THE PUBLIC UTILITIES COMMISSION OF OHIO

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| IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC. FOR APPROVAL TO MODIFY RIDER FBS, RIDER EFBS, RIDER FRAS, AND RIDER GTS. | CASE NO. 15-50-GA-RDR |

*SECOND ENTRY ON REHEARING*

Entered in the Journal on October 12, 2016

## I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing of the January 6, 2016 Opinion and Order, which approved, with modifications, an application filed by Duke Energy Ohio, Inc. to amend its balancing tariffs.

## II. DISCUSSION

{¶ 2} 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.

{¶ 3} R.C. 4909.18 provides, in part, that a public utility may file an application to establish any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing.

{¶ 4} On March 21, 2007, in Case No. 05-732-EL-MER, et al., the Commission approved a stipulation, which, among other issues, 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).

**{¶ 5}** On January 15, 2015, in the above-captioned proceeding, Duke filed, pursuant to R.C. 4909.18, an application 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. In the application, Duke noted 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, proposed to make enhanced firm balancing service mandatory for gas suppliers and aggregators that have a maximum daily quantity (MDQ) greater than or equal to 20,000 dekatherms (dth)/day, while gas 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.

**{¶ 6}** 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.

**{¶ 7}** 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.

{¶ 8} The hearing convened, as scheduled, on August 4, 2015.

{¶ 9} By Opinion and Order issued January 6, 2016, the Commission modified and approved Duke's application to modify the terms under which choice suppliers and aggregators receive either firm balancing service or enhanced firm balancing service, as well as the Company's related proposal to modify the FRAS and GTS tariffs. In the Opinion and Order, the Commission noted that Exeter Associates, Inc. (Exeter) performed Duke's management/performance (m/p) audit for the period of September 2012 through August 2015, which was then pending in another proceeding, and included an analysis and assessment of the issues raised by the parties in the present case. *In re Duke Energy Ohio, Inc.*, Case No. 15-218-GA-GCR (*2015 GCR Case*), Entry (Feb. 25, 2015). Taking administrative notice of the m/p audit report, the Commission found, consistent with the evidence of record and Exeter's recommendation, that a mandatory threshold of 6,000 dth/day for Duke's enhanced firm balancing service should be approved. The Commission also adopted Staff's recommendation for an interim period. Specifically, for the 2016-17 heating season, the Commission determined that choice suppliers should take either the same level of service under Rider EFBS that they elected for 2015-16, or more if they prefer. Opinion and Order at 8-9.

{¶ 10} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters

determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

**{¶ 11}** On February 5, 2016, applications for rehearing of the Commission's Opinion and Order were filed by Duke, IGS, and RESA. Memoranda contra the various applications for rehearing were filed by Duke, RESA, and OCC on February 16, 2016.

**{¶ 12}** By Entry on Rehearing dated February 24, 2016, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing.

**{¶ 13}** The Commission has reviewed and considered all of the arguments raised in the applications for rehearing. Any argument that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

*A. Selection of Threshold*

**{¶ 14}** As its first ground for rehearing, RESA argues that the Commission unreasonably and unlawfully took administrative notice of the m/p audit report docketed in the *2015 GCR Case* on December 9, 2015, which was approximately four months after the evidentiary hearing closed and three months after briefs were filed in the present proceeding. RESA points out that neither Duke nor the intervenors were presented with an opportunity to cross-examine the auditor or to rebut or respond to any of the statements in the m/p audit report, which, according to RESA, is prejudicial and contrary to Ohio Supreme Court precedent. *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1, 647 N.E.2d 136 (1995); *Allen v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 532 N.E.2d 1307 (1988); *Forest Hills Util. Co. v. Pub. Util. Comm.*, 39 Ohio St.2d 1, 313 N.E.2d 801 (1974).

