

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Duke)	
Energy Ohio, Inc., for an Adjustment to)	Case No. 21-618-GA-RDR
the Capital Expenditure Program Rider)	
Rate)	

REPLY BRIEF OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

Interstate Gas Supply, Inc. (“IGS”) submits this Reply Brief to respond to Duke Energy Ohio, Inc.’s (“Duke”) conditional acceptance of the auditor’s recommendation to monitor the capitalization and recovery of stock-based and earnings-related incentive compensation through its Capital Expenditure Program Rider (“CEP”).¹ Duke should not be permitted to adopt that recommendation² since it is based upon the auditor’s misconception that the terms and conditions of the Stipulation and Recommendation (“Stipulation”) approved in Case No. 19-791-GA-ALT govern Duke’s recovery of financial performance incentives in this case. Indeed, Interstate Gas Supply, Inc. (“IGS”) and the Ohio Consumers’ Counsel (“OCC”) agree that Duke cannot rely on the Stipulation to justify its proposed recovery of financial performance incentives in this case, because that

¹ Brief in Support of Duke Energy Ohio, Inc.’s Application for Adjustment to the Capital Expenditure Program Rider Rate at 24 (Mar. 10, 2022). (hereinafter “Duke Initial Brief”).

² Staff Exhibit 1 at 36.

agreement was submitted for the exclusive purpose of resolving Case No. 19-791-GA-ALT and, therefore, has no precedential value.³

Duke filed its CEP application pursuant to R.C. 4929.111 and, therefore, must satisfy the requirements of that statute to recover the costs associated with its distribution of financial performance incentives. Although Staff of the Public Utilities Commission (“Staff”) maintains that “Duke’s application . . . does meet the statutory requirements” for approval under R.C. 4929.111⁴, Duke has not provided any evidence to demonstrate that the financial performance incentives at issue in this case are consistent with its statutory obligation to furnish necessary and adequate services and facilities that are just and reasonable. Accordingly, IGS and OCC separately urged the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to direct Duke to remove any incentive-based and stock-based compensation from its Capital Expenditure Program Rider.⁵

II. DISCUSSION

A. Duke Should Not be Permitted to Adopt the Auditor’s Sixth Recommendation Because It Mistakenly Relies Upon the Terms and Conditions of the Stipulation Approved in Case No. 19-0791 to Shape the Scope of Its Review.

Duke should not be permitted to benefit from the auditor’s misbelief that the Stipulation approved in Case No. 19-791-GA-ALT authorizes Duke to recover financial

³ Initial Brief of Interstate Gas Supply, Inc. at 9 (Mar. 10, 2022) (hereinafter “IGS Initial Brief”); Initial Brief for Consumer Protection by Office of the Ohio Consumers’ Counsel at 24 (Mar. 10, 2022). (hereinafter “OCC Initial Brief”)

⁴ Initial Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 3 (Mar. 10, 2022). (hereinafter “Staff Initial Brief”)

⁵ IGS Initial Brief at 6; OCC Initial Brief at 24.

performance incentives in *this* case.⁶ That mistake appears to have been the motivating factor behind the auditor's decision to limit its review of Duke's financial performance incentives to a comparison of the amount of incentive pay included in the CEP application to the amount authorized under the Stipulation. But for that decision, it is reasonable to conclude that the auditor's corresponding recommendation—i.e., that Duke's capitalization and recovery of stock-based and earnings-related incentive compensation should be monitored to ensure the amount recovered does not significantly increase⁷—most likely would have been different.

Indeed, there is no evidence in the record to distinguish the financial performance incentives at issue in this case from those that the auditor and Staff flagged for removal in Case No. 19-791-GA-ALT, meaning the auditor likely would have recommended removal of Duke's stock-based and earnings-related incentive compensation from its current CEP. But that did not occur here. Not surprisingly, Duke indicated that it agreed with the auditor's recommendation on the condition that the Commission clarify that it was the auditor's intention that Staff will monitor financial performance incentives included for recovery in Duke's CEP by the including the issue in the standard audit scope.⁸ Staff noted its concurrence with Duke's recommendation.⁹

⁶ Staff Exhibit 1 at 75.

