

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matters of the Applications of Duke Energy Ohio, Inc., for Adjustments to Rider MGP Rates.	)	Case No. 14-375-GA-RDR
	)	Case No. 15-452-GA-RDR
	)	Case No. 16-542-GA-RDR
	)	Case No. 17-596-GA-RDR
	)	Case No. 18-283-GA-RDR
	)	Case No. 19-174-GA-RDR
	)	Case No. 20-53-GA-RDR
In the Matters of the Applications of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 14-376-GA-ATA
	)	Case No. 15-453-GA-ATA
	)	Case No. 16-543-GA-ATA
	)	Case No. 17-597-GA-ATA
	)	Case No. 18-284-GA-ATA
	)	Case No. 19-175-GA-ATA
	)	Case No. 19-1086-GA-UNC
	)	Case No. 20-54-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 Authority to Defer Environmental Investigation and Remediation Costs.)	Case No. 19-1085-GA-AAM
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**MEMORANDUM CONTRA THE JOINT MOTION OF THE RETAIL ENERGY
SUPPLY ASSOCIATION AND INTERSTATE GAS SUPPLY, INC. TO REOPEN
THE HEARING RECORD TO SUBMIT A STIPULATED FACT
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Three months after the evidentiary hearing in this case was completed and the record was closed, RESA and IGS (the “Marketers”) seek to have the PUCO reopen the

hearing record¹ to enter a (non-existent) stipulation. They assert that the (non-existent) stipulation is necessary to correct an exhibit (Duke Exhibit 8) containing information about shopping in Dominion East Ohio’s service area that purportedly contains an error. The Marketers’ say that after the hearing occurred, and based on information received from the PUCO Staff, they learned that Duke Exhibit 8 incorrectly fails to include a clarifier that the shopping percentages included standard choice offer consumers.² The Marketers want a stipulation saying: “The choice statistics for Dominion East Ohio Gas shown on Duke Ex. 8 include both Choice customers and SCO customers.”³

The PUCO should deny the Marketers’ request. First, there is no stipulation. The so-called stipulation (or stipulated facts) is only between RESA and IGS. No other party joins the “stipulation.” The Marketers cannot force one on the other parties by filing a motion.

Second, the Marketers are not looking to have admitted *additional* evidence and the hearing records can be re-opened only to permit the presentation of additional evidence. But the Marketers are not requesting to admit *additional* evidence. They are requesting a stipulation that one of Duke’s exhibits contained inaccurate information because it was missing a disclaimer. Re-opening of the hearing records is not allowed under Ohio law.

Under O.A.C. 4901-1-34, the PUCO, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.

¹ Under O.A.C. 4901-1-34.

² Motion at 1-2.

³ *Id.*

Additionally, a motion to reopen a proceeding shall specifically set forth the purpose of the requested reopening.⁴ And if the purpose is to permit the presentation of *additional evidence*, the motion shall specifically describe the nature and purpose of such evidence and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding.⁵

Third, Duke Exhibit 8 is a PUCO-created document that reflects information publicly available on the PUCO energy choice website. The Marketers admit in their memorandum in support that the document is available on the PUCO's website and includes the desired disclaimer.⁶ Since the Marketers are seeking a clarification of *another party's* exhibit (a document created by the PUCO and currently in the public record), there is not good cause to reopen the proceedings.

The Marketers have not provided good cause for the PUCO to reopen the hearing to enter a non-existent stipulation making an unnecessary correction to the exhibit of another party based on hearsay. As the Marketer's admit in their request, there is no prejudice from the error in the exhibit because the Marketers do not seek to supplement any briefing or to hold an additional hearing.⁷ The PUCO should deny the Marketers' motion to reopen the hearing.

⁴ O.A.C. 4901-1-34 (B).

⁵ *Id.*

⁶ Memorandum in Support at 5-6.

⁷ *Id.* at 7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Memorandum Contra was served by electronic transmission upon the parties below this 22nd day of February 2022.

/s/ William J. Michael _____
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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ATA, 15-0453-GA-ATA, 16-0543-GA-ATA, 17-0597-GA-ATA, 18-0284-GA-ATA,
19-0175-GA-ATA, 19-1086-GA-UNC, 20-0054-GA-ATA, 18-1830-GA-UNC, 18-
1831-GA-ATA, 19-1085-GA-AAM**

Summary: Memorandum Memorandum Contra the Joint Motion of The Retail Energy Supply Association and Interstate Gas Supply, Inc. to Reopen the Hearing Record to Submit a Stipulated Fact by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J.