BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code.	))))	Case No. 19-1429-GA-ORD

MEMORANDUM CONTRA OF THE RETAIL ENERGY SUPPLY ASSOCIATION TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S APPLICATION FOR REHEARING

I. INTRODUCTION

The Ohio Consumers' Counsel ("OCC") seeks to implement rule changes on rehearing that will harm the competitive market and not result in fair or flexible regulatory rules. The Retail Energy Supply Association ("RESA")[1] opposes all four assignments of error raised by OCC. First, shadow billing has been repeatedly proposed by OCC and rejected by the Commission. There was no lack of evidence, lack of rationale or other error in the Commission's February 24, 2021 Finding and Order rejecting yet again another attempt by OCC to implement shadow billing. Second, the Commission correctly rejected OCC's attempt to revamp billing to disallow non-commodity charges on bills (contrary to customers' preferences) and correctly declined to implement a definition for "commodity charges" when there have been no issues. Third, the Commission properly avoided unfairly promoting the standard choice offer ("SCO") and gas cost recovery ("GCR") rates over others when it concluded that its new price-to-compare statement should not list the actual SCO or GCR rate. Finally, the Commission reasonably rejected the switching block

[1] The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

proposal because customers already have the ability to take steps that protect them from slamming and the proposal could cause customer confusion and frustration. OCC's latest attempt to impose roadblocks – this time through mandatory local distribution company ("LDC") rules – should be rejected.

II. ARGUMENT

A. The Commission properly rejected OCC's shadow billing proposal based on the record and with sufficient detail in its decision.

OCC claims that the Commission erred in rejecting shadow billing because it had no record evidence of significant billing system changes and the costs of such changes, and because resources for customers to make comparisons are not available to all.[2] OCC Application for Rehearing at 2-4. OCC's claim is without merit because *multiple* LDCs stated in their comments filed in the record in this proceeding that the LDCs would have to make billing system changes in order comply with OCC's proposal. Those comments are record evidence supporting the Commission's conclusion that OCC's shadow billing proposal would require significant billing system changes. The Commission did not need to know the cost of the billing system changes in order to reject shadow billing. Moreover, the Commission has the ability to rely on its sound judgment and its own expertise to conclude that the proposal would require significant billing system changes and that those changes are not warranted. Lastly, customers have other means to make comparisons even if the Energy Choice Ohio website is not accessible.

1. Multiple LDCs confirmed that OCC's shadow billing proposal would require them to make billing system changes.

Duke Energy of Ohio, Inc. explained that its billing system does not have the capability to comply with OCC's shadow billing proposal. Duke Reply Comments at 2. Duke also stated that it would have

[2] OCC claims that the decision lacks record evidence and rationale, which violates R.C. 4903.09 and *Tongren v. PUC*, 85 Ohio St.3d 87, 1999-Ohio-206. OCC Application for Rehearing at 2-3.

to make "extensive revisions to the Company's billing systems" in order to comply. *Id.* The East Ohio Gas Company d/b/a/ Dominion East Ohio and Vectren Energy Delivery of Ohio, Inc. also stated that the proposal will necessitate "**costly** billing system changes" for the monthly and the annual reports. Joint Reply Comments at 11 (emphasis added). As demonstrated by these comments in the record, the Commission properly and reasonably rejected OCC's shadow billing proposal because it would require significant billing system changes.

2. It is apparent that OCC's shadow billing proposal would require LDC billing system changes.

OCC's shadow billing proposal includes multiple components, requiring the LDCs to continuously gather, prepare and report information. The shadow billing proposal would also require billing system changes. The proposal would require the LDCs to:[3]

- **Create a bill** as if each shopping customer were on the LDC's SCO or the GCR rate;
- Compare the difference between what each shopping customer paid for natural gas through competitive retail natural gas supplier and what the customer would have paid had they been served through the LDC's SCO or GCR rate;
- Inform each shopping customer on their bill what their natural gas charges would have been had the customer been served under the SCO or the GCR rate;
- Prepare each year, on an aggregated basis, the amount paid by the shopping customers and the amount the shopping customers would have paid if the shopping customers had been on the LDC's SCO or the GCR rate; and
- Publicly file a report each year with the Commission detailing the aggregated customer savings or losses experienced as a result of shopping with competitive retail natural gas suppliers instead of choosing the SCO or GCR.

