

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 14-0375-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 14-0376-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an adjustment to Rider MGP Rates.	) ) )	Case No. 15-0452-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 15-0453-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	) ) )	Case No. 16-0542-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 16-0543-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 17-0596-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 17-0597-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	) ) )	Case No. 18-0283-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tarif Approval.	) )	Case No. 18-0284-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Implementation of the Tax Cuts and Jobs Act of 2017.	) ) )	Case No. 18-1830-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Tariff Amendments.	) ) )	Case No. 18-1831-GA-ATA

In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	)	
	)	Case No. 19-0174-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio Inc., for Tariff Approval.	)	Case No. 19-0175-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs.	)	
	)	Case No. 19-1085-GA-AAM
	)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 19-1086-GA-UNC
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	
	)	Case No. 20-0053-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 20-0054-GA-ATA
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**REPLY IN SUPPORT OF THE MOTION FOR LEAVE TO INTERVENE AND  
REQUEST TO ESTABLISH A PROCEDURAL SCHEDULE AND MEMORANDUM IN  
SUPPORT OF INTERSTATE GAS SUPPLY, INC.**

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**I. INTRODUCTION**

On September 17, 2021, Interstate Gas Supply, Inc. (“IGS”) filed a motion for leave to intervene in the above-captioned proceedings after Duke Energy Ohio, Inc. (“Duke”) and other parties filed a Stipulation and Recommendation (“Stipulation”) that seeks to resolve several unrelated matters and includes market-related commitments and recommendations that are completely unrelated to the scope of the underlying proceedings. Duke, the Ohio Consumers’ Council (“OCC”), and the Ohio Energy Group (“OEG”) subsequently filed memoranda contra opposing IGS’s intervention (collectively

“Stipulating Parties”). On the whole, each party asserts a variation of the same two claims: IGS’s motion for leave to intervene cannot satisfy the criteria to warrant intervention under R.C. 4903.221 because (1) IGS does not have an interest in the proceeding to warrant intervention; and (2) IGS’s intervention would delay approval of the Stipulation.

The reality, however, is that IGS has demonstrated that it will be adversely impacted by the Stipulation and, therefore, has a real and substantial interest necessary to warrant intervention under R.C. 4903.221 and Ohio Adm. Code 4901-1-11. IGS also established that good cause and extraordinary circumstances exist to warrant intervention in each of the above-captioned cases for which the intervention deadline has passed.<sup>1</sup>

Moreover, IGS’s intervention will not *unduly* prolong or delay this proceeding for several reasons. First, the Public Utilities Commission of Ohio (“PUCO” or “Commission”) has yet to establish a procedural schedule to consider the Stipulation; thus, IGS is not suggesting to change any existing scheduled deadlines. Second, several of these proceedings have been pending for more than seven years, so it is disingenuous for the Stipulating Parties to oppose a brief extension to consider new market-related provisions that were only recently raised. Finally, because any delay in these proceedings is the result of the actions of the Stipulating Parties’ introduction of new issues, it cannot be argued that IGS’s intervention will *unduly* delay this case.

For the reasons set forth below, the Commission should reject the attempts by the Stipulating Parties to deprive IGS of its right to due process and grant IGS’s Motion for

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<sup>1</sup> IGS notes that an intervention deadline has not been established in two of the 18 cases captioned above (i.e. Case Nos. 20-53-GA-RDR and 20-54-GA-ATA).

Leave to Intervene and request to establish a procedural schedule in this case, so that it may evaluate whether the Stipulation satisfies the three-prong test.

