

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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
	)	

**THE RETAIL ENERGY SUPPLY ASSOCIATION’S REPLY BRIEF TO  
MEMORANDUM CONTRA SUBMITTED BY DUKE ENERGY OHIO, INC., OHIO  
ENERGY GROUP, AND THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**I. Introduction**

On September 29, 2021, Retail Energy Supply Association (“RESA”)<sup>1</sup>, pursuant to Ohio Revised Code Section 4903.221 and Ohio Administrative Code 4901-1-11, moved to intervene in the above-styled 18 proceedings as a full party of record.<sup>2</sup> As fully explained in its motion to intervene, the reasons supporting this request for intervention are clear. Prior to August 31, 2021, when a stipulation was filed in this proceeding, the applications and filings in the above-captioned

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<sup>1</sup> 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](http://www.resausa.org).

<sup>2</sup> RESA Motion for Leave to Intervene and Memorandum in Support of RESA (“RESA Motion for Leave”).

18 proceedings did not involve any supplier-related issues and were limited to Duke Energy Ohio's ("Duke") manufactured gas plant ("MGP") sites and the Tax Cuts and Jobs Act of 2018 ("TCJA"). Consequently, RESA had no reason to intervene in these proceedings. The filed stipulation, however, is not limited to MGP and TCJA issues and includes three marketer-related issues that RESA had no prior notice of: Duke's transition away from its gas cost recovery ("GCR") process and adoption of a natural gas auction process ("SSO") that will not include a standard choice offer; a new bill format proposal to include an SSO price-to-compare message on natural gas bills; and giving the Office of the Ohio Consumers' Counsel ("OCC"), upon request, 24-months of historic "shadow billing" data, which will include data comparing an aggregate of shopping customer costs with the GCR or SSO.<sup>3</sup>

Despite RESA demonstrating its real and substantial interest in having an opportunity to participate in these proceedings, Duke, the Ohio Energy Group ("OEG"), and OCC have filed memorandum contra to RESA's motion to intervene, arguing that RESA's intervention is untimely and unnecessary. As demonstrated further below, Duke's OEG's and OCC's claims are without merit as RESA's members have real and substantial interests, and will be prejudiced without the opportunity to participate in these proceeding. Duke, OEG and OCC cannot deny that the stipulation they drafted and signed contains provisions that will impact the retail natural gas market in Duke's territory. The Commission should grant RESA's motion for leave to intervene and make RESA a full party of record.

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<sup>3</sup> Stipulation at pp. 16-19.

## **II. Argument**

### **A. The arguments made against RESA's intervention are meritless.**

None of the arguments advanced by Duke, OEG, and OCC negate the fact that the August 31, 2021 stipulation includes supplier-related terms which were crafted without any input from the supplier industry. Duke takes issue with the fact that RESA failed to intervene in the 16 proceedings addressing its MGP sites and the two proceedings addressing the TCJA. However, Duke concedes that three concerns identified by RESA (Duke's transition to a SSO, adding a price-to-compare on customer bill, and provision of shadow billing information to OCC) are market-related commitments. Nonetheless, Duke argues that RESA's intervention in these proceedings is premature because other than the aggregated shadow billing data being given to OCC, the market-related commitments in the stipulation would not come to pass without a separate Commission proceeding on the merits of a move to a SSO.<sup>4</sup> OEG similarly argues that RESA should have intervened earlier and intervention at this time would prolong the proceedings. Furthermore, OEG argues that the information being provided to OCC "merely involves an information request by OCC that again, serves the interests of transparency."<sup>5</sup> OCC posits that RESA's participation is more appropriate in Case No. 21-903-GA-EXM, under which Duke has filed a notice of intent to file an application for the transition to SSO. OCC also believes that the price-to-compare message on bills is benign because that stipulation term will educate customers. Finally, OCC argues that its mere possession of shadow billing data cannot possibly adversely impact RESA.<sup>6</sup>

The Commission should not be persuaded by any of these arguments as the face of the stipulation shows RESA's interest in this proceeding. The August 31, 2021 stipulation is

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<sup>4</sup> Duke Memorandum Contra at p. 5, 8-10.

<sup>5</sup> OEG Memorandum Contra at p. 3.

<sup>6</sup> OCC Memorandum Contra (Oct. 6, 2021) at p. 3-4.

essentially a roadmap for Duke to transition to a SSO model and includes various requirements: the number and timing of stakeholder sessions; the timing of Duke's filing of its application to transition to an SSO; the timing of the first SSO Auction and the timing for the first delivery period; and parameters for the recovery of prudently-incurred costs for the transition from GCR to the SSO auction process.<sup>7</sup> The stipulation also mandates that Duke's SSO application create a non-bypassable rider for residential natural gas customer bills and a bypassable rider on non-residential natural gas customer bills for SSO Transition Costs.<sup>8</sup> Duke, OEG and OCC cannot hide the fact that they are presenting a stipulation that will directly impact the retail natural gas market in Ohio and the proposed structure for Duke's SSO application. RESA, being knowledgeable regarding Duke's market and the GCR and SSO processes, has a direct interest in the stipulation. Allowing OEG, Duke and OCC to keep RESA out of this proceeding means that RESA and its members operating in Duke's choice program will not have the opportunity to address stipulation conditions that will affect Ohio's retail natural gas market.