OCC's proposal involves multiple steps, much information, many calculations and automation. It is readily apparent that from the first requirement above (to create an entirely different bill for every shopping customer) that the proposal will involve a billing system change. It is also apparent that, to

[3] OCC's Initial Comments at 3-4.

aggregate the information, some changes would have to be required. It is logical to conclude that, *in toto*, the proposal would necessitate multiple billing system changes. In addition, as an on-going regulatory requirement, LDCs would be expected to *continuously* gather information, conduct the calculations and report the information. That aspect of the proposal further supports the Commission's conclusion that automated billing system changes would be required in order to meet the requirement.

3. The Commission did not need to know the costs of the LDCs' significant billing system changes in order to reject OCC's shadow billing proposal.

OCC claims that, without the costs to implement the billing system changes, the Commission failed to base its decision on findings of fact and record evidence. OCC Application for Rehearing at 4. Not only did OCC fail to provide any estimate of the cost of billing changes to support its proposal, OCC ignores that the Commission expressly rejected shadow billing not based on the specific amount of costs to implement (which would be across every LDC) but based on the simple fact that the proposal would require significant billing system changes (as informed by the LDC reply comments that included a comment that the changes would be "costly"). Detailed cost information was not required to rule on OCC's proposed rule change. In addition, the Commission rejected shadow billing for a second reason – the fact that existing resources allow customers to compare pricing and available offers. Finding and Order at ¶ 89. Thus, not only did the Commission reject shadow billing based on the facts in the record, it provided a second independent reason to reject OCC's proposal; the Commission did not need detailed cost information in order to reject shadow billing.[4]

[4] As the proponent of the shadow billing proposal, OCC had the burden to demonstrate that shadow billing should be approved. OCC presented no information of what steps would be required of the LDCs.

In addition, OCC's shadow billing proposal is not new to the Commission. OCC has unsuccessfully advocated for shadow billing in multiple Commission proceedings, including:

- Minimum Natural Gas Service Rules, Case No. 09-0326-GA-ORD, Finding and Order at ¶ 55(b) (July 29, 2010) and Entry on Rehearing at ¶ 28 (October 15, 2010).
- Competitive Retail Natural Gas Rules, Case No. 12-925-GA-ORD, Finding and Order at ¶ 94 (December 18, 2013) and Entry on Rehearing at ¶ 16 (February 26, 2014) [proposal was to have historical cost information on the bills for comparison with the SCO].
- Duke Gas Cost Recovery Audit, Case No. 15-218-GA-GCR, Opinion and Order at ¶ 69 (September 7, 2016).
- Duke Gas Cost Recovery Audit, Case No. 18-218-GA-GCR, Opinion and Order at ¶ 57 (December 18, 2019).
- Duke Bill Format Proposal, Case No. 19-1593-GE-UNC, Finding and Order (December 18, 2019) at ¶35.
- Minimum Electric Service Rules, Case No. 17-1842-EL-ORD, Finding and Order at ¶ 162 (February 26, 2020) and Entry on Rehearing at ¶ 35 (January 27, 2021).

The Commission is familiar with what OCC's proposal involves, including that it would require multiple changes by the LDCs. The Commission relied on its knowledge of shadow billing and even cited to prior proceedings wherein significant system changes were raised. Finding and Order at 89. The Commission was entitled to rely on its knowledge of this issue and was not required to know the costs of the system changes in reaching its decision to reject the proposal.[5]

[5] The Supreme Court of Ohio has deferred to the Commission's judgment in matters where the Commission applies its expertise and discretion to factual matters. *See e.g., Monongahela Power Co. v. PUC*, 104 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶ 29 ("[T]he court has consistently found it proper to defer to the commission's judgment in matters that require the commission to apply its specialized expertise and discretion, as it did below, with regard to factual matters now on appeal.") and *Cincinnati Bell Tel. Co. v. PUC*, 92 Ohio St.3d 177, 179-180, 2001-Ohio-134, 749 N.E.2d 262 ("We have consistently refused to substitute our judgment for that of the commission on evidentiary matters….Traditionally, we have deferred to the judgment of the commission in instances involving the commission's special expertise and its exercise of discretion, when the record supports either of two opposing positions.").

