

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Duke Energy Ohio, Inc., for Approval) Case No. 15-0050-GA-RDR
to Modify Rider FBS, Rider EFBS and)
Rider FRAS.)

**DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA
THE MOTION TO INTERVENE OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
AND INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

On January 15, 2015, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) initiated the above-captioned proceeding to modify the rates in Rider FBS (Firm Balancing Service) and Rider EFBS (Enhanced Firm Balancing Service) and to modify the terms under which suppliers may choose either FBS or EFBS. The Company also seeks 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. The reasons that necessitate these requested changes are set forth in detail in the Company's Application.

On January 22, 2015, the Attorney Examiner issued a procedural schedule in the captioned proceeding, affixing deadlines for intervention, comments, and reply comments (Entry). Thereafter, on February 5, 2015, both the Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc., (IGS) moved to intervene. Both parties further requested to prolong the current procedural schedule such that the proposed changes would be delayed by a year.¹ .

¹ See, e.g., RESA Motion, at pg. 6.

For the reasons stated herein, both motions to alter the procedural schedule should be denied and this matter should proceed pursuant to the Attorney Examiner's Entry.

II. DISCUSSION

A. Comments of RESA

In its Motion to Intervene, Comments and Request to Adjust Procedural Schedule, RESA argues that the Company is proposing a change to a stipulation that was agreed to and adopted by the Public Utilities Commission of Ohio (Commission) in Duke Energy Ohio's merger proceeding.² However, the Stipulation and Recommendation in that case provided specifically that "DE-Ohio *may* continue to offer its current firm balancing service in addition to the new enhanced firm balancing service."³ The stipulation does not mandate that the Company offer the two services indefinitely, or until the parties agreed otherwise. In fact, the stipulation made provision for subsequent collaborative meetings to discuss changes to the Customer Choice Program, confirming that the terms of Rider FBS and Rider EFBS were not absolute or immune from revision. Although the Company is indeed proposing a change that would discontinue offering firm balancing service to competitive retail natural gas (CRNG) suppliers with a maximum daily quantity (MDQ) greater than 20,000 dth/day, this does not contravene any specific language in the stipulation. Indeed, to suggest, as RESA does, that a tariff cannot be changed in subsequent proceedings to account for changes in the development of the competitive retail market or costs imposed via the Federal Energy Regulatory Commission runs afoul of sound regulatory principles.

² *In the Matter of the Joint Application of Cinergy Corp. on Behalf of The Cincinnati Gas & Electric Company and Deer Holding Corp. for Consent and Approval of a Change in Control of The Cincinnati Gas & Electric Company*, Case No. 05-732-EL-MER, Entry (March 21, 2007). RESA claims to have participated in this proceeding and to have signed the Stipulation and Recommendation, however there is no evidence of such participation in the docket.

³ *Id.*, Stipulation and Recommendation, at pg. 4, para. 2 (March 1, 2007).

RESA next claims that the proceeding is being “rushed” because the procedural schedule provides for approval in forty-three days. RESA argues that the Company’s Application “appears” to be unjust and unreasonable due to this procedural schedule and that, therefore, a hearing must be held. However, as the Commission itself has determined the timing and conduct of the proceeding, RESA cannot logically argue that the application that was filed by the Company is unjust and unreasonable. And given that RESA has already stated its concerns in comments submitted in its motion to intervene, it has essentially expedited the filing of comments. There is no impediment that precludes RESA from due process. The matters raised by RESA in its comments will, no doubt, be carefully considered by the Commission. The same is true for the comments submitted by IGS.

RESA likewise argues that changing the tariff to become effective on April 1, 2015, impacts suppliers that have elected one service or another on January 15th of this year. However, this is why the Company, with cooperation from Commission Staff, held a meeting at the Commission and invited every CRNG supplier to attend. All CRNG suppliers were on notice of possible changes – before the January 15 election date – to permit them to factor that information into their business plans as needed. And, contrary to RESA’s claims, this proceeding does not involve a claim of retroactive ratemaking, as the proposed changes are prospective in nature, intended to take effect on April 1, 2015.

Next, RESA claims that the Company’s proposal would “punish” larger suppliers. However, neither FBS or EFBS can logically be considered a “punishment.” They are simply two different methods for handling the daily balancing requirements of the Choice Program. At least one of the largest suppliers has opted for EFBS since its inception and has managed to remain competitive, therefore the EFBS option does not, by definition, cause a competitive disadvantage. By RESA’s logic, requiring smaller suppliers (under 1,000 dth) to select FBS

would likewise constitute a “punishment.” This is simply not the case. The tariff was originally designed to give CRNG suppliers the option of FBS or EFBS provided their customer base was large enough to warrant an allocation of storage that would not be too small to effectively manage. This is why suppliers with an MDQ under 1,000 dth/day were required to remain with FBS. Similarly, as the Choice Program has grown and it has become increasingly difficult to manage storage, 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.

RESA complains that there is no mechanism for a CRNG supplier to return to FBS, after participating in EFBS. However, EFBS is designed to increase or decrease the portion of storage allocated to the supplier as the supplier’s MDQ changes throughout the year, but the supplier must remain with EFBS for an entire cycle of injections and withdrawals (one year). If a mechanism was set up as RESA suggests, then a supplier with an MDQ near 20,000 dth/day could be slightly over the threshold one month and slightly under the next, causing the supplier to switch back and forth between FBS and EFBS throughout the year. This would be impossible to manage for both the supplier and the Company. This is the reason that the tariff change includes a date (December 31st of the preceding year) when the determination is made regarding whether or not EFBS is mandatory for each supplier. Any supplier that decreases below the 20,000 MDQ during the year, would have the right to choose FBS for the following year.

