

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BRIEF
OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

September 18, 2015

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I. Introduction

On January 15, 2015, Duke Energy Ohio, Inc. filed an application with the Public Utilities Commission of Ohio (“Commission”) seeking to eliminate the option for large competitive retail natural gas service suppliers (“Suppliers”) in its service territory to elect between Duke’s Firm Balancing Service (“FBS”) and Enhanced Firm Balancing Service (“EFBS”).¹ This was the very date by which suppliers had to elect either FBS or EFBS for the 2015-2016 storage year. Duke has proposed that all large Suppliers² be able to select only EFBS. Duke originally requested that this change become effective April 1, 2015.³ However, after strong opposition was raised by The Retail Energy Supply Association (“RESA”), the Commission found that further investigation was warranted and a hearing was held on August 4, 2015. Now, Duke requests that this change in its balancing services become effective April 1, 2016.⁴

RESA filed its Initial Brief in this matter on September 4, 2015. RESA opposes Duke’s proposal, finding that (a) the proposal is unjust and unreasonable and (b) a long-term evaluation is already underway in another Commission proceeding. In addition, RESA recommended further actions if the Commission concludes that either an interim solution should be implemented or Duke’s ill-advised proposal should be adopted. Initial Briefs were also filed by Duke, the Office of the Consumers’ Counsel (“OCC”) and the Staff.

RESA hereby submits its Reply Brief responding to specific issues raised in the Initial Briefs by Duke and the Office of the Consumers’ Counsel. The evidence amply demonstrates that there is no problem that must be immediately resolved by the Commission. In fact, there may never be a problem to be fixed. Moreover, the current management/performance auditor is reviewing

¹ Duke Exhibit (“Ex.”) 1.

² “Large Supplier” being defined as having a maximum daily delivery quantity (“MDQ”) of 20,000 dekatherms (“Dth”) or greater.

³ *Id.* at 5.

⁴ Transcript (“Tr.”) at 33.

Duke's capacity portfolio, balancing services and storage services.⁵ That auditor will be addressing these issues and there is no reason to supersede the auditor's actions by adopting Duke's ill-advised proposal.

II. Duke's Initial Brief and OCC's Initial Brief raise nothing new to demonstrate that Duke's balancing services need to be altered at the present time.

Duke claims that there is a present problem that must be fixed by the Commission.⁶ The record in this proceeding clearly shows that there is not a current problem, only the potential for a future problem. Duke claims that the EFBS is undersubscribed and that is why it must be forced upon all large suppliers. The record reflects though that the EFBS is not currently undersubscribed -- currently Suppliers has signed up for roughly 51,000 Dth of EFBS peak service.⁷ Duke's witness admitted during the hearing that, with the current level of EFBS subscribership, Duke can manage its system.⁸ The evidence also showed that Duke has successfully managed its system at lower levels of EFBS subscribership than the current 51,000 Dth of peak service.

The Ohio Consumers' Counsel ("OCC") supports Duke's request.⁹ However, the OCC's support does not change the fact that the "alleged problem" is not a present problem that requires adoption of Duke's permanent, long-term "fix." In fact, the Staff of the Commission expressly stated in its Initial Brief that there may never be a problem because Suppliers have selected EFBS sufficiently and there is no present reason to believe that the voluntarily actions of the Suppliers will not remain sufficient.¹⁰ The Staff describes Duke's position as a concern or a worry.¹¹

RESA believes that Duke's concern/worry about an event that could theoretically occur in the future is an insufficient rationale to fundamentally alter the design of the Duke Choice program

⁵ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR.

⁶ Duke Initial Brief ("Br.") at 2-3.

⁷ Tr. at 33-34.

⁸ Tr. at 97.

⁹ OCC Initial Br. at 5-7

¹⁰ Staff Initial Br. at 3 and 4

¹¹ *Id.* at 3 and 5.

to the detriment of Choice customers. This is particularly so given that there are less restrictive means to ensure Suppliers continue to take EFBS (i.e., RESA's alternative proposal), rather than to adopt Duke's overly broad and discriminatory proposal. Thus, this rationale is an unjust and unreasonable basis upon which to modify the balancing services on a permanent basis as Duke proposes herein.

Also, Duke claims that its solution to the "problem" is the optimal solution.¹² However, as RESA pointed out in its Initial Brief in this proceeding, Duke's proposal raises many concerns.¹³ Specifically, Duke's proposal would require only the largest Suppliers to shoulder the burden and costs to address a problem on Duke's system that has not even yet materialized. The Staff has found RESA concerns to be valid concerns.¹⁴ As a result, the Commission should also find that Duke's proposal is problematic and not appropriate for adoption.