4. Unavailability of the Energy Choice Ohio website to some customers does not mean customers cannot compare pricing and offers or that shadow billing must be mandated.

OCC contends that it was unreasonable for the Commission to point to the Energy Choice Ohio website as a reason to reject shadow billing while also recognizing that the website is not available to all. OCC Application for Rehearing at 5. OCC interprets the Commission's ruling as somehow stating that customers "must rely" on that website to compare pricing. *Id.* That is not what the Commission concluded and the Commission did not err.

The Commission has repeatedly stated that customers can compare supplier pricing and offers through various means.[6] At ¶ 89 of the Finding and Order in this case, the Commission reaffirmed that position and referenced the Energy Choice Ohio website **as one means** by which customers can make comparisons. The Commission correctly stated that the Energy Choice Ohio website is one resource available to customers to compare prices and offers. It is not the only resource available to customers; nor has it been. Historically, the Commission has not required customers to use that website to compare pricing and offers. Even if that website is unavailable for some, customers have the ability to make comparisons at a minimum by soliciting or considering offers from other suppliers. Therefore, it was not unreasonable to reject shadow billing when customers can nonetheless use the resources at their disposal to compare prices and offers from competitive retail natural gas suppliers.

In sum, it was reasonable for the Commission to have rejected shadow billing once again. The record supports the Commission's ruling and the Commission amply explained the basis for rejecting OCC's proposal. There was no violation of R.C. 4903.09 or the Ohio Supreme Court precedent in

[6] *See e.g., In the Matter of the Commission's Review of Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. Case No. 09-0326-GA-ORD, Finding and Order at ¶ 55(b) (July 29, 2010) and Entry on Rehearing at ¶ 28 (October 15, 2010); and *In the Matter of the Commission's Review of Its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order at ¶ 162 (February 26, 2020).

Tongren. As a final matter, shadow billing would provide misleading information to the public – it will be incomplete and inaccurate, not recognize variations in competitive offers and result in an out-of-date fictitious rate that does not exist but would be presented as the point of comparison with the SCO or GCR rate. The Commission should not mislead the public or adopt rules that require the utilities to mislead the public.

B. The Commission properly refused to define "commodity charge" and then limit bills to just commodity charges.

OCC argues on rehearing that a definition of "commodity charge" is needed in the rules so that customers are not disconnected for failing to pay "extras" beyond the natural gas commodity and that bills should be limited to just commodity services. OCC Application for Rehearing at 7-8. OCC claims the Commission failed to protect customers by not making those changes. *Id.*

The Commission's decision to not adopt a definition of "commodity charge" was reasonable. The comments in the record overwhelmingly urged a ruling that keeps the status quo and does not adopt the proposed changes.[7] OCC did not present evidence of misuse (for which customers need protection), and on rehearing contends that the non-commodity information on the bill is confusing. OCC Application for Rehearing at 9. There is no evidence to support that statement. Rather the record shows that the LDCs identified no issues, and numerous parties stated that customers like the convenience and value of non-commodity charges being on their bills.[8] Duke Energy Ohio also explained that it could not comply with the proposal because it provides one bill for both electric and natural gas services.[9] In light of the strong support for the status quo and the disruption that the proposal would cause, the

[7] HomeServe Initial Comments at 3; Pivotal Initial Comments at 2; Dominion/Vectren Initial Comments at 7; IGS Initial Comments at 5; Duke Initial Comments at 2.
[8] *Id*.
[9] Duke Initial Comments at 2.

Commission's decision to not adopt a definition of "commodity charge" is reasonable and supported by the record.

C. Ohio law does not require the SCO or GCR rate to be listed in the price-to-compare statement.

The Commission is now requiring a price-to-compare statement be included on customer bills as follows:[10]

> When shopping for a natural gas supplier, it may be useful to compare supplier offers with the standard choice offer (SCO) rate [or, if applicable, the gas cost recovery (GCR) rate] available to eligible customers, which varies monthly based on the market price of natural gas. Price represents one feature of any offer; there may be other features which you consider of value. More information about the SCO [or GCR, if applicable] and other suppliers' offers is available at energychoice.ohio.gov or by contacting the PUCO.

