

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Approval to Modify)	Case No. 15-50-GA-RDR
Rider FBS, Rider EFBS, Rider FRAS, and)	
Rider GTS.)	

**INITIAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

A. Procedural

In accordance with the Attorney Examiner's Entry of January 22, 2015, the Retail Energy Supply Association ("RESA")¹, a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure submits its initial comments in the above styled proceeding. Several RESA members are certificated as competitive retail natural gas ("CRNG") service providers and many of those are currently providing CRNG service to retail customers in the Duke Energy Ohio, Inc. ("Duke") service area.

Previously, RESA filed a timely motion to intervene in this proceeding. RESA requested that the procedural schedule be adjusted to allow for discovery, settlement discussions and a hearing if necessary. That request is still pending, and RESA believes that these comments

¹ RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Dynegy Energy Services; GDF SUEZ Energy Resources NA, Inc.; IDT Energy, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; Nordic Energy Services, LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

underscore the wisdom of expanding the procedural schedule to provide for a more extensive factual examination and discussion of amendments to the current Duke balancing tariff.

B. RESA Position

Duke's proposal to remove the Firm Balancing option to large Suppliers/Aggregators and require those Suppliers/Aggregators to use the more expensive Enhanced Firm Balancing Service, on its face is illegal, unjust and unreasonable. It is illegal because it requests the Commission to conduct retroactive rate making. Under the current tariff all Suppliers/Aggregators had to select either Firm Balancing or Enhanced Balancing by not later than January 15, 2015 for the 2015-2016 contract year. Duke's proposal filed on January 15, 2015, after most of the selections were made, asks that the Commission in April reach back in time and revoke the selection of Firm Balancing by all large suppliers. Since the tariffs permitted selection of Firm Balancing for contract year 2015-2016 at the time the elections were made, it would violate both procedural and substantive due process to go back in time and by governmental action nullify the selection.

Duke's proposal is also unjust and unreasonable to any Supplier/Aggregator who elected Firm Balancing which Duke now seeks to revoke. Such Suppliers/Aggregators build their 2015 business models and delivery systems depending upon on the availability of Firm Balancing. Removing Firm Balancing after the Suppliers/Aggregators who selected changed their financial position based on the tariff is inequitable.

Duke may submit a request to the Commission to discriminate among Supplier/Aggregators, and increase their cost or withdraw a current service they enjoy, but only prospectively. Further, Duke has the burden of proof that its proposal is legal, just and reasonable and in the public's interest.

II. Duke's proposal to make Enhanced Firm Balancing Service Rider mandatory for certain suppliers and aggregators is unjust and unreasonable.

On January 15, 2015, Duke filed the application in this case seeking authority to adjust its Firm Balancing Service Rider ("Rider FBS") and Enhanced Firm Balancing Service Rider ("Rider EFBS"). CRNG suppliers and aggregators who elect Rider FBS agree to deliver specific forecasted quantities of gas each day, and Duke collects for the estimated portion of storage costs associated with that daily balancing and credits the revenues to the gas cost recovery mechanism. CRNG suppliers and aggregators who elect Rider EFBS have wider latitude than Rider FBS through "banking" of gas supplies and, again, the charges collected by Duke are applied as a credit to the gas cost recovery mechanism. Duke proposes to modify the terms under which CRNG suppliers and aggregators choose either Rider FBS or Rider EFBS. More specifically, Duke proposes to make Rider EFBS mandatory for all CRNG Suppliers/Aggregators with a maximum daily quantity ("MDQ") greater than 20,000 dekatherms per day. CRNG Suppliers/Aggregators with a MDQ of 1,000-19,999 dekatherms per day will still be able to elect either balancing service. For those that would be permitted to make an election, the election must be made annually by January 15. Duke also seeks to modify certain terms under its Full Requirements Aggregation Service and Gas Trading Service Tariffs to coincide with the changes requested for Rider FBS and Rider EFBS.