RESA likewise mistakenly argues that EFBS is more expensive than FBS. This is not necessarily true. The charge that Duke Energy Ohio recovers and credits to the Gas Cost Recovery (GCR) Rider is higher for EFBS, but if the supplier effectively manages the utilization of their EFBS bank, the supplier may buy more when prices are low and less when prices are high such that their total cost could be the same or lower than it would be on Rider FBS.

Finally, RESA claims that the proposed changes open a larger debate about who should pay for balancing services. There is no debate on this topic. Both FBS and EFBS are charged to suppliers and credited to the GCR. Historically, the charges have been paid for by the supplier and will continue to be paid for by the supplier. This proceeding is merely concerned with how selection between FBS and EFBS is managed. Duke Energy Ohio proposed no changes related to *who* pays for the service.

B. Comments of IGS

IGS claims that Duke Energy Ohio failed to adequately consider potential alternatives to those proposed in the application. However, in an informal meeting held at the Commission offices on January 9, 2015, the Company explained the many alternatives considered, including the following:

- Acquiring additional capacity beyond the Company's design day would only help during colder than normal winters, since during warmer than normal winters the Company would still need to sell off excess storage at a potential loss.
- Artificially adjusting the Target Supply Quantity (TSQ) for each supplier to manage storage would potentially solve the issue. However, Duke Energy Ohio would then be determining when suppliers would need to purchase more or less based on operational considerations rather than price. It is expected that suppliers would rather control that for themselves through EFBS to take advantage of price differentials and their own view of the market.
- Reducing the overall amount of storage would expose the Company to penalties on the pipelines. The current level of storage is required to meet the daily balancing needs of the entire system within the limitations set in each storage providers tariffs.

As was explained during the January informal meeting, none of the above options resolve the logistical/financial concerns as well as the proposed tariff proposal.

IGS complains that Duke Energy Ohio waited until the "11th hour" to file its Application. Such a statement ignores the fact that circumstances intended to be rectified through the Application developed over time. As participation in the Choice Program grew gradually and

the number of suppliers choosing EFBS decreased gradually, the issue with managing storage was masked. The difficulty in managing storage did not become apparent until this winter as the Company was required to purchase an unusual amount of gas supply in the spot swing market to keep storage balances from being withdrawn too quickly. Once the problem was identified, various alternatives were considered and analyzed before it was determined that the best course of action is to make EFBS mandatory for larger suppliers. But changes in terms of participation are not the only changes at issue. Rather, rates under both Rider FBS and Rider EFBS must change, as a result of the rates the Company will pay to storage service providers. And as Columbia Gas made a filing at the FERC in December 2014 to increase its rates, payable by the Company, for transmission modernization,⁴ it appeared efficient and logical to include all necessary tariff changes in one filing. Thus, it cannot be said that the Application was not submitted in a reasonable time.

IGS further complains that the proposed changes to the tariffs unfairly discriminate against large CRNG suppliers. However, IGS is mistaken, as tariffs generally are devised to manage various regulatory needs and competing interests. Tariffs create different classes and impose different requirements on those classes as a matter of course. For example, Duke Energy Ohio's electric tariffs include demand charges for large non-residential customers. Small non-residential customers pay only per-kWh charges. This means that large non-residential customers must manage their peak loads and demand ratchets to minimize their bills. Small non-residential customers do not have this concern. This argument by IGS is simply a distraction and adds no value to the discussion.

IGS points out that Duke Energy Ohio has not updated the Application to indicate how many suppliers elected EFBS for the twelve months ended March 31, 2016. IGS mistakenly

⁴ See FERC Docket No. RP15-296, initiated on December 30, 2014.

claims that if at least one supplier chooses EFBS, the Company's reasoning for an expedited decision no longer has merit. In fact, three suppliers chose EFBS during the recent election, resulting in a slight increase to the total amount of allocated withdrawal rights over the current winter. However, incremental costs for spot swing have been and continue to be experienced during this current winter to manage storage. These costs would have been much higher had this winter turned out to be extremely warm or extremely cold, so it is still preferable that this issue be resolved expeditiously.

Finally, it is worth noting that both RESA and IGS comment with respect to the impact of potential changes to the tariff upon their respective interests, but neither recognizes the impact of the change in rates due to changes made by Columbia Gas. As explained by the Company in its Application, this proposed change is the only viable alternative that resolves the issues explained in the Company's Application.

C. Practical Matters of Concern

For the reasons above stated, Duke Energy Ohio submits that the procedural schedule should be maintained, as initially determined by the Attorney Examiner. However, if the Commission determines to alter the schedule to delay implementation of changes to the tariffs, the Company respectfully requests that the Commission nonetheless, within the current expedited timeframe, approve the changes for rates for April 1, 2015, to coincide with the changes in what Duke Energy Ohio pays to Columbia Gas. Otherwise, GCR customers will be subsidizing customers served by suppliers. In 2012, Duke Energy Ohio filed for similar rate provisions that were then approved without opposition.⁵

Moreover, if changes to the tariff are not approved pursuant to this Application, the Company requests that any incremental costs incurred during the ensuing year for managing

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider FBS and Rider EFBS*, Case No. 12-1474-GA-RDR, Finding and Order, (May 30, 2012).

storage be recovered from Choice Customers through an appropriate mechanism to prevent subsidization.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motions by RESA and IGS to alter the procedural schedule for this proceeding.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 9th day of February, 2015, to the following parties.

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