## **II. ARGUMENT**

### **A. IGS's Interest is Sufficient to Justify Intervention.**

The Stipulating Parties argue that IGS's motion to intervene should be denied because it does not meet the intervention standard set forth in R.C. 4903.221. Specifically, the Stipulating Parties contend that IGS is not adversely impacted by Duke's market-related commitments to: (1) predetermine the structure of Duke's application to exit the merchant function ("EXM") and transition from a Gas Cost Recovery ("GCR") mechanism to a competitive Standard Service Offer ("SSO"); (2) provide twenty-four months of shadow billing data—without any confidential restrictions—to the OCC on an ongoing basis; and (3) to implement billing system changes that will include the Price-to-Compare on all shopping customer bills.<sup>2</sup>

With respect to Duke's commitment to file an EXM application and transition to an SSO, Duke alleges that IGS does not have a real and substantial interest necessary to warrant intervention because the stipulated provision is "just a promise to file an application"<sup>3</sup> in a separate proceeding. The Stipulating Parties argue that because IGS can participate in the EXM application, Duke's commitment in these cases will not

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<sup>2</sup> Stipulation at pp 16-19.

<sup>3</sup> Memorandum of Duke Energy Ohio Contra Motions to Intervene and Set Schedule at 7. (hereinafter "Duke Memo Contra")

adversely impact IGS.<sup>4</sup> IGS disagrees. IGS's ability to file a motion to intervene in the EXM application proceeding should not distract from the fact that the structure of Duke's EXM application was expressly defined in *this* proceeding and, therefore, impacts IGS's interests in this case.<sup>5</sup>

The Stipulation, for example, dictates critical components of the structure of Duke's EXM application. It predetermines (without any input from competitive market participants) that Duke will transition to an SSO rather than a standard choice offer. Likewise, it specifies how SSO transition costs will be recovered from the residential customers that IGS serves, and establishes a timeframe by which Duke must conduct its first auction and delivery period.<sup>6</sup> Making matters worse, the Stipulation requires Duke to include in the EXM application bill format changes that violate Commission rulemaking process and recent precedent.<sup>7</sup> By establishing the blueprint for the EXM application in this case, the Stipulating Parties have greased the skids to achieve their own desired outcome while simultaneously forcing competitive market participants to swim against the current to have any chance of bringing sanity to the misguided, half-baked approach hardwired into the Stipulation.

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<sup>4</sup> Duke Memo Contra at pp 8-9; Memorandum Contra Motions for Leave to Intervene and Motion to Establish a Procedural Schedule by Ohio Energy Group at 3 (hereinafter "OEG Memo Contra"); Memorandum Contra IGS's Motion to Intervene and Motion for Procedural Schedule by Office of the Ohio Consumers' Counsel at pp 3-4. (hereinafter "OCC Memo Contra")

<sup>5</sup> Stipulation at ¶22.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., *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, Entry on Rehearing at 20 (Jan. 27, 2021).



If that were not enough to demonstrate that IGS has an interest in this case, it is also noteworthy that approval of the Stipulation is inextricably tied to the EXM application case. In other words, the EXM application will not move forward if the Stipulation is rejected.<sup>8</sup> Regardless of whether IGS supports or opposes the EXM application as currently proposed, IGS has an interest in the outcome of this case by virtue of the parties tethering them together. Thus, IGS has a real and substantial interest in these proceedings by virtue of the EXM-related provisions alone.

Next, the Stipulating Parties seek to marginalize the adverse impact to IGS concerning Duke's commitment to include the price-to-compare on shopping customer bills. Here, they argue that there is no harm because the price-to-compare already appears on several utility bills throughout Ohio.<sup>9</sup> OCC and OEG go further and appear to argue that IGS does not have an interest in this provision because Duke's price-to-compare commitment is intended to educate consumers and promote transparency.<sup>10</sup> These claims mischaracterize the status quo in other natural gas utility service territories and would work against the very goals they allege to promote.

First, OCC and OEG neglect to mention that—as a result of Commission rules—***none of the natural gas utilities*** list the default service price on their bills. The reason the default service price is omitted is simple: Default service rates for auction-based products change on a monthly basis. Therefore, the default service rate does not

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<sup>8</sup> Stipulation at ¶21.

<sup>9</sup> See, e.g., Duke Memo Contra at 7; OEG Memo Contra at 3.

