

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Uniform)
Purchased Gas Adjustment Clause Rules)
Contained in Chapter 4901:1-14 of the Ohio) Case No. 18-1291-GA-ORD
Administrative Code.)

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and respectfully submits its reply comments on proposed changes to administrative rules addressing the uniform purchased gas adjustment clause, as issued by the Public Utilities Commission of Ohio (Commission) on October 10, 2018.

OCC's Proposal to Artificially Limit Use of the Purchase Gas Adjustment Clause Is Illegal.

The only entity that filed initial comments in this docket was the Office of the Ohio Consumers' Counsel (OCC), and the major issue raised by OCC is one that would affect only Duke Energy Ohio. OCC suggests that the Commission change its rules so as to prohibit Duke Energy Ohio from availing itself of a statutorily allowed pricing methodology. OCC fails to recognize that the Commission does not – and may not – use its rule-making authority to change the law. The Commission's rules amplify laws that were enacted by the Ohio Legislature.

As OCC notes,¹ three of the four large local distribution companies (LDCs) in Ohio currently procure gas through a competitive auction process and set the retail price for that gas on the basis of the auction results. Duke Energy Ohio, on the other hand, relies on the same process it has used for many years, as is allowed under Ohio law.

¹ OCC Comments, pg. 2.

Revised Code (R.C.) 4905.302(C) requires the Commission to “promulgate a purchased gas adjustment rule . . . that establishes a uniform purchased gas adjustment clause to be included in the schedule of . . . natural gas companies subject to the jurisdiction of the public utilities commission . . .” Duke Energy Ohio is a natural gas company subject to the jurisdiction of the Commission. Hence, the Commission is statutorily required to have a rule allowing Duke Energy Ohio to have a purchased gas adjustment clause.

The other three, large Ohio LDCs all voluntarily chose to switch to procuring natural gas through auction processes. Indeed, the Commission’s rules include provisions designed specifically for applications to exit the merchant function, as is allowed by law. The Ohio General Assembly has set forth the circumstances under which an LDC may exit the merchant function, if it chooses to do so. Under R.C. 4929.04, an LDC must prove that it is in substantial compliance with state policy and is either subject to effective competition with respect to the commodity sales service or ancillary service or customers have reasonably available alternatives.² If the LDC fails to meet its burden of proof with regard to these conditions, the Commission **may not** authorize the LDC to move away from the standard, purchased gas adjustment clause approach.³

Contrary to these statutory provisions, OCC asks the Commission to proclaim that the purchased gas adjustment clause is **only available** to LDCs with fewer than 100,000 customers. This restriction is found nowhere in Ohio law and thus would be outside of the Commission’s authority. Indeed, if the legislatively mandated joint committee on agency rule review finds that a revised rule exceeds the scope of the agency’s statutory authority or conflicts with either

² R.C. 4929.04(A).

³ R.C. 4929.04(D).

another rule or the legislative intent of the statute under which it is proposed, that committee is authorized to invalidate the rule.⁴

OCC's Proposed Change, Applicable to only One Jurisdictional Utility, Is Inappropriate for a Rule-Review Proceeding.

OCC proposes a change that, even by its own reckoning, would impact only one entity in the state of Ohio. This is an unreasonable and inappropriate use of a five-year rule review.

Rules are promulgated by an administrative agency to provide additional detail to existing laws, applicable to all entities equally. On the other hand, OCC's proposed changes would impact only a single entity subject to the Commission's jurisdiction. This is an inappropriate use of this rule-review proceeding, a concept that OCC itself has previously espoused: "There should not be a rule that applies only to [one utility] . . ."⁵

OCC's Rationale for Forcing Duke Energy Ohio To Exit the Merchant Function Is Flawed.

OCC attempts to justify its illegal proposal by comparing Duke Energy Ohio's recent gas cost recovery (GCR) rates with the auction-based rates of other large, Ohio LDCs. OCC's comparison shows that Duke Energy Ohio's GCR rates have exceeded the average rates of the other three LDCs in most years. However, that analysis is flawed in a very important way: The comparison is based on an average that includes Dominion East Ohio, whose auctions attract suppliers in the Ohio shale gas area. There is absolutely no reason to believe that those suppliers would participate in auctions for the Duke Energy Ohio service area, any more than they do in auctions for the Vectren and Columbia areas.

