

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.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter, and being otherwise fully advised, hereby issues its Opinion and Order. For the reasons stated below, the Commission modifies and approves the application filed by Duke Energy Ohio, Inc. for authority to modify the terms under which choice suppliers and aggregators receive firm balancing service or enhanced firm balancing service.

APPEARANCES:

Amy B. Spiller, Deputy General Counsel, and Elizabeth H. Watts, Associate General Counsel, 139 East Fourth Street, 1303-Main, Cincinnati, Ohio 45202, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by William J. Michael and Jodi J. Bair, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, Michael J. Settineri, and Gretchen L. Petrucci, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of the Retail Energy Supply Association.

Joseph Olikar, 6100 Emerald Parkway, Dublin, Ohio 43016, on behalf of Interstate Gas Supply, Inc.

Jennifer L. Spinosi, 21 East State Street, 19th Floor, Columbus, Ohio 43215, on behalf of Direct Energy Services, LLC, Direct Energy Small Business, LLC, and Direct Energy Business Marketing, LLC.

OPINION:

I. Procedural History

Duke Energy Ohio, Inc. (Duke or the Company) is a public utility as defined in R.C. 4905.02 and a natural gas company under R.C. 4905.03, and, as such, is subject to the jurisdiction of this Commission.

On March 21, 2007, in Case No. 05-732-EL-MER, et al., the Commission approved a stipulation, which, inter alia, set the rate of Duke's firm balancing service rider (Rider FBS). *In re Cinergy Corp.*, Case No. 05-732-EL-MER, et al. (*Merger Case*), Entry (Mar. 21, 2007). Rider FBS is a mechanism that enables Duke to recover the estimated portion of storage costs associated with daily balancing from choice suppliers and aggregators, and the charges collected by the Company are then applied as a credit to the gas cost recovery (GCR) mechanism. As a result of the stipulation in the *Merger Case*, Duke participated in a collaborative that resulted in the proposal of Duke's enhanced firm balancing service rider (Rider EFBS).

On January 15, 2015, in the above-captioned proceeding, Duke filed, pursuant to R.C. 4909.18, an application (Duke Ex. 1) to adjust Rider FBS and Rider EFBS. Further, Duke proposed to modify the terms under which choice suppliers and aggregators receive either firm balancing service or enhanced firm balancing service. Duke also sought to modify certain terms under its full requirements aggregation service (FRAS) and gas trading service (GTS) tariffs to coincide with the changes requested for Rider FBS and Rider EFBS.

By Entry dated January 22, 2015, the attorney examiner established a procedural schedule, including deadlines for the filing of initial and reply comments in response to Duke's application. Initial comments were filed on February 12, 2015, by the Retail Energy Supply Association (RESA); Interstate Gas Supply, Inc. (IGS); and Direct Energy Services, LLC, Direct Energy Small Business, LLC, and Direct Energy Business Marketing, LLC (collectively, Direct Energy). Reply comments were filed by the Ohio Consumers' Counsel (OCC) and Duke on February 19, 2015.

On March 25, 2015, the Commission issued a Finding and Order, granting the motions for intervention filed by RESA, IGS, Direct Energy, and OCC. Additionally, following a review of Duke's application and the parties' initial and reply comments, the Commission approved the Company's proposed rate adjustments to Rider FBS and Rider EFBS, which were not opposed by the parties. However, in light of the issues raised in the parties' comments, the Commission found that further review was necessary with respect to the other tariff modifications proposed in Duke's application, specifically the Company's proposal to modify the terms under which choice suppliers

and aggregators receive firm balancing service or enhanced firm balancing service, and the Company's related proposal to modify the FRAS and GTS tariffs. Accordingly, the Commission established an additional procedural schedule, including a hearing date.

In accordance with the Commission's procedural schedule, Duke filed the direct testimony of Jeff L. Kern (Duke Ex. 2) on July 14, 2015. On July 21, 2015, RESA filed the direct testimony of Thomas Scarpitti (RESA Ex. 1) and Matthew White (RESA Ex. 2), and OCC filed the direct testimony of Bruce M. Hayes (OCC Ex. 1). The hearing convened, as scheduled, on August 4, 2015. Briefs and reply briefs were filed by the parties on September 4, 2015, and September 18, 2015, respectively.