Riders FBS and EFBS have been in place for years. Based on a 2007 stipulation and recommendation, Duke's Rider FBS was modified and a new balancing option, Rider EFBS, was created. *In the Matter of the Joint Application of Cinergy Corp., on Behalf of The Cincinnati Gas & Electric Company, and Duke Energy Holding Corp. for Consent and Approval of a Change of Control of The Cincinnati Gas & Electric Company*, Case Nos. 05-732-EL-MER, et al. ("Merger Case"). Duke's current rates for Rider FBS and Rider EFBS were approved in *In*

the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates, Case Nos. 12-1685-GA-AIR, et al., Opinion and Order (November 13, 2013).

Now, Duke seeks to unilaterally make changes to the stipulated terms and conditions of Riders FBS and EFBS, changing the electability and attractiveness of the balancing service options. Duke noted in its application that the number of CRNG suppliers and aggregators electing Rider EFBS has declined, but provided no details. Furthermore, Duke claims that this change has made it difficult for Duke to manage storage balances within interstate pipeline tariff requirements. However, Duke has again presented no details. In addition, Duke has presented nothing to explain in detail why making Rider EFBS mandatory for certain CRNGS Suppliers/Aggregators is a just and reasonable change. Even though Duke has the burden in this matter, Duke presented no statistics or details in its application to need to evaluate the justness and reasonableness of its proposal, including:

- How the number of CRNGS Suppliers/Aggregators electing Rider EFBS has actually changed.²
- How the fewer Supplier/Aggregators actually made it “difficult to manage the storage balances.”³
- Why the 20,000 dekatherm threshold was proposed and appropriate.
- The alternative solutions considered and evaluated by Duke.⁴
- If any current Suppliers/Aggregators taking Rider FBS will be forced to take Rider EFBS?

This information is needed to evaluate Duke’s proposal – the need for it, the appropriateness of the proposal to solve Duke’s concern, and the timing of any changes to the riders. Given the

² Duke’s application refers only to one supplier/aggregator’s switch from Rider EFBS to Rider FBS in 2013.

³ Duke’s application includes percentages of pipeline capacity and storage in 2013, compared to the percentages that existed before Rider EFBS was created. There is no information regarding the pipeline capacity and storage percentages in 2014 or, for that matter, what the percentages are for 2015 based on the recent elections.

⁴ Duke claims in its February 9, 2015 memorandum contra the RESA and IGS motions to intervene (at page 5) that it explained the alternatives considered during an informal meeting held on January 9, 2015. Even if Duke explained the options it considered during that informal meeting, Duke has the burden to demonstrate in this case that its proposal is just and reasonable. Without any explanation in its application, RESA contends that Duke has not demonstrated that making Rider EFBS mandatory for CRNG suppliers and aggregators is just and reasonable, especially in light of the objections and criticisms raised by multiple CRNG suppliers/aggregators.

current status of the case (and the comment cycle), there is no opportunity to gather, discuss and debate. As a result, Duke's proposal is not justified; rather, it appears to be unjust and unreasonable.

III. The proposed revamp of Duke's balancing services will have significant negative impact on the current active Suppliers/Aggregators and possibly deter others.

The Commission's decision in this matter will affect the viability of the CRNG market in Duke's service territory – certain active CRNG Suppliers/Aggregators will have options for balancing, while the large CRNG Suppliers/Aggregators will no longer have balancing options and be forced to take Rider EFBS or pull out. There are several reasons.

First, Duke's proposal would negatively affect larger Suppliers/Aggregators (and by extension their customers) as compared to Suppliers/Aggregators serving smaller loads in the Duke territory. This change would put larger CRNG Suppliers/Aggregators at a competitive disadvantage to the smaller CRNG Suppliers/Aggregators – they will have no choice between balancing services, while the others will have choices.

Second, Duke's proposal lacks a mechanism for a CRNG Supplier/Aggregator to return to Rider FBS if its MDQ goes lower than the 20,000-dekatherm-per-day threshold. A CRNG Supplier/Aggregator would be stuck with Rider EFBS for the entire election year, even when its load decreases.

