

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application)
of Duke Energy Ohio, Inc. for an) Case No. 22-507-GA-AIR
Increase in Natural Gas Rates)

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Approval) Case No. 22-508-GA-ALT
of an Alternative Form of Regulation)

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Tariff) Case No. 22-509-GA-ATA
Approval)

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Approval) Case No. 22-510-GA-AAM
to Change Accounting Methods)

**DUKE ENERGY OHIO, INC.’S REPLY MEMORANDUM TO
MEMORANDA CONTRA DUKE ENERGY OHIO’S MOTION TO STRIKE SPECIFIC
INTERVENOR OBJECTIONS TO STAFF REPORT**

I. INTRODUCTION

Pursuant to O.A.C. 4901-1-12, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) responds to the memoranda contra Duke Energy Ohio’s Motion to Strike Specific Intervenor Objections to the December 22, 2022 Staff Report of Investigation (the Staff Report), filed in the above captioned cases on February 6, 2023, by the Retail Energy Supply Association (RESA), Interstate Gas Supply, Inc. (IGS), and the Office of the Ohio Consumers’ Counsel (OCC) (collectively, the Intervenor).¹

¹ Two intervenors that filed objections to the Staff Report—People Working Cooperatively, Inc. (PWC) and Ohio Energy Group (OEG)—did not file memoranda contra the Company’s motion to strike certain of their objections. As such, this reply memorandum does not address the objections of PWC and OEG, and the Company’s grounds for moving to strike objections of PWC and OEG can be found in Duke Energy Ohio, Inc.’s Motion to Strike Specific Intervenor Objections to the Staff Report, filed on January 30, 2023.

On June 30, 2022, the Company filed an application to increase its distribution rates, for approval of an alternative form of regulation, for tariff approval, and to change its accounting methods (the Application). The Public Utilities Commission of Ohio (the Commission) Staff (Staff) prepared and issued the Staff Report on December 22, 2022. Pursuant to R.C. 4909.19, Objections to the Staff Report were submitted by the Company and the Intervenors on January 20, 2023. The Company moved to strike certain Intervenor objections on January 30, 2023, and the Intervenors each filed a memorandum contra the motion to strike on February 6, 2023. This brief serves as the Company's reply to these memoranda contra.

II. REPLY TO INTERVENORS' MEMORANDA CONTRA

The Company replies to each Intervenor's memorandum contra below and reiterates its position that each Intervenor objection discussed below should be stricken.

A. Reply to RESA's Memorandum Contra

a. RESA Objections 1, 2, and 3: Customer Connect

Under RESA's reasoning, a utility that files a rate case based on a defined set of changes and proposals is subject to an intervenor's unqualified right to question *any* proposal or practice within the applicant's entire business structure. This is an unfounded and unsupported interpretation of the scope of a rate case and the Commission's authority. RESA may not improperly force the parties to this case to evaluate the whole of Duke's Customer Connect system when the costs incurred in relation to that system have not been submitted for recovery in this case. This would require the Company to litigate issues it has not yet raised and that it may plan to raise in an appropriate future proceeding if and when it seeks to recover associated costs. RESA is inappropriately seeking to expand the scope of this case, and this objection should therefore be stricken.

b. RESA Objections 8, 9, and 10: Switching Fees, Customer Information List Fees, and Other Specified Fees

The Company has not proposed changes to its tariff as it relates to the fees referenced by RESA, so the Company has not placed those fees at issue. RESA cannot use the fact that the Company has proposed modifications to certain portions of its tariff as a green light to raise *any* issue RESA sees with the Company's tariff, whether referenced in the Application or not. It was therefore not an error for Staff not to include these fees as part of the Staff Report analysis.

Next, RESA's reference to a stipulation approved by the Commission in the Company's recent electric base rate case (the 2021 Electric Stipulation) is confusing.² RESA correctly notes that the Commission approved the 2021 Electric Stipulation on December 14, 2022, but goes on to note that "[t]here is no dispute that fees were modified as a result of that proceeding."³ While it remains unclear, the Company assumes that RESA is suggesting that fees in the Company's *electric* tariff were modified as a result of that *electric* rate case, as the natural gas tariff was not the subject of that proceeding. Indeed, the Company's natural gas tariff is the subject of *this* proceeding, so the Company fails to understand the relevance or logic of RESA's reference to the 2021 Electric Stipulation. RESA's initial objection, as well as its continued references to the 2021 Electric Stipulation and electric rate case, are improper and should be stricken.

c. RESA Objection 12: Customer Service Audit

Despite its suggestion otherwise, RESA did not properly object to Staff's reliance on a 2019 customer service audit. RESA provides no support for its claim that the Company's 2019 audit is unreliable or outdated, and instead generically cites to R.C. 4909.154 to suggest that Staff

² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-EL-AIR, *et al*, Corrected Stipulation and Recommendation (Sept. 19, 2022) and Opinion & Order (Dec. 14, 2022).