**{¶ 15}** Similarly, IGS claims, in its first ground for rehearing, that the Commission unlawfully and unreasonably took administrative notice of, and relied upon, an audit

report issued in a separate proceeding after briefing was completed in this case, in violation of R.C. 4903.09 and due process. *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1, 647 N.E.2d 136 (1995); *Allen v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 532 N.E.2d 1307 (1988); *Forest Hills Util. Co. v. Pub. Util. Comm.*, 39 Ohio St.2d 1, 313 N.E.2d 801 (1974); *West Ohio Gas Co. v. Pub. Util. Comm.*, 294 U.S. 63 (1935). Specifically, IGS argues that it was improper for the Commission to take notice of the m/p audit report, because it was not introduced into evidence during the hearing in this case and, therefore, no party had the opportunity to explain or rebut the information in the audit report. IGS adds that the Commission improperly relied upon the audit report to reduce Duke's burden of proof to demonstrate that it is necessary to modify its balancing tariffs and to show how they should be modified. IGS further argues that, under R.C. 4903.09, the Commission cannot rely upon evidence that is not part of the record in this proceeding. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999); *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 301 U.S. 292 (1937). Finally, IGS argues that, contrary to R.C. 4903.09, the Commission dismissed RESA's interim proposal without any analysis.

**{¶ 16}** RESA's second ground for rehearing is that the Commission unreasonably and unlawfully selected a 6,000 dth/day threshold, which, according to RESA, was not based on the record, is arbitrary and inconsistent with the evidence of record, and is contrary to state policy. RESA argues that the Commission should not have relied on the recommended 6,000 dth/day threshold in the m/p audit report in the *2015 GCR Case*, because it is not evidence in the record in this case. RESA adds that the 6,000 dth/day threshold is not consistent with RESA witness Scarpitti's proposal, which RESA believes would provide a more even playing field for choice suppliers, or with the state policy in R.C. 4929.02(A)(7) to promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition.

**{¶ 17}** Like RESA, IGS also asserts, as its third ground for rehearing, that the Commission's selection of the 6,000 dth/day threshold is arbitrary, unlawful, and unreasonable and not supported by the record evidence. According to IGS, there is

nothing to support the 6,000 dth/day threshold other than the m/p audit report that was not admitted into the record or subject to cross-examination. IGS recommends that, to the extent that enhanced firm balancing service is determined to be mandatory in any year, the Commission should reduce the threshold to 1,000 dth/day, with process-only customers being excluded from the requirement.

**{¶ 18}** RESA's fourth ground for rehearing is that the Commission unreasonably and unlawfully failed to adopt RESA's interim proposal. RESA argues that the adoption of its interim proposal would provide a fair solution if an undersubscription occurs, while a permanent solution is developed following a full audit and review of Duke's choice program and balancing services. RESA asserts that its interim proposal would ensure that choice suppliers, regardless of size, are treated fairly, while also making sure that any cost increases are known far enough in advance to protect suppliers.

**{¶ 19}** For its fifth ground for rehearing, RESA contends that the Commission violated R.C. 4903.09, by unreasonably and unlawfully failing to set forth in its decision the reasons why Exeter's recommendation, which was not in evidence, should be adopted over RESA's interim proposal, which was introduced into evidence. RESA contends that the Opinion and Order does not explain why RESA's interim proposal was not adopted by the Commission.

**{¶ 20}** In response to the arguments raised by both IGS and RESA, OCC asserts that there are no grounds for rehearing based on the Commission's taking administrative notice of the m/p audit report. Specifically, OCC maintains that IGS and RESA have misread the Opinion and Order, because the Commission did not actually accept or rely on the findings in the audit report, but instead merely noted that the 6,000 dth/day threshold recommended in the audit report is reasonable. OCC notes that the Commission relied on Staff's recommendations rather than the audit report. OCC further notes that the Commission recognized that the proper place to address the audit report, including the 6,000 dth/day threshold, is in the *2015 GCR Case*, which will provide IGS

and RESA an opportunity to cross-examine the audit report's sponsor, rebut and otherwise respond to the audit report, and present witnesses and exhibits at a hearing addressing the audit report.

**{¶ 21}** OCC also argues that IGS and RESA have not suffered any prejudice from the Commission's taking administrative notice of the m/p audit report. *Allen v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 532 N.E.2d 1307 (1988); *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 12 Ohio St.3d 280, 466 N.E.2d 848 (1984). OCC reiterates that the Opinion and Order was based on Staff's recommendations rather than the audit report. OCC asserts, therefore, that there is no merit in the claim that Duke's burden of proof was modified by the Commission. OCC adds that the Opinion and Order cites ample evidence provided by Duke in this proceeding that supports the same findings in the audit report. OCC points out that, regardless of the audit report, the record in this case establishes that Duke had insufficient firm transportation in relation to storage, the Company had considered several possible solutions, and a threshold under 20,000 dth/day was reasonable for the Company's purposes.