⁷ *Id.* at 36.

⁸ Duke Initial Brief at 24.

⁹ Staff Initial Brief at 11.

No such clarification should be necessary. IGS and OCC agree that the auditor should have reviewed Duke's CEP application in this case independently given that the Stipulation, by its own terms, was submitted for purposes of resolving Case No. 19-791-GA-ALT only.¹⁰ Since IGS and OCC were not signatory parties to that Stipulation, both parties also rightfully assert that they cannot be bound by its terms.¹¹ The Commission also should not be hamstrung by the terms and conditions of a Stipulation that placed an emphasis on the CEP expenditures and related assets for a time period that is different from that which Duke's current application seeks to resolve.¹² The Stipulation has no precedential value; therefore, IGS and OCC agree that it should not have factored into the auditor's review of Duke's financial performance incentives in this case.

The foregoing demonstrates that Duke cannot adopt the auditor's sixth recommendation because it mistakenly relied on the terms and conditions of the Stipulation in Case No. 19-791-GA-ALT to shape the scope of its review and develop its recommendation. Accordingly, the Commission should not authorize Duke to recover financial performance incentives through its CEP application in this case.

B. Duke's Proposed Recovery of Financial Performance Incentives Does Not Meet the Requirements for Recovery Under R.C. 4929.111

Despite Staff's assertion to the contrary¹³, Duke's request to recover stock-based and earnings-related incentive compensation does not meet the statutory requirements

¹⁰ IGS Initial Brief at 8; OCC Initial Brief at 23.

¹¹ IGS Initial Brief at 9; OCC Initial Brief at 23.

¹² IGS Initial Brief at 8-9.

¹³ Staff Initial Brief at 3.

for approval under R.C. 4929.111. There is no evidence in the record to demonstrate that the financial performance incentives that Duke seeks to recover are consistent with its obligation to furnish necessary and adequate services and facilities. Duke has also failed to provide any evidence to suggest that these incentives are dissimilar in any way from those that the auditor recommended for removal in Case No. 19-0791-GA-ALT.¹⁴ Thus, Duke has not satisfied the just and reasonable standard necessary to warrant recovery of those incentives under R.C. 4929.111.¹⁵

As explained at length in IGS's and OCC's initial briefs, Duke's proposed recovery of financial performance incentives is also contrary to longstanding Commission policy and precedent.¹⁶ Given that Duke failed to distinguish the incentives at issue in its current CEP from those in Case No. 19-791-GA-ALT, Duke is unable to characterize those incentives as anything other than a financial inducement correlated with its bottom line and meeting shareholder interests, which the Commission has historically excluded from utility expense.¹⁷

III. CONCLUSION

Duke's proposal to recover stock-based and earnings-related compensation through its current CEP is contrary to Ohio law and Commission precedent. And Duke should not be permitted to benefit from the auditor's mistake by conditionally accepting the auditor's recommendation. Based on the foregoing, IGS supports OCC's

¹⁴ IGS Energy Exhibit 1 at 9-9.

¹⁵ IGS Initial Brief at 6-8; OCC Initial Brief at 24.

¹⁶ IGS Initial Brief at 6-8; OCC Initial Brief at 17-18.

¹⁷ IGS Initial Brief at 7; OCC Initial Brief at 17-18.

recommendation that the Commission should direct Duke to identify the specific amount of financial performance incentives included its CEP revenue requirement and remove those incentives from its CEP.¹⁸

Respectfully submitted,

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¹⁸ OCC Initial Brief at 13.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Reply Brief of Interstate Gas Supply, Inc.* was served this 31st day of March 2022 via electronic mail upon the following:

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