BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING OF INTERSTATE GAS SUPPLY, INC., AND THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) initiated this proceeding in order to modify rates in Rider FBS (Firm Balancing Service) and Rider EFBS (Enhanced Firm Balancing Service) and to modify the terms under which suppliers might choose either FBS or EFBS. The Company explained in its application and in supporting testimony that competitive retail natural gas suppliers had more recently been electing to predominantly choose FBS rather than EFBS, resulting in difficulty in managing the Company's storage balance and necessitating the purchase of additional gas in the spot market during colder than normal winters or to otherwise sell gas into the spot market during warmer than normal winters. The additional costs for these spot purchases or any losses on sales, as well as the demand charges for storage needed to balance the entire system are borne by Gas Cost Recovery (GCR) customers.

After a hearing was held, the Commission issued an Opinion and Order that concluded that the Company's proposal to modify the terms of its FBS and EFBS services was reasonable but warranted modification. The Commission decided that due to timing concerns, it would adopt the Staff's recommendations such that, for 2016-2017 heating season, choice suppliers

should take the same level of service under Rider EFBS that they elected for the previous heating season, or more if they prefer. The Commission also determined that beginning with the election in January 2017, suppliers with a Maximum Daily Quantity (MDQ) of 6,000 dekatherms (dth)/day or higher would be required to take service under Rider EFBS.

Interstate Gas Supply, Inc., (IGS) and the Retail Energy Supply Association, (RESA) both oppose the Commission's decision and have sought rehearing. As the Applications for Rehearing of both parties were similar, Duke Energy Ohio addresses both in this Memorandum Contra.

II. DISCUSSION

A. Administrative Notice of the Exeter Report

In its Opinion and Order, the Commission took notice of an auditor's report in a related proceeding. In the Company's annual audit of its GCR management performance, the Commission ordered an audit to be performed by Exeter Associates, Inc., (Exeter). Exeter submitted its Report on the Management and Performance Audit of Duke Energy Ohio's Gas Procurement Practices and Policies, (Report) on December 9, 2015.[1] The Opinion and Order in this proceeding was rendered on January 6, 2016. IGS and RESA argue that the Commission's taking of administrative notice in its Opinion and Order in this case was improper because the hearing in this case had been held in August and the evidentiary record had closed.[2] Principally IGS and RESA argue that they have not had an opportunity to review and respond to the audit report, nor to examine the auditor at hearing on the record.

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[1] *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, et al., Report on the Management and Performance Audit of Duke Energy Ohio's Gas Procurement Practices and Policies, (December 9, 2015).

[2] RESA Application for Rehearing at p.4 and IGS Application for Rehearing at p.16.

However, IGS and RESA have both sought intervention in the Company's GCR proceeding. In their respective late-filed Motions to Intervene, both parties explicitly stated that their interest in the GCR proceeding related to the Exeter Report.[3] In an Entry granting the motion to intervene of IGS, the Attorney Examiner noted that the Commission had decided that the Exeter Report would be addressed in the GCR proceeding. Because of this, IGS was granted intervention into that case. Thus, IGS and RESA's arguments concerning the taking of administrative notice is of no consequence, as they will have ample opportunity for due process with respect to the Exeter Report in the GCR case. In the meantime, the Commission has opted to take the middle ground approach in this proceeding, which approach is thoughtful and reasonable under the circumstances, and allows affected suppliers sufficient time to adjust operations accordingly. If the Commission elects to grant rehearing in this case, it can delay an opinion on rehearing until the GCR proceeding has been heard and briefed, and they take administrative notice again, as needed.

B. The 6,000 dth per day Threshold is Appropriate

IGS and RESA both argue that the Commission unreasonably selected a 6,000 dth per day threshold and again point to the Commission's reliance on the Exeter Report. However, the Commission set forth its reasoning in the Opinion and Order, explaining that it did not agree with the Company's recommended threshold of 20,000 because, as Exeter points out, suppliers could then decide to intentionally reduce the number of customers served, as a means to avoid being required to take service under EFBS and that would again leave the Company with insufficient firm transportation capacity. The Commission has reached an interim determination

[3] *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, Motion to Intervene of Interstate Gas, Inc., (January 14, 2016) at p.3 and Motion to Intervene of the Retail Energy Supply Association, (February 4, 2016) at p.3.

with respect to how to proceed in the near term. Parties will have an opportunity to probe the Auditor's Report in the GCR proceeding. To the extent changes are warranted, such changes can be made in the GCR case. Thus, rehearing on this issue in this proceeding is unnecessary and should be denied.

Additionally, IGS and RESA's comments regarding the selection of an appropriate threshold amount are obviously self-serving. To the extent the threshold is lowered to the suggested 1,000 dth/day as suggested, suppliers with an MDQ of 1,001 dth/day would get about 870 dth of EFBS. That would amount to 87% of the peak load for that supplier. The impact of IGS and RESA's recommendation fails to recognize the unfair impact this would have on smaller suppliers. The Commission, unlike IGS and RESA, must take into account fairness for all stakeholders. It has done so in this proceeding and should not be called upon to second guess its decision in respect of only a few stakeholders.