The stipulation would also put into place an SSO price-to-compare on Duke's natural gas bills once Commission-approval is received and Duke transitions to the SSO.<sup>9</sup> The stipulation sets forth the exact language for the price-to-compare message including when the billing system change will be implemented; language to be included; and the customer groups who will receive the message.<sup>10</sup> Again, RESA has a substantial interest in how bill formats are created for choice customers and has significant experience in this area. OEG, Duke and OCC cannot in good faith argue that RESA does not have a valid interest in a stipulation that would put in place the price-to-compare message.

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<sup>7</sup> Stipulation at pp. 16-18.

<sup>8</sup> *Id.* at 17.

<sup>9</sup> *Id.* at 18.

<sup>10</sup> *Id.*

Finally, turning to Duke's provision, upon OCC's request, 24-months of historic shadow billing data, RESA has repeatedly objected to and the Commission has repeatedly rejected the public availability of such information because substantial, viable customer information is already available. The Commission has recently stated:

The Commission rejects OCC's argument regarding shadow billing. **Viable public resources already exist, namely the Commission's "apples to apples" website at [energychoice.ohio.gov](http://energychoice.ohio.gov), which enable customers to compare differences between CRES providers' programs and rates and an EDU's SSO.** If customers have concerns regarding a discrepancy between rates listed on [energychoice.ohio.gov](http://energychoice.ohio.gov) and the price-to-compare listed on their utility bill, they have the opportunity to contact the Commission regarding the difference, as well as contact the specific CRES provider or EDU. We value transparency between customers and the rates/programs administered by CRES providers and an EDU's SSO rate, and, at the same time, we recognize the additional cost and burdens implementing OCC's proposed shadow billing report would have on EDUs. At this time, we find the current informational resources available to customers sufficient and OCC's proposed shadow billing requirement unnecessary; therefore, OCC's first assignment of error should be denied.

*In re 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 (Jan. 27, 2021), at ¶ 35 (emphasis added) (also rejecting OCC's request to make shadow billing publicly available). *See also In re Application of Ohio Power Company to Initiate Phase 2 of its GridSMART Project and to Establish the GridSMART Phase 2 Rider*, Case No. 13-1939-EL-RDR, Opinion and Order (Feb. 1, 2017), at ¶ 79 (rejecting Ohio Partners for Affordable Energy's request for shadow billing) and *In re the Purchased Gas Adjustment Clause Contained within the Rate Schedules of Duke Energy Ohio, Inc.*, Case No. 18-218-GA-GCR, et al., Opinion and Order (Dec. 18, 2019), at ¶ 54 (rejecting OCC's shadow billing recommendation which the Commission had also previously rejected in Duke's 2015 audit case regarding its GCR rider).

The Commission's previous directive regarding shadow billing is correct and RESA has every right to dispute the stipulation's inclusion of shadow billing in this proceeding. Importantly,

as the Commission recognizes, shadow billing is not a transparent way to compare competitive offers. Any such calculation ignores non-rate, value-added elements of actual competitive offers, competitive products for which a utility does not bill, and also ignores the variations of the types of competitive products offered in the marketplace. Further, the August 31, 2021 stipulation does not lay out any parameters for Duke's shadow billing methodology.<sup>11</sup> The stipulation also ignores that some information about competitive offers may be confidential and deems that "aggregated shadow billing information is not to be considered confidential."<sup>12</sup> RESA should be allowed to intervene in these proceedings to ensure the Commission is fully informed on Duke's OEG's and OCC's proposal to conduct shadow billing in Duke's territory – and all three parties should be made to explain how shadow billing has any bearing on the manufactured gas plant proceedings and the tax proceedings.

**B. RESA has previously demonstrated good cause for intervention in these 18 proceedings and no delay will occur as a result.**

In its motion to intervene filed September 29, 2021, RESA fully demonstrated that it met the standard for intervention pursuant to R.C. 4903.221 and Ohio Adm.Code 4901-1-11. Notably, prior to August 31, 2021, **RESA had no prior reason** to intervene in these proceedings because they only involved issues of Duke's MGP rider, environmental remediation costs, and the TCJA and did not involve any supplier-related issues. It is only now, with the stipulation recently proposed, that supplier-related issues are first being introduced. RESA's interests are not currently represented by Duke or by the other stipulation parties and no suppliers were involved in settlement

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<sup>11</sup> Stipulation at p. 19. The Commission should also take note that even though the stipulation has not been approved, OCC is now using shadow billing information allegedly provided by Duke to OCC in another proceeding to advocate for market changes. *See In the Matter of the Commission's Review of Chapter 4901:1-21 of the Ohio Administrative Code*, October 8, 2021 filing by OCC. RESA's interest in this proceeding on Duke's provision of and OCC's use of shadow billing is warranted.