**{¶ 22}** In response to IGS' and RESA's arguments regarding administrative notice of the m/p audit report, Duke points out that such arguments are of no consequence, as IGS and RESA have intervened in the *2015 GCR Case* and will, therefore, have ample opportunity for due process with respect to the audit report. Noting that the Commission set forth its reasoning in the Opinion and Order, Duke also asserts that the 6,000 dth/day threshold is appropriate and fair to all stakeholders, while IGS and RESA have offered a self-serving recommendation that would unjustly impact smaller choice suppliers.

**{¶ 23}** In the Opinion and Order, the Commission concluded that Duke's proposal to modify the terms under which choice suppliers and aggregators receive firm balancing service or enhanced firm balancing service is reasonable and should be approved, as modified by the Commission. We noted that the record reflects that Duke has experienced difficulty in managing its capacity portfolio. Specifically, as a result of

growth in the choice program and a decrease in the number of choice suppliers and aggregators electing enhanced firm balancing service, Duke was compelled to purchase approximately 2,000,000 dth of spot gas during the winter of 2014-15, 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 purchased 1,000,000 dth of spot gas. 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 5-6, Att. JLK-3; Tr. at 94, 97.) The Commission agreed 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. Opinion and Order at 8.

**{¶ 24}** *The record reflects that Duke and OCC recommended a mandatory* enhanced firm balancing service threshold of 20,000 dth/day, which was supported by the testimony of Company witness Kern and OCC witness Hayes (Duke Ex. 2 at 5-7, 10-11, Att. JLK-3, Att. JLK-6; OCC Ex. 1 at 7-9). RESA, however, 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 (RESA Ex. 1 at 6-7, 8). In the Opinion and Order, the Commission determined that a threshold of 6,000 dth/day is reasonable and consistent with Exeter's recommendations in the m/p audit report from the *2015 GCR Case*. Opinion and Order at 9.

**{¶ 25}** *With respect to the arguments raised in the applications for rehearing filed* by RESA and IGS, the Commission finds no merit in their contention that the Commission erred in taking administrative notice of the m/p audit report. The Commission may take administrative notice of information in another docket, if the parties have had an opportunity to prepare and respond to the information and they are not prejudiced by the administrative notice. *Allen v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 532 N.E.2d 1307

(1988). In this case, Duke provided ample evidence to support a 6,000 dth/day threshold for mandatory enhanced firm balancing service. Regardless of Exeter's recommendations in the m/p audit report, the record reflects that Duke has experienced difficulty in managing its capacity portfolio and that, following consideration of several potential solutions to the balancing problem, the Company determined that a threshold somewhere in the range of 6,000 dth/day to 20,000 dth/day would be sufficient to remedy the problem (Duke Ex. 2 at 5-7, 10, Att. JLK-3, Att. JLK-6; Tr. at 65-66, 87-88, 94).

**{¶ 26}** Specifically, Duke witness Kern's direct testimony shows the effect of varying thresholds, including 6,000 dth/day, on the Company's capacity portfolio (Duke Ex. 2 at Att. JLK-6). As Mr. Kern explained, although Duke recommended a threshold of 20,000 dth/day, the effect on the Company's capacity portfolio varies little if the threshold is set at 20,000 dth/day, 10,000 dth/day, or 6,000 dth/day (Duke Ex. 2 at 10, Att. JLK-6; Tr. at 65, 87). Mr. Kern also testified, on cross-examination by counsel for IGS, that a threshold of 6,000 dth/day would address Duke's balancing concerns (Tr. at 87-88). Mr. Kern explained that the goal of Duke's application is to "get enough of the suppliers to have the enhanced firm balancing service so we can effectively manage the system" (Tr. at 66).

**{¶ 27}** Therefore, solely from Mr. Kern's testimony, it should have been evident to the parties that the Commission's adoption of a 6,000 dth/day threshold was a distinct possibility in this case. RESA and IGS were offered ample opportunity to respond to Mr. Kern's testimony indicating that a threshold lower than 20,000 dth/day would resolve Duke's balancing problem and, in fact, RESA witness Scarpitti directly acknowledged the Company's position on this point (RESA Ex. 1 at 8). For this reason, we find no error in taking administrative notice of Exeter's recommended 6,000 dth/day threshold in the m/p audit report, given that the same threshold was also supported in the record by Mr. Kern, with a full and fair opportunity for IGS and RESA to respond to his testimony through cross-examination and post-hearing briefing. As the Commission's adoption of a 6,000 dth/day threshold is supported by the record in this case, we do not agree that

RESA and IGS have been prejudiced by our decision to take administrative notice of Exeter's recommendation. Further, we note that RESA and IGS, as parties to the *2015 GCR Case*, were provided an opportunity, in that case, to present testimony and exhibits at the hearing addressing the m/p audit report, cross-examine the m/p auditor, submit post-hearing briefs, and otherwise fully respond to the m/p audit report, including the recommended 6,000 dth/day threshold for mandatory enhanced firm balancing service. Following a review of the record in the *2015 GCR Case*, the Commission declined RESA's and IGS' request to revisit the 6,000 dth/day threshold and instead noted that the issue would be addressed in the present case. *2015 GCR Case*, Opinion and Order (Sept. 7, 2016) at 29-30.

**{¶ 28}** Regarding the Commission's decision not to adopt RESA's interim proposal, the Opinion and Order in this case thoroughly described and addressed the proposal. Specifically, RESA proposed that, if an established baseline amount of storage 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/day, which is the threshold to elect Rider EFBS. These choice suppliers would then deliver gas in and out of storage pursuant to a preset schedule that would allow Duke to cycle through its storage assets. The Opinion and Order also addressed Duke's response to RESA's interim proposal, noting that, according to the Company, the proposal would fail to provide an adequate threshold or sufficient flexibility to enable the Company to adjust its storage activity during volatile weather, as well as create a significant administrative burden for the Company. Opinion and Order at 6.

**{¶ 29}** Having fully addressed the parties' positions, the Commission ultimately concluded that Duke's proposal should be adopted, with modifications, and the basis for this decision was thoroughly set forth in the Opinion and Order. Opinion and Order at 8-9. With respect to RESA's interim proposal, we specifically noted that a 1,000 dth/day threshold may result in disproportionate allocations of storage to smaller choice suppliers. Opinion and Order at 9. Duke's balancing tariffs provide that enhanced firm

balancing service allocations are based on increments of 3,000 dth/day (Duke Ex. 1 at Att. 4A). This means that a supplier with an MDQ of 1,000 dth/day is allocated the same portion of enhanced firm balancing service as a supplier with an MDQ of 3,000 dth/day. Given this allocation provision in the balancing tariffs, and with a mandatory enhanced firm balancing service threshold set at 1,000 dth/day, as RESA proposed, the Commission agrees with Exeter's conclusion that smaller suppliers that just meet the threshold would be allocated an excess proportion of enhanced firm balancing service and a de minimus portion of storage (Audit Report at 79). We, therefore, affirm our decision to adopt a higher threshold.

**{¶ 30}** Further, Duke witness Kern testified that RESA's interim proposal would not resolve the Company's balancing issues. Among other concerns with the proposal, Mr. Kern explained that RESA witness Scarpitti's recommended baseline amount of storage, which was based on the winter of 2013-14, failed to account for several pertinent factors, such as the Company's spot market purchases in that winter. Mr. Kern also testified that RESA's interim proposal would create an administrative burden for the Company, afford the Company insufficient flexibility to react to market and weather conditions, and result in an unfair distribution of costs flowing to the Company's GCR customers. (Tr. at 85, 93-96.) For these reasons, we find that our decision to adopt Duke's proposal, with modifications, rather than RESA's interim proposal, was reasonable, as well as thoroughly explained and supported by the record.

### *B. Timeframe for Implementation*

**{¶ 31}** As its third ground for rehearing, RESA maintains that the Commission unreasonably and unlawfully failed to establish an appropriate timeframe for implementing mandatory enhanced firm balancing service and that the Commission, based on the record, was required to clearly address how firm balancing service and enhanced firm balancing service should be implemented after April 2017. RESA notes that one of its largest concerns is the timing of the implementation of the change to Duke's balancing services. According to RESA, any major change in the balancing services

should not commence until after the 2017-18 heating season, which would allow choice suppliers to carefully examine the options and rationally plan for the change. RESA asserts that the inappropriate timing of the change approved in the Commission's decision will undermine contracts entered into based upon the existing balancing rate structure and leave choice suppliers with stranded capacity. RESA, therefore, urges the Commission to either adopt RESA's interim proposal or extend the implementation date for mandatory enhanced firm balancing service until April 2018.