⁴ R.C. 106.021.

⁵ *In the Matter of the Commission's Promulgation of Rules for Electric Transition Plans and of a Consumer Education Plan, Pursuant to Chapter 4928, Revised Code*, Case No. 99-1141-EL-ORD, Reply Comments of the Ohio Consumers' Counsel, pg. 10 (Oct. 29, 1999).

If the prices obtained in Dominion’s auctions are removed from the comparison, the results are quite different. The following is taken from OCC’s Table 1, with Dominion removed:

From OCC Table 1. Exeter Comparison of Duke GCR Rates to Other Ohio Utilities 12 Months Ended August (\$/Mcf)				
Company	2013	2014	2015	Average
Columbia	4.814	5.7839	4.5984	5.0654
Vectren	4.6505	5.6003	4.7852	5.012
Other Companies' Avg.	4.73225	5.6921	4.6918	5.0387
Duke Energy Ohio	4.9336	5.435	5.1373	5.1686
Difference Above/(Below)	0.20135	(0.26)	0.4455	0.1299

And the following is taken from OCC’s Table 2,⁶ with Dominion removed:

From OCC Table 2. Comparison of Duke GCR Rates to Other Ohio Utilities Calendar Years 2015 Through November 2018 (\$/Mcf)					
Company	2015	2016	2017	2018	Average
Columbia	3.9825	3.8542	4.5533	4.2286	4.1547
Vectren	3.9158	3.8158	4.3792	4.05	4.0402
Other Companies' Avg.	3.94915	3.835	4.46625	4.1393	4.09745
Duke Energy Ohio	4.7733	4.1208	4.8	4.5682	4.5656
Difference Above/(Below)	0.82415	0.2858	0.33375	0.4289	0.46815

As is clear from the revised charts, although Duke Energy Ohio’s GCR rates exceeded the rates charged by Columbia and Vectren in all but one year evaluated, the differential is substantially lower than in the table presented by OCC. And, interestingly, Dominion’s rates were lower than either Columbia’s or Vectren’s rates in every one of the analyzed periods. Certainly the analysis provided by OCC cannot be the basis for mandating rate-making changes at the administrative agency level.

⁶ It should also be noted that the information in OCC’s Table 2 was taken from the Commission’s Apples-to-Apples charts, which do not include any riders. Both Vectren and Columbia have riders in place that also affect the prices that customers actually pay.

OCC's Alternative Recommendation Is Also Illegal.

OCC recommends that, if the Commission does not restrict the GCR to smaller LDCs, it should instead add a pricing review to the periodic management performance audits. Specifically, OCC asks that the Commission require such audits to “compare the reliability and pricing of the GCR to the pricing available under an SSO auction, where prices would be at least as favorable for customers as procurement through a competitive wholesale auction.”⁷ OCC does not suggest how an auditor could possibly determine what prices would have resulted from a hypothetical auction. And certainly such a comparison could not be made to auctions held by other LDCs, as we have just seen that geography matters a great deal.

Furthermore, the nature and content of management performance audits are set in statute and thus not subject to change through promulgation of a rule.

The commission shall not require that a management or performance audit pertaining to the purchased gas adjustment clause of a gas or natural gas company, or a hearing related to such an audit, be conducted more frequently than once every three years. **Any such management or performance audit and any such hearing shall be strictly limited to the gas or natural gas company's gas or natural gas production and purchasing policies. No such management or performance audit and no such hearing shall extend in scope beyond matters that are necessary to determine the following:**

- (a) That the gas or natural gas company's purchasing policies are designed to meet the company's service requirements;
- (b) That the gas or natural gas company's procurement planning is sufficient to reasonably ensure reliable service at optimal prices and consistent with the company's long-term strategic supply plan;
- (c) That the gas or natural gas company has reviewed existing and potential supply sources⁸

OCC's suggested expansion of the matters to be audited would clearly violate the express terms of the governing statute.

⁷ OCC Comments, pg. 7.

⁸ R.C. 4905.302(C)(2) (emphasis added).

Conclusion

For the reasons stated above, Duke Energy Ohio respectfully suggests that the Commission reject the modifications proposed by OCC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties via electronic mail delivery or by U.S. mail, postage prepaid, as indicated, on this 26th day of November, 2018.

/s/ Jeanne W. Kingery
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