III. RESA and Staff correctly recognized that the management/performance auditor will be addressing the long-term issue of Duke's management of its capacity portfolio and storage.

RESA and the Staff pointed out that the big picture related to Duke's capacity portfolio and storage services is under evaluation in Duke's current gas cost recovery ("GCR") proceeding.¹⁵ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 15-218-GA-GCR. The Staff even noted that GCR proceeding will be looking at the situation in the long term.¹⁶ Duke and OCC ignore the on-going analysis of the management/performance auditor in their initial briefs. Their silence is telling – there is no reason not to allow the management/performance auditor to evaluate and make its recommendations on the issue.

¹² Duke Initial Br. at 3-4

¹³ RESA will not repeat all of its arguments herein. Instead, RESA refers the reader to its Initial Brief, pages 10-16.

¹⁴ Staff Initial Br. at 5

¹⁵ RESA Initial Br. at 2; Staff Initial Br. at 3.

¹⁶ Staff Initial Br. at 3

IV. If the Commission nonetheless determines that some interim solution should be implemented, the RESA interim solution is a just and reasonable approach.

RESA will not repeat herein the many arguments it presented to support its proposed interim solution.¹⁷ Duke repeated its arguments against RESA's interim proposal – raising nothing new in its Initial Brief on this point. RESA has refuted those claims already – specifically proposing an interim solution that does not target large Suppliers or impose unnecessary discriminatory provisions among Suppliers, which is the effect of Duke's proposal.

RESA will note, however, that Duke has claimed that the RESA interim solution is problematic because it is a temporary solution.¹⁸ Duke is correct that RESA's interim solution was proposed as a temporary solution. RESA's interim solution was presented because of the management/performance auditor's current evaluation that is in progress and RESA's understanding that the Commission will be considering Duke's capacity portfolio, balancing services and storage services within that proceeding. This Duke criticism supports RESA's earlier position that the Commission should not adopt Duke's proposal herein and consider the matter within the context of the GCR proceeding.

V. If the Commission nonetheless determines that Duke's ill-advised proposal should be implemented, the Commission must ensure that competition is not adversely affected and the best way to accomplish that is by requiring an unbundling of GCR costs from natural gas distribution rates.

Both Duke and OCC oppose RESA's recommendation to unbundle GCR costs from Duke's natural gas distribution rates, if the Commission decides to adopt Duke's proposal herein.¹⁹ However, it is noteworthy that Duke and OCC do not dispute that Duke's natural gas distribution rates recover GCR-related costs.²⁰ Given that fact, the Commission should recognize that Duke's

¹⁷ See, RESA Initial Br. at 16-22.

¹⁸ Duke Initial Br. at 5.

¹⁹ Duke Initial Br. at 7-8; OCC Initial Br. at 8-11.

²⁰ Rather, they argue that RESA was required and failed to establish the subsidies – the GCR costs recovered through natural gas distribution rates. *Id.*

proposal to modify its balancing services will change a fundamental aspect of Duke's shopping program – it restricts Supplier flexibility for serving customers and impacts the competitiveness of the market in Duke's service territory. If the Commission decides that such a fundamental aspect of the program should be altered as Duke has proposed herein, the Commission should commit to looking at the remainder of the program in another proceeding. Duke and OCC advocate that only a myopic, single-issue approach be taken by the Commission. Neither argued that the Commission cannot open another proceeding for such an examination. RESA urges the Commission to be more even-handed, if it decides to change the balancing services as Duke has proposed.

VI. Conclusion

For all of the foregoing reasons, Duke's application should be rejected. If the Commission determines that an interim solution should be implemented, until it has reached a conclusion in Case No. 15-218-GA-GCR, RESA recommends its proposed interim solution. If, however, the Commission determines that Duke's proposal should be implemented, the Commission should commit to opening another Commission proceeding to unbundle GCR costs from Duke's natural gas distribution rates so that the competitive marketplace is not unreasonably affected by the change in the balancing services.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Howard Petricoff", written over a horizontal line.

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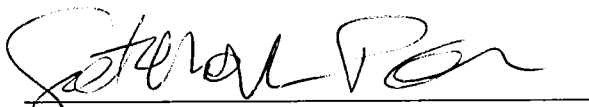
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CERTIFICATE OF SERVICE

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Summary: Reply Brief electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association