<sup>10</sup> See, e.g., OCC Memo Contra at 4; OEG Memo Contra at 3.

represent a price that a customer can select on a prospective basis—the next month’s price will be different. For example, default service prices have run up by well over 100% in just the last three months. If a customer relied upon the last month’s price to set expectations for the future, they would receive a serious wake up call. Therefore, contrary to OCC’s and OEG’s claim that providing the default service price on customer bills will increase transparency, the opposite is true: It would only work to create customer confusion. IGS has a real and substantial interest in ensuring that these misleading and anticompetitive provisions do not come to fruition.

Likewise, IGS’s opposition to the inclusion of the price-to-compare on customer bills is well-documented.<sup>11</sup> IGS has a real and substantial interest in market behavior and, by extension, compliance with Ohio law<sup>12</sup> and the Commission’s rules. As a general matter, agreements that are in violation of the law are null and void. IGS, therefore, should be entitled to provide input on whether Duke’s price-to-compare commitment complies with the billing provisions set forth in Ohio Adm. Code 1-13-11(B)(13) and (D) to ensure that Ohio law and the Commission’s rules are not circumvented via backroom negotiations. Based on the foregoing, IGS has demonstrated that it has a real and substantial interest in Duke’s price-to-compare commitment that will be adversely impacted absent its intervention in this case.

Regarding the shadow billing provision, the Stipulating Parties generally claim that this provision has no adverse impact on IGS’s interests because the shadow billing data

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<sup>11</sup> See, e.g., *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, Entry on Rehearing at 20 (Jan. 27, 2021).

<sup>12</sup> R.C. 4905.06

is to be shared only with the OCC.<sup>13</sup> This argument fails for several reasons. As an initial matter, OCC is not the market monitor—that duty falls on the Commission and its Staff (which footnoted out of this provision in the Stipulation).<sup>14</sup> Additionally, the Stipulation includes no express limitations or guardrails on OCC’s use of that information. The Stipulation also expressly provides that the “aggregated shadow billing information is not to be considered confidential.”<sup>15</sup> Of course, the confidentiality of the data that OCC has requested is a matter currently pending a Commission determination in another case.<sup>16</sup> OCC appears to be attempting to circumvent the Commission’s due process requirements with respect to determinations on confidentiality. Finally, since IGS cannot predict what OCC’s intentions are with respect to this data, the Stipulating Parties’ suggestion that IGS is not—or could not be—adversely impacted by OCC’s possession of that information is unavailing.

By now the Stipulating Parties should be keenly aware of the fact that IGS has litigated this very issue with OCC and other utilities (with Duke commonly siding with IGS) in several Commission rulemakings and proceedings.<sup>17</sup> IGS’s opposition to OCC’s requests to receive shadow billing data is well-documented, and the “Commission has previously rejected, on several occasions, similar shadow-billing recommendations . . .

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<sup>13</sup> Duke Memo Contra at 6; OCC Memo Contra at 4; OEG Memo Contra at 3.

<sup>14</sup> See R.C. 4928.06

<sup>15</sup> Stipulation at ¶25.

<sup>16</sup> See, e.g., *In the Matter of the Application of Ohio Power Company for Approval of Changes to Its Bill Format*, Case No. 20-1408-EL-UNC, Entry (Oct. 2, 2020).

<sup>17</sup> See, e.g., *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, Entry on Rehearing at 20 (Jan. 27, 2021).

.<sup>18</sup> IGS clearly has an interest in ensuring that OCC does not circumvent Commission precedent through an opaque settlement process to achieve a result that the Commission has rejected several times. Any argument that IGS does not have an interest that would be adversely impacted by Duke's shadow billing data commitment in these cases is simply untrue. Thus, IGS's Motion to intervene should be granted.

### **B. IGS's Legal Position Relates to the Merits of the Cases.**

In an absurd twist, Duke and OCC both acknowledge that the merits of these proceedings are primarily related to resolution of Duke's manufactured gas plant ("MGP") cases and the charges to consumers for Duke's remediation costs, and the impacts of the 2017 Tax Cuts and Jobs Act.<sup>19</sup> IGS certainly does not dispute that fact. However, IGS does take issue with Duke's contention that IGS's legal position has no probable relation to the merits of this case. After all, it was the Signatory Parties—not IGS—that injected three separate market-related issues into the Stipulation. These commitments are of significant import to IGS and are now squarely at issue even though each market-based provision is completely unrelated to the scope of the underlying proceedings.