II. Summary of the Evidence and Arguments

A. Duke

In the application, Duke proposes to modify the terms under which choice suppliers and aggregators receive either firm balancing service or enhanced firm balancing service. Duke also seeks to modify certain terms under its FRAS and GTS tariffs to coincide with the changes requested for Rider FBS and Rider EFBS. In support of its application, Duke notes that the number of choice suppliers and aggregators electing enhanced firm balancing service has declined, which has resulted in difficulty for the Company in managing storage balances within interstate pipeline tariff requirements. Duke, therefore, proposes to make enhanced firm balancing service mandatory for choice suppliers and aggregators that have a maximum daily quantity (MDQ) greater than or equal to 20,000 dekatherms (dth)/day, while choice suppliers and aggregators with an MDQ over 1,000 dth/day and under 20,000 dth/day would continue to elect either type of balancing service. (Duke Ex. 1 at 4-6.)

Duke witness Kern testified that choice suppliers and aggregators taking firm balancing service from the Company are required to deliver the Target Supply Quantity (TSQ) of natural gas on a daily basis. According to Mr. Kern, because the TSQ is based on forecasted weather, actual usage will be different from the TSQ, with the difference being withdrawn or injected into storage. Mr. Kern also testified that, given that Duke's GCR customers pay for the storage, Rider FBS is designed to recover the estimated portion of storage costs associated with daily balancing from choice suppliers and aggregators and to credit the GCR mechanism. (Duke Ex. 2 at 3.)

Additionally, Mr. Kern explained that, under enhanced firm balancing service, the choice supplier or aggregator is able to deliver more or less than the TSQ on a daily basis and to manage a bank on Duke's system. Mr. Kern further explained that, at the end of the gas day, actual weather data is used to calculate a backcast supply quantity that is compared to the amount that the choice supplier or aggregator delivered, with

the difference increasing or decreasing the amount of natural gas held in the bank, although there are limits on how much the bank can increase or decrease on a daily basis. Mr. Kern noted that choice suppliers and aggregators taking service under Rider EFBS pay the full value of Duke's equivalent storage costs rather than an estimate of the portion used for daily balancing, and pay demand and volumetric rates that are higher than under Rider FBS. Mr. Kern testified that, under Rider EFBS, choice suppliers and aggregators have greater flexibility, including the ability to purchase more gas when prices are low and less gas when prices are high, which mitigates or even eliminates the price differential between the two riders. According to Mr. Kern, as with Rider FBS, revenues received from Rider EFBS are credited to Duke's GCR mechanism. (Duke Ex. 2 at 3-4.)

Further, Mr. Kern explained that choice suppliers and aggregators must decide between firm balancing service and enhanced firm balancing service by January 15 of each year and remain on that service for the following period of April 1 through March 31. Mr. Kern testified that Duke, in turn, provides the balancing services through storage contracts with interstate pipelines, which have tariff limitations that require the Company to maintain its storage balances throughout the year within a specified band, or else risk pipeline penalties and depleting its storage before the end of the winter. (Duke Ex. 2 at 4-5.)

Mr. Kern explained that a portion of Duke's withdrawal rights under its storage contracts are required to meet the obligation of providing enhanced firm balancing service to choice suppliers and aggregators and that additional firm transportation must be purchased to assure that the Company remains able to meet the peak design day. According to Mr. Kern, if more choice suppliers and aggregators elect enhanced firm balancing service, there is less storage and more firm transportation to meet the needs of Duke's GCR customers; however, if fewer choice suppliers and aggregators take service under Rider EFBS, the Company's capacity portfolio consists of more storage and less firm transportation available for GCR customers. With respect to the winter of 2014-15, Mr. Kern testified that growth in the choice program and a decrease in the number of choice suppliers and aggregators electing enhanced firm balancing service resulted in insufficient firm transportation in relation to storage, such that Duke found it necessary to purchase approximately 2,000,000 dth of spot gas in order to effectively manage its storage balances and avoid pipeline penalties. Mr. Kern also noted that Duke purchased approximately 1,000,000 dth of spot gas in the winter of 2013-14. Therefore, in order to avoid this situation in the future and ensure that Duke is able to effectively manage its storage balances, Mr. Kern explained that the Company proposes, following consideration of several possible solutions, that choice suppliers and aggregators with an MDQ above 20,000 dth/day be required to take service under Rider EFBS, which would achieve the Company's desired allocation of firm transportation and storage and result in an equitable sharing of the full cost of

