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. 21-180-GA-RDR**
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Modify its Tariff Regarding Rate IMBS.	**)))**	**Case No. 21-188-GA-ATA**

INITIAL COMMENTS
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

July 23, 2021

I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] files the following comments on the application, as amended and clarified by Duke Energy of Ohio, Inc. ("Duke"), to change its balancing service tariffs. Duke proposes to increase the rates for the Enhanced Firm Balancing Service ("Rider EFBS"), Firm Balancing Service ("Rider FBS") and Interruptible Monthly Balancing Service ("Rider IMBS"), and to include new confiscation-of-gas language in Rider EFBS. The rate changes are based in part on a proposal filed by Columbia Gas Transmission ("TCO") at the Federal Energy Regulatory Commission ("FERC"). The new confiscation-of-gas language is also based on TCO's proposal at FERC. The TCO proposal, however, is still pending at the FERC and may ultimately change.[2] RESA will not oppose Duke's rate changes as amended and clarified in these proceedings if the Commission requires Duke to promptly file a new application in the event that TCO's rates (as ultimately set by FERC) are lower than those in this pending application. This directive along with a prompt approval from the Commission of such future application(s) are crucial to suppliers so that they are not subject to excessive rates. Duke is a party to TCO's FERC proceeding and will receive notice of FERC's decision. Since the Commission is also a party to TCO's FERC proceeding, it too will receive notice of FERC's decision when it issues, and can therefore act quickly on Duke's subsequent application(s).

RESA does not agree to Duke's inclusion of the confiscation-of-gas language in its application. Duke proposed the confiscation-of-gas language because TCO proposed similar

---

[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.

[2] *Columbia Gas Transmission, LLC*, Docket Nos. RP20-1060-000, RP20-1159-000 and RP21-351-000.

language in its pending FERC proceeding. TCO, Duke and others, however, recently presented a partial resolution of TCO's FERC proceeding that includes TCO withdrawing its proposed confiscation-of-gas language at FERC. Duke's proposed confiscation-of-gas language is not necessary in light of this development and would result in an inapplicable term/condition being added to Duke's tariff. The Commission should not approve the confiscation-of-gas language. If the Commission disagrees and allows the language to be added to Duke's tariff, it should require Duke to promptly file a new application in the event FERC approves the partial stipulation or disapproves of TCO's confiscation language.

The Commission should require Duke to submit the new application(s) within 15 days of FERC's ruling.

II. BACKGROUND

Duke proposes to change the rates for its three balancing services and to include new language in Rider EFBS allowing Duke to confiscate a supplier's gas under conditions. A summary of the proposed changes is below:[3]

Balancing Service	Proposed Rate Change	Proposed Confiscation-of-Gas Language
EFBS	Demand Charge: increased from \$7.34 to \$11.06 per Dth of the Supplier's MDDQ. Commodity Charge: increased from \$0.038 to \$0.045 per Mcf.	Service ¶(k): Quantities of gas above the Supplier's Bank Contract Quantity ("BCQ") at specified June 30 or August 31 levels will not be carried over; they will be forfeited by Supplier to the extent the excess causes TCO to confiscate Duke's gas. Service ¶(o): Quantities of gas above the Supplier's maximum bank inventory at the specified February 1 level will not be carried over; they will be forfeited by Supplier to the extent the excess causes TCO to confiscate Duke's gas.

[3] *See* Revised Exhibit B of Duke's Amended Application filed March 12, 2021.

FBS	Charge: increased from $0.363 to $0.614 per Mcf.	Not proposed for this balancing service rider.
IMBS	Charge on throughput: increased from $0.0848 to $0.1222 per Mcf.	Not proposed for this balancing service rider.

In support of the rate changes, Duke explained that the rate changes are based on the combined impact of: (a) changes in the costs it is incurring for storage service and transportation in/out of storage from TCO; (b) changes in the costs it is incurring for storage service from Texas Gas Transmission; and (c) a decrease in the throughput used in the calculations.[4] On April 15, 2021, Duke clarified its intent as to the proposed rates. Duke stated:[5]

> After [Commission] approval, however, and in the event FERC determines, through the course of its proceeding, that the TCO rates upon which Duke Energy Ohio's Rates FBS, EFBS, and IMBS are calculated should be set at a level that is different than what is currently being charged by TCO, Duke Energy Ohio will forthwith file a new application to adjust such rates accordingly.

