

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 Tariff 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
)	

JOINT REPLY (IN SUPPORT OF JOINT MOTION OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND INTERSTATE GAS SUPPLY, INC. TO REOPEN THE HEARING RECORD TO SUBMIT A STIPULATED FACT) TO DUKE ENERGY OHIO, INC.’S MEMORANDUM CONTRA

The Retail Energy Supply Association (“RESA”)¹ and Interstate Gas Supply, Inc. (“IGS”) filed the joint motion to reopen the hearing record to submit a simple stipulated fact: *“The choice statistics for Dominion East Ohio Gas shown on Duke Ex. 8 include both Choice customers and SCO customers.”* Duke Energy of Ohio (“Duke Energy or “Duke”) opposes submitting that fact

¹ The comments expressed by RESA in this filing represent the positions 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.

into the record even though (i) the stipulated fact will ensure the Commission is aware of the error in a Commission document that Duke Energy utilized at the hearing and (ii) Duke Energy does not disagree that the stipulated fact is accurate and truthful.

Regardless of Duke Energy's reasons for not wanting to ensure the error is corrected, RESA's and IGS' joint motion is procedurally proper, factually supported and satisfies the standard under Commission Rule 4901-1-34(A). That rule states that "[t]he commission...may, upon [its] 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." Further, "[i]f 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." Ohio Adm. Code 4901-1-34(B).

The joint motion is procedurally proper as to form and timing because the motion includes the stipulated fact that would be admitted into evidence and the motion was filed prior to the issuance of a final order. Duke Energy argues that the timing between the conclusion of the hearing and the joint motion renders the motion untimely, but as the Rule makes clear, a motion is timely if submitted prior to the issuance of a final order. The joint motion specifically described the nature and purpose of such evidence and the motion was filed prior to the issuance of a final order – thus the requirements of the Rule have been met as to those points.

RESA and IGS also set forth the reasons on why the stipulated fact could not have been presented earlier in the proceeding. It was after the hearing closed that Staff provided documents to IGS' attorney that established the error and the correction – the missing disclaimer that the DEO numbers included both Choice and SCO customers. Duke Energy claims RESA and IGS were on notice at the deposition of RESA witness Crist of the error, but that is not true because it was not

until Staff provided documents to IGS' attorney that the error and the correction were established, and the request to correct the record could be presented.

Moreover, Duke Energy fails to disclose to the Attorney Examiner in its memorandum contra that Mr. Crist's deposition took place on the afternoon of November 16th and the hearing commenced on the morning of November 18th. It is unrealistic to expect RESA and IGS to establish the error in one-day all the while engaged in preparing for a contested hearing (prepping witnesses, exchanging exhibits, etc.) where multiple witnesses were cross-examined.

Lastly, Duke Energy argues the motion should be denied because no party cited to Duke Ex. 8 in a brief before the Commission. That argument is irrelevant because the stipulated fact seeks to correct an error on a Commission produced document that was admitted into the record. Absent admission of the stipulated fact, neither the Commission nor the Supreme Court of Ohio will be aware of the error and the correction – and there is no guarantee that any party that signed the stipulation in this proceeding will not cite to Duke Ex. 8 in any future brief or other pleading. As to Duke's criticism that only RESA and IGS have agreed to the stipulated fact, stipulated facts were allowed into the record at the November 18th hearing without the agreement of all parties. Thus, this stipulated fact can be accepted by the Attorney Examiner into the record over the objections of Duke Energy.

The joint motion meets the standard for reopening the record under Commission Rule 4901-1-34(A). RESA and IGS have presented a stipulated fact related to Duke Ex. 8 as admitted, and, without the stipulated fact, the hearing record contains an error. No additional hearing is

required to grant the Joint Motion as presented. Tellingly, Duke Energy's failure to dispute the accuracy or truthfulness of the stipulated fact is sufficient to reopen the record to admit the stipulated fact without a hearing.

Respectfully Submitted,

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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 sent (via electronic mail) on the 23rd day of February 2022 on all persons/entities listed below:

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0053-GA-RDR, 20-0054-GA-ATA**

Summary: Reply Joint Reply electronically filed by Mr. Michael J. Settineri on behalf
of Retail Energy Supply Association and Interstate Gas Supply, Inc.