providing balancing service between choice and GCR customers. Mr. Kern added that lowering the MDQ threshold would make very little difference in Duke's capacity portfolio and its ability to meet the peak design day. (Duke Ex. 2 at 5-7, 10, Attach. JLK-3, Attach. JLK-6; Tr. at 94.)

In its brief, Duke argues that the current FBS and EFBS tariffs are creating inequities between GCR customers and choice customers and that the Company has proposed an optimal solution that ensures that gas storage assets are efficiently managed, customers are not required to pay more than is necessary, and choice suppliers are treated fairly (Duke Br. at 2-4). As discussed further below, RESA responds that Duke's enhanced firm balancing service is not currently undersubscribed, as the Company claims, and that the Company has successfully managed its system at lower levels. RESA adds that Duke's concern for problems that may occur in the future is insufficient to justify a fundamental alteration in the design of the choice program, particularly given that there are less restrictive means to ensure that suppliers continue to take service under Rider EFBS. RESA also counters that Duke's proposal would unjustly shift more costs from GCR customers to choice customers, arbitrarily discriminate against the approximately seven large suppliers with an MDQ above the 20,000 dth/day threshold, and unduly burden suppliers that have already entered into contracts for gas and capacity. (RESA Br. at 11-16; RESA Reply Br. at 3-4; Tr. at 33-34, 64-65, 80-82, 97, 110.)

B. OCC

OCC witness Hayes testified that Duke's additional costs for balancing the system through spot market purchases or losses on forced sales would be charged to the GCR mechanism and potentially passed through to GCR customers, which would cause an inappropriate cost shift from choice suppliers to GCR customers. Mr. Hayes stated that Duke's proposal to modify its balancing tariffs is a reasonable means to address the Company's balancing problems and to ensure that GCR customers do not pay costs associated with providing service to non-GCR customers. Additionally, Mr. Hayes recommended that, if the Commission approves modifications to the rates or terms of service under Riders FBS and EFBS, such modifications should not result in GCR customers being responsible for charges caused by the choice suppliers receiving balancing services from Duke. In its brief, OCC argues that Duke's application should be approved, because it will ensure that GCR customers are not held responsible for costs associated with balancing services provided to choice suppliers. (OCC Ex. 1 at 7-9; OCC Br. at 5-8.) RESA responds that OCC's support of Duke's proposal does not change the fact that there is no current problem requiring a long-term solution. According to RESA, there is no evidence in the record that GCR customers have paid too much for service or that Duke has incurred penalties or costly spot market purchases. (RESA Br. at 20-22; RESA Reply Br. at 3; Tr. at 16, 83.)