IGS referenced these provisions in its Motion to Intervene, so its legal position is related to the merits of the case. IGS should be entitled to due process to address those commitments. Therefore, the Commission should find that IGS's Motion to Intervene satisfies the standard set forth in R.C. 4903.221(B)(2).

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<sup>18</sup> See, e.g., *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, Entry on Rehearing at pp 6-7 (Apr. 21, 2021).

<sup>19</sup> See Duke Memo Contra 8; OCC Memo Contra at 3.

Moreover, it cannot be overlooked that the Stipulation is presented as a package. As such, IGS reserves the right to contest the settlement in its entirety under the Commission's "three-prong" test. As noted in IGS's motion to intervene, the entire competitive market was excluded from the negotiations that established the Stipulation's terms. Thus, in addition to the legal infirmities of the Stipulation under prongs two and three, the process through which the agreement was reached raises serious concerns whether the Stipulation can satisfy prong one. As the Supreme Court of Ohio has stated, it has "grave concern regarding the partial stipulation . . . from settlement talks from which an entire customer class was intentionally excluded." *Time Warner AxS v. PUCO*, 75 Ohio St. 3d 229, FN 2 (1996). Such conduct is "contrary to the commission's negotiations standard . . . ." *Id.* Accordingly, IGS's legal position is highly relevant to the three-prong test used by the Commission to evaluate the reasonableness of the Stipulation in these cases.

### **C. IGS's Intervention Will Not Unduly Delay or Prolong the Proceeding.**

The Stipulating Parties universally claim that IGS's Motion to Intervene should be denied due to the potential to further delay these proceedings. Of course, some of these proceedings have been dragging on for more than seven years.<sup>20</sup> Yet, the Stipulating Parties now complain that time is of the essence and they simply cannot wait a few more weeks for IGS and other competitive market participants to exercise their right to due process and contest whether the Stipulation satisfies the Commission's three-prong test.

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<sup>20</sup> See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates*, Case No. 14-0375-GA-RDR (Mar. 31, 2014); *In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval*, Case No. 14-0376-GA-ATA (Mar. 31, 2014).

Make no mistake, IGS did not introduce these market-related issues into the Stipulation nor did it seek to resolve a group of unrelated proceedings (without filing to consolidate them) together after those cases had already been fully litigated and pending a Commission decision on the merits. Rather, it was the Stipulating Parties that created a new procedural process for resolution of these cases. The Stipulating Parties threw a wrench into the approval process by not only failing to consolidate the cases prior to filing the Stipulation, but also by introducing three market-related commitments that are completely unrelated to the scope of the underlying proceedings. Any delay in these proceedings is the result of the Stipulating Parties' own actions, and the Commission should not allow the Stipulating Parties to deprive IGS of its right to due process under the guise of administrative efficiency.

As set forth in IGS's Motion to Intervene, IGS will not unduly delay this proceeding because these cases have not been consolidated and the Commission has yet to establish a procedural schedule to consider the Stipulation.<sup>21</sup> Therefore, IGS satisfies the intervention standard set forth in R.C. 4903.221(B)(3).

**D. IGS Will Significantly Contribute to the Full Development and Equitable Resolution of the Factual Issues in This Case.**

Duke briefly argues that IGS should not be granted intervention in this case because it has not provided any reason to believe that it could resolve any disputes related to the three market-related commitments cited throughout IGS's Motion to

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<sup>21</sup> Motion for Leave to Intervene and Request to Establish a Procedural Schedule of Interstate Gas Supply, Inc., at 17. (hereinafter "IGS Motion to Intervene")

Intervene.<sup>22</sup> Here again, IGS has litigated current and pending matters related to the provision of shadow billing and the inclusion of the price-to-compare on Ohio customer bills. IGS has participated in natural gas restructuring matters in Ohio for over thirty years: IGS serves customers in utility service territories that have eliminated the GCR and participates in utility proceedings related to the provision of default service. IGS, therefore, has the knowledge and experience necessary to significantly contribute to the full development and resolution of the market-related commitments identified in its Motion to Intervene. Based on the foregoing, Duke's argument should be dismissed.