In support of the confiscation-of-gas language, Duke stated that it proposed the language for Rider EFBS "to remain consistent with how storage must be managed" given the changes TCO has proposed at FERC.[6] Duke noted that its EFBS tariff already requires suppliers to keep storage balances at specified levels and TCO only confiscates gas if the balance exceeded the April 1 level.[7] By incorporating TCO's changes, the proposed confiscation could occur if the supplier's bank exceeds the specified inventory levels at three other times as well – February 1, June 30 and August

[4] Duke Application at 3.
[5] Duke Correspondence (April 15, 2021).
[6] Duke Application at 3. It is RESA's understanding that the TCO confiscation language has not taken effect and is pending FERC consideration, unlike TCO's rate changes which were put into effect in February 2021 pending subsequent FERC approval or revision.
[7] Duke Application at 3.

31.[8] On July 8, 2021, Duke clarified its intent as to the proposed confiscation-of-gas language, stating in part:[9]

> …Duke Energy Ohio is aware that the proceeding at the Federal Energy Regulatory Commission (FERC), pursuant to which the Columbia Gas Transmission (TCO) rates for storage and related transportation are being adjusted, is still in process and, now, that a partial settlement has been filed.
>
> * * *
>
> As part of the recently filed partial settlement, TCO has agreed to withdraw its tariff changes around the new gas confiscation provision for their storage service. It agreed to file to implement those changes in its tariff within 15 days of the FERC order accepting this partial settlement.
>
> Assuming TCO does withdraw those confiscation provisions, Duke Energy Ohio would similarly revise its tariffs to eliminate the new confiscation provisions, within 15 days of its receiving notice of that TCO change.

III. COMMENTS

A. The proposed rate changes are reasonable if subject to prompt adjustment by Duke and the Commission if the outcome of the TCO case results in lower rates.

Duke proposes to increase its balancing service rates based on changes in its underlying costs to offer the services. Duke's proposed rates, however, include cost increases that TCO implemented in February 2021, but are still subject to FERC review and approval. The FERC proceeding continues and it is unknown when it will conclude. RESA has reviewed Duke's proposed changes in these proceedings. RESA is willing to not oppose Duke's proposal to implement the new proposed rates for Riders EFBS, FBS and IMBS so long as the Commission requires Duke to <u>promptly</u> file a new application with the Commission to re-set the rates in Riders FBS, EFBS and IMBS if FERC finalizes TCO's rates at less than what would be included in Duke's proposed rates. This requirement is important to ensure that suppliers are not harmed by Duke

[8] *Id*.
[9] Duke Correspondence (July 8, 2021). Note, Duke is a signatory party to the Stipulation and Agreement of Partial Settlement filed July 1, 2021, in TCO's FERC proceeding.

adjusting its rates based, in part, on non-finalized TCO rates. Duke appears agreeable with this directive as well, given its statement in its April 15, 2021 clarification that "Duke Energy Ohio will forthwith file a new application to adjust such rates accordingly." Equally important is that the Commission quickly rule on any rate-adjustment filing to ensure that suppliers are not harmed.[10]

B. The proposed right to confiscate gas is unnecessary and will be ineffectual, and therefore should not be approved.

Duke proposes to include new language in Rider EFBS that would result in quantities of the supplier's gas above specified levels as of February 1, June 30 or August 31, in addition to April 1 levels, being forfeited by the supplier if the excess causes TCO to confiscate Duke's gas. Specifically, Duke proposes the following language changes for Rider EFBS (in bold and underlined):