C. RESA

RESA witness Scarpitti testified that Duke's proposal is unreasonable, because it seeks to alter the settlement agreements that established the terms of the Company's choice program; would penalize the largest choice suppliers and harm the competitive market; and is based on a hypothetical Rider EFBS undersubscription that has not happened in the past and may not occur in the future. However, in the event that the Commission finds that Duke has identified a potential problem with its ability to manage its storage assets, Mr. Scarpitti proposed an interim contingency plan as an alternative to Duke's request. Specifically, Mr. Scarpitti recommended that a baseline amount of storage be established and assigned to choice suppliers and, if the baseline amount is not met through elections under Rider EFBS, Duke would allocate, on a pro rata basis, the shortfall to choice suppliers taking service under Rider FBS and with an MDQ over 1,000 dth (i.e., the threshold to elect Rider EFBS), which would then deliver gas in and out of storage pursuant to a preset schedule that would allow the Company to cycle through its storage assets. Using data from the winter of 2013-14, Mr. Scarpitti testified that a baseline amount representing nine percent of Duke's total firm transportation and residential firm transportation capacity requirement would be reasonable, given that the Company was able to manage its storage adequately during that winter, despite the fact that it was one of the coldest on record. Finally, Mr. Scarpitti recommended that, because a thorough review of Duke's asset mix and balancing tariffs is expected to occur in the Company's pending GCR proceeding, his alternative proposal should be approved through 2017-18. *In re Duke Energy Ohio, Inc.*, Case No. 15-218-GA-GCR (2015 GCR Case), Entry (Feb. 25, 2015). Mr. Scarpitti noted that this timeline would sufficiently enable choice suppliers to implement any major changes in the balancing services that may be adopted by the Commission in the 2015 GCR Case and to factor any increased costs into their retail contracts. (RESA Ex. 1 at 3-4, 6-7, 8, 11-12.)

In response, Duke contends that RESA's proposal is designed to serve RESA's interests and would not achieve a fair result between GCR and choice customers; would cause significant administrative burden for the Company; and would only be a temporary solution. Duke asserts that RESA's proposal sets forth an inadequate threshold and fails to permit sufficient flexibility to enable the Company to adjust its storage activity during volatile weather. (Duke Br. at 4-6; Duke Reply Br. at 4; Tr. at 94-96.) OCC argues that the Commission should not wait for Duke's balancing issues to become increasingly severe before resolving the issues. OCC emphasizes that Duke's ability to meet the needs of GCR customers without resorting to costly spot market purchases or sales has already been impacted by the undersubscription to Rider EFBS. OCC further argues that RESA's proposal would improperly shift costs caused by choice suppliers to GCR customers. (OCC Reply Br. at 2-4; Tr. at 66.)

RESA witness White testified that Duke's unilateral attempt to modify its balancing options is inappropriate, given that the riders were established based on stipulations and collaborative processes between the Company and several other parties. Mr. White further testified that Duke's pending management/performance (m/p) audit in the *2015 GCR Case* is the proper forum in which to discuss a long-term solution to the Company's balancing problems. Finally, Mr. White proposed that, if Duke's request is approved over RESA's objections, the Commission open a docket to address subsidies embedded in the Company's distribution rates that flow through to the GCR mechanism. (RESA Ex. 2 at 5-7, 9; RESA Br. at 10-11, 16; RESA Reply Br. at 5-6.) Duke, OCC, and Staff oppose this recommendation, arguing that RESA offered no analysis or other evidence of subsidies in Duke's distribution rates and, in any event, the present case is not the proper forum in which to address RESA's allegations (Duke Br. at 7-8; Duke Reply Br. at 4-5; OCC Br. at 8-10; Staff Reply Br. at 1-2; Tr. at 148-150).

RESA recommends, in its brief, that the Commission reject Duke's proposal and instead thoroughly review and modify, if necessary, the Company's choice program in the context of the *2015 GCR Case*. RESA reiterates that any change in Duke's assets or pricing should be done with enough forward notice so that the transition will occur smoothly and without a negative impact on choice suppliers. However, if the Commission finds that measures must be taken now to address Duke's concerns, RESA recommends that its interim contingency plan be adopted through the 2017-18 period, in order to allow a thorough review of the issues to take place in the *2015 GCR Case*. (RESA Br. at 16, 22-23.)

