

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Natural Gas Rates)	Case No. 22-507-GA-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Form of Regulation)	Case No. 22-508-GA-ALT
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tarif Approval)	Case No. 22-509-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods)	Case No. 22-510-GA-AAM
)	

**MEMORANDUM CONTRA DUKE ENERGY OHIO INC.'S MOTION TO STRIKE
OBJECTIONS TO THE STAFF REPORT OF INTERSTATE GAS SUPPLY, LLC**

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I. INTRODUCTION

Pursuant to R.C. 4909.19 and OAC 4901-1-28(B), Interstate Gas Supply, LLC (“IGS” or “IGS Energy”) filed objections to the Staff Report of Investigation (“Staff Report”) relating to Duke Energy Ohio, Inc.’s (“Duke”) application to increase its base distribution rates, approve an alternative form of regulation, tariff approval, and to change its accounting methods (“Application”).¹ Among other things, IGS objected to the Staff Report’s failure to provide a comprehensive evaluation of all matters and issues related to Duke’s customer information system (“CIS”), Customer Connect, and, in doing so, to recommend a corresponding reduction to Duke’s proposed return on equity (“ROE”).² IGS also objected to the Staff Report’s failure to not only address a switching fee that Duke seeks to retain on a going forward basis³, but also its failure to recommend tariff modifications that will better align Duke’s EFBS Tariff and Rider FBS with the balancing services that Duke currently provides to default service customers.⁴ Additionally, IGS objected to the Staff Report’s failure to address Duke’s discriminatory practice of including its affiliate’s non-jurisdictional charges on the utility bill, and to recommend that Duke certify to the Public Utilities Commission of Ohio (“PUCO” or “Commission”) that those charges will no longer be presented on the bill.⁵

¹ Objections of Interstate Gas Supply, LLC to the Application and Staff Report and Summary of Major Issues (Jan. 20, 2023) (hereinafter “IGS Objections”).

² *Id.* at pp 8-11; 19-21 (Objections C and J).

³ *Id.* at 8 (Objection B).

⁴ *Id.* at pp 15-16 (Objection F).

⁵ *Id.* at pp 16-17 (Objection G).

On January 30, 2023, Duke filed a Motion to Strike Specific Intervenor Objections (“Motion”)⁶ filed by IGS and other parties. Specifically, Duke sought to strike IGS’s Objections B, C, F, G, and J⁷, arguing that each Objection either lacks relevance or is outside the scope of this case. Duke’s Motion is notable in that it did not allege that any of IGS’s objections failed to meet the standard for objections set forth in R.C. 4909.19 and OAC 4901-1-28.

Indeed, Duke’s Motion is without merit and should be rejected. Each of the IGS objections at issue in Duke’s Motion were lodged with enough specificity to place Duke, Staff, and other intervenors on notice as to the issues that IGS will litigate in this proceeding. Those objections are also relevant to Duke’s base distribution rate determination, which is squarely at issue in this case. For the reasons described below, Duke’s Motion to Strike IGS’s objections should be denied.

II. LAW

Pursuant to R.C. 4909.19, parties to a rate proceeding are authorized to file objections to a staff report. Ohio Adm. Code 4901-1-28(B) clarifies the procedure and provides that objections “may relate to the findings, conclusions, or recommendations contained in the [staff] report, *or to the failure of the report to address one or more specific items.*” (emphasis added). That rule further provides that objections “must be specific[,]” and any objections that fail to meet this requirement may be stricken. In addition, OAC

⁶ Motion of Duke Energy Ohio, Inc. to Strike Specific Intervenor Objections to Staff Report and Memorandum in Support (Jan. 30, 2022) (hereinafter “Duke Motion to Strike”).

⁷ *Id.* at 12-14. IGS notes that Duke numbered these Objections in its Motion to Strike as 2, 3, 6, 7, and 10.

4901-1-28(C) states that the purpose of objections is to frame the issues in the proceedings.

More importantly, this Commission has previously held that “[w]hether or not [objections] are based on accurate representations of fact, and whether or not they are appropriate considerations in the setting in rates, is irrelevant to the question of whether they should be stricken.”⁸ In the Commission’s view, “[t]he intrinsic merit, or lack of merit, of any particular objection must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.”⁹ The question of whether an objection is supportable or legal is irrelevant. Accordingly, objections shall withstand a motion to strike so long as they relate to the findings, conclusions, or recommendations in a staff report, or relate to the failure of the staff report to address certain items and are specific.

III. ARGUMENT

A. IGS’s Objection B Concerning the Staff Report’s Failure to Address and to Recommend Removal of the Switching Fee Charged to Rate FTL Customers is Properly Before the Commission.

Duke moves to strike IGS’s Objection B, arguing that the objection lacks relevance for two reasons: (1) Duke is not proposing any changes to the \$4.00 switching fee charged to Residential Firm Transportation Service (“Rate FTL”) customers in this case; and (2) “switching fees have no relevance to determining base distribution rates.”¹⁰ Duke contends that because switching fees do not pertain to base distribution rates, the

⁸ *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR, Entry at 2 (Nov. 10, 2003) (hereinafter “*Water and Sewer LLC*”). See also *Industrial Energy Consumers v. Pub. Util. Comm.*, 63 Ohio St. 3d 551, 554 (1992).

⁹ *Water and Sewer LLC*, Entry at 3 (Nov. 10, 2003).

¹⁰ Duke Motion to Strike at 12.

Commission Staff properly excluded an analysis of this tariff provision in its Staff Report.¹¹ Each of Duke's arguments are without merit and should be rejected.

As Duke is keenly aware, it is not unusual for the Staff Report of Investigation to address matters beyond what a utility proposed in a rate application.¹² Indeed, the Commission has previously determined that a matter may be placed into issue or related to the application even if the specific change is not proposed by the applicant itself.¹³ Such is the case here as IGS specifically objected to the Staff Report's failure to address and to recommend removal of the \$4.00 switching fee charged to Rate FTL customers in light of Duke's failure to provide any evidence in this case to support the charge.¹⁴

Duke's second argument is also without merit given that the switching fee is a charge present in Duke's tariff today and, therefore, served as a source of revenue for the utility during the test year. Indeed, switching fees collected by the utility during the test year provide a credit to the proposed revenue requirement that Duke has requested the Commission authorize in this proceeding. As IGS referenced in the Objections it filed, Ohio law provides that the Commission must determine that a charge is just and

¹¹ *Id.* at pp 12-13.

¹² See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates, etc.*, Case Nos. 21-887-EL-AIR et al., Staff Report at 21 (May 19, 2022) (Staff reviewed tariff provisions involving the eligible-customer list and billing/payment and recommended changes although the utility did not propose changes to those provisions); and *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates, etc.*, Case Nos. 20-595-EL-AIR et al., Staff Report at 28-29 (Nov. 18, 2020) (Staff reviewed and recommended a revision to AEP Ohio's pole attachment rate although the utility did not originally propose to change the rate in its application).

¹³ See e.g., *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges and to Change its Regulations and Practices Affecting the Same*, Case No. 83-300-TP-AIR, 1984 WL 992025, Entry on Rehearing at 4 (May 20, 1984), citing *Cleveland Illum. Co. v. Pub. Util Comm'n of Ohio*, 42 Ohio St.2d 403, 420 (1975).

¹⁴ IGS Objections at 8.

reasonable when fixing and determining rates; any charge that is found to be unjust or unreasonable is prohibited.¹⁵ IGS, therefore, properly objected to the Staff Report's failure to review the switching fee and recommend its removal as part of its analysis of Duke's base distribution rates. The objection is clearly relevant to the issues in this case and should not be stricken.

Duke's claim that IGS's Objection should be stricken because it is based on a "false premise"¹⁶ is also without merit. Initially, whether an objection is supported by facts is a matter to be explored at hearing and through briefing. Regardless, IGS's Objection B clearly states that the switching fee applies to customers that revert to Duke's sales service.¹⁷ IGS objected, at least in part, because the Staff Report also did not evaluate whether Duke applies the switching fee uniformly to both shopping and non-shopping customers or in a discretionary manner, and in doing so, the Staff Report failed to determine whether the fee violates the prohibition against utility discrimination in R.C. 4905.35. That section is relevant to both a base distribution case and a request to implement an alternative rate plan. R.C. 4929.05(A)(1). Based on the foregoing, Duke's motion to strike IGS's Objection B should be denied.

¹⁵ *Id.*; R.C. §§ 4905.22 and 4909.15.

¹⁶ Duke Motion to Strike at 13.

¹⁷ IGS Objections at 8.

B. IGS's Objections C and J Concerning the Staff Report's Failure to Consider the Management Policies, Practices, and Overall System Capabilities of Duke's CIS is Specific and Relevant to a Determination of Duke's Return on Equity in this Case and Should Not Be Stricken.

Duke moves to strike IGS's Objections C and J, arguing that objections related to Duke's CIS are irrelevant because the full Customer Connect system was not placed into issue in Duke's application.¹⁸ Specifically, Duke argues that because it does not seek full recovery of the costs associated with its CIS in this case, it did not place the broader management or design of the system at issue; therefore, IGS's Objections C and J are irrelevant and should be stricken.¹⁹ Duke's argument lacks merit.

It is worth noting that Duke does not argue that either objection fails to satisfy the standard for objections set forth in R.C. 4909.19 OAC 4901-1-28. Indeed, both objections specifically address the Staff Report's failure to provide a comprehensive evaluation of all matters and issues related to Duke's CIS in evaluating Duke's base distribution rates (i.e., an evaluation of Duke's imprudent management, policies, and practices²⁰ associated with the CIS implementation; and an evaluation of the overall CIS system design to ensure that the new system is capable of encouraging innovative product and service offerings from competitive market participants in accordance with Ohio law and policy²¹).

Despite Duke's argument to the contrary, its Application and testimony placed the CIS squarely at issue in this case by including \$1,779,473 of Operation and Maintenance ("O&M") expenses and \$2,549,825 in proposed amortization of deferred O&M in the test

¹⁸ Duke Motion to Strike at 13; 15.

¹⁹ *Id.*

²⁰ IGS Objections at Objection C.

²¹ *Id.* at Objection J.

year revenue requirement.²² These costs are entirely relevant to the determination of Duke's base rates given that the Commission is required under Ohio law to evaluate Duke's management policies, practices, and organization in setting Duke's rates. R.C. 4909.154. Moreover, Duke dedicated an entire piece of testimony²³ toward describing its efforts (unsuccessful efforts, of course) to enhance the customer experience, including the implementation of a new CIS—the very same system at issue in IGS's objections.

Duke's argument that IGS's Objections C and J somehow lack relevance because the utility is not seeking full recovery of the costs associated with the system also lacks merit by virtue of Duke's failure to cite to any law or Commission precedent to support its position. It is clear that "[i]n fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission shall consider the management policies, practices, and organization of the public utility." R.C. 4909.154. While the Commission has the authority to disallow the recovery of imprudently incurred costs, the Commission may also reduce Duke's rate of return for poor management performance—regardless of whether such conduct relates to the proposed rate increase at issue. "It is fundamental that a utility's management practices be considered when setting its authorized rate of return." *Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St. 3d 535 at 547 (1993). Regardless of whether Duke seeks to recover all, or a portion of the costs associated with its CIS, the Staff Report should have performed a comprehensive evaluation of Duke's policies and practices associated with the system's rollout as well as

²² Direct Testimony of Retha I. Hunsicker at 10.

²³ See Testimony of Jacob Colley at 4-8.

the system's capabilities to not only determine whether *any* costs should be recovered by Duke in this case, but also to determine whether Duke's rate of return should be reduced as a consequence for poor management performance in the implementation of the CIS. Based on the foregoing, IGS's Objections C and J are properly lodged and Duke's Motion to Strike those objections should be flatly denied.

C. IGS's Objection F Concerning the Staff Report's Failure to Recommend Modifications to Better Align Duke's EFBS Tariff and Rider FBS with Balancing Services Provided to Default Service Customers is Specific and Relevant to Other Distribution-Related Proposals in This Proceeding.

Duke also moves to strike IGS's Objection F for two reasons: First, Duke argues that the Objection should be stricken because IGS's proposal to allocate storage reservation costs and commodity charges directly to Competitive Retail Natural Gas Service ("CRNGS") customers served under Duke's Enhanced Firm Balancing Service ("EFBS") and Firm Balancing Service ("Rider FBS") was not placed in issue by the utility in this case and, therefore, is beyond the scope of this proceeding.²⁴ Next, Duke argues that because IGS is pursuing the same point in two other cases,²⁵ IGS's Objection F is irrelevant and should be stricken.²⁶ Duke's arguments are without merit.

First, Duke raises no argument that IGS's Objection F fails to satisfy the standard for objections set forth in set forth in R.C. 4909.19 and OAC 4901-1-28.

Second, the Commission has allowed objections to stand in situations where the objections show a "sufficient nexus" between issues not addressed in the Application and

²⁴ Duke Motion to Strike at 13.

²⁵ IGS has searched the public filings in case 21-218-GA-GCR and cannot locate any public record of IGS raising Duke's balancing tariffs; therefore, IGS avers that Duke's argument is misguided and does not require a response.