**{¶ 32}** IGS asserts, as its second ground for rehearing, that the Opinion and Order is unlawful, unjust, and unreasonable, because it undermines the contracts of choice suppliers and will leave them with stranded excess pipeline capacity. IGS emphasizes that choice suppliers have already entered into long-term contracts, based upon the existing balancing rate structure, that they are unable to decontract prior to 2017. According to IGS, the Commission should either adopt RESA's interim proposal or delay the mandatory enhanced firm balancing service implementation date until April 2018.

**{¶ 33}** With respect to the timing issue raised by IGS and RESA, Duke points out that choice suppliers have already been afforded nearly two years to prepare for the change to the Company's balancing services. Duke argues that the transition period provided by the Commission is proper, whereas IGS and RESA seek an interim solution with timing that is tailored to their own interests, at the expense of GCR customers. Duke adds that RESA's interim proposal would significantly increase the administrative burden on the Company, without alleviating the problem. Duke emphasizes that it must be able to manage storage in any given winter, without relying on costly spot market purchases or sales.

**{¶ 34}** In the Opinion and Order, the Commission acknowledged RESA's concerns regarding the timing of the change to Duke's balancing services and the potential impact on choice suppliers' current contracts. We, therefore, directed, consistent with Staff's recommendation, 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. We also noted that any winter spot market purchases for 2016-17 should be thoroughly audited to ensure that GCR customers are not unduly impacted. Opinion and Order at 9. The Commission believes that this one-year transition period is a reasonable means to provide adequate notice and preparation time to choice suppliers, while also protecting GCR customers. As Duke notes, choice suppliers have been afforded approximately two years in which to prepare for the change to Duke's balancing services, dating back to January 15, 2015, when the Company filed its proposal, and continuing through the Commission-approved implementation date of April 1, 2017. Accordingly, we find that RESA's and IGS' requests for rehearing on this issue should be denied.

### *C. Comprehensive Review of Duke's Choice Program*

**{¶ 35}** As its sixth ground for rehearing, RESA asserts that the Commission unreasonably and unlawfully adopted a dramatic change to Duke's balancing services prior to undertaking a thorough and comprehensive review of the Company's balancing system and choice program. Specifically, RESA claims that the Commission should have examined the entirety of the costs associated with Duke's choice program and addressed alleged subsidies flowing to the GCR through the Company's distribution rates.

**{¶ 36}** IGS also contends, in its fourth ground for rehearing, that the Opinion and Order is unlawful and unreasonable, because it modified Duke's balancing tariffs without a comprehensive review of the Company's rate structures, including alleged subsidies in distribution rates. IGS asserts that, given the elimination of larger choice suppliers' option to elect firm balancing service, the Commission should have examined the entirety of the costs associated with Duke's choice program, in order to identify subsidies flowing to the GCR and promote the state policies set forth in R.C. 4929.02(A)(2) and (A)(7).

{¶ 37} In response, OCC asserts that RESA and IGS have offered the same arguments that the Commission already considered and rejected in the Opinion and Order. According to OCC, the Commission should again reject RESA's and IGS' request for a review of Duke's choice program.

{¶ 38} Duke asserts that the Commission properly rejected, as outside the scope of this proceeding, RESA's recommendation for a comprehensive review of alleged subsidies in the Company's distribution rates. Duke notes that this case was initiated to determine how best to resolve issues related to its portfolio management, while ensuring fairness for all parties. According to Duke, RESA's allegations of subsidies flowing to GCR customers are not pertinent to the issues and, in any event, are wholly unsupported.

{¶ 39} In the Opinion and Order, the Commission declined to adopt RESA witness White's recommendation that the Commission conduct a comprehensive review of Duke's choice program and alleged subsidies flowing to the GCR through the Company's distribution rates. Opinion and Order at 9. We again find that the RESA's and IGS' request for a review of Duke's choice program is beyond the scope of this proceeding. As Duke notes, the Company filed its application in this proceeding, requesting approval to modify its balancing tariffs, for the specific purpose of ensuring that the Company has sufficient firm transportation capacity to manage storage, provide balancing services, and serve its GCR customers. Although the Commission has concluded that modifications to Duke's balancing tariffs are warranted, we do not agree with RESA and IGS that the modifications necessitate a review of the Company's distribution rates. With respect to RESA's request for a review of Duke's balancing system, we note that Exeter's m/p audit included a thorough assessment of the Company's performance in areas such as gas supply planning, capacity utilization and procurement activity, and transportation service, including a review of balancing requirements and balancing services. As discussed above, RESA and IGS fully participated in the hearing and briefing addressing the balancing and other issues identified in the m/p audit report in the *2015 GCR Case*. Accordingly, RESA's and IGS' requests for rehearing on this issue should be denied.