**E. IGS's Proposed Procedural Schedule Appropriately Balances the Interests of the Stipulating Parties with the Interests of Parties that Were Excluded from Negotiations.**

Although the Stipulating Parties oppose IGS's request to establish a procedural schedule in these proceedings, only the OCC presents an argument as to why that proposal should be rejected. Despite indicating a willingness to agree to the discovery timeline IGS proposed, OCC argues that the remainder of IGS's proposed procedural schedule should be rejected because the suggested timelines will cause "a substantial delay."<sup>23</sup> Instead, OCC urges the Commission to set the case for hearing no later than October 2021.<sup>24</sup>

OCC's request fails to appropriately balance the interests of the stipulating parties with the interests of IGS and other stakeholders that were excluded from the settlement

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<sup>22</sup> Duke Memo Contra at pp 9-10.

<sup>23</sup> OCC Memo Contra at 6.

<sup>24</sup> *Id.*

negotiations that resulted in the Stipulation. IGS's proposal is reasonable in that it will allow adversely impacted parties to conduct discovery, prepare testimony, and hold a hearing to develop a record based on a timeline that should not unduly delay a group of proceedings that have been pending for more than seven years.<sup>25</sup> Based on the foregoing, the proposed procedural schedule set forth in IGS's Motion to Intervene should be adopted.

#### **F. IGS's Participation in These Proceedings Should Not Be Limited.**

Despite OCC's argument to the contrary, the Commission should not limit IGS's ability to participate in this case to the three competitive market-related issues referenced in its Motion to Intervene.<sup>26</sup> The Stipulation was adopted as a package and is intended to resolve *all* issues in these cases.<sup>27</sup> In considering the reasonableness of a stipulation, the Commission evaluates the settlement as a package to determine whether the agreement benefits ratepayers and public interest and does not violate any important regulatory principle or principle.<sup>28</sup>

IGS should be afforded the same opportunity to review the entire settlement without limitation to determine whether the agreement benefits ratepayers and the public interest. IGS notes that the crediting and netting of benefits<sup>29</sup> set forth in the Stipulation raises questions as to whether every class of customer (i.e. small commercial) that has

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<sup>25</sup> IGS Motion to Intervene at 8.

<sup>26</sup> OCC Memo Contra at pp 4-5.

<sup>27</sup> Stipulation at 23.

<sup>28</sup> *In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 21 (May 13, 2010).

<sup>29</sup> See, e.g., Stipulation at ¶10.



paid these rates has been represented. IGS serves small commercial customers and, therefore, can provide meaningful input. Moreover, there are opaque terms in the Stipulation that permit OCC and Duke to delegate revenues identified in the Stipulation. These matters may require additional exploration and development. Based on the foregoing, IGS should be granted full party status to these proceedings.

### **III. CONCLUSION**

The foregoing demonstrates that IGS has a real and substantial interest in this proceeding that will be adversely impacted absent its intervention in these cases. IGS's Motion to Intervene satisfies the requirements for intervention as set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11. IGS's Motion to Intervene also established that good cause and extraordinary circumstances exist to warrant intervention in those cases where a deadline to intervene has been set. Accordingly, the Commission should reject the Stipulating Parties' arguments and grant IGS's Motion to Intervene in the above-captioned proceedings.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that this *Reply in Support of the Motion for Leave to Intervene and Motion to Establish a Procedural Schedule and Memorandum of Support of Interstate Gas Supply, Inc.* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 12<sup>th</sup> day of October 2021.

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Summary: Reply in Support of Motion for Leave to Intervene and Request to Establish a Procedural Schedule electronically filed by Mr. Michael A. Nugent on behalf of Interstate Gas Supply, Inc.