

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. 18-0218-GA-GCR
In the Matter of The Audit of the Uncollectable Expense Rider of Duke Energy Ohio Inc., and Related Matters.)))	Case No. 18-0318-GA-UEx
In the Matter of The Application of Duke Energy Ohio Inc., for Approval of an Adjustment to its Interim and Temporary PIPP Plan and Rider Case.))))	Case No. 18-0418-GA-PIP

**INITIAL BRIEF
BY
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Regulation of the)	
Purchased Gas Adjustment Clauses)	
Contained within the Rate Schedules of)	Case No. 18-0218-GA-GCR
Duke Energy Ohio Inc., and Related)	
Matters.)	

In the Matter of The Audit of the)	
Uncollectable Expense Rider of Duke)	Case No. 18-0318-GA-UEX
Energy Ohio Inc., and Related Matters.)	

In the Matter of The Application of Duke)	
Energy Ohio Inc., for Approval of an)	Case No. 18-0418-GA-PIP
Adjustment to its Interim and Temporary)	
PIPP Plan and Rider Case.)	

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I. INTRODUCTION

Duke and the PUCO Staff, in their Settlement, are proposing charges (related to propane) that only a *subset of* consumers would pay for service that benefits *all* consumers. That is wrong. Moreover, the Settlement continues Duke's antiquated approach of selling gas to consumers using its monopoly gas purchasing practices instead of using the competitively bid auction that benefits consumers with market prices. That is also wrong. Duke's monopoly approach is a vestige of a bygone era that is out of step with all other major gas utilities (and electric utilities). All those other utilities are giving their Ohio consumers the benefit of a competitively bid standard offer with low market prices.

The Settlement harms customers and is contrary to regulatory principles and practices. Further, neither Duke nor PUCO Staff in the Settlement are taking steps to bring to consumers the benefits of competition. That also harms customers and is contrary to regulatory principles and practices. And Duke and PUCO Staff are depriving consumers of information that would allow them to make informed choices about their natural gas provider. That, too, is harmful to consumers and is contrary to regulatory principles and practices.

Duke's and PUCO Staff's efforts are in a proposed Settlement that is not binding on the PUCO. It can be modified to benefit consumers and consistent with regulatory principles and practices. To protect Duke's nearly 400,000 residential gas customers, the Office of the Ohio Consumers' Counsel ("OCC") recommends that it should be.

II. BACKGROUND

R.C. 4905.302 and Ohio Adm.Code 4901:1-14-07 require that the Public Utilities Commission of Ohio ("PUCO") conduct, or cause to be conducted, periodic audits of gas or natural gas companies. Through its February 21, 2018 Entry in this case, the PUCO initiated the annual gas recovery ("GCR"), uncollectable expense ("UEX"), and percentage of income payment plan ("PIPP") audits of Duke Energy Ohio, Inc.

("Duke").¹ The Entry required the audit to review Duke's compliance with the PUCO's gas cost recovery mechanism for the 12-month period ending August 2018, and review of the incurred and estimated cost used to calculate the gas cost recovery rates.² Finally, the

¹ See *In re the Matter of The Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, PUCO Case No. 18-0218-GA-GCR, Entry (February 21, 2018).

² *Id.*

Entry directed Duke to select the auditor and that the audit findings be filed in the dockets for the GCR audit in Case No. 18-218-GA-GCR, for the UEX rider in Case No. 18-318-GA-UEX, and for the PIPP rider in Case No. 18-418-GA-PIP.³ The due date for the GCR, and UEX and PIPP rider audit was initially November 16, 2018, but was extended to January 24, 2019 by Entry on October 11, 2018. The Audit Report was filed in this docket on January 24, 2019 by the auditor, Exeter.⁴

On July 27, 2019, Duke filed a Joint Stipulation and Recommendation (“Settlement”) between it and Staff, intended to resolve issues in these cases. Now the PUCO must determine if the Settlement is reasonable and meets the test the PUCO uses to evaluate settlements. As filed, the Settlement package is not reasonable and does not meet the test that the PUCO uses to evaluate settlements. There are three key issues with the Settlement.⁵

First, the assignment of propane commodity costs (discussed in Section 6.5.5 of the Management and Performance Audit prepared by Exeter and Associates (“Exeter”) and filed with the PUCO on January 24, 2019) are not properly allocated and therefore not in the public interest.⁶ To remedy this, the PUCO should amend the Settlement to properly allocate the propane commodity costs during the audit period and to require a refund of those costs to its GCR customers.⁷

³ *Id.*

⁴ *Report to the Public Utilities Commission of Ohio on the Management and Performance Audit of Duke Energy Ohio Inc.*, PUCO Case No. 18-0218-GA-GCR (“Audit Report”).

⁵ *See In re the Matter of The Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, PUCO Case No. 18-0218-GA-GCR, The Direct Testimony of Michael P. Haugh on Behalf of The Office of the Ohio Consumers’ Counsel (September 3, 2019) (“Haugh Direct”).

⁶ Haugh Direct at 2-3.

⁷ *Id.* at 3.

Second, a competitive procurement process for natural gas in lieu of a Gas Cost Recovery (“GCR”) mechanism is not included in the Settlement.⁸ The PUCO should further amend the Settlement by encouraging Duke to transition from the GCR mechanism to a standard service offer (“SSO”) procurement mechanism.⁹

Finally, the Settlement is lacking by not requiring information that should be provided to Duke consumers looking to buy natural gas from marketers.¹⁰ Providing information to consumers about how consumers have fared historically with prices they paid for natural gas from marketers compared to GCR prices would be informative and educational for consumers.¹¹ Therefore, the PUCO should order Duke to provide information to the public regarding the natural gas commodity price differences between what marketer and GCR customers are paying.¹²

III. STANDARD OF REVIEW

The Supreme Court of Ohio held in *Duff v. Pub. Util. Comm.*¹³ that a stipulation is merely a recommendation that is not legally binding upon the PUCO. The PUCO “may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.”¹⁴ The Supreme Court of Ohio in *Consumers’*

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367 (1978); *see also* Ohio Adm. Code 4901-1-30(E).

¹⁴ *Id.*

*Counsel v. Pub. Util. Com.*¹⁵ considered whether a just and reasonable result was achieved with reference to criteria adopted by the PUCO in evaluating settlements:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is diversity of interests among the stipulating parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The ultimate question to be answered is whether, based the record, taken as a whole the settlement is reasonable, complies with Ohio law, and is in the public interest. As OCC shows below, the settlement in this case does not meet this standard.

IV. RECOMMENDATIONS

As OCC Expert Witness Haugh testified, the Settlement as filed is not in the public interest and violates important regulatory practices and principles. It should not be approved.¹⁶ OCC recommends that the PUCO should modify the Settlement and order Duke to properly allocate the costs associated with the use of the propane facilities -- which indisputably benefited *all* customers, shopping and non-shopping alike -- to marketer customers and refund to the GCR customers costs improperly allocated to them.¹⁷

Additionally, as recommended by OCC Expert Witness Haugh, the PUCO should retain an independent consultant to examine the effect of Duke procuring its natural gas

¹⁵ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

¹⁶ Haugh Direct at 3.

¹⁷ *Id.*

supply through a standard service offer auction (and ending its hedging activities that it charges to customers).¹⁸ The findings from this process should be reported to the PUCO within nine months of the Order in this proceeding, with a timeline of 18 months for a transition to a competitive auction to replace Duke's GCR if it is demonstrated that Duke consumers would benefit from the competitively bid standard offer that all other major energy utilities use.¹⁹

Finally, OCC recommends that the PUCO modify the Settlement to contain a provision requiring Duke to place Duke's GCR price on customers' bills. This would inform customers of the potential that they may be paying additional costs above the GCR for their natural gas if provided by a marketer.²⁰ The PUCO should also require Duke to provide aggregated shadow-billing data. This would enable consumers to calculate the amount marketer customers pay above or below the amount they would have paid for gas service on Duke's standard offer (GCR).²¹ The shadow-billing program should be similar to that provided by Columbia Gas.²²

If these modifications are not implemented by the PUCO (they should be), then the PUCO should reject the Settlement because it neither benefits consumers nor the public interest and violates important regulatory principles and practices.

¹⁸ *Id.* at 11.

¹⁹ *Id.* at 11 and 15.

²⁰ *Id.* at 15.

²¹ *Id.* at 15.