²⁶ Duke Motion to Strike at 13.

those that are expressly put in issue.²⁷ Duke claims that “[t]he Company has not placed at issue any balancing services” Yet, Duke’s Application seeks to modify the delivery receipt point requirements for several tariffs²⁸ applicable to CRNGS, arguing that the changes are necessary *to assist Duke in balancing its system*. Thus, Duke has in fact put its balancing tariffs at issue in this case. It would be highly unfair to permit Duke to unilaterally propose more stringent balancing measures for CRNGS without a holistic evaluation of Duke’s balancing procedures.

Third, these tariff proposals are notable in that Duke is also seeking approval of many of those same tariff modifications in another case.²⁹ It is cruel irony that Duke is accusing IGS of seeking to litigate Duke’s balancing tariffs in multiple cases when Duke is also seeking to do the exact same thing. While IGS may have raised similar arguments in Duke’s EXM case,³⁰ an evidentiary hearing in that case has not been held and the proceeding remains pending before the Commission. There is nothing to prohibit IGS from raising a similar proposal in this case. Based on the foregoing, IGS’s Objection F is properly lodged and Duke’s Motion to Strike should be denied.

²⁷ *In the Matter of the Application of the Toledo Edison Company for Authority to Amend and Increase Certain of its Rates and Charges for Electric Service*, Case No. 95-299-EL-AIR, 1996 Ohio PUC LEXIS 180, *215 (Apr. 11, 1996).

²⁸ See e.g., P.U.C.O 18, Gas Service, Sheet No. 44.14, Page 18 of 24 (Duke seeks to modify its Full Requirements Aggregation Service Tariff to require CRNGS to deliver gas by city gate or zone at Duke’s direction); P.U.C.O 18, Gas Service, Sheet No. 50.4, Page 3 of 6 (Duke seeks to modify its Rider EFBS to also require CRNGS to deliver gas by city gate or zone at Duke’s direction).

²⁹ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Amend its Natural Gas Tariff*, Case No. 21-0794-GA-ATA (Aug. 13, 2021).

³⁰ See e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case Nos. 21-0903-GA-EXM et al., Direct Testimony of Joe Bird on Behalf of Interstate Gas Supply, Inc. (Sept. 7, 2022).

D. IGS's Objection G Concerning the Staff Report's Failure to Address Duke's Discriminatory Billing Practices is Specific and Relevant to a Determination of the Lawfulness of Duke's Alternative Rate Plan Application in this Proceeding.

Duke moves to strike IGS's Objection G on a finding that the objection raises new issues outside the scope of this case and is therefore irrelevant to a distribution rate proceeding.³¹ Duke's Motion does not make any claim that IGS failed to satisfy the standards for Objections in either a base distribution rate proceeding³² or an application for approval of an alternative rate plan.³³ IGS's Objection G satisfies Ohio law and the Commission's rules in that it specifically objects to the Staff Report's unjust and unreasonable failure to address Duke's discriminatory practice of including its affiliate's non-jurisdictional charges on the utility bill.³⁴

Moreover, IGS's Objection G is relevant to this proceeding given that Duke's Application also seeks approval of an alternative form of regulation. Pursuant to R.C. 4929.05, one of the factors that the Commission must consider when determining whether to approve a natural gas utility's request for an alternative rate plan is whether the utility is in compliance with the prohibition against utility discrimination set forth in R.C. 4905.35. The Commission, therefore, should find that IGS's Objection G is relevant to a determination of whether the alternative rate plan that Duke filed in this proceeding should be approved, and deny Duke's Motion to Strike.

³¹ Duke Motion to Strike at 14.

³² See R.C. 4909.19; OAC 4901-1-28(B).

³³ See OAC 4901:1-19-07(F).

³⁴ IGS Objections at 16.

IV. CONCLUSION

Duke's motion to strike IGS's Objections B, C, F, G, and J should be denied. Duke has not alleged that IGS failed to satisfy the standard for objections set forth in R.C. 4909.19 and OAC 4901-1-28. Indeed, each of IGS's Objections at issue in Duke's motion are lodged with enough specificity to place Duke and other intervenors on notice as to the issues that IGS plans to litigate in these cases. The objections are also relevant to a determination of Duke's base distribution rates. Based on the foregoing, the Commission should find that IGS's Objections are properly lodged and deny Duke's motion to strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Memorandum Contra Duke Energy Ohio Inc.'s Motion to Strike the Objections to the Staff Report of Interstate Gas Supply, LLC* was served via electronic transmission upon the following parties of record this 6th day of February 2023.

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Summary: Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Strike
Objections to the Staff Report of Interstate Gas Supply, LLC electronically filed by
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