<sup>12</sup> *Id.*

negotiations. Further, the Revised Code and prior Commission precedent support RESA being allowed to intervene in these proceedings. R.C. 4903.221(A)(2) (the Commission “may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.”); *In re Dayton Power & Light Co.*, Case Nos. 02-2779-EL-ATA, *et al.*, Opinion and Order (Sept. 2, 2003) at 8-9 (granting Green Mountain Energy Company’s motion to intervene, which was filed during the hearing and after the deadline for intervention, because it could not have known it was required to intervene prior to the filing of the stipulation in that proceeding); *In re Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR, *et al.*, Opinion and Order (Jan. 9, 2013) at 12-13 (allowing RESA to intervene after the need for a solar energy resource compliance project became an issue to be decided in Ohio Power Company’s long-term forecast case instead of its SSO case).

While Duke, OEG, and OCC all point to the potential delays by allowing RESA to intervene, this concern is unfounded. As RESA indicated in its motion to intervene, its intervention will not unduly prolong or delay the proceedings. That is because the Commission has not yet established a procedural schedule for the submission of evidence to consider the August 31, 2021 stipulation within the framework of its three-prong test for evaluating stipulations, or consolidated the 18 cases for such a proceeding. Furthermore, the Commission has not even set an intervention deadline in Case Nos. 20-53-GA-RDR and 20-54-GA-ATA. The Commission should not allow the parties to the stipulation to make swift and significant changes to the operation of Duke’s competitive marketplace and to the provision of shopping information and data without allowing RESA members an opportunity to address the changes identified in the stipulation. Consequently, any fears of delay as a result of RESA being granted intervention are unfounded and RESA should be allowed to intervene in these proceedings to protect its members’ interests.



**C. The Commission should not limit RESA's participation in any hearing in these proceedings.**

Rule 4901-1-30(D) expressly provide that any party, including RESA if intervention is granted, has the right to offer evidence and/or arguments in opposition to the stipulation. And central to these proceedings, is whether a stipulation that contains retail market provisions satisfies the Commission's three-prong test for stipulations. RESA has every right to challenge the stipulation under the Commission's three-prong test. OCC, however, seeks to block RESA's participation by claiming the hearing officer should limit RESA's participation under Rule 4901-1-27(B)(7) to only the retail market issues.<sup>13</sup>

OCC's attempt to avoid transparency in these proceedings and limit RESA's participation in any hearing should be rejected. First, as noted above, RESA would have a right under Rule 4901-1-30(D) as a party to offer evidence and/or arguments in opposition to the stipulation. Second, limiting RESA's involvement to only certain parts of the stipulation is contrary to the three-prong stipulation test which requires an evaluation of whether the stipulation is (1) the product of serious bargaining among capable, knowledgeable parties; (2) does not violate any important regulatory principle or practice; and (3) as a package, benefits customers and the public interest. Duke has submitted testimony on the three-prong test in this proceeding and RESA should likewise be able to submit testimony on the three-prong test – which requires in part, an evaluation of the stipulation **as a package**.

Lastly, contrary to OCC's unsupported claim, evidence offered by RESA in this proceeding would not "unnecessarily delay" these proceedings or a resolution of this matter. The stipulation first saw the light of day on August 31, 2021 and no hearing has been set in these proceedings. Moreover, OCC cannot in good faith claim that RESA should be limited in the evidence it presents

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<sup>13</sup> OCC Memorandum Contra at pp. 4-5.

while OCC and the rest of the stipulation signatory parties can present unlimited evidence supporting the stipulation. Indeed, the only delay in these proceedings was created by OCC, Duke and OEG when they inserted retail market provisions into a stipulation on proceedings that have nothing to do with retail market provisions. OCC's attempt to limit RESA's participation in any hearing in these proceedings should be rejected.

### **III. Conclusion**

For all of these reasons, the Commission should grant RESA's motion for leave to intervene in all of the proceedings with no limitation. RESA satisfies the requirements for intervention in these Commission proceedings because its members have real and substantial interests and it will be prejudiced without the opportunity to participate in these proceedings to address those interests. Additionally, RESA has demonstrated, pursuant to R.C. 4903.221, Ohio Adm.Code 4901-1-11, and prior Commission precedent, that good cause and extraordinary circumstances allows RESA to intervene at this juncture as a full party of record with no limitations at hearing.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

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Summary: Brief Reply Brief to Memorandum Contra Submitted by Duke Energy Ohio, Inc., Ohio Energy Group, and the Office of the Ohio Consumers' Counsel electronically filed by Mr. Michael J. Settineri on behalf of Retail Energy Supply Association