OCC claims that the Commission unreasonably failed to require the current SCO or GCR rate as part of the above price-to-compare statement. OCC Application for Rehearing at 10-11. OCC alleges that without the rate, the statement would violate state policy in R.C. 4929.02(A)(1), which states that it is the policy of this state to "promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods." *Id.*

Nothing in the state policy, including R.C. 4929.02(A)(1), requires the specific SCO or GCR rate be included in a price-to-compare statement. OCC would have the Commission conclude that it can only comply with R.C. 4929.02(A)(1) and "promote" natural gas services and goods by listing the actual SCO or GCR rate. The state policy should not misinterpret in that manner. Notably, no other statutes or any Commission rules require the SCO or GCR rate be included in a price-to-compare statement.

[10] Finding and Order at ¶ 69.

In addition, listing the SCO or GCR rate in the above price-to-compare statement on the monthly bills would create problems, including:

- Leaving out key information on how to understand the SCO and GCR rates and how (if even possible) to make a proper comparison of a retail contract rate;
- Failing to recognize that the SCO and GCR rates are not proper comparison points because they are based on different pricing structures; and
- Suggesting on bills that the best deal can be obtained by comparing a supplier rate against the SCO or GCR rate listed on a particular bill.

For these reasons, OCC's legal argument should be rejected and the Commission should also conclude that no error occurred. The SCO or GCR rate should not be included in the price-to-compare statement adopted by the Commission.

D. The Commission properly rejected the proposed switching block.

OCC argues that it was unreasonable to reject the Staff's proposed switching block, claiming that the proposal is "more aligned" with Ohio law, provides more customer education, and is more proactive protection for consumers. OCC Application for Rehearing at 11. First, OCC has reargued its reasons for the switching block. It has not raised anything new at this stage of the proceeding and its discontent with the Commission's ruling on this issue is an insufficient basis for granting rehearing.

Second, the Commission properly recognized that mechanisms already exist to guard against and prevent slamming. Finding and Order at ¶ 118. Thus, customers will be able to protect themselves. Third, the Commission also properly considered the need to allow for *fair* competition. *Id.* As RESA explained previously, the switching block proposal could be burdensome, cause confusion and be frustrating to customers. As such, the switching block cannot be considered to be more aligned with Ohio law or as providing less customer education or less protection. The Commission properly rejected Staff's switching block.

III. CONCLUSION

OCC seeks on rehearing multiple changes to the February 24, 2021 decision that would impose greater restrictions on the competitive market, unreasonably promote the SCO and GCR, and mislead and confuse the public. OCC's changes do not align with the policy of the State, which the OCC and the Commission are statutorily obligated to support. *See* R.C. 4929.02(B). All of the reasons outlined above justify rejection of OCC's application for rehearing in its entirety.

Respectfully Submitted,

/s/ Gretchen L. Petrucci
Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
614-464-5462
mjsettineri@vorys.com
glpetrucci@vorys.com

Counsel for the Retail Energy Supply Association

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 5th day of April, 2021 upon the persons listed below.

josephclark@nisource.com sdismukes@eckertseamans.com dclearfield@eckertseamans.com sstoner@eckertseamans.com Rocco.dascenzo@duke-energy.com Jeanne.kingery@duke-energy.com Larisa.vaysman@duke-energy.com kennedy@whitt-sturtevant.com fykes@whitt-sturtevant.com andrew.j.campbell@dominionenergy.com Regulatory@InfiniteEnergy.com bethany.allen@igs.com Michael.nugent@igs.com joe.oliker@igs.com	mpritchard@mcneeslaw.com cendsley@ofbf.org lcurtis@ofbf.org amilam@ofbf.org talexander@calfee.com slesser@calfee.com khehmeyer@calfee.com mjsettineri@vorys.com glpetrucci@vorys.com gkrassen@bricker.com dstinson@bricker.com dparram@bricker.com Ambrosia.Logsdon@occ.ohio.gov David.bergmann@occ.ohio.gov
David Pemberton Suburban Natural Gas Company 2626 Lewis Center Road Lewis Center OH 43035	

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

Summary: Memorandum Contra to the Office of the Ohio Consumers' Counsel's Application for Rehearing electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association