²² *Id.*

A. The Settlement does not benefit customers or the public interest, therefore violates the settlement test.

Exeter, the auditor that Duke chose pursuant to the February 21, 2018 PUCO Entry, provided its findings regarding Duke's assignment of propane commodity costs.²³ According to OCC Expert Witness Haugh, the Audit Report illustrates that Duke has propane facilities that allow it to maintain proper operating pressure during periods of peak demand.²⁴ These facilities can be used to meet customers' gas requirements during periods of peak demand if Duke determines it is the least expensive option.²⁵

As Mr. Haugh testified, during the audit period Duke utilized the propane facilities to maintain distribution operating pressure on a number of days.²⁶ Maintaining proper operating pressure is necessary to keep the system running, thereby providing benefits to all customers.²⁷ Had it not been for the need to maintain distribution system operating pressures, it would not have been necessary for Duke to use its propane facilities during the audit period.²⁸

Yet, according to Mr. Haugh, Exeter found that during the audit period the costs associated with the propane facilities were allocated *only* to Duke's GCR customers, even though all firm transportation customers (marketer customers) *also* benefited from the use of the propane facilities.²⁹ Marketer customers were not assessed costs associated with the use of the propane facilities even though they benefitted from the use of the

²³ Audit Report at 6-24.

²⁴ Haugh Direct at 3-4.

²⁵ *Id.*

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ *Id.*; Audit Report at 6-24.

²⁹ Haugh Direct at 4.

facilities.³⁰ Therefore, OCC expert witness Haugh explained, Exeter determined that both GCR and marketer customers should be responsible for their proportional share of incremental propane costs during the audit period.³¹

The Settlement falls short of benefitting customers and the public interest by not properly allocating the propane commodity costs.³² As OCC Expert Haugh explains in his testimony, the Audit Report clearly states that GCR customers were assessed the full costs associated with the propane use and “Exeter believes this to have been unreasonable.”³³ Mr. Haugh concludes that because all customers benefited from using the propane, which kept Duke’s system running, all customers -- rather than just GCR customers -- should pay for it.³⁴

OCC Expert Witness Haugh also explains that Exeter found Duke’s GCR rates have been higher than the standard choice offers of the other three major natural gas distribution companies in the state.³⁵ Therefore, Mr. Haugh testified, it is appropriate to switch to a competitive auction process which has led to lower gas commodity prices for customers in other Ohio gas utility service territories.³⁶ According to Mr. Haugh, without a requirement in the Settlement for this examination, the Settlement falls short of benefitting customers and the public interest.³⁷

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Audit Report at 6-24.

³⁴ Haugh Direct at 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

Finally, OCC recommends that the Settlement should be amended to require Duke to make information publicly available to consumers, to show cost differences between what GCR customers are paying versus what marketer customers are paying for their natural gas.³⁸ Without this requirement, the Settlement falls short of benefitting customers and the public interest.³⁹

1. To benefit consumers, the PUCO should amend the Settlement to properly allocate the propane commodity costs during the audit period and to require a refund of costs to the gas cost recovery customers.

In his testimony, OCC Expert Witness Haugh concluded that although the Settlement addresses the assignment of propane commodity costs, it does not address the incorrect and unreasonable allocation of costs that occurred during the audit period, as detailed by Exeter.⁴⁰ Mr. Haugh recommends that the Settlement should therefore be amended to properly allocate costs to all customers that benefitted from the use of the propane to balance the system during peak usage during the audit period.⁴¹

OCC Expert Witness Haugh also recommended that, the PUCO should follow Exeter's recommendation to take the incremental costs incurred during the audit period and include those costs in Duke's Contract Commitment Cost Recovery Rider ("CCCR").⁴² Mr. Haugh explained in his testimony that the CCCR is set up to collect costs associated with pipeline capacity, storage commitments and propane costs.⁴³ The

³⁸ Haugh Direct at 7.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 8.

⁴² *Id.*

⁴³ *Id.*

propane costs should have been collected through this rider all along, asserts Mr. Haugh.⁴⁴ Therefore, Mr. Haugh concludes, the CCCR is the appropriate rider for fairly allocating the costs.⁴⁵

2. To benefit consumers, the PUCO should amend the Settlement by ordering Duke to transition from the gas cost recovery to a competitive auction for the provision of the standard service offer.

The Settlement does not require Duke to examine the potential benefits of transitioning to a competitive auction for the provision of the standard offer for the supply of natural gas according to OCC Expert Witness Haugh.⁴⁶ But Duke should always be mindful of ways to help reduce natural gas costs for consumers.⁴⁷ And the public interest is best served when customers are safely provided the lowest rates possible.⁴⁸ In recent years, OCC Expert Haugh explains, the competitive standard offer auctions at the other large natural gas utilities in the state have produced lower rates for consumers.⁴⁹ Therefore, Mr. Haugh concludes, the PUCO should amend the Settlement to require Duke to transition to a standard service offer procurement mechanism.⁵⁰

Mr. Haugh explained that Exeter found that from 2016 – 2018 the Duke GCR that customers pay averaged \$0.684/Mcf more than the standard offer prices that the other major gas utilities in Ohio provide to their customers.⁵¹ Mr. Haugh suggests that some

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 9.

⁴⁷ *Id.* at 10.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 11.

⁵¹ *Id.* at 8.

might assert including Dominion East Ohio (“DEO”) in the analysis is unreasonable due to DEO’s large on-system storage and close proximity to the Marcellus Shale gas reserves and, therefore, it should not be included in the comparison.⁵² As shown in the table below, however, even if DEO is removed from the comparison there is still a difference between Duke’s average GCR rate and the average standard offer rates for Vectren Energy Delivery Ohio (“VEDO”) and Columbia Gas of Ohio. On average, consumers in Duke’s service area paid \$0.225/Mcf more during the three-year period.⁵³

Further, explains Mr. Haugh, Exeter found that Duke’s hedging activities averaged approximately \$0.40/Mcf as a cost to GCR consumers.⁵⁴ The costs associated with hedging would be unnecessary if Duke transitioned from the GCR to a competitive auction process similar to the COH and DEO SCO, Mr. Haugh reasoned.⁵⁵

Comparison of Duke GCR vs COH and VEDO (per Mcf)				
	2016	2017	2018	Average
COH	\$ 3.6504	\$ 4.6378	\$ 4.3742	\$ 4.2208
VEDO	\$ 3.9667	\$ 4.6375	\$ 4.1492	\$ 4.2511
Average	\$ 3.8086	\$ 4.6377	\$ 4.2617	\$ 4.2360
Duke	\$ 3.9593	\$ 4.7989	\$ 4.6337	\$ 4.4640
Difference	\$ 0.1508	\$ 0.1612	\$ 0.3720	\$ 0.2280

Mr. Haugh explains in his testimony that the standard offer competitive auctions of other Ohio gas utilities have been very successful and allowed the utilities to take

⁵² *Id.*

⁵³ *Id.* at 9.

⁵⁴ *Id.*

⁵⁵ *Id.*

advantage of the abundance of in-state natural gas, for the benefit of consumers.⁵⁶

According to Mr. Haugh, the Audit Report describes a white paper that was filed in PUCO Case No. 07-589-GA-AIR.⁵⁷ However, this report was filed in May 2009 and was based on meetings that occurred in July and August of 2008. There may have been many changes in the natural gas markets since that time, which could possibly benefit customers through the use of a competitive auction process.⁵⁸

OCC Expert Haugh recommends that the PUCO retain an independent consultant to conduct an evaluation of Duke's current procurement process and compare it against a competitive process similar to those conducted by the other large Ohio natural gas utilities.⁵⁹ Mr. Haugh also explains that a competitive auction would eliminate the need for Duke to continue its hedging activities (and the associated costs to consumers).⁶⁰

Finally, Mr. Haugh concludes the findings from this consultant evaluation should be reported to the PUCO within nine months of the Order in this proceeding, and a timeline of transitioning to a competitive standard offer within 18 months if there is convincing evidence that a competitively bid standard service offer would deliver the optimal pricing standards contemplated in ORC 4905.32 (C)(2)(b) that would benefit consumers.⁶¹

Therefore, the PUCO should modify the Settlement by ordering Duke to transition from the gas cost recovery mechanism to a standard service offer procurement

⁵⁶ *Id.* at 11.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 12.

mechanism to benefit consumers, unless Duke can affirmatively show that its gas cost recovery process would benefit consumers.

3. To benefit consumers, the PUCO should order Duke to provide information to the public regarding the natural gas commodity price differences between what marketer and gas cost recovery customers are paying.

In Duke's previous GCR audit, Exeter found that GCR customers paid approximately \$7 million per year less than marketer customers.⁶² And although Exeter did not examine the difference between the commodity costs Duke's GCR customers paid compared to marketers in this case, OCC Witness Michael Haugh did.⁶³

Mr. Haugh explains that in discovery, Duke provided 2018 information⁶⁴ on residential GCR and marketer customer commodity costs.⁶⁵ Mr. Haugh then took the total amount charged to marketer customers in 2018 and divided that by total volumes billed to marketer customers, which provided the average price marketers in Duke's area charged customers.⁶⁶ OCC Witness Haugh next applied the same calculation to Duke's GCR customers and found that, in the aggregate, they paid less for natural gas than marketers customers by \$11.3 million.⁶⁷

⁶² Report to the Public Utilities Commission of Ohio on the Management and Performance Audit of Gas Purchasing Practices and Policies of Duke Energy Ohio, Case No. 15-218-GA-GCR at 45 (December 9, 2015) ("2015 Audit Report").

⁶³ Haugh Direct at 12.

⁶⁴ Information from 2015-2018 was requested in the discovery, but Duke said it was not available.

⁶⁵ *Id.*

⁶⁶ *Id.* at 12-13.

⁶⁷ *Id.* at 13.

	<u>Marketer</u>	<u>GCR</u>
Volumes (Mcf)	19,370,462	12,476,380
Costs	\$101,773,935	\$58,245,730
Average Cost	\$5.25/Mcf	\$4.67/Mcf
Difference	\$0.59/Mcf	
Total Cost Difference		<u>\$11,343,321</u>

OCC Witness Haugh's analysis shows that in 2018 marketer customers paid about \$11 million more than Duke's GCR customers.⁶⁸ That is even worse for consumers than in the previous audit period where marketer customers paid \$7 million above Duke's GCR.⁶⁹ Part of this difference can be attributed to more customers shopping in 2018 than during the previous audit period, explained Mr. Haugh.⁷⁰ This one year time frame equates to roughly \$48 per customer that shopped in 2018.⁷¹

As Mr. Haugh explained, it is very concerning that the discrepancy between marketer and GCR customers has increased by 57% since the last audit period.⁷² This information should be provided to customers looking to shop for a supplier.⁷³ The discrepancy in cost between marketers and GCR is easily calculated and provides

⁶⁸ *Id.* at 13.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*; Based on an average of 236,000 customers being served by Choice suppliers as seen on the PUCO Choice statistics (<https://app.powerbigov.us/view?r=eyJrIjoia0JjOTA2MjYtNzMzNi00Y2RhLTljZjEtZTU3Zjg5ZDZhMDgyIiwidCI6IjUwZjhmY2M0LTk0ZDgtNGYwNy04NGViLTM2ZWQ1N2M3YzhhMiJ9>).

⁷² Haugh Direct at 14.

⁷³ *Id.*

customers information that would be helpful in choosing a supplier.⁷⁴ This information demonstrates that most shopping (marketer) customers are paying more than if they were to stay with the GCR.⁷⁵ The cost discrepancy could easily be placed on the PUCO's Apples to Apples page or as a line item on customers' bills, suggests Mr. Haugh.⁷⁶

As Mr. Haugh points out, the PUCO currently has a docket open in Case No. 19-1429-GA-ORD concerning the Minimum Gas Service Standards ("MGSS") embodied in Ohio Adm. Code 4901:1-13.⁷⁷ These rules involve the minimum content of customer bills provided by natural gas utilities, including bill messages to consumers.⁷⁸ This open docket affords the perfect opportunity for the PUCO to address what information should be provided to consumers regarding comparison prices and savings gained or lost by customers participating in competitive choice programs.⁷⁹

For this case, OCC therefore recommends that the PUCO order Duke to provide information to the public regarding the natural gas commodity price differences between what marketer and GCR customers are paying.

B. The Settlement violates other important regulatory principles and practices, which should be modified or rejected to protect consumers.

As OCC Expert Witness Haugh stated in his testimony, Ohio law requires a natural gas company's procurement planning to maintain reliable service at optimal prices.⁸⁰ Further, ignoring alternatives such as using a competitive auction process to

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 10; R.C. 4905.302(C)(2)(b).

procure natural gas, like the other three large gas utilities in Ohio have done, results in prices that may be less than optimal and are potentially unreasonable for consumers.⁸¹ Mr. Haugh points out that an appropriate regulatory principle in Ohio has been that energy utility default rates should be priced according to a competitive auction, to benefit consumers.⁸²

The Settlement also violates the important principle of cost-causation.⁸³ It ignores an auditor recommendation that would have more fairly allocated the incremental propane costs to all firm transportation customers who benefited from the use of the propane facilities during the audit period rather than to just GCR customers.⁸⁴ The Settlement is also inconsistent with the regulatory practice of assessing costs to those who caused or benefited from the expenditure.⁸⁵

Finally, OCC recommends that the Settlement should be amended to require Duke to make information publicly available to consumers, to show cost differences between what GCR customers are paying versus what marketer customers are paying for their natural gas.⁸⁶ Without this requirement, the Settlement violates the regulatory practice for providing sufficient information to enable consumers to make informed choices and educating to them about their choices.⁸⁷

⁸¹ *Id.*; R.C. 4929.02(A).

⁸² *Id.*

⁸³ *Id.* at 7.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Haugh Direct at 7.

⁸⁷ *Id.*

Therefore, the PUCO should amend the Settlement to require Duke to properly allocate the costs associated with the use of the propane facilities also to marketer customers during the audit period and refund the costs to the GCR customers.

C. The Auditor's testimony during hearing should be stricken and not considered.

During the hearing in this case, PUCO Staff called Jerome D. Mierzwa to the stand. He is a Principal and Vice President of Exeter.⁸⁸ When the PUCO called him to the stand, OCC objected to Mr. Mierzwa testifying.⁸⁹ Exeter's audit report was stipulated into the record, so there was no relevant reason for Mr. Mierzwa to testify.⁹⁰ Further, contrary to the PUCO's rules, PUCO Staff did not pre-file any written testimony from Mr. Mierzwa.⁹¹ The Attorney Examiner noted OCC's objections and allowed Mr. Mierzwa to testify, suggesting that OCC could move to strike Mr. Mierzwa's testimony at its conclusion.⁹² When Mr. Mierzwa left the stand, OCC moved to strike his testimony for the same reasons.⁹³ The Attorney Examiner reserved a ruling on the motion.⁹⁴

Mr. Mierzwa's testimony should be stricken and not considered by the PUCO. It is not relevant. Further, contrary to the PUCO's rules, PUCO Staff did not pre-file any written testimony from Mr. Mierzwa.⁹⁵ The failure to follow the PUCO's rules severely prejudiced OCC, as it was denied the opportunity – present in all other PUCO

⁸⁸ Hearing Transcript at 28.

⁸⁹ *See id.* at 24-26.

⁹⁰ *See id.* at 24.

⁹¹ *See id.*; *see also* Docket; O.A.C. 4901-1-29.

⁹² *See id.* at 27.

⁹³ *See id.* at 32.

⁹⁴ *See id.*

⁹⁵ *See id.*; *see also* Docket; O.A.C. 4901-1-29.

proceedings – to have notice of expert testimony, analyze the testimony, and prepare cross-examination. As OCC explained on the record, “there is a reason why the Commission requires the filing of written testimony by expert witnesses incases and that is to give everyone a fair, full opportunity to prepare for a case and avoid surprises.”⁹⁶

V. CONCLUSION

The PUCO should not approve the Settlement as filed. The Settlement is unreasonable and fails the three-prong test used by the PUCO to evaluate settlements. If the PUCO wants to save this Settlement, it should amend it to properly allocate the propane commodity costs, along with a refund for GCR consumers. It should also amend the Settlement to encourage Duke to transition from the GCR mechanism to a standard service offer procurement mechanism.

The PUCO should also retain an independent consultant to examine the effect Duke procuring its natural gas supply through a standard offer auction, and the findings from this process should be reported to the PUCO in order to determine whether Duke consumers would benefit from the competitively bid standard offer that all other major energy utilities use.

Finally, the PUCO should require Duke to provide aggregated shadow-billing data which calculates the amount marketer customers pay above or below the amount they would have paid for gas service on the Duke’s standard offer (GCR), similar to that provided by Columbia Gas of Ohio.

⁹⁶ See Hearing Transcript at 26.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Brief was served via electronic transmission to the persons listed below on this 15th day of October 2019.

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Summary: Brief Initial Brief by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Logsdon, Ambrosia E.