

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION  
TO DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA  
THE MOTION TO INTERVENE BY THE RETAIL ENERGY SUPPLY ASSOCIATION**

On February 5, 2015, the Retail Energy Supply Association (“RESA”)<sup>1</sup> filed a motion to intervene, preliminary comments, and a request to adjust the procedural schedule in the above-captioned proceeding. On February 9, 2015, Duke filed a memorandum contra to the request to amend the schedule, but did not contest RESA’s intervention. Thus, the following Reply addresses only the scheduling issue. Specifically, RESA responds to several of Duke’s arguments opposing the revised schedule.

In support of amending the procedural schedule, which was set prior to the intervention of RESA and others in opposition, RESA argued that Duke’s proposed effective date of April 1, 2015, is unjust and unreasonable because it will alter the choice all suppliers/aggregators have today under the Duke Tariff to select one of two balancing elections for the 2015-2016 storage year. Duke is seeking to reverse the balancing options effective for the April 2015 - March 2016

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<sup>1</sup> RESA is 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. Several RESA members are certificated as competitive retail natural gas (“CRNG”) service providers and active in the Ohio retail natural gas markets providing service to residential, commercial, industrial and governmental customers. In addition, some of RESA’s members currently provide CRNG service to retail customers in Duke Energy Ohio, Inc.’s service area. 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.

storage year which certain suppliers\aggregators made prior to January 15, 2015. On its face, the timing of the Duke request is unjust and unreasonable. Further, while the current schedule provides interested parties with an opportunity to make comments, it does not provide for discovery. Given the dearth of facts provided in the application to amend the tariff, plus the wide gulf in opinions on whether eliminating the choice of Firm Balancing is necessary as noted in the comments, discovery is needed. In sum, the current schedule and comment cycle provides insufficient time for RESA and others to explore and present their positions on changing the existing supplier balancing tariffs to the Commission.

First, Duke has stated that it would like a Commission decision to be issued quickly and have the tariff revisions be effective April 1, 2015, but Duke has not demonstrated, in light of the arguments and concerns raised by RESA, that it is just and reasonable to allow this matter to proceed on an expedited basis, without providing the Commission with meaningful facts as to why the current election of Firm Balancing or Enhanced Balancing should not continue, the harm that flows from eliminating the option of Firm Balancing for the market, and the impact on the retail customers of the suppliers who will have Firm Balancing withdrawn for the upcoming storage season. Those important facts are not in the application and must be provided to the record via discovery.

Second, Duke claims that, because all suppliers were on sufficient notice of possible changes by virtue of a January 9, 2015 meeting, there is no need to change the procedural schedule in this matter. That January 9<sup>th</sup> meeting took place only three business days prior to the deadline of January 15, 2015, for making the balancing election. Further, at the time of the meeting, Duke had not filed its application in this matter yet. RESA members believed the January 9<sup>th</sup> meeting was a dialogue as to whether and how the balancing tariff should be

changed. Taken at face value, Duke's defense that the January 9<sup>th</sup> meeting put the suppliers\aggregators on notice that the firm balancing was going to be dropped for the larger suppliers\aggregators for this year, then the suppliers\aggregators were never consulted, only given an ultimatum. If that is the case, then RESA objects to the ultimatum and seeks a full hearing so that the true facts which affect gas balancing can be explored and a solution in the public's best interest can be applied.

Duke filed the application to change the supplier\aggregator balancing tariff on January 15, 2015, after most suppliers had filed their balancing elections in accordance with the tariff that provides that balancing elections must be made before the deadline of January 15<sup>th</sup>. Duke has made no claim that it served all suppliers\aggregators with its tariff application prior to the deadline.<sup>2</sup> Further, since the Duke application in this proceeding was filed on the deadline date of January 15, 2015, public notice to the suppliers\aggregators did not appear on the Commission's website prior to the supplier\aggregator balancing election deadline. Thus, suppliers/aggregators could not have meaningfully considered Duke's proposal when making their elections.

Suppliers/aggregators deserve the opportunity to pursue discovery, analyze the proposed changes, and have discussions with Duke and interested parties including the Staff, about the proposed revisions. The Commission too deserves to receive the best information and arguments from the parties. Allowing more time for fact-gathering and deliberative arguments will allow that to happen.

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<sup>2</sup> In accordance with the order of the Attorney Examiner in her January 22, 2015 Entry, Duke filed a letter in this proceeding reflecting that it served notice on January 23 and 24, 2015, on all gas suppliers and aggregators who would be affected by the proposed modifications. That notice occurred well after the election deadline.

Third, Duke claims that its proposal to have the tariffs be effective on April 1, 2015, will only be prospective. Duke ignores the fact that Duke's proposal asks that the Commission revoke the valid selections of Firm Balancing Service by all large suppliers/aggregators that were just made in January 2015. The current tariffs permitted selection of Firm Balancing for contract year 2015-2016, but Duke's proposal would nullify those valid, recent selections, violating both the procedural and substantive due process of suppliers/aggregators. If Duke had wanted to revise these tariffs, it should have proposed the changes sufficiently in advance of January 15th, so that Commission review could take place, and the suppliers/aggregators could evaluate the impact of the proposal in a commercially reasonable time before the 2015-2016 storage year election. Suppliers/aggregators' valid elections should not be changed after the fact because Duke waited to file this application on the very day elections were being made.

Duke denies that the proposal will punish suppliers/aggregators. Yet, Duke's proposal will force large suppliers/aggregators to have a particular balancing service and to remain on that service regardless of any changes in the supplier/aggregator's maximum daily quantity ("MDQ"). Duke has not presented the Commission with the actual harm that would arise because some suppliers/aggregators over 20,000 dekatherms per day elected not to take the Enhanced Banking option. Likewise, Duke has not demonstrated that it is not discriminatory to offer Firm Balancing only to suppliers/aggregators under 20,000 dekatherms per day. As such, the procedural schedule should be modified so that parties can explore these issues, among others.

RESA stands by its claim that Duke's proposal will punish larger suppliers/aggregators (and by extension their customers) as compared to suppliers/aggregators serving smaller loads in the Duke territory. Larger suppliers/aggregators will be at a competitive disadvantage compared

with the smaller suppliers/aggregators, who will have the opportunity to elect the balancing service that best suits their needs.

For all of the foregoing reasons, the procedural schedule should be revised. Specifically, RESA proposes that, after the filing of comments, the Attorney Examiner issue an Entry revising the procedural schedule to allow for (a) thirty days of discovery and (b) a prehearing conference. In particular, the discovery period should be held open until March 15 with discovery due ten days after service of the discovery requests. A prehearing/settlement conference should be convened after March 16 to determine if a settlement can be reached. If a settlement is not possible, then RESA recommends that the Commission schedule a hearing, direct the filing of a Staff report, require testimony to be filed by Duke, and thereafter the filing of direct testimony by intervenors and the Staff.

WHEREFORE, RESA respectfully requests that the Commission grant RESA's motion to intervene, and that the current procedural schedule be modified as detailed above to allow for discovery, the filing of a Staff report, a prehearing/settlement conference and, if needed, testimony and a hearing.

Respectfully Submitted,



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### 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 17<sup>th</sup> day of February 2015 upon the persons listed below.



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Summary: Reply Reply to Duke Energy Ohio's Inc.'s Memorandum Contra the Motion to Intervene by the Retail Energy Supply Association electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association