*D. Process-Only Customers*

**{¶ 40}** In its first ground for rehearing, Duke argues that the Opinion and Order does not address the issue of process-only customers, as raised by Exeter in the m/p audit report. Specifically, Duke notes that the audit report states:

> Load for process-only customers is not weather dependent in the same way as heating customer load, and process-only load customers do not necessarily take deliveries on a daily basis. This would make it impractical for suppliers serving process-only load customers to manage EFBS. This could be addressed by including an exemption to mandatory EFBS for suppliers serving process-only load. (Audit Report at 79.)

Duke asserts that, because the Opinion and Order does not address this issue, there is a question as to whether the Company may include an exemption for process-only load in its amended tariffs. Duke adds that, although it has only two process-only load pools that each has an MDQ that is currently under 6,000 dth/day, it is possible that load will grow for either of these customers or that new process-only customers with an MDQ above 6,000 dth/day could subscribe to the Company's balancing service. Duke, therefore, requests that the Commission provide clarification on the issue of process-only load.

**{¶ 41}** RESA responds that, although it agrees that customers with a load profile that does not require storage should not have to pay for a balancing service that includes storage, process-only customers were not a focus during the hearing and, therefore, the Commission would not be able to define what constitutes process-only use or to determine the effect that exempting such use would have on other customers. RESA asserts that, because there is no support in the record upon which to grant Duke's request for rehearing, the Commission should adopt an interim solution and conduct additional

proceedings to find an equitable and efficient long-term answer to the Company's interstate pipeline contract imbalance.

{¶ 42} The Commission disagrees with RESA's contention that the issue of process-only load was not sufficiently addressed during the hearing in this case. Duke witness Kern testified that process-only customers can be identified and excluded from a mandatory enhanced firm balancing service requirement (Tr. at 88). Further, the Commission clarifies that Duke should include an exemption from the mandatory enhanced firm balancing service requirement for process-only load in its amended tariffs, consistent with Mr. Kern's testimony and Exeter's recommendations in the m/p audit report (Tr. at 87-88; Audit Report at 79). With this clarification, we find that Duke's request for rehearing on this issue should be denied.

### *E. Spot Market Purchases for the 2016-17 Heating Season*

{¶ 43} As its second ground for rehearing, Duke contends that the Opinion and Order does not explain what will occur in the event that spot market purchases for the 2016-17 heating season impact GCR customers, either positively or negatively. Duke further contends that it is, therefore, left with uncertainty regarding the business risk associated with spot market purchases. Duke requests that the Commission clarify or otherwise provide a mechanism for recovery of costs associated with any spot market purchases necessary during the interim period.

{¶ 44} In response, RESA notes that there is no basis in the record to determine that the occurrence of spot market purchases is necessarily harmful to GCR customers and, therefore, the Commission appropriately directed Staff to monitor the issue. RESA adds that, if Duke is seeking assurance of cost recovery for any spot market purchases that occur during the 2016-17 heating season, the question of whether the Company is entitled to full compensation for such purchases is a matter for determination in a future proceeding.

{¶ 45} OCC notes that Duke proposed modifications to its balancing tariffs so that it would be able to balance its system without having to make spot market purchases or sales. OCC points out that the Commission reasonably ordered an audit to ensure that any spot market purchases do not unduly impact GCR customers. OCC believes that the Commission was clear that, if GCR customers are unduly impacted by spot market purchases, the associated costs may not flow through to GCR customers and, therefore, Duke's request for clarification is not necessary.

{¶ 46} In the Opinion and Order, the Commission noted that, consistent with Staff's recommendation, any winter spot market purchases for 2016-17 should be thoroughly audited to ensure that GCR customers are not unduly impacted. Opinion and Order at 9. The Commission notes that the question of cost recovery associated with any spot market purchases for 2016-17 would be a matter for determination in a future m/p audit proceeding, following a thorough review by the auditor of the circumstances necessitating the spot market purchases and the impact on GCR customers. With this clarification, we find that Duke's request for rehearing on this issue should be denied.

## III. ORDER

{¶ 47} It is, therefore,

{¶ 48} ORDERED, That the applications for rehearing filed by Duke, IGS, and RESA be denied. It is, further,

**{¶ 49}** ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

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SJP/sc

Entered in the Journal

OCT 12 2016

Barcy F. McNeal
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