D. Staff

In its brief, Staff notes that, if too few choice suppliers elect balancing service under Rider EFBS on January 15, 2016, for the 2016-17 heating season, GCR customers may unreasonably be in the position of paying for storage that is not used effectively and for spot gas at the peak of demand. Staff also notes that the problem of insufficient elections under Rider EFBS may not occur and that, even if it does, it is difficult to anticipate the scope of the problem, given that it will be strongly affected by the winter weather. Staff, therefore, recommends that choice suppliers be required to take either the same level of service under Rider EFBS that they elected last January, or more if they wish. Staff believes that its proposal properly balances the concerns of all parties, although Staff emphasizes that Duke's winter spot market purchases for 2016-17 will need to be thoroughly audited to ensure that GCR customers are not unduly impacted. Finally, Staff asserts that a long-term solution to issues with Duke's capacity portfolio should be addressed following the m/p audit in the *2015 GCR Case*. (Staff Br. at 4-5.)

Duke responds that Staff's proposal has no support in the record and, in any event, would not resolve the balancing issues. Specifically, Duke points out that the amount of assigned enhanced firm balancing service is a function of each supplier's MDQ rather than a choice by the supplier; therefore, if the MDQ of the suppliers electing Rider EFBS goes down, another supplier would need to take service under the rider to maintain the Company's portfolio at the same level. Duke also objects to Staff's recommendation to defer a long-term resolution until after the m/p audit in the 2015 GCR Case, because the Company is ultimately responsible for effectively managing its supply and capacity portfolio to provide the best price to GCR customers, while an auditor's after-the-fact recommendations are not always adopted. (Duke Reply Br. at 1-3.) OCC asserts that Staff's proposal does not provide sufficient protection for GCR customers (OCC Reply Br. at 5-6).

III. Conclusion

The Commission finds that Duke's proposal to modify the terms under which choice suppliers and aggregators receive firm balancing service or enhanced firm balancing service, including the Company's related request to modify the FRAS and GTS tariffs, is reasonable and should be approved, with the modifications set forth below. Under Duke's current balancing service options, we recognize that, for any given year, there may be sufficient elections under Rider EFBS, such that the Company is sufficiently able to manage its system within interstate pipeline tariff requirements. The Commission, however, does not believe that it is prudent to wait to act on the problem identified by Duke or to defer a decision to a later date, given that the evidence of record indicates that the Company has previously experienced difficulty in managing its capacity portfolio. Specifically, with respect to the winter of 2014-15, Duke witness Kern explained that, due to growth in the choice program and a decrease in the number of choice suppliers and aggregators electing enhanced firm balancing service, the Company was faced with insufficient firm transportation in relation to storage, and was forced to buy approximately 2,000,000 dth of spot gas, in order to keep its storage from being withdrawn too quickly and to avoid the pipeline penalties that would have otherwise occurred. During the winter of 2013-14, Duke's spot purchases amounted to 1,000,000 dth. Mr. Kern further explained that the costs associated with such spot purchases during cold periods or any losses on forced sales in warmer weather are charged to Duke's GCR mechanism and potentially recovered from GCR customers. (Duke Ex. 2 at 6, Attach. JLK-3; Tr. at 94.) The Commission agrees with Duke that this outcome would not result in fair, just, and reasonable rates for the Company's GCR customers, or an equitable sharing of storage costs between GCR and choice customers.

Staff and RESA recommend that a long-term solution be addressed following the m/p audit in the 2015 GCR Case. In response to their recommendation, the Commission takes administrative notice of the m/p audit report, which was docketed on

December 9, 2015, in the *2015 GCR Case*. In the m/p audit report, Exeter Associates, Inc. (Exeter), which was selected by the Commission to perform Duke's m/p audit for the period of September 2012 through August 2015, includes its analysis and assessment of the issues raised by the parties in the present case, including an evaluation of Duke's and RESA's proposals, as part of Exeter's comprehensive review of the Company's gas supply procurement and management functions. Exeter notes that its audit confirms that, under Duke's existing capacity assignment procedures and balancing service options, the Company may be left with insufficient firm transportation capacity, which may have an adverse impact on the gas costs of GCR customers. Exeter further notes that it did not identify any alternatives to Duke's assignment of storage to choice suppliers through enhanced firm balancing service that would maintain a balance in the allocation of capacity costs to GCR customers and firm transportation customers. (Audit Report at 78-79.)