> <u>Service ¶(k)</u>: A Supplier may have no more than 60% of its BCQ in bank as of June 30, and no more than 85% of its BCQ in bank as of August 31. **<u>Quantities in excess of 60% of Supplier's BCQ as of June 30, or 95% of Supplier's BCQ as of August 31, shall not be carried over beyond June 30 or August 31, as applicable, and shall be forfeited by Supplier to the extent that such excess causes TCO to confiscate the Company's gas.</u>**
>
> <u>Service ¶(o)</u>: Supplier's maximum bank inventory on April 1 shall not exceed 25% of its BCQ. Supplier's maximum bank inventory on February 1 shall not exceed 65% of its BCQ. Quantities in excess of 25% of Supplier's BCQ **<u>on April 1, or 65% of Supplier's BCQ on February 1,</u>** shall not be carried over beyond April 1 **<u>or February 1, as applicable, and shall be forfeited by Supplier to the extent that such excess causes TCO to confiscate the Company's gas</u>**.

Duke acknowledged in its July 8, 2021 filing that TCO has recently agreed to withdraw the confiscation language as part of a partial settlement of its pending FERC proceeding. Duke

[10] RESA notes regulatory outcomes are not the sole reason for prompt rate adjustment to avoid harm. For example, it is RESA's understanding that certain Storage Service Transportation contracts used in the provision of balancing services expire in March 2022, so prompt filing to update rates with as much advance notice given to suppliers is desirable.

proposes to include the above underlined and bolded language in its Rider EFBS but remove it if TCO ultimately withdraws the corresponding language in the FERC proceeding. Duke's proposal would result in unnecessary and ineffectual language in the EFBS tariff. Specifically, the additional dates for TCO confiscation of Duke's gas will not occur because TCO has agreed to withdraw those confiscation dates from its tariff proposal at FERC. Duke, therefore, has no reason for a counterpart in Rider EFBS. Accordingly, the Commission should reject language that will be a meaningless term/condition of service under Rider EFBS, and not adopt Duke's confiscation-of-gas language.[11]

C. Timing is important to suppliers.

RESA urges the Commission to move forward with these proceedings and recognize that timing is a key consideration in RESA's non-opposition of Duke's proposed rates as amended and clarified. If these rates are implemented as Duke has proposed (and the confiscation language change should not be implemented), both Duke and the Commission need to act promptly. Duke should be directed to file a new application within 15 days of the FERC decision. Without such directive, suppliers may be harmed.

IV. CONCLUSION

RESA appreciates the opportunity to provide these comments on Duke's amended and clarified application to modify Rider EFBS, Rider FBS, and Rider IMBS. For the foregoing reasons, RESA does not oppose Duke's proposed rates in these proceedings. The Commission should require Duke to file a new application within 15 days of FERC's decision in TCO's pending

[11] The Commission has specifically avoided meaningless tariffs. *See In the Matter of Ohio Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, to Transfer Jurisdictional Assets, to Establish Fuel Efficient Procedures, to Freeze and Lower Overall Electric Rates to Customers, and to File Tariffs Not for an Increase in Rates*, Case No. 95-830-EL-UNC, Opinion and Order at 8 (October 18, 1995) (stipulated tariff was "preferable" to other approach that tended to render the tariffed industrial rates meaningless).

proceedings, in the event that TCO's rates (as set by FERC) are lower than those in this pending application. RESA opposes Duke's proposed confiscation-of-gas language and urges the Commission to reject it because it is unnecessary and will be ineffectual.

Respectfully Submitted,

/s/ Gretchen L. Petrucci
Michael J. Settineri (0073369), Counsel of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
Telephone 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 on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 23rd day of July 2021 on all persons/entities listed below:

Duke Energy Ohio, Inc.	rocco.dascenzo@duke-energy.com jeanne.kingery@duke-energy.com larisa.vaysman@duke-energy.com
Interstate Gas Supply, Inc.	michael.nugent@igs.com bethany.allen@igs.com evan.betterton@igs.com joe.oliker@igs.com
Ohio Consumers' Counsel	william.michael@occ.ohio.gov ambrosia.wilson@occ.ohio.gov
Retail Energy Supply Association	mjsettineri@vorys.com glpetrucci@vorys.com
Staff of the Public Utilities Commission of Ohio	robert.eubanks@ohioAGO.gov

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci