’s Brief at 10-12. But a comparison of Duke’s commodity cost to marketer’s surely reflects on Duke’s gas management practices.

natural gas is being provided by a marketer.²³ Likewise, the data would enable consumers to compare the amount they would have paid for gas service had they been on Duke's standard offer (GCR).²⁴

Duke asserts that making this information available would require extensive revisions to its current billing systems, or the dedication of numerous hours to manually gather the data.²⁵ Maybe. Maybe not. Regardless, Duke itself points out early in its Brief that a settlement involves give and take.²⁶ But Duke does not want to give customers or the public anything in this Settlement.

This information is a *benefit* to consumers and would only take changes (to its billing system) that Duke willingly does whenever it wants to add a rider or increase rates for its own benefit. Providing this benefit to consumers would go a long way in giving consumers value in the Settlement.

To provide consumers and the public value in this Settlement, the PUCO should modify the Settlement so that Duke has to provide information to the public regarding the natural gas commodity price differences between what marketer and GCR customers are paying.

B. The Settlement violates important regulatory principles and practices and should be modified or rejected to protect consumers.

As OCC argued in its Brief, Ohio law requires a natural gas company's procurement planning to maintain reliable service at optimal prices.²⁷ Ignoring

²³ OCC Brief at 14-15.

²⁴ *Id.*

²⁵ Duke Brief at 5-6.

²⁶ *Id.* at 1.

²⁷ OCC Brief at 15; R.C. 4905.302(C)(2)(b).

alternatives to a GCR, such as using a competitive auction process to procure natural gas, results in prices that are at best less than optimal, and at worst unreasonable for consumers.²⁸ Ohio has long supported the regulatory principle energy that utility default rates should be priced according to a competitive auction, to benefit consumers.²⁹ Accordingly, Duke should be encouraged to transition from a GCR to a competitive auction for SSO service.

Duke's only assertion that the Settlement does not violate important regulatory principles and practices is based purely on the opinion of its own witness.³⁰ The witness's experience includes "administration and ensuring an adequate supply of gas."³¹ It does not seem to include economic or regulatory expertise. Duke needs more than "because he said so" as evidence that the Settlement does not violate regulatory principles and practices.

Further, the Settlement violates the important principle of cost-causation.³² The Settlement only allocates the incremental propane costs to GCR customers even though non-GCR customers also benefited from the propane system during peak times. This result is inconsistent with the regulatory practice of assessing costs to those who caused or benefited from the expenditure.³³

The Settlement also violates the regulatory practice of providing sufficient information to enable consumers to make informed choices and educating to them about

²⁸ *Id.* at 15-16; R.C. 4929.02(A).

²⁹ *Id.* at 16.

³⁰ *Id.* at 2.

³¹ Duke Brief at 2.

³² *Id.*

³³ *Id.*

their choices.³⁴ Accordingly, the Settlement should be modified to require Duke to make information publicly available to consumers, either on customers' bills, the PUCO's Apples to Apples page, or both, to show cost differences between what GCR customers are paying versus what marketer customers are paying for their natural gas.

III. CONCLUSION

This Settlement violates the PUCO's standard for reviewing Settlements as explained above. Therefore, the PUCO should modify Duke and PUCO Staff's proposed Settlement as recommended by OCC. In its current form, it harms consumers and is contrary to regulatory principles and practices.

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³⁴ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief was served via electronic transmission to the persons listed below on this 29th day of October 2019.

/s/ William J. Michael

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