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 APPLICATION FOR REHEARING
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
AND
INTERSTATE GAS SUPPLY, INC.

Pursuant to Section 4903.10, Revised Code ("R.C."), and Rule 4901-1-35, Ohio Administrative Code ("OAC"), The Retail Energy Supply Association ("RESA")[1] and Interstate Gas Supply, Inc. ("IGS") hereby respectfully request rehearing of the April 20, 2022 Opinion and

[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.

Order (the "Order") issued by the Public Utilities Commission of Ohio (the "Commission") in the above-captioned matters approving the Stipulation filed on August 31, 2021. RESA and IGS contend that the Order is unlawful and unreasonable in the following respects:

1. The Commission acted unreasonably and unlawfully by considering issues outside of the ordered scope of the proceedings (*see*, Order at ¶ 137).

2. The Commission acted unreasonably and unlawfully by not reversing the attorney examiner's decisions limiting the intervention of RESA and IGS in these proceedings (*see*, Order at ¶ 35).

3. The Commission acted unreasonably and unlawfully by improperly shifting the burden to RESA and IGS to show that the Stipulation does not benefit ratepayers and the public interest (*see*, Order at ¶¶ 120, 123).

4. The Commission acted unreasonably and unlawfully by concluding that there "appears to be" serious bargaining among capable, knowledgeable parties. (*see*, Order at ¶¶ 100-106).

5. The Commission acted unreasonably and unlawfully by not treating suppliers as an excluded class under its analysis of *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 1996-Ohio-224, 61 N.E.2d 1097 (*see*, Order at ¶¶ 88, 104).

6. The Commission acted unreasonably and unlawfully by not considering whether the Signatory Parties traded the competitive market provisions at the expense of ratepayer credits and MGP Rider charges, in violation of R.C. 4903.09.

7. The Commission acted unreasonably and unlawfully by finding that RESA and IGS "have failed to present any evidence demonstrating that the Stipulation violates any regulatory principle or precedent." (*see*, Order at ¶ 138).

8. The Commission acted unreasonably and unlawfully by concluding that the Stipulation does not violate any important regulatory principle or practice (*see*, Order at ¶¶ 133, 138).

9. The Commission's finding that the settlement, as a package, benefits ratepayers and the public interest was unlawful and unreasonable because of the precedent set by such a finding under these circumstances, because the competitive market provisions were included to the detriment of ratepayers and because of the approval of the provision of misleading shadow billing information to OCC. (*see*, Order at ¶¶ 107-123).

For these reasons, and as further explained in the Memorandum in Support attached hereto, RESA and IGS respectfully request that the Commission grant their Joint Application for Rehearing and either modify the Stipulation to strip out the competitive market provisions or conduct an additional hearing on the issues raised herein.

Respectfully Submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369), Counsel of Record
Elia O. Woyt (0074109)
Gretchen L. Petrucci (0046608)
Anna Sanyal (0089269)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Telephone 614-464-5462
Facsimile 614-719-5146
msettineri@vorys.com
eowoyt@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com

Counsel for the Retail Energy Supply Association

/s/ Joseph Oliker per authorization (mjs)
Michael Nugent (0090408)
Counsel of Record
Email: michael.nugent@igs.com
Joseph Oliker (0086088)
Email: joe.oliker@igs.com
Evan Betterton (100089)
Email: evan.betterton@igs.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone:(614) 659-5000
Facsimile: (614) 659-5073

Counsel for Interstate Gas Supply, Inc.

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**

MEMORANDUM IN SUPPORT

TABLE OF CONTENTS

I. INTRODUCTION 8

II. ARGUMENT 10

A. The Commission acted unreasonably and unlawfully by considering issues outside of the ordered scope of the proceedings. 10

B. The Commission acted unreasonably and unlawfully by not reversing the attorney examiner's decisions limiting the intervention of RESA and IGS in these proceedings. 14

C. The Commission acted unreasonably and unlawfully by improperly shifting the burden to RESA and IGS to show that the Stipulation does not benefit ratepayers and the public interest. 17

D. The Commission acted unreasonably and unlawfully by concluding that there "appears to be" serious bargaining among capable, knowledgeable parties. 19

E. The Commission acted unreasonably and unlawfully by not treating suppliers as an excluded class under its analysis of *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 1996-Ohio-224, 61 N.E.2d 1097 26

F. The Commission acted unreasonably and unlawfully by not considering whether the Signatory Parties traded the competitive market provisions at the expense of ratepayer credits and MGP Rider charges, in violation of R.C. 4903.09. 26

G. The Commission acted unreasonably and unlawfully by finding that RESA and IGS "have failed to present any evidence demonstrating that the Stipulation violates any regulatory principle or precedent." 28

H. The Commission acted unreasonably and unlawfully by concluding that the Stipulation does not violate any important regulatory principle or practice. 31

I. The Commission's finding that the settlement, as a package, benefits ratepayers and the public interest was unlawful and unreasonable because of the precedent set by such a finding under these circumstances, because the competitive market provisions were included to the detriment of ratepayers and because of the approval of the provision of misleading shadow billing information to OCC. 32

III. CONCLUSION 36

I. INTRODUCTION

In the Commission's April 20, 2022 Opinion and Order ("Order"), the Public Utilities Commission of Ohio (the "Commission") took "a moment to appreciate the magnitude of the cases before us today." Order at ¶ 85. Unfortunately, the Commission's appreciation was directed solely at the duration of the cases and the amounts at issue:

> These proceedings are quite complex and, in some instances, have spanned more than seven years in duration. The earliest of these proceedings relates to incremental cost recovery to remediate two former MGP sites once used by Duke to provide service to customers. The *Duke MGP Proceedings* address recoverability of more than $85 million in MGP investigation and remediation expense pending in annual cost recovery filings for calendar years 2013 through 2019, as well as the appropriateness of additional deferral accounting for environmental investigation and remediation activities beyond 2019. Similarly, the *Duke TCJA Proceedings*, which have remained unresolved since 2018, include equally challenging issues, such as the disagreement over the appropriate valuation of impacts of the TCJA and the timing for providing credits to customers.

Order at ¶ 85.

It was long after the TCJA cases and after most of the MGP cases went to hearing and were fully briefed that Duke Energy Ohio, Inc. ("Duke Energy" or "Duke") entered into a Stipulation and Recommendation on August 31, 2021 (the "Stipulation") with the Ohio Energy Group ("OEG," an association for large industrial customers), the Office of the Ohio Consumers' Counsel ("OCC") and the Commission's Staff (collectively, with Duke Energy, the OEG and OCC, the "Signatory Parties"), to resolve not only the MGP and TCJA proceedings but also to implement significant changes to the competitive natural gas market for Duke's customers and competitive retail natural gas suppliers.

The Commission desired to bring a conclusion to these cases that were fully briefed and decisional since 2019: (i) "[T]he earliest of the above captioned proceedings have been pending

for nearly eight years and the contested issues in the *Duke MGP Proceedings* and *Duke TCJA Proceedings* had already been litigated during evidentiary hearings held in November 2019 and August 2019, respectively." Order at ¶ 102; and (ii) "[W]e find that the Stipulation resolves 18 pending matters before the Commission that would otherwise require significant time and resources to resolve." Order at ¶ 133. Unfortunately, in its motivation to bring conclusion to these proceedings, the Commission failed to properly address the shenanigans that transpired in connection with the Stipulation and acted unreasonably and unlawfully in connection with certain of its rulings pertaining to arguments asserted by The Retail Energy Supply Association ("RESA")[2] and Interstate Gas Supply, Inc. ("IGS") in these proceedings.

RESA and IGS seek rehearing on the Order based on nine (9) specific errors as set forth below. The competitive market provisions were outside the scope of these proceedings, and the Commission did not comply with Ohio Supreme Court precedent in its expansion of the scope. The limited intervention granted to RESA and IGS was improper, and caused the Commission to engage in improper burden shifting, erroneous analysis and due process violations. In the Order, the Commission ignored the protections afforded to RESA and IGS by the Ohio Supreme Court in *Time Warner* and failed to consider whether the Signatory Parties traded the market provisions at the expense of ratepayer credits and MGP Rider charges. The Commission made an improper and motivated finding in the Order regarding evidence presented by RESA and IGS with respect to violations of regulatory principles and practices, and then reached an erroneous conclusion

[2] 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.

regarding the Stipulation with respect to same. For all of these reasons, (i) the Commission's decision to approve the Stipulation without the removal of the competitive market provisions was unlawful and unreasonable and (ii) rehearing must be granted to ensure ratepayers received the maximum credit they deserved and are not paying more than necessary under Rider MGP. That is the Commission's obligation, and the inclusion of the competitive market provisions in the Stipulation and OCC's threat in its reply brief to withdraw from the Stipulation (OCC Reply Brief at 18) if the competitive market provisions were removed should suffice to trigger further inquiry by the Commission. Rehearing is warranted and required.

II. ARGUMENT

A. The Commission acted unreasonably and unlawfully by considering issues outside of the ordered scope of the proceedings.

The Commission defined the explicit scope of the MGP and TCJA proceedings. The scope did not include competitive market issues. By considering the competitive market provisions in its consideration of the Stipulation, the Commission acted unreasonably and unlawfully.

The Commission granted Duke Energy's request to be able to file applications each year to recover investigation and remediation charges. As the Commission stated on page 72 of its November 13, 2013 Opinion and Order:

> Duke also requests authorization to file an application in each subsequent year to update Rider MGP based on the unrecovered balance and related carrying charges as of the prior December 31. In light of the fact that the Commission has determined herein that Duke should be authorized to recover the prudently incurred costs of MGP investigation and remediation for these two sites, the Commission finds Duke's request for annual updates to Rider MGP in order to reflect the costs for the preceding year is reasonable and should be approved. **Accordingly, the Commission finds that, beginning March 31, 2014, and on or before March 31 in each subsequent year, Duke must update Rider MGP based on the unrecovered balance, minus any carrying charges as required previously in this Order, as of the prior December 31. In these subsequent cases wherein Duke will be updating Rider MGP,**

> **Duke shall bear the burden of proof to show that the costs incurred for the previous year were prudent.**

In re Duke Energy Ohio, Inc., Case No. 12-1685-GA-AIR, et al., Opinion and Order (Nov. 13, 2013) at page 72 (emphasis added). The Commission indicated further that Duke Energy would be able to recover those costs which were prudently incurred through Rider MGP. *Id. at 72*. Likewise, in its October 24, 2018 Finding and Order in Case No. 18-47-AU-COI, ¶ 35, the Commission ordered that "[i]t is therefore, ORDERED, That Ohio rate-regulated utilities file an application not for an increase in rates, pursuant to R.C. 4909.18, to reflect the impact of the TCJA on their current rates by January 1, 2019, unless exempted or otherwise directed in this Finding and Order." The scope of these proceedings, as set by the Commission, was finite and clear. **The Commission did not authorize or order Duke Energy to address competitive market issues in the MGP and TCJA proceedings.**

The attorney examiner's October 15, 2021 Entry in these proceedings acknowledged that the competitive market provisions in the Stipulation "… **do not represent** a mere expansion of the existing issues involved or an alternative proposal to resolve the issues involved or an alternative proposal to resolve the issues in the *Duke MGP Proceedings* or *Duke TCJA Proceedings*; rather, the attorney examiner agrees they represent **wholly unrelated matters** for the Commission's and other interested parties' consideration." October 15, 2021 Entry at ¶ 31 (emphasis added). Indeed, Duke Witness Lawler admitted at hearing there were no issues in the TCJA cases and the MGP cases that related in any way to the competitive retail natural gas market.[3]

The Ohio Supreme Court has held that "[w]hen the commission has a made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be

[3] Tr. at 40:2-5 and 19-22.

changed or modified." *Office of Consumers' Counsel v. Public Utilities Com.*, 10 Ohio St.3d 49, 50-51, 461 N.E.2d 303 (1984). The Ohio Supreme Court "will not allow the commission to arbitrarily change" a prior order without explanation. *Officer of Consumers' Counsel v. Public Utilities Com.*, 16 Ohio St.3d 21, 22-23, 475 N.E.2d 786 (1985). "And if the commission does see fit to depart from a prior order, the commission 'must explain why,' and 'the new course also must be substantively reasonable and lawful.'" *In re Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶ 17, quoting *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 52. Accordingly, it is error to not follow a prior order without explaining the need to deviate from it. *Officer of Consumers' Counsel*, 16 Ohio St.3d at 23 ("because the commission has not justified its overruling of its 1981 order … we reverse the order of the commission"); *Office of Consumers' Counsel*, 10 Ohio St.3d at 50-51 (holding the Commission erred by failing "to justify its apparent decision" to change a prior order).

In these proceedings, until the April 20, 2022 Order, the Commission never explained why the limited scope of the proceedings should be expanded to include competitive market issues. While attorney examiners have broad discretion with respect to conducting proceedings before them, the scope of proceedings as set forth in an order cannot be changed at the time of the final order without sufficient justification. In the April 20, 2022 Order, the Commission relied on the fact that the Stipulation contained the competitive market provisions in its attempt to justify expanding the scope of these proceedings:

> [T]he fact that the directives in the Duke MGP 14-375-GA-RDR, et al. -75- Proceedings and the Duke TCJA Proceedings, or the Orders in the 2012 Rate Case and the TCJA Investigation, did not explicitly state that parties could consider competitive market provisions is irrelevant for our purposes here today. A stipulation has been submitted for our consideration, pursuant to Ohio Adm.Code 4901-1-30, and we have evaluated whether that Stipulation satisfies our three-part test in this Opinion and Order.

Order at ¶ 137. Such justification is not reasonable or sufficient. By limiting the scope of these proceedings in its prior orders, the attorney examiner set parameters governing these proceedings. Such parameters are critical to not only parties to the proceeding, but also to non-parties, as non-parties rely on orders limiting the scope of proceedings in their determination to intervene or not or to monitor or not monitor the proceedings. Furthermore, the Commission's reasoning in its justification misses the reasonableness mark and would lead to absurd results – any orders by the Commission setting the scope of proceedings would be subject to being overturned, without any other justification, if a stipulation is filed expanding the scope of or the issues for resolution in the proceeding. Such a result renders the Ohio Supreme Court precedent absolutely meaningless, as any order setting the scope of a proceeding can be arbitrarily changed by the parties to the proceeding upon the filing of a stipulation by the parties; if the Commission considers the stipulation, the scope is changed; if the Commission does not evaluate the stipulation, the scope is not changed. Therefore, the Commission's justification for expanding the scope of these proceedings beyond its prior orders cannot be justified by the Stipulation alone.

Under Ohio Supreme Court precedent and the facts in this case, the Commission is bound by its prior orders limiting the scope of these proceedings. If the Commission wanted to expand the scope of these proceedings,[4] it could have done so with the issuance of an order with reasonable justification for same. The attorney examiner did not issue an order to expand the scope of these proceedings, and the Commission is, therefore, bound by the initial scope orders. The Commission erred in its consideration of the wholly unrelated competitive market issues that were outside of the scope that the Commission set. The Commission also acted unreasonably and unlawfully by

[4] Duke Energy did not submit any request to the Commission to address competitive market issues in these proceedings.

improperly attempting to justify the expansion of the scope of these proceedings through its reliance on the breadth of the Stipulation and the Commission's actions in other proceedings. *See*, Order at ¶ 137 (the Commission appears to place reliance on its expansion of scope on the *FirstEnergy Grid Mod Case*, even though the only discussion of "scope" in the Opinion and Order (July 17, 2019) (*see* ¶¶ 14-19) in that case related to the cross-examination of a witness). The Commission should have never considered that competitive market provisions that fell outside the Commission's own clearly defined scope of these proceedings.

B. The Commission acted unreasonably and unlawfully by not reversing the attorney examiner's decisions limiting the intervention of RESA and IGS in these proceedings.

The Commission's affirmance of the attorney examiner's grant of only limited intervention to RESA and IGS is unreasonable, and the language in the Order evidences the unlawful result that was brought about by the limited intervention. In ¶ 120 of the Order, the Commission stated as follows: "[t]he only remaining issue is to determine whether the competitive market provisions require us to find that the Stipulation **does not benefit ratepayers** and the public interest, **despite these uncontested benefits** related to the MGP remediation costs and TCJA." (emphasis added). The unlawful and unreasonable result should be apparent. By only granting limited intervention to RESA and IGS, the Commission did not allow RESA and IGS to contest the benefits of the Stipulation with respect to MGP remediation costs and the TCJA. In more direct terms: **The reason the benefits were uncontested is because RESA and IGS were not allowed to contest them!** The Commission then improperly shifted the burden (discussed in a separate assignment of error below) to RESA and IGS to show that the Stipulation does not benefit ratepayers and the public interest.

What is even more troubling with the grant of only limited intervention is that, despite the improper burden shift, the Commission has created a *fait accompli* scenario whereby RESA and

IGS were left without a voice: "**[W]e need not address the question** of whether the Stipulation would be appropriate even if we found the shadow billing provision did not benefit ratepayers or the public interest, as suggested by RESA/IGS, in light of the commitments related to the savings of millions of MGP remediation costs and taxes." Order at ¶ 123 (emphasis added). In short, by not allowing RESA and IGS full intervention in these proceedings, the Commission improperly left RESA and IGS in a position where they had to prove the negative (i.e., that the Stipulation does not benefit ratepayers), but then would not weigh RESA's and IGS' evidence with respect to shadow billing because of the "uncontested" benefits associated with the MGP remediation costs and the TCJA issues, on which RESA and IGS could not make arguments with their limited intervention. **That is a fundamental violation of RESA's and IGS' due process rights – all stemming from the grant of only limited intervention to RESA and IGS.**

The Supreme Court of Ohio has stated that intervention in Commission proceedings "ought to be *liberally allowed* so that the position of all persons with a real and substantial interest in the proceedings can be considered by the PUCO." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20 (emphasis added). As the Court noted, intervention should be allowed whenever an entity has demonstrated an interest *in the proceeding.* Although RESA's and IGS' motions for leave to intervene satisfied the intervention criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11 to warrant full party status *in the proceedings*, the October 15 Entry unreasonably limited both parties' participation in these proceedings to only address the proposed provisions related to the competitive market. October 15, 2021 Entry, ¶ 32. A subsequent entry noted that because RESA and IGS' participation was limited, both parties could only offer evidence and/or arguments in opposition to the three competitive market-related commitments at issue in this brief. November 3, 2021 Entry, ¶ 29.

The October 15, 2021 Entry attempted to justify limiting intervention by referencing the Commission's responsibility to ensure the expeditious and orderly conduct of its hearings, and that R.C. 4901.13 authorizes the Commission to adopt rules to govern its proceedings and to "regulate the mode and manner" of its hearings. October 15, 2021 Entry, ¶ 25. Despite the lack of a procedural schedule at that time to consider the Stipulation or any evidence in the record to show that RESA and IGS' intervention would unduly prolong or delay the proceedings, the October 15 Entry unfairly limited both parties' participation in these cases to the proposed provisions related to the competitive market. In doing so, RESA and IGS were precluded from presenting evidence and/or arguments in opposition to the *entire* Stipulation pursuant to Ohio Adm. Code 4901-1-30(D) and, therefore, deprived of their right to due process.

The October 15 Entry and subsequent clarifying entry (November 3, 2021 Entry, ¶ 27) enabled Duke to sidestep Ohio law and the Commission's rules on discovery (R.C. 4903.082; Ohio Adm. Code 4901-1-16(B)) by withholding documents and/or failing to provide meaningful responses to certain IGS interrogatories that addressed other, non-market related commitments included in the Stipulation. Consequently, both IGS and RESA were prevented from obtaining evidence relevant to the three-part test. As the Supreme Court of the United States has noted, "[a] hearing is not judicial, at least in any adequate sense, unless the evidence can be known." *W. Ohio Gas Co. v. Pub. Utilities Comm'n of Ohio*, 294 U.S. 63, 69, 55 S. Ct. 316, 319, 79 L.Ed. 761 (1935).

The Stipulation was entered into as a package and intended to resolve *all* issues in these cases. Joint Ex. 1 at 23, ¶¶ 35-36. In considering the reasonableness of a stipulation, the Commission evaluates the settlement as a package to determine whether the agreement benefits ratepayers and the public interest and does not violate any important regulatory principle or

practice. *In re Application of Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 21 (May 13, 2010). Perhaps it is for that reason that "the Commission rarely grants limited intervention . . . ." November 3, 2021 Entry, ¶ 27. RESA and IGS should have been afforded a full and fair opportunity to review the entire settlement without limitation to determine whether the agreement benefits ratepayers and the public interest.

For all of the foregoing reasons, the Commission should have reversed the attorney examiner's decisions limiting the intervention of RESA and IGS in these proceedings. RESA and IGS were granted only limited intervention, which meant that RESA and IGS could not conduct discovery on the MGP Rider and TCJA provisions to challenge the Stipulation in its entirety. Additionally, the Commission placed RESA's and IGS' actions under heavy scrutiny, the procedural/discovery schedule was expedited, and the hearing itself started and finished in one day with five witnesses. No party to a Commission proceeding would like to be in the position RESA and IGS were forced into in these proceedings, and the language in the Order (as discussed above) exemplifies the lack of due process in these proceedings.

C. The Commission acted unreasonably and unlawfully by improperly shifting the burden to RESA and IGS to show that the Stipulation does not benefit ratepayers and the public interest.

In ¶ 39 of the Order, the Commission properly stated the "the burden of proof lies with the Signatory Parties to show that the Stipulation will satisfy the three criteria used by the Commission [in its evaluation of stipulations]." Inexplicably, forty-nine pages later in ¶ 120 of the Order, the Commission curiously shifted the burden onto RESA and IGS by stating that "**[t]he only remaining issue is to determine whether the competitive market provisions require us to find that the Stipulation does not benefit ratepayers and the public interest**, despite these uncontested benefits related to the MGP remediation costs and TCJA." (emphasis added). Such burden shift is unlawful and unreasonable.

By switching the inquiry from whether the Stipulation, as a package, benefits ratepayers and the public interest to whether the competitive market provisions cause the Stipulation not to benefit ratepayers and the public interest, the Commission improperly shifted the burden from the Signatory Parties to RESA and IGS. The Signatory Parties certainly did not advance arguments that the competitive market provisions caused the Stipulation not to benefit ratepayers and the public interest – those arguments would only have been advanced by RESA and IGS. Thus, whether knowingly or unknowingly, the Commission shifted the burden to RESA and IGS. Indeed, given the limited intervention, RESA and IGS were precluded from advancing arguments regarding other provisions in the Stipulation. By making a shift in its level of inquiry with respect to the second criterion of the three-prong test, the Commission created error and violated its own standards for review of stipulations.

Moreover, not only did the Commission shift the burden of proof onto RESA and IGS, it placed RESA and IGS in an untenable position – having to prove a negative (i.e., that the inclusion of competitive market provisions caused the Stipulation not to benefit ratepayers and the public interest), especially because RESA and IGS were precluded from raising issues with respect to MGP remediation costs and the TCJA as a result of their limited intervention (as discussed above). The burden shift is unlawful, unreasonable and highly prejudicial.

The Commission must also be cognizant of the analytical deficiencies in the Order: (1) in ¶ 39 of the Order, the Commission stated that it "finds no basis in RESA/IGS's claim that the burden has been wrongly shifted in these proceedings", (2) then in ¶ 120 of the Order, the Commission proceeds to shift the burden as set forth above, (3) then, the Commission, despite the unlawful burden shift, did not weigh or analyze the evidence presented by RESA and IGS with respect to the shadow billing provision in the Stipulation, and (4) then stated that "**we need not**

address the question of whether the Stipulation would be appropriate even if we found the shadow billing provision did not benefit ratepayers or the public interest, as suggested by RESA/IGS, in light of the commitments related to the savings of millions of MGP remediation costs and taxes." Order at ¶ 123 (emphasis added). The Commission acted unlawfully in allowing the burden shift. Rehearing on this issue should be granted.

D. The Commission acted unreasonably and unlawfully by concluding that there "appears to be" serious bargaining among capable, knowledgeable parties.

RESA and IGS correctly argued in their joint initial brief that no serious bargaining took place given the inclusion of the competitive market based provisions in the Stipulation. No suppliers were invited to or were involved in the negotiations. RESA Ex. 4, supplemental response November 8, 2021; RESA Ex. 29, IGS Ex. 34. None of the Signatory Parties or non-opposing parties provided any evidence of having the requisite experience to consider the competitive market provisions. Tr. 38: 10-18; Tr. 103:13 to 104:24. And, the only two witnesses that testified in support of the Stipulation were completely devoid of knowledge that the Commission had recently rejected two of the three market-related commitments. Tr. 78: 15-23 and 115: 1-6. The record evidence shows that no serious bargaining took place as to the competitive market provisions.

The Commission disagreed with RESA and IGS, stating at ¶ 100 of the Order that "[t]he Commission finds that the Stipulation **appears** to be the product of serious bargaining among capable, knowledgeable parties."[5] Order at ¶ 100 (emphasis added). The Commission found that differences between the applications filed by Duke Energy and the stipulation was evidence of "the seriousness of negotiations and bargaining between parties" and that the Signatory and non-

[5] The use of the word "appears" by itself raises into question the Commission's determination and supports rehearing on this assignment of error.

opposing parties represented "diverse interests" and were "knowledgeable and capable[.]" Order at ¶¶ 101, 103 and 105. The Commission also found that the duration of the negotiations was evidence of serious bargaining and that RESA and IGS were able to "fully participate in these proceedings consistent with their stated interests." Order at ¶¶ 102, 105. The Commission, concluded that the Stipulation "satisfies the first criterion." Order at ¶ 106.

The Commission's conclusion was against the manifest weight of the evidence. First, the Signatory and non-opposing parties did not represent "diverse interests" given the contents of the Stipulation. The Commission stated that the Signatory Parties and non-opposing parties included "residential customers, a utility, large nonresidential customers, Staff, Ohio manufacturers and other businesses, as well as low-income customers and weatherization providers." Order at ¶ 101. In doing so, the Commission ignored the fact that the only entities that signed the Stipulation were Staff, Duke Energy, OEG and the OCC. *See Ohio Edison Col., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order at p. 26 (July 18, 2012) (noting signatory parties represent diverse interests). The non-opposing parties that did not join the Stipulation were Kroger, the Ohio Partners for Affordable Energy (an advocate for low-income customers and weatherization coordinator), and the Ohio Manufacturers Association Energy Group (a group of manufacturers).

Notably, not one competitive retail natural gas supplier was involved in the negotiations on topics that greatly impacted the competitive natural gas market. The Commission has previously noted the inclusion of suppliers as signatory parties to stipulations represents diverse interests. *See Ohio Edison Col., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order at p. 26 (July 18, 2012) ("The signatory parties represent diverse interests including the Companies, a municipality, competitive suppliers, commercial

customers, industrial consumers, advocates for low and moderate-income customers, and Staff …"). The Commission also agreed in the Order that RESA and IGS "… had no reason to seek intervention before the filing of the Stipulation …[.]" Order at ¶ 105. Given those facts as well as the attorney examiner's own finding that the competitive market provisions were wholly unrelated to the proceedings, the Commission's finding that the parties at the bargaining table represented diverse interests is manifestly against the weight of the evidence and unsupported by the record.

The Commission's determination that serious bargaining existed also violates the principles set forth by the Supreme Court of Ohio's decision in *Time Warner Axs v. Public Utilities Commission*, 75 Ohio St. 3d 229, 661 N.E. 2d 1097 (1996). In *Time Warner*, the Commission approved a partial stipulation where various nonsignatory parties argued they were excluded from the entire process which led to the development of the stipulation. *Id.* at 233, fn. 2 *and see Summary of the Ohio Bell Telephone Company*, Case No. 93-487-TP-ALT and Case No. 93-576-TP-CSS, Decision dated November 23, 1994. The Court expressed "grave concerns regarding the commission's adoption of a partial stipulation which arose from the exclusionary settlement meetings." *Id.* The Court summarized the principle in 2016, stating "[w]e have expressed grave concern regarding a stipulation when an entire customer class is intentionally excluded from settlement talks." *In re Ohio Edison Col*, 146 Ohio St.3d 222, 230, 2016-Ohio-3021, ¶ 42, 54 N.E.3d 1218, 1226.

The Commission has noted the importance of not excluding customer classes from settlement negotiations. *See, e.g., In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, 20-586-EL-ATA, 20-587-EL-AAM, Opinion and Order, November 17, 2021, ¶ 107 (noting that "no class of customers [were]

excluded from settlement negotiations."). And, here, the Commission should have considered suppliers as a class of customers or a class worthy of the protections of *Time Warner* given that suppliers are regulated by the Commission, are subject to Commission statutes and rules and take service under various schedules offered by Duke (as discussed below). Suppliers also were directly impacted by the Stipulation that was negotiated with not one supplier at the table or in the proceeding.

The Commission, however, found otherwise, stating that "[f]urther, we agree with OCC and Staff that Time Warner is inapplicable in these proceedings as suppliers are not customer classes and there is nothing in the record to indicate that these parties were improperly or intentionally excluded from settlement negotiations." Order at ¶ 88, citing Time Warner, 75 Ohio St.3d at 233, fn. 2. The Commission also stated… there is no record evidence that any party or class of customers was excluded from negotiations when such negotiations were underway." Order at ¶ 104. The Commission's determination was incorrect and against the manifest weight of the evidence available to the Commission.

While RESA and IGS assert that suppliers as a class warrant the protections of *Time Warner*, **it is undisputed that suppliers are customers of Duke Energy Ohio**. Suppliers take service from Duke Energy Ohio and pay Duke Energy Ohio for those services. Tariff schedules establishing that suppliers are customers of Duke Energy Ohio include:

1) **Rate FRAS – Full Requirements Aggregation Service, Sheet No. 44.13** which includes the below provisions:

APPLICABILITY

This service is available to Suppliers delivering gas on a firm basis to the Company's city gate receipt points on behalf of customers receiving Firm Transportation Service from the Company. The service provided hereunder allows Suppliers to deliver to the Company on an aggregated basis those natural gas supplies that are needed to satisfy the requirements of Customer Pools participating in the Company's firm transportation programs.

SUPPLIER INVOICE

On a monthly basis, the Company will generate, and Supplier will pay, an invoice that includes the costs set forth below in this Tariff Sheet and in Sheet No. 45 herein.

2) **Rider EFBS – Enhanced Firm Balancing Service, Sheet No. 50.13** which includes the below provisions:

APPLICABILITY

Applicable to pools served by gas suppliers/aggregators that secure their own total upstream pipeline capacity necessary to meet the aggregated peak day requirements as more fully described under the Assignment of Capacity provision contained in Rate FRAS, Full Requirements Aggregation Service, Sheet No. 44, and that elect or are required to receive service for such pools under Rider EFBS rather than Rider FBS (Firm Balancing Service).

RATE

a) For all services rendered pursuant to this tariff, Supplier each month shall pay the Company the charges set forth below:

1. Demand Charge: $10.22, assessed each month on each Dth of the Supplier's MDDQ;
2. Commodity Charge: $0.052, per Mcf, applied to all monthly consumption of the supplier's aggregate FT-S, FT-L, RFT and RFT-LI services not included in a pool receiving service under Rider FBS.

b) Rates will be reviewed quarterly and adjusted based on current charges from the Company's storage service providers.

3) **Rider FBS - Firm Balancing Service, Sheet No. 75.14** which includes the below provisions:

APPLICABILITY

Applicable to pools served by gas suppliers/aggregators that secure their own total upstream pipeline capacity necessary to meet the aggregated peak day requirements as more fully described under the Assignment of Capacity provision contained in Rate FRAS, Full Requirements Aggregation Service, Sheet No. 44, and that receive service for such pools under Rider FBS rather than Rider EFBS (Enhanced Firm Balancing Service) as more fully described under the Service provision contained in Rider EFBS, Enhanced Firm Balancing Service, Sheet No. 50.

BALANCING SERVICE CHARGE

The FBS charge, which will be applied to all monthly consumption of the supplier's aggregate FT and RFT services not included in a pool receiving service under Rider EFBS, is $0.575 per Mcf.

4) **Rate SAC – Retail Natural Gas Supplier and Aggregator Charges, Sheet No. 45.2**, which includes the below provisions:

APPLICABILITY

These Charges apply to Retail Natural Gas Suppliers and Aggregators providing Competitive Retail Natural Gas Service to Customers located in the Company's service territory.

TYPES OF CHARGES

General Fees

Registration Fee	$ 145.00
Retail Natural Gas Supplier and Aggregator Financial Evaluation Fee	$ 50.00/Evaluation
Retail Natural Gas Supplier Customer Information List Fee	$ 150.00/List
Governmental Aggregator Eligible Customer List Fee (based on zip codes only)	$ 400.00/List
Governmental Aggregator Eligible Customer List Fee (includes best efforts verification of governmental boundaries)	$1,200.00/List
Monthly Fee for Additional Actively Billed Retail Natural Gas Supplier Rate Codes (following the first 25 actively billed rate Codes per month)	$ 30.00/Rate Code
Returned Check Charge	$ 20.00/Check

BILLING TERMS AND CONDITIONS

The billing terms and conditions for the above stated charges shall be in conformance with those specified in Rate FRAS.

The supplying and billing for service and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio.

All of the above provisions of Duke's tariff (attached as Exhibit 1 to this rehearing application) show that suppliers are customers of Duke Energy, are subject to its tariff, and pay Duke for its services.[6] "Thus, the Commission's determination that suppliers are not customers is against the manifest weight of the evidence. Suppliers are customers and as such warrant the protection of *Time Warner*.

[6] To the extent necessary, RESA and IGS request that the Commission take administrative notice of Duke Energy's tariff which is on file with the Commission. *See In the Matter of the Application of United Telephone Company of Ohio d/b/a Embarq for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-760-TP-BLS, Entry on Rehearing, February 13, 2008, 2008 Ohio PUC LEXIS 106, at *41-42 ("It is not an unusual or novel concept that the Commission, on its own motion, should take administrative notice of a public document, such as a tariff, that exists in its own records.")

The evidence also shows that suppliers were intentionally excluded from negotiations. No competitive retail natural gas suppliers or RESA were invited to participate in the Stipulation negotiations. RESA Ex. 4, supplemental response November 8, 2021; RESA Ex. 29, IGS Ex. 34. Duke Energy admitted that the Stipulation negotiations took place for over a year, and yet no suppliers were invited to those discussions. *Id.* The following admissions submitted into the record support this factual finding.

Hearing Exhibit #	**Request**	**Admission**
RESA Ex. 4	RESA-RFA-01: Admit that Duke Energy did not invite any competitive retail natural gas suppliers to participate in the stipulation negotiations.	Duke Energy Supplemental Response: Admit
RESA Ex. 29	RFA 1-4: Admit that the stipulation negotiations did not include any competitive retail natural gas suppliers.	OCC Response: Admit
RESA Ex. 29	RFA 1-5: Admit that OCC did not invite any competitive retail natural gas suppliers to participate in the stipulation negotiations.	OCC Response: Admit

James Cawley, the former Chairman, Vice Chairman and Commission of the Pennsylvania Public Utility Commission testified that suppliers were intentionally excluded noting that "[it] therefore is particularly troubling that RESA and suppliers were intentionally excluded from these settlement discussions. At least in the case of shadow billing, RESA and competitive suppliers have 'openly and notoriously' opposed the concept, which the Stipulation signatories (both supporting and agreeing not to oppose) knew or should have known." RESA/IGS Ex. 1 (Cawley Direct Testimony at 3). Mr. Cawley's testimony is supported by OCC's admissions that it did not invite suppliers to negotiations and it knew that "none of the signatory parties to the stipulation

directly represent the interests of competitive retail natural gas suppliers." *See* RESA Ex. 29, RFA1-3.

The record evidence establishes that suppliers who are customers of Duke Energy were intentionally excluded from settlement negotiations on issues that impacted the competitive natural gas market in Ohio. The Commission's acted unlawfully and unreasonably when finding otherwise. *Time Warner* is applicable to the facts in these proceedings and cannot be ignored by the Commission.

E. The Commission acted unreasonably and unlawfully by not treating suppliers as an excluded class under its analysis of *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 1996-Ohio-224, 61 N.E.2d 1097.

A critical error the Commission made in this proceeding was finding that *Time Warner* "… is inapplicable in these proceedings as suppliers are not customer classes and there is nothing in the record to indicate that these parties were improperly or intentionally excluded from settlement negotiations." Order at ¶ 88. For all of the reasons stated in Section II.D. above, the Commission acted unreasonably and unlawfully by not treating suppliers as customers under its analysis of *Time Warner*. Notably, the Court's grave concern raised in *Time Warner* about exclusionary settlement negotiations was in 1995 prior to the implementation of Ohio's natural gas choice program. The Commission should treat suppliers as a class of customers or, alternatively, as a general class that warrants the protections of *Time Warner* given the implementation of choice and the fact that suppliers as regulated entities in Ohio are subject to and take service under Duke's tariff. The Commission acted unreasonably and unlawfully in finding that no customer class was intentionally excluded from the settlement negotiations.

F. The Commission acted unreasonably and unlawfully by not considering whether the Signatory Parties traded the competitive market provisions at the expense of ratepayer credits and MGP Rider charges, in violation of R.C. 4903.09.

RESA and IGS argued to the Commission that given the nature of these proceedings and the provisions in the Stipulation, the only value that could have been given up or traded is additional ratepayer credits or a lower amount collected through Rider MGP. *See* RESA/IGS Initial Brief at 43-44. This is especially true as there is no dispute that the competitive market provisions are wholly unrelated to the MGP and TCJA provisions. *See* Order at ¶ 89. The fact that these unrelated provisions made their way into the Stipulation, means that one or more of the Signatory Parties found value in such competitive retail natural gas market provisions in agreeing to the terms of the Stipulation. The Commission, however, did not address this argument by RESA and IGS and that failure was unlawful and unreasonable. Moreover, as noted above, RESA and IGS were prevented from seeking discovery or cross-examination on the MGP and TCJA provisions of the Stipulation, so could not put on evidence that such trading occurred.

In the Order, the Commission stated that "… the Stipulation provides a significant benefit with the resolution of 18 total proceedings addressing cost recovery of more than $85 million in MGP remediation costs, while lowering customer rates and providing bill credits to natural gas customers." Order at ¶ 118 citing to Duke Ex. 7 at 14-20. Missing from the Order is any consideration by the Commission that OCC and the Commission's Staff traded less bill credits and additional costs in MGP remediation costs for the competitive market provisions. Every settlement negotiation between sophisticated parties is a "give and take." By receiving value in the Stipulation in the form of such competitive market provisions means that the one or more Signatory Parties who sought such competitive market provisions gave up value elsewhere in order to come to agreement on the Stipulation. Given the nature of these proceedings and the provisions in the Stipulation, the only value that could have been given up or traded is additional ratepayer credits or a lower amount collected through Rider MGP.

On rehearing the Commission should address that argument and allow discovery and examination on whether such trading of rate payer credits and Rider MGP cost increases occurred. *In re Comm'n Review of the Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶ 53 (reversing the Commission's decision when it "approved the staff's proposed energy credit without specifically addressing any of AEP's challenges to the inputs used in the EVA's methodology."); *see also In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶ 66 ("The commission never offered a response to AEP's claims and thus failed to explain its decision. This was error.").

G. The Commission acted unreasonably and unlawfully by finding that RESA and IGS "have failed to present any evidence demonstrating that the Stipulation violates any regulatory principle or precedent."

The Commission's finding in ¶ 138 that RESA and IGS "have failed to present any evidence demonstrating that the Stipulation violates any regulatory principle or precedent" is unreasonable and unlawful because it is contrary to the record in these proceedings. RESA and IGS presented extensive testimony from James H. Cawley, who spent sixteen (16) years as a Chairman, a Vice Chairman, and a Commissioner of the Pennsylvania Public Utility Commission (RESA/IGS Ex. 1 (Cawley Direct Testimony) at 1) with respect to specific ways that the Stipulation violates important regulatory principles. The Signatory Parties failed to produce any witness to counter Mr. Cawley's testimony. The Commission finding quoted above is simply against the manifest weight of the evidence and must be reversed, with Mr. Cawley's testimony receiving the weight that it deserves.

As Mr. Cawley testified in his direct testimony, the inclusion of "alien provisions" (RESA/IGS Ex. 1 (Cawley Direct Testimony) at 3) violates several important regulatory principles and practices:

- "First, simply as a matter of sound public policy, it would be unwise to allow inclusion of alien provisions in settlement stipulations because there has been no opportunity for robust debate and careful development of the concepts, and because possibly interested parties may be blindsided after seeing no reason to intervene in the underlying proceedings (as occurred here)." *Id.* at 11.

- "Secondly, it is standard regulatory practice to ensure that adequate notice is given and an opportunity to participate is afforded to all interested parties in proceedings affecting them. It therefore is particularly troubling that RESA and suppliers were intentionally excluded from these settlement discussions. At least in the case of shadow billing, RESA and competitive suppliers have "openly and notoriously" opposed the concept, which the Stipulation signatories (both supporting and agreeing not to oppose) knew or should have known." *Id*. at 11-12.

- "Thirdly, having voted on many thousands of cases as a public utility regulator, I can say with certainty that it is exceedingly valuable to have a broad spectrum of parties advocating an equally broad range of positions from which the Commission can pick and choose to arrive at a decision that is in the public interest. When, as here, egregious exclusion of essential parties occurs, the broad spectrum of parties and broad range of positions are likely to be absent. Such absence does not promote sound decision making." *Id*. at 12.

- "Fourthly, this case provides a poster child for why settlements may not be appropriate for formulating major policy positions. As is often the case in settlements, the participants here were drawn into alliances against each other to achieve their individual goals instead of being encouraged to seek solutions that address the interests of all the stakeholders and especially the public interest. Rather than setting major policy on the GCR/SSO and shadow billing disputes via a partial settlement, I would direct separate application proceedings on each issue and entertain only full settlements, if any, and only after full evidentiary hearings and briefing of the issues." *Id.* at 12-13.

Mr. Cawley made it clear that if he were voting on the reasonable of the Stipulation, he would be offended that the Signatory Parties submitted the Stipulation with the extraneous provisions for approval. *Id.* at 13. During his cross-examination, Mr. Cawley testified that the Signatory Parties "acted inappropriately." Tr. 185: 2-8.

On redirect, Mr. Cawley stated his expert opinion that the use of the stipulation process to gain approval of alien provisions is improper. Tr. 211: 6-10. The Commission cannot approve the Stipulation as it is a product of unscrupulous settlement tactics – sneaking certain provisions

into a stipulation, which are wholly unrelated to the subject matters of the underlying proceedings[7] without notifying affected stakeholders of the negotiations. If he was making a decision with respect to the Stipulation, Mr. Cawley recommended "that the shenanigans perpetrated here end here." RESA/IGS Ex. 1 (Cawley Direct Testimony) at 16.

Mr. Cawley, noted the substantial harm that would occur if the Commission approves the Stipulation as filed. *Id.* at 15-16. He testified that:

> The precedent created by approval of the Stipulation as filed would (i) encourage many more blatant attempts to end-run the Commission's established precedents, (ii) not promote sound decision making and the public interest, (iii) substantially increase the litigation time and expense of all parties before the Commission, and (iv) most heavily burden the Commission and its Staff.
>
> If the behavior displayed by the signatories to the Stipulation is not sternly forbidden, the Commission and its Staff, rather than being able to rely on Ohio's sufficient probative evidence rule requiring evidence of record, will be forced instead to laboriously compare every offered stipulation with the underlying record to ensure some evidence supports *every* stipulation provision.
>
> This needless additional work will extend way beyond stipulation reviews and competitive market cases. The precedent set here will apply to all settlements of public utility disputes within the Commission's jurisdiction, bounded only by an exhaustion of legal counsel's inventiveness. To the dismay of the Commission's attorney examiners, there soon will be a spike in late intervention motions filed by interested and aggrieved parties who had no earlier reason to intervene in cases.

Id. at 15-16.

Mr. Cawley also cautioned about the disturbing precedent that would be set if the Stipulation were adopted unchecked. He testified that "[t]he precedent created by approval of the

[7] Ms. Lawler testified that there were no issues in the tax cases and the MGP cases comprising these proceedings that related to the competitive retail natural gas market. Tr. 40: 2-5 and 19-22. *See also* October 15, 2021, Entry ¶ 31.

Stipulation as filed would (i) encourage many more blatant attempts to end-run the Commission's established precedents, (ii) not promote sound decision making and the public interest, (iii) substantially increase the litigation time and expense of all parties before the Commission, and (iv) most heavily burden the Commission and its Staff." *Id.* at 15.

The Commission should have afforded Mr. Cawley's testimony substantial weight given his time as a Chairman and commissioner on a public utility commission in a deregulated state (Pennsylvania). The Commission acted unreasonably and unlawfully by completely ignoring the testimony of Mr. Cawley and finding that RESA and IGS "have failed to present **any evidence** demonstrating that the Stipulation violates any regulatory principle or precedent." That statement is not supported by the record and clear error. The Commission's statement in the Order that RESA and IGS "have failed to present any evidence demonstrating that the Stipulation violates any regulatory principle or precedent" is against the manifest weight of the evidence in the record and unreasonable.

H. The Commission acted unreasonably and unlawfully by concluding that the Stipulation does not violate any important regulatory principle or practice.

As set forth in the prior assignment of error, the Commission entirely ignored the testimony by Mr. Cawley regarding violations of important regulatory principles and practices as a result of the competitive market provisions in the Stipulation. Then, in order to explain its conclusion that that Stipulation does not violate any important regulatory principle or practice, the Commission (1) cited to Duke Exhibit 7 at 22-23 (the direct testimony of Duke Energy witness Amy B. Spiller) and (2) stated "that the Stipulation resolves 18 pending matters before the Commission that would otherwise require significant time and resources to resolve." Order at ¶ 133. First, Mr. Cawley's testimony was much more detailed and thorough than any of Duke's two witnesses, neither of whom has Mr. Cawley's experience and understanding of the ramifications of allowing the

Signatory Parties to push through the Stipulation without modification under the facts and circumstances of these proceedings. Second, the fact that the Stipulation resolves "18 pending matters before the Commission that would otherwise require significant time and resources to resolve" is of no significance in any proper analysis of whether there was a violation of any important regulatory principle or practice. Mr. Cawley explicitly laid out important regulatory principles and practices that were violated by the Stipulation. The Commission failed to soundly analyze the violations in the Opinion, and, rather, was motivated in its reasoning by the resolution of these proceedings brought about by the Stipulation. Accordingly, the Commission acted unreasonably and unlawfully by concluding that the Stipulation does not violate any important regulatory principle or practice.

I. The Commission's finding that the settlement, as a package, benefits ratepayers and the public interest was unlawful and unreasonable because of the precedent set by such a finding under these circumstances, because the competitive market provisions were included to the detriment of ratepayers and because of the approval of the provision of misleading shadow billing information to OCC.

RESA and IGS were unable to present evidence or engage in cross-examination on any of the MGP or TCJA provisions of the Stipulation. Instead, the Commission imposed on RESA and IGS the burden of proving that the inclusion of the competitive market provisions outweighed the benefits of the TCJA and MGP provisions. The Commission statement in the Order at ¶ 120 reflects this burden shifting:

> [b]ased on the record evidence, as discussed above, there is no question that these provisions related to the Duke MGP Proceedings and the Duke TCJA Proceedings benefit ratepayers and the public interest. The only remaining issue is to determine whether the competitive market provisions require us to find that the Stipulation does not benefit ratepayers and the public interest, despite these uncontested benefits related to the MGP remediation costs and TCJA.

Order at ¶ 120.

After putting the burden of proof on RESA and IGS, the Commission rejected RESA's and IGS' evidence holding that the provisions in the Stipulation requiring Duke to file an application to transition to an SSO and the commitment to include proposed price-to-compare messaging were commitments to file proposals only. Order at ¶ 121. The Commission further stated that it would not use its decision in the Order to predetermine the outcome of any such applications. Order at ¶ 121. The Commission also held that the provision of shadow-billing information to OCC by Duke "… may benefit ratepayers and the public interest … [.]" Order at ¶ 122. The Commission concluded that the Stipulation will "… benefit ratepayers and the public interest." Order at ¶ 123.

The Commission erred in making that conclusion. First, the precedent set by condoning conduct and circumstances surrounding the negotiation of the Stipulation is not in the public interest. If rehearing is not granted, the Commission will have set a very disturbing precedent that will have the practical effect of causing parties to intervene in every Commission case so that parties can ensure that they receive notice of settlement negotiations, even if the settlement negotiations on their face relate to wholly unrelated matters. The bases for intervention, or the claimed interests supporting intervention, would be legitimate concerns about provisions being surreptitiously included in the settlement that are wholly unrelated to the subject matter of such proceeding, with a citation to what happened in these proceedings.

As noted by Mr. Cawley, such broad scale intervention by numerous parties in every case before the Commission will not benefit ratepayers or the public interest – it will only lead to a substantial increase in the amount and costs of litigation at the Commission. RESA/IGS Ex. 1 (Cawley Direct Testimony) at 16. Notably, the Commission felt it necessary in the Order to "take a moment to caution parties before including similarly unrelated provisions in future stipulations." Order at ¶ 89. But, that caution is not sufficient to avoid the risk in any other proceeding that

negotiations may take place that exclude regulated entities like suppliers or resolve important issues with no notice to the entities or persons most affected by the resolution.

The Commission's conclusion that the Stipulation benefits ratepayers and the public interest is also unlawful and unreasonable because as discussed above, it is very likely that ratepayers received less than what they deserve through the TCJA credit and will pay more than their fair share for the MGP remediation costs because reduced credits and increased costs were traded for the wholly unrelated competitive market provisions. Allowing wholly unrelated provisions to be included in a stipulation on proceedings that were ordered to address the MGP remediation cost recovery applications and the TCJA credit, and not providing ratepayers with the full amount of the deserved credit and overcharging for MGP remediation costs does not benefit ratepayers and is not in the public interest. While RESA and IGS were prevented from presenting evidence on this issue, the record is sufficient to warrant a grant of rehearing to determine if a trade-off occurred to the detriment of ratepayers.

The Commission's approval of shadow billing is also not in the public interest and will not benefit ratepayers. IGS and RESA witness Frank Lacey provided uncontroverted testimony with respect to the detrimental effects of the shadow billing provisions contained in the Stipulation on the competitive retail natural gas market. With respect to shadow billing, Mr. Lacey expressed concerns regarding the shadow billing provision in the Stipulation. RESA/IGS Ex. 2 (Lacey Direct Testimony) at 25. Shadow billing is a flawed concept and provides meaningless results. *Id.* at 26-30. Shadow billing provides inaccurate information that does not represent a complete comparison of pricing and savings. Specifically, shadow billing excludes volumes consumed and pricing for all choice customers not billed by Duke under its consolidated billing platform. RESA/IGS Ex. 2 (Lacey Direct Testimony) at 28; *see also* RESA Ex. 7 and RESA Ex. 8.

Duke conceded this point admitting that shadow billing in the proposed Stipulation would not account for dollars paid by choice customers billed directly by the competitive retail natural gas supplier for the supply of natural gas. RESA/IGS Ex. 2 (Lacey Direct Testimony) at 28; *see also* RESA Ex. 7 and RESA Ex. 8. Additionally, Duke does not have access to the dollar amounts charged by such competitive retail natural gas suppliers to customers that are not billed by Duke Energy on a consolidated billing basis for the supply of natural gas. RESA Ex. 9. Yet, the Commission seems to believe that shadow billing provides accurate pricing information to customers given its conclusions in ¶ 122 of the Order with no record evidence that shadow billing information will "benefit ratepayers" as found by the Commission. Order at ¶ 122.

Because the shadow billing calculation is a financial calculation (RESA Ex. 7 and RESA Ex. 8), shadow billing excludes considerations that might be included in offers from competitive retail natural gas suppliers. For example, a customer may be willing to pay a premium for carbon offset natural gas. The shadow billing financial calculation will capture the price premium, but cannot capture the carbon offset piece. Therefore, in the above example, the shadow billing information is misleading and does not capture the true considerations involved in a transaction that a consumer entered into knowingly. When customers makes natural gas supply decisions based on factors other than price, then any shadow billing information becomes entirely misleading.

Mr. Lacey also explained that "[i]f any policy actions are taken in response to those meaningless results, they will almost certainly be bad policy actions." RESA/IGS Ex. 2 (Lacey Direct Testimony) at 29-30. For example, OCC used information provided by Duke prior to OCC agreeing to the Stipulation in a recent Commission rule proceeding. See Consumer Protection Comments by Office of the Ohio Consumer's Counsel (October 8, 2021) filed in *In the Matter of*

the Commission's Review of Ohio Adm. Code Chapters 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34 Regarding Rules Governing Competitive Retail Electric Service and Competitive Retail Natural Gas Service, Case No. 17-1843-EL-ORD, et al. Just as damaging would be if OCC uses the inaccurate information to lobby for legislative change. Such actions would harm the competitive retail natural gas market.

The Commission cursorily dismissed RESA's and IGS's evidence on this issue, stating that "[t]he Commission finds that no valid reason has been presented to justify elimination of the shadow-billing provision from the Stipulation pursuant to part two of the test to evaluate stipulations." Order at ¶ 122. That dismissal was unlawful and unreasonable just like the Commission's conclusion that the Stipulation as a package benefits ratepayers and is in the public interest. The circumstances surrounding the Stipulation do not warrant a finding that the Stipulation without modification benefits ratepayers and the public interest.

III. CONCLUSION

A recurring theme in these proceedings since the Stipulation has been filed is that the Stipulation provides a global resolution of proceedings that have been ongoing for years. The Commission focused on that point throughout the Order even though it took a moment "… to caution parties before including similarly unrelated provisions in future stipulations" and stated that making such inclusions would "invariably invite additional due process" and "cause delay[.]" Order at ¶ 89. However, such words of warning do nothing to (a) change the precedent created by the Commission's approval of the Stipulation under the circumstances in these proceedings or (b) remedy the fundamental violations of RESA's and IGS' due process rights in these proceedings. The better result here is to ignore OCC's threat in its reply brief to withdraw from the Stipulation

if the competitive market provisions are removed (OCC Reply Brief at 18) and modify the Stipulation to both remove the competitive market provisions and the provisions of the Stipulation that allow a Signatory Party like OCC to withdraw from the Stipulation. That simple solution will end this matter on rehearing – and then it is up to Duke to decide on whether it wants to pursue its SSO application. Given the errors in the Opinion outlined herein, rehearing should be granted by the Commission, and RESA and IGS respectfully request that, on rehearing, the Commission modify the Stipulation to remove, in their entirety, the competitive market provisions.

Respectfully Submitted,

/s/ Michael J. Settineri
Michael J. Settineri (0073369), Counsel of Record
Elia O. Woyt (0074109)
Gretchen L. Petrucci (0046608)
Anna Sanyal (0089269)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
Telephone 614-464-5462
Facsimile 614-719-5146
msettineri@vorys.com
eowoyt@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com
Counsel for the Retail Energy Supply Association

/s/ Joseph Oliker per authorization (mjs)
Michael Nugent (0090408)
Counsel of Record
Email: michael.nugent@igs.com
Joseph Oliker (0086088)
Email: joe.oliker@igs.com
Evan Betterton (100089)
Email: evan.betterton@igs.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone:(614) 659-5000
Facsimile: (614) 659-5073
Counsel for Interstate Gas Supply, Inc.

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 served (via electronic mail) on the 20th day of May 2022 upon all persons/entities listed below:

Duke Energy Ohio, Inc.	rocco.dascenzo@duke-energy.com jeanne.kingery@duke-energy.com larisa.vaysman@duke-energy.com talexander@beneschlaw.com mkeaney@beneschlaw.com khehmeyer@beneschlaw.com ssiewe@beneschlaw.com
Staff of the Public Utilities Commission of Ohio	werner.margard@ohioAGO.gov
Ohio Consumers' Counsel	larry.sauer@occ.ohio.gov christopher.healey@occ.ohio.gov william.michael@occ.ohio.gov amy.botschner.obrien@occ.ohio.gov
Ohio Energy Group	jkylercohn@bkllawfirm.com kboehm@bkllawfirm.com mkurtz@bkllawfirm.com
Ohio Partners for Affordable Energy	rdove@keglerbrown.com
The Kroger Co.	paul@carpenterlipps.com
Ohio Manufacturers Association Energy Group	bojko@carpenterlipps.com
Interstate Gas Supply, Inc.	michael.nugent@igs.com evan.betterton@igs.com joe.oliker@igs.com

/s/ Michael J. Settineri
Michael J. Settineri

Exhibit 1

(consists of the following 45 pages)

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

RATE FRAS

FULL REQUIREMENTS AGGREGATION SERVICE

APPLICABILITY

This service is available to Suppliers delivering gas on a firm basis to the Company's city gate receipt points on behalf of customers receiving Firm Transportation Service from the Company. The service provided hereunder allows Suppliers to deliver to the Company on an aggregated basis those natural gas supplies that are needed to satisfy the requirements of Customer Pools participating in the Company's firm transportation programs.

CHARACTER OF SERVICE

This Tariff Sheet applies to the provision of pooling service for firm gas transportation customers. Suppliers under this Tariff Sheet shall supply the full requirements of their Pool Customers and agree to accept supply management responsibility. Company shall specify, and Supplier shall deliver each day, the Target Supply Quantity for Supplier's Pool.

GAS SUPPLY AGGREGATION/CUSTOMER POOLING AGREEMENT

Prior to acting as a Supplier for Pool Customers receiving Firm Transportation Service, Supplier must enter into a Gas Supply Aggregation/Customer Pooling Agreement with the Company. An example of the Gas Supply Aggregation/Customer Pooling Agreement is attached to this Tariff Sheet.

SUPPLIER INVOICE

On a monthly basis, the Company will generate, and Supplier will pay, an invoice that includes the costs set forth below in this Tariff Sheet and in Sheet No. 45 herein.

LATE PAYMENT CHARGE

Payment of the total amount due must be received by Company, or its authorized agent, by the due date shown on the Supplier's invoice. If the Supplier does not pay the total amount due by the date shown, an additional amount equal to one and one half percent (1.5%) of the total unpaid balance shall also become due and payable.

RETURNED CHECK CHARGE

The Returned Check Charge set forth in Sheet No. 45 herein shall be added to the Supplier's account each time a check is returned by the financial institution for insufficient funds.

MEASUREMENT OF CUSTOMER USAGE VOLUMES

The Company shall be responsible for all usage measurement at the point of delivery to the customer's facilities. Monthly volumes billed to Pool Customers shall be considered actual volumes consumed, whether the meter reading is actual or estimated.

QUALITY OF GAS DELIVERED BY SUPPLIER

The Supplier warrants that all gas delivered by or on behalf of Supplier for its Pool Customers under this Tariff Sheet shall meet the quality, pressure, heating value and other quality specifications of the applicable FERC Gas Tariff of the interstate gas pipeline delivering said gas to the Company.

Filed pursuant to an Order dated September 9, 2020 in Case No. 20-384-GA-ATA before the Public Utilities Commission of Ohio.

TITLE AND WARRANTY

Supplier warrants that it will, at the time and place of delivery, have good right and title to all volumes of gas delivered on its behalf, free and clear of all liens, encumbrances, and claims whatsoever, and that it will defend, indemnify, and hold the Company harmless for all suits, actions, debts, accounts, damages, costs, losses, or expenses (including reasonable attorneys' fees) arising from or out of the adverse claims of any or all persons relating to or arising from said gas.

DEFINITIONS

"Adjusted Target Supply Quantities" (ATSQ) means the Target Supply Quantities plus or minus any adjustments that the Company may require the Supplier to make to its daily deliveries (i.e., Annual Reconciliation volumes) plus the daily firm (Rate FT) requirements of all customers being served by the Supplier under Rate IT.

"Aggregation Service" is a service provided by the Company that allows Suppliers to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the full firm requirements of the one, or more, firm transportation customers that comprise the membership of the Supplier's Pool, as defined below, all in accordance with the rules established by the Company regarding delivery requirements, banking, billing and payments, and Supplier performance requirements.

"Arrearages" are past due and unpaid amounts owed to the Company. A thirty-day arrears exists when any portion of the previous month's bill is unpaid at the time the current bill is issued. Customers having a thirty-day or more arrears of $50.00 or more are not eligible to participate in the Program. A customer who is current on a payment plan for previously billed and unpaid charges is not considered to have Arrearages when an electronic enrollment to the Company's firm transportation program is received from a Supplier.

"British Thermal Unit" or "Btu" means the quantity of heat required to raise one (1) pound of water (about a pint) one (1) degree Fahrenheit at or near its point of maximum density.

"Ccf" means one hundred cubic feet.

"Commission" means the Public Utilities Commission of Ohio.

"Company" means Duke Energy Ohio.

"Customer" means a residential, non-mercantile, or mercantile recipient of the Company's Sales Service or Transportation Service.

"Default" means the failure of the Company or Supplier to fulfill a duty or obligation set forth in Duke Energy Ohio's tariffs, the Ohio Revised Code, the Ohio Administrative Code, or any agreement or contract between and among the Company and Supplier.

DEFINITIONS (Contd.)

"Dekatherm" or "Dth" means a unit of heating value equal to ten (10) Therms or Million Btu's (1 MMBtu).

"Eligible Customer" is a customer who is eligible to participate in a Governmental Aggregation in accordance with section 4929.26 and 4929.27 of the Ohio Revised Code and does not include any of the following: a person that is both a distribution service customer and a mercantile customer on the date of commencement of service to the Governmental Aggregator or the person becomes a distribution service customer after the service commencement date and is also a mercantile customer; a person who is supplied with natural gas sales service pursuant to a contract with a Supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation; a person who is supplied with natural gas sales service as part of the Percentage of Income Payment Plan (PIPP) program; or, a customer who has failed to discharge, or enter into a plan to discharge, all existing Arrearages owed to or billed by the Company.

"Enrollment Processing Period" means the number of days required to process a customer's accepted enrollment in the Program pursuant to this Tariff. This process commences with the submission to Company by Supplier of appropriate information for an eligible customer and ends with the termination of the customer's rescission period. The process will take up to twelve (12) calendar days, and includes seven (7) business days from the date the Company sends the customer a letter indicating the customer may rescind its Program enrollment or change in Suppliers.

"Firm Transportation Service" means service under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service - Large (Rate FT-L – Sheet No. 37) or Firm Transportation Service – Small (Rate FT-S – Sheet No. 52).

"Gas Supply Aggregation/Customer Pooling Agreement" is an agreement between the Company and Supplier that defines the mutual responsibilities and obligations of those parties relative to the Aggregation Service provided under Rate FRAS.

"Maximum Daily Quantities" (MDQ) means the expected peak day natural gas usage for a Supplier's Pool of Customers.

"Mcf" means one thousand cubic feet.

"Mercantile Customer" has the meaning set out in division (L) of section 4929.01 of the Ohio Revised Code. In summary, it means a customer that: (1) consumes, other than for residential use, more than 5,000 Ccf of natural gas per year at a single location or as part of an undertaking having more than 3 locations within or outside the state; and (2) that has not filed a declaration with the Commission.

"Negative Imbalance Volume" or "Under-deliveries" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

DEFINITIONS (Contd.)

"OAC" means the Ohio Administrative Code.

"OCC" means the Office of the Ohio Consumers' Counsel.

"Operational Flow Orders" (OFOs) are notices issued by the Company via its electronic bulletin board (EBB) or fax transmission requiring Suppliers to adjust their daily deliveries into the Company's system to match, match or be less than, or match or be more than their Adjusted Target Supply Quantity for the Supplier's Pool of Customers receiving Firm Transportation Service. Supplier shall be required to deliver natual gas, or to cause natural gas to be delivered, into the Company's specified city gate receipt points, if it is determined by the Company to be necessary and the specified receipt points and amounts are identified in the OFO notice posted on the EBB.

"Over-deliveries" or "Positive Imbalance Volume" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.

"Pool" is a group of one or more customers receiving service pursuant to firm transportation tariffs that have been joined together pursuant to Rate FRAS, Full Requirements Aggregation Service for supply management purposes. If PIPP Customers are being served by a Supplier, a separate Pool must be comprised entirely of PIPP Customers.

"Pool Customer" means a recipient of Firm Transportation Service provided by the Company under Tariff Sheet Nos. 33, 36, 37 or 52 who receives gas supply from a Supplier as a member of a Pool.

"Pooling Program" refers to the services provided under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service - Large (Rate FT-L – Sheet No. 37), Firm Transportation Service - Small (Rate FT-S – Sheet No. 52), and Full Requirements Aggregation Service (Rate FRAS – Sheet No. 44).

"Pooling Service" means a service provided by the Company that allows Suppliers to deliver to the Company gas supplies needed to satisfy the usage requirements of the customers of the Supplier's Pool, all in accordance with the rules established by the Company in this Tariff Sheet and Gas Supply Aggregation/Customer Pooling Agreement.

"Positive Imbalance Volume" or "Over-deliveries" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.

"Program" means the Company's firm transportation/supply aggregation customer choice program under Rate RFT, Rate RFTLI, Rate FT-L and Rate FT-S, and Rate FRAS, respectively.

"PUCO" means the Public Utilities Commission of Ohio.

DEFINITIONS (Contd.)

"Sales Service" means service under Residential Service (Rate RS – Sheet No. 30), Residential Service Low Income Pilot (Rate RSLI – Sheet No. 34), General Service – Small (Rate GS-S – Sheet No. 32) or General Service - Large (Rate GS-L – Sheet No. 35).

"Supplier" is a qualified business entity that: (1) has been certified by the PUCO to provide retail natural gas service, (2) has been chosen as a Supplier by a group of one or more customers that qualifies as a Pool, (3) agrees to accept responsibility for the gas supply management of the Pool, (4) meets the Requirements for Supplier Participation set out in this Tariff Sheet, and (5) has executed a Gas Supply Aggregation/Customer Pooling Agreement with the Company.

"Supply Contract" or "Contract" means a contract between the Pool Customer and its Supplier that defines the mutual responsibilities and obligations of those parties relative to customer's purchase and Supplier's sale of gas supplies for delivery to customer pursuant to this Tariff Sheet and the applicable Transportation Service Tariff Sheet.

"Target Supply Quantities" (TSQ) are defined as daily city gate delivery quantities determined from statistical models used to estimate the daily gas usage of the full requirements firm customers in Supplier's Pool. These daily gas usage estimates are adjusted for Unaccounted-for Gas Loss and converted from volumetric to thermal quantities.

"Transportation Service" means service under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service - Large (Rate FT-L – Sheet No. 37), Firm Transportation Service – Small (Rate FT-S – Sheet No. 52) or Interruptible Transportation Service (Rate IT – Sheet No. 51).

"Unaccounted-for Gas Loss" is the difference between the Company's total available gas commodity and the total gas commodity accounted for (metered) as sales and transported volumes. The difference is comprised of factors including but not limited to leakage, discrepancies due to meter inaccuracies, Company use and with the use of cycle billing, an amount of gas used but not billed.

"Unaccounted-for Percentage" means a percentage calculated by dividing the difference between: (1) the aggregate volume of gas received into Company's system from the interstate pipelines plus the volume of vaporized propane, all converted to Mcf using the Btu content associated with such supply source, and (2) the aggregate volume consumed by all of Company's gas customers, stated in Mcf, over that same period, by the Mcf volume calculated in item (1) above.

"Under-deliveries" or "Negative Imbalance Volume" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

REQUIREMENTS FOR SUPPLIER PARTICIPATION

Each Supplier desiring to receive Aggregation Service/Firm Transportation Service from the Company will be evaluated to ensure that it possesses the financial resources and sufficient experience to perform its responsibilities as a Supplier. On the basis of this evaluation, a Supplier's participation may be limited to a level specified by the Company.

In order to assist Company in performing its evaluation, Supplier(s) must do the following:

a) Provide proof of Commission Certification to the Company.
b) Complete and sign the Company's Credit Application form.
c) Complete and sign the Retail Natural Gas Supplier Registration form.
d) Pay a registration fee as set forth in Sheet No. 45 herein.
e) Attend Company-sponsored training for Retail Natural Gas Suppliers.
f) Demonstrate a working understanding of the proper electronic communications capabilities necessary to transact business with the Company.
g) Complete and sign the Company's Gas Supply Aggregation/Customer Pooling Agreement.

Suppliers not meeting the necessary credit level will be required to provide additional security in a form and format specified by the Company.

Financial evaluations will be based on standard credit factors such as financial and credit ratings, trade references, bank information, unused line of credit, Pool Customer payment history, and related financial information that have been independently audited, if available. The Company shall determine creditworthiness based on the above criteria, and will not deny a Supplier's participation in the Program without reasonable cause. A fee will be assessed to the Supplier for each financial evaluation, as set forth in Sheet No. 45 herein.

The Company reserves the right to conduct re-evaluations of Supplier's financial standing from time to time. Such re-evaluation may be initiated either by a request from the Supplier or by the Company, if the Company reasonably believes that the creditworthiness or operating environment of a Supplier may have changed. Based on such re-evaluation, the Company may require the Supplier to increase the amount of its financial security. If the Supplier does not increase its security within five (5) business days of the Company's request or within an additional time period specified by the Company, the Supplier's participation may be suspended or terminated in accordance with the Consequences of Supplier's Failure to Perform or Comply section of this Tariff. The financial evaluation fee set forth in Sheet No. 45 herein will be assessed for such re-evaluations.

GENERAL PROVISIONS

A) Suppliers and Governmental Aggregators shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:

1) Marketing, solicitation, or sale of a competitive retail natural gas service;
2) Administration of contracts for such service; or
3) Provision of such service, including interactions with consumers.

GENERAL PROVISIONS (Contd.)

B) Suppliers shall maintain an employee and an office open for business in the state of Ohio.

C) Suppliers and Governmental Aggregators shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.

D) Suppliers and Governmental Aggregators shall not change or authorize the changing of a customer's Supplier of competitive retail natural service without the customer's prior consent, as provided for under Rule 4901:1-29-06 of the OAC. For the purpose of procuring competitive retail natural gas services, this requirement does not apply to automatic Governmental Aggregation and for the PIPP program.

E) All Suppliers and Governmental Aggregators shall provide the Commission's staff with a name, telephone number, and e-mail address of a contact person who will respond to Commission concerns pertaining to consumer complaints. If any of the required information relating to the

contact person should change, the Supplier or Governmental Aggregator shall provide advance notice of such changes to the Commission.

RECORDS AND RETENTION

A) The Company (for records retention related to competitive retail natural gas services), each Supplier and each Governmental Aggregator shall establish and maintain records and data sufficient to:

1) Verify its compliance with the requirements of any applicable Commission rules; and
2) Support any investigation of customer complaints.

B) Unless otherwise prescribed, all required records shall be retained for no less than two years.

C) Unless otherwise prescribed by the Commission or its authorized representatives, all required records required shall be provided to the Commission staff within three (3) business days of its request.

MARKETING AND SOLICITATION

A) Each Supplier and Governmental Aggregator that offers competitive retail natural gas service to customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make informed cost comparisons.

1. For fixed-rate offers, such information shall, at minimum, include:

a) The cost per Ccf or Mcf, whichever is consistent with the Company's current billing format, for natural gas supply;
b) The amount of any other recurring or nonrecurring Supplier or Governmental Aggregator charges; and
c) A statement that the Supplier's or Governmental Aggregator's rate is exclusive of all applicable state and local taxes and the Company's service and delivery charges.

MARKETING AND SOLICITATION (Contd.)

2) For variable-rate offers, such information shall, at minimum, include:

a) A clear and understandable explanation of the factors that will cause the price to vary (including any related indices) and how often the price can change;
b) The amount of any other recurring or Supplier or Governmental Aggregator charges; and
c) A statement that the Supplier's or Governmental Aggregator's rate is exclusive of all applicable state and local taxes and the Company's service and delivery charges.

B) A Supplier's or Governmental Aggregator's promotional and advertising material shall be provided to the Commission or its staff within three (3) business days of a request by the Commission or its staff.

C) No Supplier or Governmental Aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

1) Soliciting customers for a competitive retail natural gas service:
a) After suspension, rescission, or conditional rescission of certification by the Commission; or
b) After denial of certification renewal by the Commission.

2) Failing to comply with paragraph (A) or (B) of this section;

3) Failing to provide in or with its advertisements and promotional materials that make an offer for sale, a toll-free/local telephone number (and address for printed materials) which the potential customer may call or write to request detailed information regarding the price, terms, conditions, limitations, and restrictions;

4) Soliciting via telephone calls initiated by the Supplier or Governmental Aggregator (or its agent) without first;

a) Obtaining the list of customers who have requested to be placed on a "do not call" list, which shall be created and maintained by the Commission; and
b) Obtaining monthly updates of the Commission-maintained "do not call" list;

5) Engaging in telephone solicitation of customers who have been placed on the "do not call" list maintained by the Commission;

6) Engaging in telephone solicitation to residential customers either before nine a.m. or after nine p.m.;

7) Engaging in direct solicitation to customers where the Supplier's or Governmental Aggregator's sales agent fails to wear and display a valid Supplier or Governmental Aggregator photo identification. The format for this identification shall be pre-approved by the Commission staff; and

MARKETING AND SOLICITATION (Contd.)

8) Advertising or marketing offers that:

a) Claim that a specific price advantage, savings, or guarantee exists if it does not, or may exist if it will not;
b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services;
c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the Company's current billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges;
d) Offer a variable price per Ccf or Mcf, whichever is consistent with the Company's current billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges; and
e) Fail to disclose all material limitations, exclusions, and offer expiration dates.

OBLIGATIONS TO THE COMPANY

Each Supplier participating in the Pooling Program shall:

1) Deliver gas to the Company on a firm basis on behalf of the Supplier's pool members in accordance with the requirements of the "Gas Supply Aggregation/Customer Pooling Agreement".

2) Establish and maintain a creditworthy financial position to enable the Supplier to indemnify the Company and the customers for costs incurred as a result of any failure by Supplier to deliver gas in accordance with the requirements of the program and to assure payment of any PUCO-approved charges for any such failure.

3) Make good faith efforts to resolve all disputes between Supplier and its Pool Customers and to cooperate with resolution of any joint issues with Company.

4) Refrain from requesting customer-specific billing, payment, and usage history without first having received the customer's approval to access such information.

Failure to fulfill any of these obligations may subject Supplier to consequences set forth in the Consequences of Supplier's Failure to Perform or Comply section of this Tariff Sheet.

CUSTOMER INFORMATION LIST

Company shall make available to Suppliers an electronic list of customer information for customers who are eligible to participate in the Program. Such list shall be updated quarterly and shall, at a minimum, contain the following information regarding each customer: name, service and mailing addresses, meter read date or schedule, and the most recent twelve (12) months of consumption data. The fee for this customer information list is set forth in Sheet No. 45 herein.

GOVERNMENTAL AGGREGATION

Governmental Aggregators shall follow the Commission's rules for formation and operation of a Governmental Aggregation.

GOVERNMENTAL AGGREGATION (Contd.)

Upon the request of a Governmental Aggregator, the Company will provide, on a best efforts basis, an update list of Eligible customers' names, service and mailing addresses, account numbers, and other customer information list data for all Eligible customers residing within the Governmental Aggregator's boundaries. Except for the inclusion of information for customers who have opted-off the Company's customer information list for Suppliers and Company account numbers, the customer information contained in such list shall be consistent with any customer information list provided to Suppliers described herein. The Governmental Aggregator will pay a fee for a copy of said list, as set forth in Sheet No. 45 herein. The Governmental Aggregator shall not disclose or use a customer's account number or any customer information regarding those customers who have opted off the Company's customer information list, without the customer's express written consent.

Prior to the Company including a customer's natural gas account in a Governmental Aggregation, the Governmental Aggregator shall provide each Eligible customer written notice that their account will be automatically included in the aggregation notice unless the customer affirmatively opts out of the aggregation. The Company shall switch Eligible customers, who have not opted out of the Governmental Aggregation, to or from a Governmental Aggregation under the same processes described herein for Suppliers.

CUSTOMER SIGN-UP PROCEDURES

Customers desiring to participate in the Program must execute a written Supply Contract with a Supplier that states that the customer has agreed to participate in the Program and which sets forth the terms and conditions of the customer's gas supply purchase. The Supplier may design the format of the Supply Contract, but at a minimum, it must comply with the applicable provisions specified in Rules 4901:1-29-10 and 4901:1-29-11 of the O.A.C.

In the alternative, customers desiring to participate in the Program may enroll with a Supplier via telephone or internet. Under these methods, the Supplier must retain proof of customer consent as required by the Commission.

The Supply Contract, or alternate proof of customer consent in the case of telephonic or internet enrollment, will be used to resolve disputes if the validity of an account enrollment comes into question. If requested by the Company, PUCO (in the case of Non-Mercantile Customers only) or OCC (in the case of residential customers only), Supplier must provide a copy of a specific Supply Contract, or alternate proof of customer consent in the case of telephonic or internet enrollment, within three (3) business days of any such request.

Regardless of the customer enrollment method used, within three (3) business days after completion of enrollment (unless a later date agreed to or customer rescinds), Supplier will provide the Company with an electronic file in a format specified by the Company, containing a listing of all customers who Supplier has signed up or desires to drop since its last submission. This list shall include each Pool Customer's Company account number. The Company will evaluate the information provided for accuracy and customer eligibility, and provide Supplier with a confirmation report within three (3) business days. In the event more than one Supplier includes the same Pool Customer on their enrollment files to begin the same period, the customer will be assigned to the Supplier whose acceptable enrollment was first processed by the Company.

CUSTOMER SIGN-UP PROCEDURES (Contd.)

Once complete and accurate information supporting a customer joining or leaving a Supplier's Pool is received and confirmed by Company, the change will be effective on the customer's next regularly scheduled meter read date, provided that it is received by the Company at least twelve (12) days before the next regularly scheduled meter read date. If a customer rescinds their enrollment prior to commencing service with a Supplier, the Company shall notify the Supplier within two (2) business days of the customer's rescission.

Customer will remain with its Supplier until: (1) the customer is reverted to Sales Service due to non-payment or Supplier default; (2) the customer or Supplier notifies the Company that the customer should revert to the Company's Sales Service; (3) the customer joins the PIPP program; or (4) the customer's name, service address and account number appear on another Supplier's electronic enrollment file listing. If a customer moves from one address to another within the Company's service territory; (a) nothing in this tariff shall be construed to impact the Supplier/Customer contract by virtue of that move; (b) the Company's current billing system needs confirmation in order to maintain Program participation with the Supplier because of the location change within the Company's service territory; (c) in order to maintain Program participation with the Supplier, the Supplier must confirm enrollment via customer authorization once the new distribution service account with the Company has been established; (d) when a customer changes their service address within the Company's service territory, the customer will be billed for Sales Service for a period of no more than one billing cycle plus eleven (11) days, provided that a timely enrollment notice is received from the Supplier; and (e) the customer and the Supplier may minimize the time the customer is billed under Sales Service by promptly providing the Company with the new enrollment notice. If the customer's current Supplier initiates customer's termination in the Program, the Company shall issue a written notification to the customer informing customer of such change. Customers, who on their own initiative, decide to terminate their participation in the Program will be permitted to do so without the Company making any determination regarding whether the customer is contractually permitted to make such move. The Company shall not be liable to the Supplier or customer for allowing the customer to revert to Sales Service. The Company is not responsible for tracking Supplier contract terms and conditions between Suppliers and customers and shall not be liable for any default of such contract.

If the Company rejects a customer from enrollment, the Supplier shall notify the customer within three (3) business days from the Company's notification of rejection that the customer will not be enrolled or enrollment will be delayed, along with the reason(s) therefor.

The Company will accept an enrollment from another Supplier for a customer who is currently with a Supplier, without the current Supplier first submitting an electronic drop notification to the Company. In enrollment situations where a customer is already being served by a Supplier or the customer is currently receiving Sales Service, the Company shall, prior to commencing competitive retail natural gas service with the subsequent Supplier, mail the customer a confirmation notice stating:

1) The Company has received a request to enroll the customer for competitive retail natural gas service with the named Supplier, and, in the case of an enrollment request for a customer who

CUSTOMER SIGN-UP PROCEDURES (Contd.)

is currently with another Supplier, a statement that Company's records reflect that customer is currently enrolled with another Supplier along with an admonition that customer should review the terms and conditions of the incumbent Supplier's Contract for customer's obligations under said Contract;

2) The date such service is expected to begin;

3) The customer has seven (7) business days from the postmark date on the notice to contact the Company telephonically, in writing or via the internet to rescind the enrollment request or notify the Company that the change of the Supplier was not requested by the customer; and

4) The Company's appropriate contact information, including, but not limited to, the Company's toll-free telephone number.

If the customer rescinds their enrollment, the Company will initiate said rescission and notify the Supplier or Governmental Aggregator.

Any customer returning to Sales Service as a result of Supplier default, slamming, Supplier abandonment, or Supplier certification rescission will not be liable for any costs associated with the switch.

ENROLLMENT OF CUSTOMERS

Suppliers may enroll customers by mail, facsimile, direct solicitation, telephone, and the internet. When soliciting and/or enrolling Non-Mercantile customers, Supplier must adhere to the requirements set out in Rules 4901:1-29-05 and 4901:1-29-06 of the OAC.

CONTRACT ADMINISTRATION AND RENEWAL NOTICES

Supplier must adhere to the contract administration and renewal requirements for Non-Mercantile customers set out in Rule 4901:1-29-10 of the OAC.

POOL CUSTOMER BILLING OPTIONS

Suppliers may elect one of the following two billing options for its Pool Customers that do not participate in PIPP.

Option 1 – Company Consolidated Billing

The Pool Customer shall receive one bill from the Company that indicates the name of the Supplier from whom the customer is receiving its gas supply and includes an amount for the Supplier's gas supply charges in accordance with the pricing arrangements agreed upon between the Supplier and the customer, including any taxes for which the Supplier must collect. The Company's consolidated bill may provide the budget amounts, past due balances, payments applied, credits, late charges, and total amount due on a consolidated basis only. A Supplier that elects this billing option will be provided, at no charge, as many as twenty-five (25) actively billed rate codes to which a customer may be assigned by the Supplier and billed by the Company. Additional actively billed rate codes (up to 80) will be provided by the Company for a fee as set forth in Sheet No. 45 of this Tariff. Each Supplier will be limited to a total of forty (40) actively billed rate codes for which the

POOL CUSTOMER BILLING OPTIONS (Cont'd)

Supplier may submit to the Company a price change each month for each rate code. Price changes must be submitted to the Company no later than the 25th day each month for bills rendered the next month. In the event that a Supplier desires extraordinary billing system changes, the Supplier shall be charged for the cost of implementing such changes, as set forth in Sheet No. 45 of this Tariff.

The Pool Customer will be responsible for making payment to the Company for the entire amount shown on the bill, including both the Company's and the Supplier's charges. In the event that a customer remits to the Company less than the full payment due, the payment received shall first be applied to the Company's charges shown on the bill plus any Arrearages relating to such Company charges from previous billing periods, and the residual amount shall be applied to the Supplier's portion of the bill, including the taxes thereon. Supplier shall be promptly notified of any payments received from customers attributable to Supplier's portion of the bill. Payment to Supplier for payments received from customers as noted above will be made within five (5) business days after mid-month and end-of-month numbers are available.

Where Supplier has elected service under Rate ARM, Accounts Receivable Management Service, the Company shall remit to the Supplier, by wire transfer or otherwise, payment for all gas billed to the Supplier's customers by the Company on Supplier's behalf, including taxes attributable to Supplier's portion of the bill based on the terms contained in the respective Supplier's ARM agreement.

Supplier shall be responsible for dispersing to the appropriate taxing authorities any tax that is attributable to Supplier's portion of the bill.

In the event, and to the extent, that a customer remits to the Company less than the amount which would be attributable to the Company's charges and Arrearages included on the bill, the customer shall be subject to the same late charges and disconnection procedures which would be applicable if the customer were receiving Sales Service.

Option 2 – Dual Billing

The customer shall receive two bills as follows:

a) The Company shall bill and collect for its portion of the bill that includes charges for gas transportation service and all applicable Riders. The Company's bill shall include the Supplier's name and a statement that the Supplier is responsible for billing Supplier's charges. In the event that a customer remits to the Company less than the amount included on the Company's bill, customer shall be subject to the same late charges and disconnect rules that would be applicable if the customer were receiving Sales Service.

b) Supplier shall be responsible for billing and collecting its part of the bill including any past due amounts that are due from Supplier's own prior billings. To facilitate Suppliers' portion of the billing each month, the Company will provide each Supplier with an electronic notification of the monthly meter readings of all customers within Supplier's Pool that have been billed by the

POOL CUSTOMER BILLING OPTIONS (Cont'd)

Company. Such billing data will correspond to the meter reading data on which the Company based its bill for transportation service. A Supplier may terminate gas sales to any Pool Customer for non-payment and remove the customer from its Pool in accordance with the procedures for dropping customers from a Supplier's Pool pursuant to this Tariff Sheet.

CUSTOMER DISCONNECTION

The Company may disconnect service to a customer for non-payment of its regulated utility charges. The Supplier is not permitted to physically disconnect customer's gas service for non-payment of the Supplier gas charges.

CUSTOMER ACCESS AND COMPLAINT HANDLING

Each Supplier shall cooperate with the Company, the Commission, and the OCC (in the case of residential customers) to answer inquiries and resolve disputes. The following procedures shall be applicable to customer access and complaint handling:

A) Customer access

1) Each Supplier or Governmental Aggregator shall ensure customers reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer bills, terminate competitive service, and transact any other pertinent business.
2) Telephone access shall be toll-free and afford customers prompt answer times during normal business hours.

3) Each Supplier or Governmental Aggregator shall provide a twenty-four (24) hour automated telephone message instructing callers to report any service interruptions or natural gas emergencies to the Company.

B) Customer complaints

1) Each Supplier or Governmental Aggregator (and/or its agent) shall investigate customer complaints (including customer complaints referred by the Company) and provide a status report within three (3) business days following receipt of the complaint to:

a) The customer, when the complaint is made directly to the Supplier or Governmental Aggregator, or

b) The customer and Commission staff, when a complaint is referred to the Supplier or Governmental Aggregator by the Commission staff.

2) The Governmental Aggregator may choose to have the Supplier perform certain functions as the Governmental Aggregator's agent. However, the Governmental Aggregator is still responsible for ensuring that the requirements of these rules are met.

If an investigation is not completed within ten (10) business days, the Supplier or

CUSTOMER ACCESS AND COMPLAINT HANDLING (Cont'd)

Governmental Aggregator (and/or its agent) shall provide status reports to the customer, and if applicable, to the customer and Commission staff. Such status reports shall be provided at three (3) business day intervals until the investigation is complete,

3) unless the action that must be taken will require more than three (3) business days and the customer has been so notified.

4) The Supplier or Governmental Aggregator (and/or its agent) shall inform the customer, or the customer and Commission staff, of the results of the investigation, orally or in writing, no later than three (3) business days after completion of the investigation. The customer or Commission staff may request the report in writing.

5) If a customer disputes the Supplier's or Governmental Aggregator's (and/or its agent's) report, the Supplier or Governmental Aggregator shall inform the customer that the Commission staff is available to mediate complaints. The Supplier or Governmental Aggregator (and/or its agent) shall provide the customer with the address, local/toll-free telephone numbers, and TDD/TTY telephone number of the Commission's public interest center.

6) Each Supplier or Governmental Aggregator shall retain records of customer complaints, investigations, and complaint resolutions for two (2) years after the occurrence of such complaints and shall provide such records to the Commission staff within three (3) business days of request.

7) Each Supplier or Governmental Aggregator shall make good faith efforts to resolve disputes and cooperate with the resolution of any joint issues with the Company.

C) If customers contact the Company concerning competitive retail natural gas service issues, the Company shall:

1) Review the issue with the customer to determine whether it also involves the Company;

2) Cooperate with the resolution of any joint issues with the Supplier or Governmental Aggregator; and

3) Refer the customer to the appropriate Supplier or Governmental Aggregator in those instances where the issue lacks Company involvement.

D) Slamming Complaints

1) A slamming complaint is a customer's allegation that the customer's Supplier or Governmental Aggregator has been switched without the customer's authorization.

2) If a customer contacts the Company, Supplier or Governmental Aggregator alleging that the customer's Supplier has been switched without the customer's authorization, the Company, Supplier or Governmental Aggregator shall:

CUSTOMER ACCESS AND COMPLAINT HANDLING (Contd.)

a) Provide the customer any evidence relating to the customer's enrollment;

b) Refer the customer to the Commission's public interest center;

c) Provide the customer with the local/toll-free telephone numbers of the Commission's consumer service department; and

d) Cooperate with the Commission staff in any subsequent investigations of the slamming complaint.

3) Except as otherwise provided in Chapter 4901:1-28 of the OAC, if the Supplier or Governmental Aggregator cannot produce valid documentation confirming that the customer authorized the switch, there shall be a rebuttable presumption that the customer was switched without authorization. Such documentation shall include one of the following, in conformance with the requirements of Rule 4901:1-29-06 of the OAC:

a) A signed contract, in the case of direct enrollment;

b) An audio recording, in the case of telephonic enrollment; or

c) Electronic consent, in the case of internet enrollment.

In the event that the customer was switched from one Supplier or Governmental Aggregator to a different Supplier or Governmental Aggregator without authorization, the customer's previous Supplier or Governmental Aggregator shall re-enroll the customer without penalty under such customer's original contract price for the duration of the original term and send the Company an electronic enrollment request. If the original Supplier or Governmental Aggregator is unable to return the customer to the original contract price, the original Supplier or Governmental Aggregator may enroll the customer in a new contract pursuant to the provisions of Rule 4901:1-29-06 of the OAC, or the customer may select a new Supplier or return to the Company's GCR commodity service;

5) In the event that a customer was switched from Sales Service to a Supplier or Governmental Aggregator without authorization, the Company shall switch the customer back to Sa**les Service without penalty.**

UPSTREAM CAPACITY REQUIREMENTS

Suppliers participating in the Company's firm transportation program must secure their own upstream firm interstate pipeline capacity required to meet Supplier's Firm Transportation Service pools' aggregate MDQ less the firm interstate pipeline capacity assigned to the Supplier by the Company. Assignments and recalls of interstate pipeline capacity are mandatory for MDQ in excess of the Supplier's Firm Transportation Service pools' aggregate MDQ as of April 1, 2007. Due to the physical configuration of the Company's system, and certain upstream interstate pipeline facilities, and to enable the Company to comply with lawful interstate pipeline

UPSTREAM CAPACITY REQUIREMENTS (Contd.)

tariffs and/or to maintain the Company's system integrity, the Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements. Specific delivery requirements will be electronically posted by the Company.

A Supplier, whose aggregate Pools' MDQ exceeds 6,000 Dth/day and who adds 3,000 Dth/day of additional MDQ over the supplier's MDQ as of April 1, 2007, shall be assigned a proportionate amount of the Company's interstate pipeline firm transportation capacity by the Company on a seasonal basis. This MDQ criterion will be reviewed by the Company semi-annually based on the MDQ as of September 30th with any release becoming effective the following November 1st through March 31st, and on the MDQ as of February 28th, with any release becoming effective the following April 1st through October 31st. Suppliers will be notified of any change to their released capacity by October 15th for winter capacity and by March 15th for summer capacity. For purposes of determining the amount of capacity to be released, a Supplier's MDQ will be adjusted for known significant changes to the Supplier's customers expected for the following season.

The assignment shall be structured as a release of capacity. The posted rate will be the rate for which the Company has contracted with the interstate pipeline. Any capacity with a discounted rate will be posted open to bids, with the Supplier being the prearranged bidder. All other capacity will be posted at the pipeline's maximum rate with the Supplier being the prearranged shipper.

The Company shall assign interstate pipeline firm transportation capacity consistent with its delivery north/south allocation percentages and on a pro-rata basis to the Company's total capacity for the designated pipelines or the parties may choose a mutually agreed-upon assigned capacity portfolio. During the summer months of April through October, the Company's Firm Transportation capacity shall be reduced by the Company's maximum daily injection rights on Columbia Gas Transmission's Firm Storage Service for purposes of determining the pro-rata share for suppliers that are receiving Firm Balancing Service (FBS) rather than Enhanced Firm Balancing Service (EFBS).

Capacity will be assigned to the Supplier on a "recall and reput" basis. The Company shall release this capacity utilizing the appropriate pipeline company's electronic bulletin board and the Supplier shall execute the service agreements so generated by the pipelines five (5) days prior to the end of the month to enable the Supplier to nominate gas suppliers under the service agreements for the following month. If the Supplier fails to execute the service agreements the charges for the released capacity will be added to the Supplier's Pool Invoice for the month.

Prior to the capacity release process, the Supplier shall comply with the appropriate pipeline's credit review and establish itself on the pipeline's Approved Bidders List (as defined in the interstate pipeline company's tariff).

The Company, as releasing shipper under a recallable release, remains liable to the pipeline for reservation charges. The Supplier will provide sufficient financial guaranty to the Company of its ability to pay such pipeline charges, unless the applicable pipeline company releases the Company from liability for the Supplier's pipeline reservation charges.

Filed pursuant to an Order dated September 9, 2020 in Case No. 20-384-GA-ATA before the Public Utilities Commission of Ohio.

UPSTREAM CAPACITY REQUIREMENTS (Contd.)

The Company reserves the right to change the type of information required as well as the nomination deadline to comply with the requirements of the interstate pipeline companies.

There will be no restrictions on the Supplier's use of the released capacity at such times that it is not required to deliver gas to the Company's system.

The Supplier may re-release all or a portion of the capacity to a replacement shipper who meets all the requirements to which the Supplier is subject including but not limited to the Company's right of recall. A re-release shall not relieve the Supplier of its obligations under the provisions of the capacity release by the Company.

The Supplier receiving assignment shall pay the pipeline(s) directly for all charges associated with the use of released capacity, including (without limitation) demand charges, commodity charges, taxes, surcharges, fuel allowances, imbalance and overrun charges, and penalties.

The Supplier shall not revise receipt and delivery points of the interstate pipeline company firm transportation capacity released by the Company, without written consent from the Company. The Supplier will be responsible for operating the assigned capacity consistent with all the terms and conditions set forth in the tariffs of the Company and the applicable pipeline companies.

DAILY BALANCING

The Company will provide and charge the Supplier for balancing service, which will be used to manage differences between the Company's required daily Supplier delivery and the actual customer's consumption. There will be an annual election each year for Suppliers whose Pool MDQ is greater than or equal to 1,000 Dth/day and less than 6,000 Dth/day to elect, on or before January 15th each year, either Rider FBS (Firm Balancing Service), Sheet No. 75 or Rider EFBS (Enhanced Firm Balancing Service), Sheet No. 74, to be effective on April 1st each year. With the exeption of Supplier Pools for process-only load, comprised entirely of customers whose loads are not weather dependent, Suppliers whose Pool MDQ is greater than or equal to 6,000 Dth/day shall receive service under Rider EFBS. A Supplier that receives service under Rider EFBS will be billed rates as set forth in Rider EFBS, Sheet No. 75. A Supplier whose Pool MDQ is less than 1,000 Dth/day will receive balancing service under Rider FBS. Suppliers that elect Rider FBS and Suppliers whose Pool MDQ is less than 1,000 Dth/day will be billed the balancing charge per Mcf as set forth on Rider FBS on all volumes consumed by the Supplier's Pool.

a) Target Supply Quantities must be delivered each day based on the Company's forecasted temperatures and the aggregate demand curve for each Customer Pool, all as more fully described within the "Gas Supply Aggregation/Customer Pooling Agreement" between the Company and Supplier. Any Supplier that fails to deliver gas volumes in accordance with that agreement may be terminated from further participation in the program.

b) Suppliers are subject to Operational Flow Orders issued by the Company as described below. The Company may suspend from this program any Supplier that does not comply with an Operational Flow Order.

DAILY BALANCING (Contd.)

c) Suppliers shall have the ability to make daily/monthly inter-pool trades under the Company tariff Rate GTS, Gas Trading Service.

MEASUREMENT OF CONSUMED VOLUMES

The Company will electronically provide each Supplier with a listing of the monthly meter readings and usages for all customers within the Supplier's pool. Such monthly meter reading and usage data will correspond to the consumption data which the Company based its bill for local delivery service. Monthly volumes billed to participating customers shall be considered actual volumes consumed, whether the meter reading is actual or calculated.

ANNUAL RECONCILIATION

The Company will reconcile imbalances on an annual basis, for each Supplier, through determination of the difference between: (1) the Supplier's deliveries for the previous year; and (2) the actual consumption plus the Company's Unaccounted-for Percentage on the Supplier's aggregate Customer Pool, both calculated at city gate, adjusted for recognition of all adjustments applicable to the previous year.

Suppliers will eliminate the imbalance through the exchange of gas with Company via a storage inventory transfer, an adjustment to their Rider EFBS bank balance, or delivery over the next thirty 30 days or longer if mutually agreed by Supplier and Company.

OPERATIONAL FLOW ORDERS

Suppliers are subject to the Company's issuance of operational flow orders which will direct each Supplier to adjust scheduled volumes to match the Customer Pool's estimated usage. For Suppliers that are utilizing Rider EFBS as their balancing service, the difference between scheduled deliveries from the interstate pipeline companies and the estimated Pool usage will be met by the EFBS. In the event that the Company's storage service provider has restricted excess storage withdrawals/injections and a Supplier exceeds Rider EFBS's MDDQ or MDBQ such excess quantities will be considered a failure to comply with the Operational Flow Order (OFO). Failure of the Supplier to deliver volumes of gas equal to their adjusted Target Supply Quantity, with both its flowing supply and MDDQ, may result in suspension or termination from further participation in Company's firm transportation program.

Failure to comply with an Operational Flow Order, which is defined as the difference between the daily OFO volume and actual daily deliveries, will result in the action and/or billing of the following charges:

OPERATIONAL FLOW ORDERS (Cont'd)

Under-deliveries

1) the payment of a gas cost equal to the highest incremental cost paid by Company on the date of non-compliance;
2) one month's demand charges on the OFO shortfall. This charge shall not be imposed more frequently than once in any thirty day period; and
3) the payment of all other charges incurred by Company including but not limited to pipeline penalty charges on the date of the OFO shortfall.

Over-deliveries

1) any over-run delivered by Supplier will be confiscated by the Company and used for its general supply requirements, without compensation to Supplier.
2) Company shall bill and Supplier shall pay all charges incurred by Company including but not limited to penalty charges from the interstate pipelines for such excess deliveries, provided such penalties can be attributed to Supplier's over-run.

SCHEDULING

Supplier must make all necessary arrangements for scheduling natural gas deliveries to Company.

Each morning, by 9:00 A.M. E.S.T., the Company will post on its EBB an "Adjusted Target Supply Quantity" that the Supplier will be required to deliver into the Company's designated city gate receipt points during the following gas day. For purposes of the Company's firm transportation program, the "Adjusted Target Supply Quantity" is defined as the Target Supply Quantity, plus or minus any adjustments that Supplier may be required to make to its daily deliveries, plus the daily firm requirements of all customers being served by Supplier under both Rate IT and Rate FT, as specified within Supplier's Firm Transportation Service for Interruptible Transportation customers contracts. The quantities so calculated will then be adjusted for Unaccounted-for Gas Loss back to the Company's city gate, and converted to Dth. By 1:00 P.M. E.S.T. each day, Supplier shall notify the Company through the EBB of its total city gate nominations for the next day, by Company Rate Schedule, for each pipeline company delivering gas into the Company's system.

The Adjusted Target Supply Quantities that will be used to define the Supplier's next day delivery obligations shall also be the quantities against which the Supplier's pipeline confirmed daily deliveries into the Company's system, combined with quantities to/from Supplier's Rider EFBS balancing service, if applicable, will be compared in order to determine Supplier's daily overrun/underrun volumes. Daily overrun/underrun volumes determined in this manner shall form the bases for daily "cash-outs," OFO charges, daily pipeline penalty charge flow throughs, and any other charges under any of the Company's applicable tariffs, that are levied based on Supplier's failure to deliver the Adjusted Target Supply Quantities of gas into the Company's system.

OTHER RULES AND REGULATIONS

Except to the extent superseded herein, the Company's Rules and Regulations Governing the Distribution and Sale of Gas and such other Commission rules as are applicable shall apply to all gas transportation service provided hereunder.

CONSEQUENCES OF SUPPLIER'S FAILURE TO PERFORM OR COMPLY

If a Supplier fails to deliver gas in accordance with the full service requirements of its Pool Customers, the Company shall supply gas temporarily to the affected Pool Customers and shall bill Supplier the higher of the following: (1) the fair market price for that period; or (2) the highest incremental cost of gas for that period that the Company actually paid for gas supplies, including transportation and all other applicable charges. The Company shall have the right to immediately and unilaterally invoke Suppliers' letter of credit, parental guarantee, or any other collateral posted by the Supplier in order to enforce recovery from Supplier of the cost of these replacement supplies.

If a Supplier fails to deliver gas in accordance with the full service requirements of the Gas Supply Aggregation/Customer Pooling Agreement, or otherwise fails to comply with the provisions of this Tariff Sheet, including those specified in the Obligations to the Company section, the Company shall have the discretion to initiate the process to suspend temporarily or terminate such Supplier's further Program participation. To initiate the process, the Company shall serve a written notice of such failure in reasonable detail and with a proposed remedy to the Supplier and the Commission, as set forth in Rule 4901:1-27-12(J) of the OAC.

On or after the date said notice has been served, the Company may file with the Commission a written request for authorization to terminate or suspend the Supplier from participation in the Company's Program. Except for failure due to under-delivery or non-delivery, if the Commission, or any Attorney Examiner, does not issue an entry to suspend or reject the action proposed by the Company within ten (10) business days after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the eleventh (11^{th}) business day. If the Supplier's failure is due to under-delivery or non-delivery and, if the Commission, or an Attorney Examiner, does not act within five (5) business days after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the sixth (6^{th}) business day.

CONSEQUENCES OF SUPPLIER'S FAILURE TO PERFORM OR COMPLY (Contd.)

If the Supplier is suspended or terminated from the Program, customers in such Pool shall revert to Company's Sales Service, unless and until said customers join another Supplier's Pool. Any termination or suspension of the Gas Supply Aggregation/Customer Pooling Agreement pursuant to any provision of this section shall be without waiver of any remedy, whether at law or in equity, to which the party not in default otherwise may be entitled for breach of the Agreement.

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution shall be offered to Suppliers and the Company as a means to address disputes and differences that may arise under this tariff. Alternative Dispute Resolution shall be conducted in accordance with the Commission rules or as agreed upon among the applicable parties. Nothing herein shall act to deprive any party of its legal rights in a jurisdictional forum.

FORCE MAJEURE

If either Supplier or Company is unable to fulfill its obligations under this Tariff Sheet due to an event or circumstance which is beyond the control of such party and which prevents such performance, such party shall be excused from and will not be liable for damages related to non-performance during the continuation of such impossibility of performance. Neither of the following shall be considered a force majeure condition: (1) changes in market conditions that affect the acquisition or transportation of natural gas; or (2) failure of Supplier to deliver or Pool Customers to consume scheduled gas volumes.

The party claiming force majeure will use due diligence to remove the cause of the force majeure condition and resume delivery or consumption of gas previously suspended. Gas withheld from the Supplier or Pool Customers during a force majeure condition will be delivered upon the end of such condition as soon as practicable.

COMPANY STANDARDS OF CONDUCT WITH RESPECT TO MARKETING AFFILIATES

In operation of its firm transportation program, the Company will adhere to the following Standards of Conduct for Marketing Affiliates:

1) Company must apply any tariff provision relating to transportation services in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

2) Company must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

3) Company may not, through a tariff provision or otherwise, give any Supplier including its marketing affiliate or customers of any Supplier including its affiliate, preference over any other gas Suppliers or their customers in matters, rates, information, or charges relating to transportation service including, but not limited to, scheduling, balancing, metering, storage, standby service, or curtailment policy. For purposes of the Company's firm transportation

COMPANY STANDARDS OF CONDUCT WITH RESPECT TO MARKETING AFFILIATES (Contd.)

program, any ancillary service provided by Company, e.g., billing and envelope service, that is not tariffed will be priced and made equally available to all.

4) Company must process all similar requests for transportation in the same manner and within the same approximate period of time.

5) Company shall not disclose to anyone other than a Company employee any information regarding an existing or proposed gas transportation arrangement, which Company receives

6) from (i) a customer or Supplier, (ii) a potential customer or Supplier, (iii) any agent of such customer or potential customer, or (iv) a Supplier or other entity seeking to supply gas to a customer or potential customer, unless such customer, agent, or Supplier authorizes disclosure of such information.

7) If a customer requests information about Suppliers, Company shall provide a list of all Suppliers operating on its system, but shall not endorse any Supplier nor indicate that any Supplier will receive a preference because of a corporate relationship.

8) Before making customer lists available to any Supplier, including any Company marketing affiliate, Company will post on its EBB a notice of its intent to make such customer list available. The notice shall describe the date the customer list will be made available, and the method by which the customer list will be made available to all Suppliers.

9) The Company will, to the extent practicable, separate the activities of its operating employees from its affiliate marketing employees in all areas where their failure to maintain independent operations may have the effect of harming customers or unfairly disadvantaging unaffiliated Suppliers under the Company's transportation programs.

10) Company shall not condition or tie its agreements for gas supply or for the release of interstate pipeline capacity to any agreement by a gas Supplier, customer or other third party in which its marketing affiliate is involved.

11) Company and its marketing affiliate shall keep separate books of accounts and records.

12) Neither the Company nor its marketing affiliate personnel shall communicate to any customer, Supplier or third party the idea that any advantage might accrue for such customer, Supplier or third party in the use of Company's service as a result of that customer's, Supplier's or other third party's dealing with any Supplier including its marketing affiliate.

13) The Company's complaint procedure for issues concerning compliance with these standards of conduct is as follows. All complaints, whether written or verbal, shall be referred to the Company's designated attorney. The Company's designated attorney shall orally acknowledge the complaint within five (5) working days of receipt. The complainant party shall prepare a

COMPANY STANDARDS OF CONDUCT WITH RESPECT TO MARKETING AFFILIATES (Contd.)

written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and specific claim. The Company's designated attorney shall communicate the results of the preliminary investigation to the complainant in writing within thirty (30) days after the complaint was received including a description of any course of action which was taken. He or she shall keep a file with all such complaint statements for a period of not less than three (3) years.

14) The Company shall not offer its affiliate Supplier a discount or fee waiver for transportation services, balancing, meters or meter installation, storage, standby service or any other service that would advantage the Company's affiliate Supplier.

15) The Company will not use its name and logo in its marketing affiliate's promotional material, unless the promotional material discloses in plain, legible or audible language, on the first page or at the first point where the Company's name and logo appear, that its marketing affiliate is not the same entity as the Company. The Company is also prohibited from participating in exclusive joint activities with any Supplier, including its affiliate, such as advertising, marketing, sales calls or joint proposals to any existing or potential customers.

SERVICE REGULATIONS

The supplying of, and billing for, service and all conditions applying thereto are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio, as provided by law.

DUKE ENERGY OHIO, INC.
GAS SUPPLY AGGREGATION/CUSTOMER POOLING AGREEMENT
ASSOCIATED WITH FIRM TRANSPORTATION PROGRAM

This Agreement is made and entered into this _____ day of_____, 2007, between Duke Energy Ohio, Inc., an Ohio corporation, 139 East Fourth Street, Cincinnati, Ohio 45202, hereinafter "Company", and _____,__a(an) _____corporation _____, hereinafter "Supplier."

WHEREAS, Supplier has secured firm supplies of natural gas which it intends to supply and sell on a firm, full gas requirements basis to gas customers located on the Company's system, all within the parameters established by the Company for its Firm Transportation Service Program.

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its city gate receipt points by Supplier and to redeliver such gas supplies to Supplier's aggregated pool of customers, all of whom have elected Firm Transportation Service from the Company under its Firm Transportation Service tariffs, Rates RFT, RFTLI, FT-L and FT-S.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations/pooling services and Supplier hereby agrees to aggregate natural gas supplies for all aggregations/pools served under this Agreement in accordance with the following terms and conditions:

ARTICLE I

Definitions

For purposes of interpreting this Agreement the following definitions shall apply:

1. Adjusted Target Supply Quantities. "Adjusted Target Supply Quantities", or "ATSQ", is defined as the Target Supply Quantities plus or minus any adjustments that the Company may require the Supplier to make to its daily deliveries (i.e., Annual Reconciliation volumes) plus the daily firm (Rate FT) requirements of all customers being served by the Supplier under Rate IT.

2. Commission. "Commission" means the Public Utilities Commission of Ohio.

3. Company. "Company" means Duke Energy Ohio.

4. Customer(s). "Customer(s)" means a residential or non-mercantile recipient of Firm Transportation Services provided by the Company, which secures its supply of gas from Supplier.

5. Firm Transportation Service. "Firm Transportation Service" means service under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service - Large (Rate FT-L – Sheet No. 37) or Firm Transportation Service – Small (Rate FT-S – Sheet No. 52).

6. Maximum Daily Quantities. "Maximum Daily Quantities", or "MDQ", means the expected natural gas usage for a Supplier's Pool of Customers on the Company's system design peak day.

7. Mercantile Customer. "Mercantile Customer" has the meaning set out in division (L) of section 4929.01 of the Ohio Revised Code. In summary, it means a customer that; (1) consumes, other than for residential use, more than 5,000 Ccf of natural gas per year at a single location or as part of an undertaking having more than 3 locations within or outside the state; and (2) that has not filed a declaration with the Commission.

8. Negative Imbalance Volume. "Negative Imbalance Volume", or "Under-deliveries", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

9. Operational Flow Order. "Operational Flow Orders", or "OFOs", are notices issued by the Company via its electronic bulletin board (EBB) or fax transmission requiring Suppliers to adjust their daily deliveries into the Company's system to match, match or be less than, or match or be more than their Adjusted Target Supply Quantity for the Supplier's Pool of Customers receiving Firm Transportation Service. Supplier shall be required to deliver natural gas, or cause natural gas to be delivered, into the Company's specified city gate receipt points, if it is determined by the Company to be necessary and the specified receipt points and amounts are identified in the OFO notice posted on the EBB.

10. Over-deliveries. "Over-deliveries", or "Positive Imbalance Volume", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.

11. Pool Customer. "Pool Customer" means a recipient of Firm Transportation Service provided by the Company under Tariff Sheet Nos. 33, 36, 37 or 52 who receives gas supply from a Supplier as a member of a Pool.

12. Pooling Program. "Pooling Program" refers to the services provided under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service – Large (Rate FT-L – Sheet No. 37), Firm Transportation Service – Small (Rate FT-S – Sheet No. 52) and Full Requirements Aggregation Service (Rate FRAS – Sheet No. 44).

13. Pooling Service. "Pooling Service" is a service provided by the Company that allows Suppliers (marketers, Suppliers, brokers, and producers) to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the full firm requirements of the one, or more, firm transportation customers that comprise the membership of the Supplier's "pool", all in accordance with rules that the Company has established regarding delivery requirements, advancing, banking, billing and payments, bonding, Supplier performance requirements, and other similar requirements for participation as a "Supplier" in the Company's Firm Transportation Service programs.

14. Positive Imbalance Volume. "Positive Imbalance Volume", or "Over-deliveries", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.

15. Program. "Program" means the Company's firm transportation/supply aggregation customer choice program under Rate RFT, Rate RFT-LI, Rate FT-L and Rate FT-S, and Rate FRAS, respectively.

16. PUCO. "PUCO" means the Public Utilities Commission of Ohio.

17. The Pool. A group of one or more customers, joined together by the Supplier for supply management purposes under this Agreement, which are receiving service pursuant to the Company's firm transportation tariffs.

18. Target Supply Quantities. "Target Supply Quantities", or "TSQ", are defined as daily city gate delivery quantities determined from statistical models used to estimate the daily gas usage of the full requirements firm customers in Supplier's Pool. These daily gas usage estimates are adjusted for Unaccounted-for Gas Losses and converted from volumetric to thermal quantities.

19. Unaccounted-for Gas Loss. "Unaccounted–for Gas Loss" is the difference between the Company's total available gas commodity and the total gas commodity accounted for (metered) as sales and transported

volumes.. The difference is comprised of factors including but not limited to leakage, discrepancies due to meter inaccuracies, Company use and with the use of cycle billing, an amount of gas used but not billed.

20. Unaccounted-for Percentage. "Unaccounted-for Percentage" means a percentage calculated by dividing the difference between: (1) the aggregate volume of gas received into Company's system from the interstate pipelines plus the volume of vaporized propane, all converted to Mcf using the Btu content associated with such supply source; and (2) the aggregate volume consumed by all of Company's gas customers over that same period, by the Mcf volume calculated in item (1) above.

21. Under-deliveries. "Under-deliveries", or "Negative Imbalance Volume", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

ARTICLE II

Term

The term of this Agreement shall commence on the first day of the month after execution hereof and, subject to Suppliers' continued compliance with the requirements outlined herein for participation in this program, shall continue in effect thereafter for a primary term of twenty-four (24) months. Thereafter, this Agreement shall continue from month to month, unless terminated by either party, upon at least ninety (90) days advance written notice. However, in no case shall this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both the Company and Supplier and/or except pursuant to the provisions of Articles III, VI, and X of this Agreement. Supplier shall be required to incorporate sufficient flexibility into its pooling agreements with its end-user customers that it serves, so that the operation of this provision will not contravene end-user customers' rights under those agreements. In the event this Agreement is terminated in accordance with the procedures contained herein, Supplier's customers shall be given the option of either electing an alternate Supplier, or returning to the Company's system supply, in accordance with the procedures outlined in Case No. 85-800-GA-AIR, as modified by the Commission from time to time.

ARTICLE III

Requirements For Program Participation

The Company shall have the right to establish reasonable standards for participation in this Program, provided it does so on a non-discriminatory basis. Accordingly, in order to participate as a Supplier in the Company's Firm Transportation Program, Supplier shall upon request provide the Company, on a confidential basis, with balance sheet and other financial statements, and with appropriate trade and banking references. Supplier also agrees to allow the Company to conduct a credit investigation as to Supplier's credit worthiness and will pay a fee to the Company to cover the cost of a credit check, as set forth in Sheet No. 45 of the Company's P.U.C.O. Gas No. 18 tariff. Further, if the Company determines that it is necessary, Supplier agrees to maintain a cash deposit, an irrevocable letter of credit at a Company approved bank of the Supplier's choosing, or such other financial instrument, as the Company may require during the term of this agreement in order to assure Supplier's performance of its obligations under this Agreement. In order to assure that the value of such financial security instruments remains proportional to Supplier's potential liability under this Agreement, the required dollar amounts of such instruments shall be adjusted at the sole discretion of the Company, as customers are added to, or deleted from, Supplier's pool. Supplier agrees that, in the event it defaults on its obligations under this Agreement and in order to satisfy Supplier's obligations under this Agreement, Company shall have the right to use such cash deposit, the proceeds from such irrevocable letter of credit, the proceeds from any other financial instrument agreed upon by the parties, and set-off against such obligations any revenue obtained through Company's billing on Supplier's behalf or any other revenues obtained by the Company as a result of any and all agreements and relationships between Company and Supplier. Such proceeds shall be used to secure additional gas supplies, including payment of the costs of the

gas supplies themselves, the costs of transportation, storage, gathering and other related costs incurred in bringing those gas supplies into the Company's system. The proceeds from such instruments shall also be used to satisfy any outstanding claims that the Company may have against Supplier, including imbalance charges, cash-out charges, pipeline penalty charges, annual reconciliation charges, and other amounts owed to the Company, and arising from, Supplier's participation in this pooling program.

In the event Supplier elects, or is forced, to terminate its participation in this Program in accordance with the provisions of this agreement, it shall continue its obligation to maintain its financial security instrument until it has satisfied all of its outstanding claims of the Company.

In addition to the above financial requirements, the Company may impose reasonable standards of conduct for Suppliers, as a prerequisite for their participation in the Program. Supplier acknowledges that in its capacity as a Supplier in this Program, it has a continuing responsibility to conduct its business in a legal and ethical manner. If, as a result of customers' complaints and/or from its own investigation, the Company determines, in its sole judgment, that Supplier is not operating under this Agreement in an ethical and/or legal manner, then the Company shall have the right to proceed as stated in the Consequences of Supplier's Failure to Perform or Comply section of P.U.C.O. Gas No. 18, Sheet No. 44 which may result in cancellation of this Agreement and denial of Supplier's further participation in this pooling program in accordance with the procedures described in Article X of this Agreement.

Company will maintain a list of Suppliers, who have met the pooling program's financial and performance requirements. This list will be made available to customers upon request.

ARTICLE IV

Full Requirements Service

In exchange for the opportunity to participate in the Company's Firm Transportation Program, Supplier agrees to supply its Pool Customers' full service requirements for natural gas on both a daily and monthly basis. Company's Firm Transportation Program requires that Supplier, as a participant in the Program, accepts supply co-management responsibility, as defined hereinafter, as a quid pro quo for its participation in this pooling Agreement.

ARTICLE V

Supply Co-Management Defined

Supplier agrees to deliver gas supplies into the Company's designated city gate receipt points on a daily basis, in accordance with the aggregate usage requirements of all those customers that comprise the Supplier's pool. However, inasmuch as it is economically and operationally impractical to install metering that will allow the Company to monitor each pool member's daily usage for aggregation and comparison with the gas supplies that are delivered to the Company's city gate receipt points, Supplier's gas supply co-management/balancing responsibilities under this Agreement shall be defined as follows:

1. The Company will maintain statistical models that will be used to estimate the daily gas usage of the full requirements firm customers in Supplier's pool. These daily gas usage estimates, as adjusted for Unaccounted-for Gas Losses, and converted from volumetric to thermal quantities, will be identified as Supplier's Target Supply Quantities. (Note: The Unaccounted-for Gas Loss adjustment will be based on the Company's system average Unaccounted-for Percentage.) A database will be created by the Company, which, at a minimum, will track daily usage estimates on an aggregated basis for all full requirements firm customers in Supplier's pool.

2. A daily load forecast methodology, developed by the Company, will be used to form the daily Target Supply Quantity for each Supplier's pool. The daily estimates by revenue class in each Supplier's pool will be calculated using only the usage information of firm full requirements customers. These daily

estimates are then adjusted for Unaccounted-for Gas Losses, and converted to Dth. The revenue class estimates for each Supplier are then combined to form the Target Supply Quantity for the Supplier's overall pool. Suppliers are responsible for informing the Company when their customer's load profiles deviate significantly from their historical load profiles. The Company will make the necessary adjustments to the Target Supply Quantity calculation to account for the new profiles.

3. Starting with the Supplier's daily Target Supply Quantity, the Company will each morning by 9:00 A.M. EST post, via its electronic bulletin board (EBB), an Adjusted Target Supply Quantity that Supplier will be required to deliver into the Company's designated city gate receipt points during the following day. The Adjusted Target Supply Quantity is defined as the Target Supply Quantity, plus or minus any adjustments that Supplier is required to make to its daily deliveries pursuant to Paragraph (5) of this Article V, plus FT requirements for IT customers, consisting of daily deliveries for the firm requirements of customers being served under both Rate IT and Rate FT, in quantities as specified in the Customer Pooling Agreement, which are adjusted for Unaccounted-for Gas Losses, and converted to Dth. By 1:00 P.M. E.S.T. each day, Supplier shall notify the Company via its EBB of its total city gate nominations for the next day, by Company Rate Schedule, for each pipeline company delivering into the Company's system.

4. The Adjusted Target Supply Quantities that are used to define the Supplier's next day delivery obligations shall also be the quantities against which Supplier's pipeline confirmed daily deliveries into the Company's system combined with quantities to/from Supplier's Rider EFBS (Enhanced Firm Balancing Service) balancing service if applicable, are compared in order to determine Supplier's daily overrun/underrun volumes. Daily overrun/underrun volumes determined in this manner shall form the bases for daily cash-outs, OFO charges, daily overrun/underrun charges, daily pipeline penalty charge flow throughs, and any other charges under this Agreement that are levied based on Supplier's failure to deliver the Adjusted Target Supply Quantities of gas into the Company's system.

5. As the final element of its gas supply co-management obligation, Supplier shall be required to reconcile annually its gas deliveries into the Company's system with the actual billed transportation volumes delivered to end-user customers within the Supplier's pool. Such reconciliation will normally be calculated during the summer months so that any differences between calendar month and billing cycle degree-day deficiencies are minimized. The actual billed transportation volumes for the reconciliation period will be determined by adding together the transportation quantities from the Monthly Summary Billing Reports for Supplier's pool. Such sum shall be adjusted for Unaccounted-for Gas Losses and converted from volumetric to thermal quantities.

   Supplier's deliveries into the Company's system will be based on the actual pipeline delivery reports for the reconciliation period, as adjusted for recorded cash-outs between the Supplier and the Company and deliveries to/from the Supplier's Rider EFBS balancing service if applicable and other gas deliveries or exchanges.

   Once the Company determines the extent of any imbalance for the reconciliation period, it will have the Supplier adjust its daily deliveries above or below the calculated Target Supply Quantities for some specified period of time until any imbalances are cured. However, in no case shall the Adjusted Target Supply Quantity be a negative number. Daily overrun/underrun calculations will be adjusted to take into account any such adjustments to Supplier's daily delivery requirements. The Company shall post any required daily delivery adjustment via the EBB at least two (2) days prior to the date that Supplier is required to begin its daily delivery adjustment. This imbalance may also be reconciled through a storage inventory adjustment or an adjustment to the Supplier's Rider EFBS bank balance if applicable.

6. Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements in addition to the quantities of gas intended for the Supplier's bank under Rider EFBS. For

Suppliers who receive service under EFBS, the north/south split for volumes up to the TSQ shall be the same as the split for Suppliers who receive service under FBS and system supply. Volumes in excess of the TSQ will be subject to north/south restrictions in accordance with the Company's ability to inject gas per its agreements with the storage service providers.

7. OFOs shall be issued by Company in those situations where it is necessary, in Company's sole judgement, for Supplier to deliver at specified receipt points and/or for Supplier to deliver at the Adjusted Target Supply Quantity in order for Company to: (a) protect the integrity of Company's gas system; (b) assure deliveries or gas supplies to all of Company's firm customers; and/or (c) adhere to the various interstate pipeline companies' balancing requirements, as stated in their FERC approved gas tariffs under which Company is served. Suppliers who receive Rider EFBS service shall be entitled to use such service, which shall be considered on-system deliveries to meet OFO requirements.

ARTICLE VI

Billing And Charges

The Company will provide Suppliers with individual pool customers' actual billing cycle usage data as customers are billed throughout the month by the Company for Firm Transportation Service.

Supplier's transportation quantities shall be determined from the Company's Monthly Summary Billing Report, which reflects customer's actual billed transport volumes, as generated within the Company's revenue reporting system.

Supplier shall be billed charges for services received under the Rider FBS (Firm Balancing Service) or EFBS (Enhanced Firm Balancing Service) based on the balancing service(s) elected or required for its Program Pool(s). Should Supplier's daily deliveries combined with quantities to/from Supplier's Rider EFBS balancing service, if applicable, not equal their Adjusted Target Quantities, then the Company will either buy-down Supplier's excess deliveries, or sell Supplier additional gas quantities until the daily Adjusted Target Supply Quantities are matched as further described below. However, if Supplier repeatedly and significantly fails to honor its delivery obligations within the tolerances established for this program, after adequate notice and opportunity to cure, Supplier shall be removed from the program, and the customers that it serves will have the option of either returning to system supply or electing another Supplier.

On those days when Supplier delivers quantities of gas into the Company's system that are in excess of the Adjusted Target Supply Quantity, Company shall purchase the excess quantities as required in order for Supplier to match his daily Adjusted Target Supply Quantities except when Supplier is receiving balancing service under Company's Tariff Rider EFBS as further described below. These over-deliveries shall be cashed out to the Supplier at the first of the month index published in Inside F.E.R.C. Gas Market Report, Prices of Spot Gas Delivered to Pipelines, Columbia Gulf Transmission Co., Mainline Index, first publication of the month following the delivery month, plus Columbia Gulf and Columbia Gas Transmission pipelines' commodity transportation costs, plus fuel, to the Company's city gate.

On those days when Supplier delivers quantities of gas into the Company's system that are less than the Adjusted Target Supply Quantities, the Company shall sell, and Supplier shall buy, such quantities of gas as are required in order for Supplier to match his daily Adjusted Target Supply Quantities except when Supplier is receiving balancing service under Company's Tariff Rider EFBS as further described below. These under-deliveries shall be cashed out to the Supplier at the first of the month index published in Inside F.E. R. C. Gas Market Report, Prices of Spot Gas Delivered to Pipelines, Columbia Gulf Transmission Co., Mainline Index, first publication of the month following the delivery month, plus Columbia Gulf and Columbia Gas Transmission pipelines' commodity transportation cost, plus fuel, to the Company's city gate plus Company's Rider ETR, Ohio Excise Tax Liability Rider.

On days when OFOs are issued, any gas delivered by Supplier on these days in excess of Adjusted Target Supply Quantities will be confiscated by the Company and used for its general supply requirements,

without compensation to Supplier except when Supplier is receiving balancing service under Company's Tariff Rider EFBS as further described below. In addition, Company shall flow through to Supplier any penalty charges that it incurs from its pipelines for such excess deliveries, provided such penalties can be attributed to Supplier's over deliveries.

On days when OFOs are issued and Supplier delivers less than its Adjusted Target Supply Quantities, the Company shall sell, and Supplier shall buy, quantities of gas as are required for Supplier to match his daily Adjusted Target Supply Quantities except when Supplier is receiving balancing service under Company's Tariff Rider EFBS as further described below. The price for such quantities shall be the higher of the cash-out charge described above for under deliveries, or the Company's actual costs of replacement supplies. In addition, the Company shall flow through to Supplier any penalties that Company incurs from its suppliers, or transporters, that are attributable to Supplier's under deliveries.

The only exception to the above two paragraphs regarding OFO's shall be on those OFO days when the Company grants Supplier, authorization to make over/under deliveries. On these days, Company will waive the regular cash out charges described above, waive the confiscation of gas supplies, and waive the flow through of pipeline penalty charges on all authorized excess/under deliveries. The Company shall grant authorization for excess/under deliveries on a non-discriminatory basis.

If Supplier is receiving balancing service under Company's Rider EFBS, Supplier is required to deliver gas under the terms of the Rider. Deliveries in excess or less than the Adjusted Target Supply Quantities will be increases or decreases to the Supplier's EFBS bank balance. When the Company's storage service provider is not authorizing over injections or over withdrawals, Supplier will be held to their designated MDDQ (Maximum Daily Delivery Quantity) and MDBQ (Maximum Daily Bank Quantity) as determined by Rider EFBS. Deliveries to the Company in excess of the Suppliers Adjusted Target Supply Quantity plus their MDBQ will be confiscated by the Company and used for its general supply requirements, without compensation to Supplier. Deliveries to the Company combined with Supplier's MDDQ that are less than the Supplier's Adjusted Target Supply Quantity will be sold to the Supplier at the higher of the cash-out charge described above for under deliveries, or the Company's actual costs of replacement supplies.

Suppliers shall have the right to make daily/monthly inter-pool trades under Rate GTS, Gas Trading Service.

The Company shall have the right to update all of its charges under this Agreement on the basis of its actual cost experience. All revenues collected from Supplier pursuant to the provisions of Article VI of this Agreement shall be flowed back to sales customers through the Company's Gas Cost Recovery mechanism.

ARTICLE VII

Compensation For Gas Utilized by Company

In the event the Company, acting pursuant to regulations or guidelines then in effect of government agencies having jurisdiction over such matters, utilizes natural gas supplies of the Supplier in order to assure gas supply to human needs and public welfare customers as defined in PUCO Case No. 85-800-GA-COI, the Company will reimburse Supplier for such usage upon the presentation of invoices by Supplier documenting its delivered cost for such natural gas.

ARTICLE VIII

Payment

On or about the tenth work day of the month, the Company shall render to Supplier a statement of the quantities delivered and amounts owed by Supplier for the prior billing month, including prior month's late

payment charges. Suppliers shall have ten (10) days from the date of such statement to render payment to the Company. Invoices for under $100,000 may be paid by check, but payment must be postmarked within ten (10) days of the invoice date. Invoices of over $100,000 must be paid by Electronic Funds Transfer within ten (10) days of the invoice date. In any case, when the due date falls on a holiday or weekend, payment will be due on the following business day.

If payment is not made by Supplier by the due date, as described above, an additional cost will be added to the charges otherwise due, and determined by applying the daily equivalent of the currently effective prime rate, plus two (2) percent to the unpaid balance for each day until payment is received. When a bill has remained unpaid for a period of thirty (30) days after rendition by the Company, and no other financial arrangements have been agreed upon, the Company may, at its sole option, and without liability therefor, suspend or cancel such Agreement with Supplier after giving written notice of its intention to do so, but such suspension or cancellation shall not discharge Supplier from its obligation to pay such bill or from any other obligation under this Agreement, nor does such suspension or cancellation preclude the Company from any rights or remedies it does or may have at law or in equity to enforce any of the provision of this Agreement.

ARTICLE IX

Interstate Pipeline Capacity

As a prerequisite for its participation in this Program, Supplier agrees, as agent for its pool customers, to acquire firm interstate pipeline capacity into the Company's system in amounts equal to the aggregate MDQ of Supplier's customer pools less the firm interstate pipeline capacity assigned to the Supplier by the Company, including the MDDQ associated with the EFBS program, as more fully described below. The Company shall have the right to periodically review the level and assignment of Supplier's capacity contracts in order to assure adequate MDQ coverage.

Due to the physical configuration of the Company's system, and certain upstream interstate pipeline facilities, and to enable the Company to comply with lawful interstate pipeline tariffs and/or to maintain the Company's system integrity, the Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements, which shall include any use by Supplier of its EFBS bank so that Supplier's total deliveries, including flowing supply and EFBS bank withdraw, need not exceed Supplier's MDQ. Specific delivery requirements will be electronically posted by the Company.

If Supplier's aggregate Pools' MDQ exceeds 6,000 Dth/day and Supplier adds 3,000 Dth/day of additional MDQ over Supplier's MDQ as of April 1, 2007, Supplier shall be assigned a proportionate amount of Company's interstate pipeline firm transportation capacity by Company on a seasonal basis. This MDQ criterion will be reviewed by the Company semi-annually based on the MDQ as of September 30th with any release/recall becoming effective the following November 1st through March 31st, and on the MDQ as of February 28th, with any release/recall becoming effective the following April 1st through October 31st.

1. Supplier will be notified of any change to its released capacity by October 15th for winter capacity and by March 15th for summer capacity.

2. The assignment shall be structured as a release of capacity. The posted rate will be the rate for which the Company has contracted with the interstate pipeline. Any capacity with a discounted rate will be posted open to bids, with Supplier being the prearranged bidder. All other capacity will be posted at the pipeline's maximum rate with Supplier being the prearranged shipper.

3. Company shall assign interstate pipeline firm transportation capacity consistent with its delivery north/south allocation percentages and on a pro-rata basis to Company's total capacity for the designated pipelines or the parties may choose a mutually agreed-upon assigned capacity portfolio. During the summer months of April through October, the Company's Firm Transportation

capacity shall be reduced by the Company's maximum daily injection rights on Columbia Gas Transmission's Firm Storage Service for purposes of determining the pro-rata share for suppliers who are receiving Rider Firm Balancing Service (FBS) rather than Rider Enhanced Firm Balancing Service (EFBS).

4. Capacity will be assigned to Supplier on a recall-and-reput basis. Company shall release this capacity utilizing the appropriate pipeline company's electronic bulletin board and Supplier shall execute the service agreements so generated by the pipelines five (5) days prior to the end of the month to enable Supplier to nominate gas suppliers under the service agreements for the following month. If Supplier fails to execute the service agreements the charges for the released capacity will be added to the Supplier's Pool Invoice for the month.

5. Prior to the capacity release process, Supplier shall comply with the appropriate pipeline's credit review and establish itself on the pipeline's Approved Bidders List (as defined in the interstate pipeline company's tariff).

6. Company, as releasing shipper under a recallable release, remains liable to the pipeline for reservation charges, and any applicable surcharges. Supplier will provide sufficient financial guaranty to the Company of its ability to pay such pipeline charges.

7. Company reserves the right to change the type of information required as well as the nomination deadline to comply with the requirements of the interstate pipeline companies.

8. There will be no restrictions on Supplier's use of the released capacity at such times that it is not required to deliver gas to Company's system.

9. Supplier may re-release all or a portion of the capacity to a Replacement Shipper who meets all the requirements to which the Supplier is subject including but not limited to, Company's right of recall. A re-release shall not relieve Supplier of its obligation under the provisions of the capacity release.

10. Supplier, after receiving such assignment shall pay the pipeline(s) directly for all charges associated with the use of released capacity, including (without limitation) demand charges, commodity charges, taxes, surcharges, fuel allowances, imbalance and overrun charges, and penalties.

11. Supplier shall not revise receipt and delivery points of the interstate pipeline company firm transportation capacity released by Company, without written consent from Company. Supplier will be responsible for operating the assigned capacity consistent with all the terms and conditions set forth in the tariffs of Company and the applicable pipeline companies.

12. For purposes of determining the amount of capacity to be released, a Supplier's MDQ will be adjusted for known significant changes to the Supplier's customers expected for the following season.

ARTICLE X

Remedies

1. Defaults. In addition to other rights to terminate or cancel that appear elsewhere in this Contract, if Company or Supplier fails to perform, to a material extent, any of the obligations imposed upon either under this Agreement, then the other party may, at its option, terminate or cancel this Agreement by

causing written notice thereof to be served on the party in default, stating specifically the cause for terminating or canceling this Agreement and declaring it to be the intention of the party giving the notice to terminate or cancel the same. In the event a party receives notice of termination or cancellation made pursuant to this Article, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or remove said causes, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then, at the option of the party giving notice, this Agreement shall terminate or cancel as of the expiration of said 30-day period. Any termination or cancellation of this Contract, pursuant to this Article shall be without waiver of any remedy, whether at law or in equity, to which the party not in default otherwise may be entitled for breach of this Agreement.

2. Sole and Exclusive Remedies. The liquidated damages, termination rights, cancellation rights, and interest payments outlined in this Agreement for non-performance herein shall be Company and Suppliers' respective sole and exclusive remedies for such non-performance. In no event shall either party be liable for special, incidental, exemplary, punitive, indirect or consequential damages including, but not limited to, loss of profit or revenue, cost of capital, cost of substitute products, downtime costs, or claims for damages by third parties upon Company or Supplier. This applies whether claims are based upon contract, warranty, tort, (including negligence and strict liability), or other theories of liability.

ARTICLE XI

Force Majeure

If either Supplier or Company is unable to fulfill its obligations under this Agreement due to an event or circumstance which is beyond the control of such party and which prevents such performance, such party shall be excused from and will not be liable for damages related to non-performance during the continuation of such impossibility of performance. Neither of the following shall be considered a force majeure condition: (1) changes in market conditions that affect the acquisition or transportation of natural gas; or (2) failure of Supplier to deliver or Pool Customers to consume scheduled gas volumes.

The party claiming force majeure will use due diligence to remove the cause of the force majeure condition and resume delivery or consumption of gas previously suspended. Gas withheld from the Supplier or Pool Customers during a force majeure condition will be delivered upon the end of such condition as soon as practicable.

ARTICLE XII

Title to Gas

Supplier warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XIII

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of Duke Energy Ohio and the Supplier and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the customer group that Supplier establishes under this Agreement.

ARTICLE XIV

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without the prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

ARTICLE XV

Applicable Law and Regulations

This Agreement shall be construed under the terms of the Company's P.U.C.O. Gas No. 18 tariff, as may be amended from time to time with the approval of the Commission. In the event the terms of this Agreement and said tariff differ in any regard, the terms of the tariff shall control.

This Agreement shall be construed under the laws of the State of Ohio and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law.

ARTICLE XVI

Notices and Correspondence

Written notice and correspondence to the Company shall be addressed as follows:

Duke Energy Ohio, Inc.
P. O. Box 960
Cincinnati, Ohio 45201-0960
Attention: Manager, City Gate Operations

Telephone notices and correspondence to the Company shall be directed to (513) 287-4042. Operational notices to the Company shall be directed to the above address, Attention: Gas Control, telephone (513) 287-2559. Fax notices to the Company shall be directed to (513) 287-2018.

Written notices and correspondence to the Supplier shall be addressed as follows:

_____

_____

_____

Telephone notices to the Supplier shall be directed to ( ) _____.
Fax notices to the Supplier shall be directed to ( ) _____.

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

IN WITNESS HEREOF, the parties hereto executed this Agreement

on the day and year first above written.

WITNESS: Duke Energy Ohio, Inc.

_____ By _____

Title _____

WITNESS: SUPPLIER

_____ By _____

Title _____

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

RIDER EFBS

ENHANCED FIRM BALANCING SERVICE

APPLICABILITY

Applicable to pools served by gas suppliers/aggregators that secure their own total upstream pipeline capacity necessary to meet the aggregated peak day requirements as more fully described under the Assignment of Capacity provision contained in Rate FRAS, Full Requirements Aggregation Service, Sheet No. 44, and that elect or are required to receive service for such pools under Rider EFBS rather than Rider FBS (Firm Balancing Service).

SERVICE

a) Service provided under Enhanced Firm Balancing Service (EFBS) shall be subject to the limitations set forth below. Such service shall be provided on a firm basis and shall apply to all gas delivered to the Company for the Supplier and provided pursuant to this tariff, up to the Bank Contract Quantity (BCQ) set forth herein. Supplier's Maximum Daily Delivery Quantity (MDDQ) shall be that specified herein.

b) Initial allocation of EFBS shall be as follows:

    1. Any Supplier whose FRAS Pool Maximum Daily Quantity (MDQ) exceeds 1,000 Dth/day, shall be allocated EFBS with an MDDQ equal to the proportion of the Company's no-notice balancing service quantity to its firm system design day times the Supplier's MDQ adjusted up to the nearest factor of 3,000.

c) Suppliers with a FRAS Pool MDQ less than 1,000 Dth/day shall continue under the Company's Rider FBS. Suppliers with a FRAS Pool MDQ greater than or equal to 1,000 Dth/day and less than 6,000 Dth/day shall have the option of receiving balancing service under EFBS or continuing under the Company's Rider FBS. Suppliers with a FRAS Pool MDQ greater than or equal to 6,000 Dth/day shall receive service under Rider EFBS. The determination will be made based on the MDQ as of December 31 of the preceding year based on the combination of all firm pools operated by the same company. Supplier pools for process-only load, comprised entirely of customers whose loads are not weather dependent (e.g. gas fired electric generation), shall be exempt from receiving service under EFBS. The annual election, if applicable, shall be made on or before January 15 of each year to become effective on April 1 of each year.

d) Incremental allocation/reduction of EFBS shall be as follows:

    1. Any Supplier whose MDQ crosses a factor of 3,000 Dth/day (herein, threshold) shall receive an allocation/reduction of its EFBS with an MDDQ equal to the proportion of the Company's no-notice balancing service quantity to its firm system design day times the Supplier's threshold (3,000 Dth/day), which will remain effective from the first of the following month in which the threshold was reached until such time as another threshold is reached.

Filed pursuant to an Order dated January 12, 2022 in Case No. 21-1155-GA-RDR before the Public Utilities Commission of Ohio.

SERVICE (Contd.)

2. For purposes of determining increases to the EFBS bank and MDDQ, the supplier's MDQ must exceed the next threshold by at least 500 Dth per day or exceed the threshold by a lower amount for three (3) consecutive months. For purposes of determining decreases to the EFBS bank and MDDQ, the supplier's MDQ must be at least 500 Dth per day lower than the previous threshold or remain under the previous threshold by a smaller amount for three (3) consecutive months. For situations where the threshold has been either exceeded or decreased as stated in the previous two sentences, measurements shall occur on the 25th day of each month, unless such day is not a business day, in which case such measurement shall occur on the next following business day.

e) The Supplier's BCQ ratio to its allocated MDDQ will be equal to the Company's ratio of daily no-notice balancing service quantity to its annual no-notice storage quantity with its storage service provider. The Company's ratio shall be determined on an annual basis. Both the Company's no-notice balancing service quantity and its annual no-notice storage quantity with its storage service providers will be established prior to the notification deadline for selecting EFBS service, and will not be changed within the associated gas year. The Company may adjust those percentages to reflect changes in the Agreement with its storage service provider, which may also necessitate changes in pricing with respect to the service. Any changes to the percentages or prices will be communicated to Suppliers on or before January 1 each year and will become effective to coincide with the Supplier's opportunity to select either FBS or EFBS service as outlined in Rate FRAS.

When initial or incremental EFBS is allocated to a Supplier, or recalled from a Supplier effective on the first day of any month, and the adjusted BCQ causes the Supplier's percent of EFBS bank to BCQ to be outside of the range specified below, then the Supplier must purchase, sell or transfer the required amount of bank so that the percent of EFBS bank to BCQ is within the specified range, within three (3) business days of the first day of the month such change is to become effective.

	Minimum	Maximum
April	0%	25%
May	0%	60%
June	14%	60%
July	34%	60%
August	54%	85%
September	75%	85%
October	88%	98%
November	95%	98%
December	78%	98%
January	59%	98%
February	36%	65%
March	18%	45%

SERVICE (Cont'd.)

1. This designation may require the Supplier to purchase, sell or transfer a specified volume of gas for the Supplier's EFBS bank in one of four ways (as determined by the Supplier, unless Supplier fails to purchase, sell or transfer specified volumes of gas, in which case option A shall be employed): (A) The Supplier may purchase natural gas from the Company, or sell to the Company, a portion of the Company's then current inventory with its storage service provider. The price for the gas purchased or sold by the Supplier for its bank volume shall equal the Company's inventory weighted average cost of gas with its storage service provider, adjusted for fuel to get a price at the burner tip. The Company shall communicate the current inventory weighted average cost of gas to Suppliers. (B) The Supplier can purchase or sell the specified volume of gas from/to another Supplier that receives service under the EFBS, by transferring volumes of gas, provided that the transfer does not increase a Suppliers Bank above the maximum levels as defined in the EFBS tariff or decrease a Suppliers Bank below the minimum for the month. Each supplier involved in the transfer must notify the Company in writing of the amount to be transferred and the date on which the transfer is to be effective. (C) The Supplier can transfer the gas to/from its own or a third parties storage account directly into the Company's storage account through an inter-company storage inventory transfer executed through the storage service provider. The increase or decrease to the Supplier's EFBS bank will be adjusted for fuel to get the increase or decrease at the burner tip. (D) The Supplier can transfer the gas to/from its IT Pool.

2. Suppliers will be required to pay for or transfer such gas designated for Supplier's BCQ in advance of the third (3rd) business day of the month in which service is effective unless other arrangements, acceptable to the Company, have been completed.

f) Except as specified in h) below, Supplier's EFBS bank shall be increased or decreased by the daily difference between actual natural gas volumes received by the Company at its city gate and Supplier's back-cast Targeted Supply Quantity (TSQ), adjusted for fuel retainage in the following manner:

1. If the Supplier delivers more natural gas than the back-casted TSQ, then the Suppliers EFBS bank shall be increased by the amount of the over-delivery, calculated at the burner tip.

2. If the Supplier delivers less natural gas than the back-casted TSQ, then the Supplier EFBS bank shall be decreased by the amount of the under-delivery, calculated at the burner tip.

g) On a day when Supplier's TSQ is greater than or equal to the MDQ, supplier shall have full access to the total MDDQ as specified in the EFBS tariff. The Supplier will not be required to make total deliveries, including the back-casted MDDQ, above the MDQ.

h) The Company may, at its option, recall EFBS from a Supplier if that Supplier subsequently ceases its participation in the Company's Customer Choice program for any reason. The Company may also recall a proportional amount of the Supplier's gas bank if the Supplier's MDQ decreases below a 3,000 Dth increment (as detailed in subparagraph (d) 1. and (d) 2. above) and the Supplier's gas bank is above the maximum quantity for that month, to become effective on the first day of the following month.

SERVICE (Cont'd.)

1. If the Company recalls EFBS, or the Supplier's MDQ decreases below a 3,000 Dth increment and Supplier does not elect to proceed under subparagraph (i) 2., then the Company shall buy all or a portion of Supplier's gas bank. The price of the gas in the Supplier's bank purchased by the Company shall be the Company's inventory weighted average cost of gas with its storage service provider, adjusted for fuel to get a price at the burner tip.

2. Alternatively, the Supplier can sell or transfer the specified volume of gas as described in subparagraph (f) 1.

3. In circumstances other than those described above, if a Supplier requests termination of EFBS other than at the time of the annual election, the Company may agree to termination at its sole discretion, and will elect to purchase any gas volumes remaining in the Supplier's bank at the above price options.

i) The Maximum Monthly Bank Quantities (MMBQ) shall be limited to the following percentages of Supplier's BCQ:

April	15%	August	18%	December	10%
May	20%	September	13%	January	10%
June	20%	October	9%	February	10%
July	20%	November	5%	March	10%

j) Supplier's Maximum Daily Bank Quantities (MDBQ) shall equal 1/25th of the Supplier's then current MMBQ, except during the months of November and December when the MDBQ shall equal 1/30th of the Supplier's then current MMBQ.

k) A Supplier may have no more than 60% of its BCQ in bank as of June 30, and no more than 85% of its BCQ in bank as of August 31.

l) The Company shall deliver Supplier's BCQ throughout the year, subject to the limitations set forth. Supplier's MDDQ shall be based upon and limited by Supplier's BCQ inventory remaining in bank determined in accordance with the Company's best estimates as follows:

% of banked gas in BCQ	% of MDDQ
100% to 30%	100%
less than 30% to 20%	80%
less than 20% to 10%	65%
less than 10% to 0%	50%

SERVICE (Cont'd.)

m) The minimum and maximum monthly net withdrawal quantities for the months November through March shall be as follows:

Month	Minimum % of BCQ	Maximum % of BCQ
November	No minimum	40%
December	No minimum	40%
January	No minimum	40%
February	10%	30%
March	10%	20%

n) If Supplier exceeds the maximum monthly net withdrawal limit during any of the months November through March, Supplier's maximum monthly net withdrawal quantity for the succeeding month shall be reduced by an amount equal to the excess quantities withdrawn during the excess withdrawal month. Supplier's withdrawals during the months April through October shall not be subject to maximum or minimum withdrawal limits; provided, however, that Supplier's withdrawals during that period shall be subject to the limitations of Supplier's BCQ levels.

o) Supplier's maximum bank inventory on April 1 shall not exceed 25% of its BCQ. Supplier's maximum bank inventory on February 1 shall not exceed 65% of its BCQ. Quantities in excess of 25% of Supplier's BCQ shall not be carried over beyond April 1.

BANK TRANSFERS

a) Suppliers may transfer volumes of gas held in their banks under the EFBS with other Suppliers receiving service under EFBS. Each supplier involved in the transfer must notify the Company in writing of the amount to be transferred and the date on which the transfer is to be effective.

b) The transfer must not increase a Suppliers Bank above the maximum levels as defined in the EFBS tariff. Likewise, the transfer must not decrease a Suppliers Bank below the MBQ for the month.

DELIVERY POINTS

a) The point of delivery for all gas tendered to the Company shall be the Company's city gate for EFBS service and, in accordance with the Supplier's FRAS Agreement with the Company, based upon a percentage north/south split. The north/south split for volumes up to the TSQ shall be the same as the split for Suppliers that have elected FBS and system supply. Volumes in excess of the TSQ will be subject to north/south restrictions in accordance with the Company's ability to inject gas per its agreements with the storage service providers.

WAIVER REQUESTS

a) In regard to the above percentage limitations on withdrawals and injections, the Company shall allow deviations from these limitations to the extent that additional flexibility has been granted to the Company by its storage service providers. Waivers shall be granted by the Company on a non-discriminatory basis.

RATE

a) For all services rendered pursuant to this tariff, Supplier each month shall pay the Company the charges set forth below:

1. Demand Charge: $10.22, assessed each month on each Dth of the Supplier's MDDQ;
2. Commodity Charge: $0.052, per Mcf, applied to all monthly consumption of the supplier's aggregate FT-S, FT-L, RFT and RFT-LI services not included in a pool receiving service under Rider FBS.

b) Rates will be reviewed quarterly and adjusted based on current charges from the Company's storage service providers.

NON-COMPLIANCE

a) If Supplier's EFBS bank is less than zero on any day, then the Supplier shall purchase a quantity of natural gas from the Company sufficient to bring the Suppliers EFBS bank up to the minimum percent listed in Service, section (f) above for the month in which the bank became less than zero. The price shall be 110% of the higher of the inventory weighted average cost of gas with its storage service provider or the highest price at which the company purchased gas for that month plus interstate pipeline fuel, commodity and daily reservation charges.

b) Except in instances when the Suppliers BCQ has been reduced due to a lower MDQ, if Supplier's EFBS bank is greater than 102% of their BCQ on any day, then the amount in excess of the maximum percent listed in Service section (f) above for the month in which the bank exceeded 102% shall be purchased by the Company for a price equal to 90% of the lower of the inventory weighted average cost of gas with its storage service provider or the lowest price at which the company purchased gas for that month plus interstate pipeline fuel, commodity and daily reservation charges.

c) Supplier must pay any penalties incurred by the Company from one of its storage service providers that can be attributed to actions by the supplier that do not comply with the EFBS tariff.

d) The Company may recall EFBS from a supplier for Non Compliance with the EFBS tariff. The Supplier will revert to the FBS at the beginning of the revenue month.

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

RIDER FBS

FIRM BALANCING SERVICE

APPLICABILITY

Applicable to pools served by gas suppliers/aggregators that secure their own total upstream pipeline capacity necessary to meet the aggregated peak day requirements as more fully described under the Assignment of Capacity provision contained in Rate FRAS, Full Requirements Aggregation Service, Sheet No. 44, and that receive service for such pools under Rider FBS rather than Rider EFBS (Enhanced Firm Balancing Service) as more fully described under the Service provision contained in Rider EFBS, Enhanced Firm Balancing Service, Sheet No. 50.

BALANCING SERVICE CHARGE

The FBS charge, which will be applied to all monthly consumption of the supplier's aggregate FT and RFT services not included in a pool receiving service under Rider EFBS, is $0.575 per Mcf.

Filed pursuant to an Order dated January 12, 2022 in Case No. 21-1155-GA-RDR before the Public Utilities Commission of Ohio.

RATE SAC
RETAIL NATURAL GAS SUPPLIER AND AGGREGATOR CHARGES

APPLICABILITY

These Charges apply to Retail Natural Gas Suppliers and Aggregators providing Competitive Retail Natural Gas Service to Customers located in the Company's service territory.

TYPES OF CHARGES

General Fees

Registration Fee	$ 145.00
Retail Natural Gas Supplier and Aggregator Financial Evaluation Fee	$ 50.00/Evaluation
Retail Natural Gas Supplier Customer Information List Fee	$ 150.00/List
Governmental Aggregator Eligible Customer List Fee (based on zip codes only)	$ 400.00/List
Governmental Aggregator Eligible Customer List Fee (includes best efforts verification of governmental boundaries)	$1,200.00/List
Monthly Fee for Additional Actively Billed Retail Natural Gas Supplier Rate Codes (following the first 25 actively billed rate Codes per month)	$ 30.00/Rate Code
Returned Check Charge	$ 20.00/Check

Bill Preparation and Request Charges

Consolidated Bill Preparation

Hourly charge for administrative and technical support to institute program modifications associated with the implementation of consolidated billing on non-standard rates requested by the Retail Natural Gas Supplier or Aggregator	$ 125.00/Hour

Other Bill Preparation Requests

Request by Retail Natural Gas Supplier or Aggregator for a one page Duplicate Bill	$ 0. 3325/Bill
Fee for Providing Commission Mandated Abandonment Notices as Bill Messages	$ .125/Bill

PURCHASE OF ACCOUNTS RECEIVABLE

The Company will negotiate a discount rate for purchase of supplier accounts receivable with each individual Retail Natural Gas Supplier or Aggregator, consistent with the guidelines approved by the Commission.

BILLING TERMS AND CONDITIONS

The billing terms and conditions for the above stated charges shall be in conformance with those specified in Rate FRAS.

The supplying and billing for service and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/20/2022 4:08:08 PM

in

Case No(s). 14-0375-GA-RDR, 14-0376-GA-ATA, 15-0452-GA-RDR, 15-0453-GA-ATA, 16-0542-GA-RDR, 16-0543-GA-ATA, 17-0596-GA-RDR, 17-0597-GA-ATA, 18-0283-GA-RDR, 18-0284-GA-ATA, 18-1830-GA-UNC, 18-1831-GA-ATA, 19-0174-GA-RDR, 19-0175-GA-ATA, 19-1085-GA-AAM, 19-1086-GA-UNC, 20-0053-GA-RDR, 20-0054-GA-ATA

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