RESA's argument on rehearing adds nothing new to the record or to its argument on brief in this case and its application for rehearing should be denied. Likewise, IGS merely reiterated its same arguments and for the same reasons likewise should be denied. Moreover, both parties neglect to cite any of the testimony provided by Duke Energy Ohio witness Jeff L. Kern had recommended a threshold of 20,000 dth a day.[4] Although the Commission opted for a different level, neither IGS nor RESA has demonstrated, contrary to Mr. Kern's testimony that the balance they recommend is better than the balance recommended by Mr. Kern, the person who has daily responsibility for managing this program.[5]

[4] Duke Energy Ohio Exh.2 at p.2.
[5] Duke Energy Ohio Exh.2 at p.1.

C. The Timing of Changes to the Program Was Properly Chosen

RESA and IGS both argue that the Commission should have deferred implementing any changes until it could do a more extensive review of the issue. In support of this view, RESA argues that the Commission should have approved its interim proposal through the 2017-2018 gas years.[6] The Company filed its application in this proceeding on January 12, 2015. Based on the Commission's decision in this case, the affected suppliers would receive storage withdraw rights for the winter starting November 1, 2017. That's nearly two years. If RESA's members or IGS had ten-year, long term contracts, presumably, they would then be requesting an interim solution until 2026, all to the detriment and at the expense of GCR customers. The interim solution should not be tailored to one supplier's contractual obligations, again, at the expense of GCR customers. It is imperative that the Commission act to correct the risk inherent in the current program. The Commission correctly opted for a middle ground of sorts, by holding the status quo for at least a year.

D. IGS and RESA's Analysis is Incomplete and Misleading

As an introduction to IGS's argument for rehearing, IGS provided a table purporting to demonstrate that EFBS subscription from 2007 to 2016 has been relatively stable and that therefore there is no need for concern about potential subscription for EFBS service.[7] However, what IGS fails to acknowledge is that participation in the choice program has grown significantly. While 60,000 dth of EFBS was adequate in 2007/08 when the total Maximum Daily Quantity of the choice program was 185,000 dth, it is certainly not adequate when the MDQ is over 450,000 dth/day such as it is today. EFBS represented 32% of the total choice

[6] Application for Rehearing of the Retail Energy Supply Association, (February 5, 2016) at p. 9
[7] Application for Rehearing of Interstate Gas Supply, Inc. at p.9.

MDQ back in 2007/08, but the EFBS election represents only 11% today. Thus, in seeking to make a point, IGS is significantly misrepresenting the reality of the problem.

Duke Energy Ohio demonstrated at hearing that there are risks created by allowing suppliers to lean on the Company's portfolio, namely that the Company would be required to make costly spot purchases or sales. In an effort to support its self-serving argument, IGS pointed out that suppliers often purchase natural gas on the spot market. However, these suppliers do not have Provider of Last Resort (POLR) responsibility. Undeniably, it would be imprudent for Duke Energy Ohio to rely on the same methods as third party suppliers who have no POLR responsibility. The Company's management of its portfolio cannot be likened to that of a competitive supplier for this reason.

IGS and RESA argue that the Commission should have relied upon RESA witness Thomas Scarpitti's proposed interim solution to the exclusion of others because it is claimed that Mr. Scarpitti's solution is superior for reasons set forth in the IGS and RESA's memos. However, Mr. Scarpitti's proposal would significantly increase the administrative burden on the company without alleviating the problem. The fact that Duke Energy Ohio was able to manage through a cold winter with only 41,400 dth/day of EFBS (with rather extensive spot purchases) does not mean that the Company could have gotten through a warmer than normal winter without selling off gas at a loss to meet storage requirements, or having gas confiscated by the pipeline. Duke Energy Ohio must maintain enough Firm Transportation to effectively manage storage in any winter. Simply put, a threshold of 41,400 dth does not come close to solving the problem of managing storage.

E. RESA's Unfounded Allegations

RESA took the opportunity in this case to raise issues that it has advocated in many other proceedings, namely that there is an anticompetitive subsidy flowing to GCR customers from gas shopping customers.[8] RESA again argues that the Commission must perform a comprehensive review to identify what it alleges are existing subsidies in distribution rates. The Commission properly opted to respond otherwise and in the Opinion and Order correctly noted that matters raised by RESA witness White were "outside the scope of this proceeding."[9]

The Commission is well within its authority to determine what matters are to be addressed in a case that is before it. This case was instituted to determine how best to resolve issues related to the Company's portfolio management and to ensure fairness for all parties involved. RESA's allegations regarding alleged subsidies are not pertinent and in any case, are wholly unsupported by facts. Accordingly, the Commission's Opinion and Order was proper and the Commission should deny RESA's request for rehearing.

Moreover, RESA argues that Duke Energy Ohio is "unilaterally" altering the terms of a negotiated settlement agreement. However, this case has been pending before the Commission since January of 2015. During that time, IGS and RESA are the only parties that deemed it to be in their own interests to intervene. Any interested stakeholder could otherwise intervene and participate in the matter. There was nothing unilateral about the proceeding and no party has been deprived of appropriate due process.

III. CONCLUSION

For all of the foregoing reasons, Duke Energy Ohio respectfully requests that the Commission deny the motions for rehearing of IGS and RESA.

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[8] RESA Exhibit 2, Testimony of Matthew White at p.8.
[9] Opinion and Order at p.9.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 11th day of February, 2016 by U.S. mail, postage prepaid, or by electronic mail transmission upon the persons stated below .

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Summary: Memorandum Memorandum Contra the Applications for Rehearing of Interstate Gas Supply, Inc., and the Retail Energy Supply Association electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.