With respect to Duke's proposed mandatory 20,000 dth/day threshold, Exeter points out that choice suppliers may decide to intentionally reduce the number of customers that they serve, as a means to avoid being required to take service under Rider EFBS, which would again leave the Company with insufficient firm transportation capacity. Regarding RESA's proposal, Exeter advises that a 1,000 dth/day threshold may result in disproportionate allocations of storage to smaller choice suppliers. Exeter concludes that an aggregate daily demand threshold of 6,000 dth/day is an appropriate solution to avoid these issues and to ensure consistency with the aggregate daily demand quantity at which capacity is assigned to choice suppliers under Duke's firm transportation program. (Audit Report at 79.)

Accordingly, the Commission finds that Exeter's recommended 6,000 dth/day threshold is reasonable, properly balances the parties' positions, and should be adopted.¹ The Commission, however, acknowledges RESA's concerns regarding the timing of changes to Duke's balancing services and the potential impact on suppliers' current contracts (RESA Ex. 1 at 11-12). For this reason, we find it appropriate to adopt Staff's recommendation on an interim basis, such that, for the 2016-17 heating season, choice suppliers should take either the same level of service under Rider EFBS that they elected for 2015-16, or more if they prefer. Consistent with Staff's recommendation, we note that any winter spot market purchases for 2016-17 should be thoroughly audited to ensure that GCR customers are not unduly impacted. Finally, the Commission finds that RESA witness White's recommendations should not be adopted at this time, as they are outside the scope of this proceeding.

¹ We note that Exeter's recommendations regarding Duke's storage levels and any other balancing issues will be addressed in the *2015 GCR Case*.

Duke should file revised tariffs, consistent with the modifications set forth in this Opinion and Order, to take effect on a date not earlier than the date upon which the final tariff pages are filed with the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a public utility as defined in R.C. 4905.02 and a natural gas company under R.C. 4905.03, and, as such, is subject to the jurisdiction of this Commission.
- (2) On January 15, 2015, Duke filed its application in this case.
- (3) Initial and reply comments were filed by the parties on February 12, 2015, and February 19, 2015, respectively.
- (4) By Finding and Order issued on March 25, 2015, the Commission authorized Duke to adjust the Rider FBS and Rider EFBS rates and found that further review was necessary with respect to the other tariff modifications proposed in the Company's application.
- (5) The hearing in this matter was held on August 4, 2015.
- (6) Briefs and reply briefs were filed by the parties on September 4, 2015, and September 18, 2015, respectively.
- (7) Duke's application to modify the terms under which choice suppliers and aggregators receive firm balancing service or enhanced firm balancing service, including the Company's related request to modify the FRAS and GTS tariffs, is reasonable, supported by the evidence of record, and should be approved, as modified by this Opinion and Order.
- (8) Duke should be authorized to file revised tariffs, consistent with this Opinion and Order.

ORDER:

It is, therefore,

ORDERED, That Duke's application to modify its FBS, EFBS, FRAS, and GTS tariffs be approved, as modified by this Opinion and Order. It is, further,

ORDERED, That Duke be authorized to file tariffs, in final form, consistent with this Opinion and Order. Duke shall file one copy in this case docket and one copy in its TRF docket. It is, further,

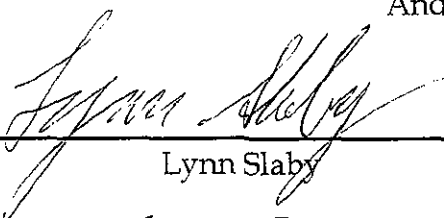
ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

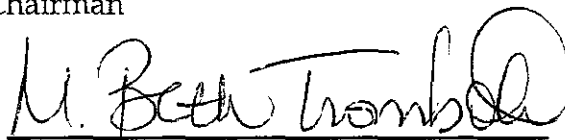
THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



Lynn Slaby



M. Beth Trombold



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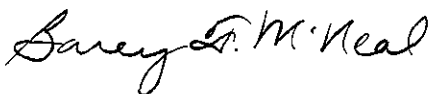


Thomas W. Johnson

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Barcy F. McNeal
Secretary