Third, Rider EFBS is more expensive than Rider FBS and these costs may not have been factored into CRNG Supplier/Aggregator offers to customers when those offers were made to customers. For the large CRNG Suppliers/Aggregators who are active in Duke's service territory, this change in the terms and conditions of Rider EFBS will affect their costs, particularly since the Suppliers/Aggregators already selected a balancing service in mid-January and Duke proposes to make these changes effective in April 2015. Even taking into

consideration Duke's informal meeting held on January 9, 2015, CRNG Suppliers/Aggregators were not given sufficient time to understand the changes to the balancing services,⁵ develop their business plans and make a selection based on the best information by the January 15 election deadline. For large CRNG Suppliers/Aggregators, Duke's proposal likely will have a negative impact for the remainder of the election period (until April 2016).

Finally, other CRNG Suppliers/Aggregators who are considering entering the Duke Service area will be affected because the balancing options will change, if Duke's application is approved as proposed.

IV. Duke Has Not Defined or Supported The Harm - If Any – Which Requires Withdrawing The Firm Balancing Option From Large Supplier/Aggregators

The petition to change the tariff provided no definitive statement as to exactly what harm will flow to whom if Duke cannot withdraw the Firm Balancing option from all large Supplier/Aggregators. The petition intimates that not enough suppliers will select the Enhanced Balancing service. What is odd about the timing of the petition is that it was made on January 15th the final day for Supplier/Aggregators to submit their election of balancing services. Had Duke merely waited until January 16th it would have known exactly who selected Enhanced Balancing and whether the dearth of Suppliers/Aggregators selecting Enhanced Balancing resulted in harm to Duke. Duke also could then have quantified the difference between the amount of surplus storage it thought would have been needed for Enhanced Balancing, the amount that is going to be needed and loss if any that would occur if Duke just sold the surplus storage into the market. The best way to address the above another unknown facts about the petition is to permit the discovery requested by RESA.

⁵ On January 9, 2015, Duke had not file its application in this case. It was not filed with the Commission until January 15, 2015, the same day that suppliers/aggregators were required to elect a balancing service that would be in effect from April 2015 through March 2016.

Finally, Duke's petition does not mention, let alone quantify, the cost to shopping customers of large Supplier/Aggregators if all of a sudden their suppliers are going to have to purchase the more expensive Enhanced Balancing, which the Suppliers/Aggregators have already affirmatively rejected. The fact that Duke has not provided the Commission with the likely cost impact of its proposal renders the petition incomplete at best. It was completely within Duke's control as to when it filed the application in this matter. Because it chose to file hours before it had the information necessary to define what if any oversupply of storage it held, and explain why its proposal was the optimal one, does not prevent the Commission for seeking that information now before a decision is made. Let the discovery go forth.

V. Conclusion

WHEREFORE, RESA respectfully requests that the Commission find the petition as filed by Duke to be lacking key information, and adjust the current procedural schedule so that discovery and further discussions can take place. Moreover, the Commission should reject as unjust and unreasonable Duke's request to mandate that large Suppliers/Aggregators take Rider EFBS and to make that change effective April 1, 2015.

Respectfully Submitted,



M. Howard Petricoff (0008287), Counsel of Record
Michael J. Settineri (0073369)
Gretchen L. Petrucci (0046608)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
Tel. (614) 464-5414
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com

Attorneys for the Retail Energy Supply Association

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 12th day of February 2015 upon the persons listed below.



M. Howard Petricoff

Duke Energy Ohio, Inc.
Amy B. Spiller
Elizabeth H. Watts
139 E. Fourth Street, 1303-Main
Cincinnati, OH 45201-0960
Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com

Interstate Gas Supply Inc.
Joseph Olier
6100 Emerald Parkway
Dublin, OH 43016
joliker@igsenergy.com

Direct Energy
Joseph M. Clark
21 East State Street, 19th Floor
Columbus, OH 43215
Joseph.clark@directenergy.com

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Summary: Comments Initial Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association