³ Memorandum Contra of the Retail Energy Supply Association to Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Objections to the Staff Report at 5.

should have conducted a new audit. But R.C. 4909.154 does not require Staff to conduct customer service audits on any particular timeline or with any particular frequency, so the relevance of this statute—and RESA’s objection in general—is unclear. This objection should thus be stricken.

B. Reply to IGS’s Memorandum Contra

a. IGS Objection 2: Switching Fees

Staff properly used the Staff Report to address items outlined in the Application; Staff did not—and should not, contrary to IGS’s argument—use the Staff Report to perform an ad hoc review of items not placed at issue in the utility’s application. The second IGS objection addresses an item not contemplated or proposed for modification or approval in the Company’s Application and is therefore not appropriate for an objection to the Staff Report under O.A.C. 4901-1-28. Switching fees in the Company’s tariff were litigated when the Company last proposed modifications to those fees, and an objection to those fees at this time is stale and irrelevant. IGS’s issue is actually with what the Company did and did not include as part of its Application—not with the Staff Report.

IGS also reiterates its position that Staff should have investigated whether the Company applies its switching fee in a discriminatory manner, but a plain reading of the Company’s tariff indicates that the switching fee is applied uniformly. IGS is attempting to force the Company and other parties to litigate an issue that does not even exist. IGS may not simply assert that Staff should have investigated discriminatory application of the Company’s tariff when IGS has presented no evidence to suggest that the Company is not following the terms of its tariff. Staff cannot—and properly did not—broaden the terms of its investigation to perform an inspection of an issue just because IGS thinks that issue *might* exist. IGS’s issue here is not relevant to this case and improperly uses an objection as a vehicle to introduce new items into the record.

b. IGS Objections 3 and 10: Customer Connect

IGS's statement that Staff should have "provide[d] a comprehensive evaluation of all matters and issues related to Duke's [customer information system]"⁴ ignores the fact that only limited items related to Customer Connect were placed at issue in the Company's Application. Under IGS's reasoning, the Company placed the entirety of its customer information system and management policies and practices at issue, despite the fact that it only included limited capital related to Customer Connect in this case. That the Company "dedicated an entire piece of testimony toward describing its efforts . . . to enhance the customer experience"⁵ does not change this fact and is certainly not a reflection of the monetary amount included in this case related to Customer Connect.

Even more, a cursory review of the Company's motion to strike reveals the falsity of IGS's assertion that the Company has not cited "any law or Commission precedent to support its position."⁶ For instance, with regard to IGS's Objection 10, the Company provided an analysis related to R.C. 4929.02, a law originally cited by IGS in its objection:

First, IGS cites R.C. 4929.02, which notes in part that it is a policy of the state to "encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods"; however, it is unclear why IGS believes that this statute supports its objection, as this statute merely codifies generic state policies related to "natural gas goods and services." While this policy may be important, it is unrelated to natural gas distribution rates and base distribution ratemaking in general, and Staff therefore rightfully devoted no analysis in the Staff Report to these issues.⁷

⁴ Memorandum Contra Duke Energy Ohio Inc.'s Motion to Strike Objections to the Staff Report of Interstate Gas Supply, LLC at 8.

⁵ *Id.* at 9.

⁶ *Id.*

⁷ Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Objections to the Staff Report at 15.

Thus, the Company has in fact cited law that discredits IGS's objection, but IGS conveniently ignores this point in its memorandum contra. IGS's objections in this instance go far beyond the scope of this case and the issues the Company has properly raised in this case.

c. IGS Objection 6: EFBS Tariff and Rider FBS

IGS objects to the Staff Report concerning balancing service issues. IGS's objection raises issues that are clearly irrelevant to the issues raised by the Company in its Application. As such, the fact that the Company did not cite either R.C. 4909.19 or O.A.C. 4901-1-28 in moving to strike this objection is also irrelevant.

Next, IGS fusses over the purported "unfair[ness]" associated with the Company's ability to "unilaterally propose more stringent balancing measures for [competitive retail natural gas service customers]." ⁸ However, in the same breath, IGS suggests that the Company has effectively put the entirety of its tariff at issue by filing its Application and, therefore, a "holistic evaluation" ⁹ of the Company's balancing procedures is appropriate. IGS fails to recognize that the unfairness would lie in this scenario, where the entirety of a utility's tariffs, riders, practices, and procedures would be subject to broad investigation simply because the utility proposed certain narrow changes within those items.

Further, the Company disputes that it has any unilateral authority in this case, and in particular as it relates to the balancing measures referenced above. The Company certainly has authority to propose changes to its base rates and other related items, but such proposals are subject to strict review by intervenors and the Commission and, very often, extensive litigation. This is, by definition, the nature of a rate case. It is not "unfair" for a utility to propose certain modifications

⁸ Memorandum Contra Duke Energy Ohio Inc.'s Motion to Strike Objections to the Staff Report of Interstate Gas Supply, LLC at 11.

⁹ *Id.*

related to its own rates when those proposals are subject to the rate case process prescribed in this case. IGS's arguments are unpersuasive. As such, the Company reiterates its motion to strike this objection here.

d. IGS Objection 7: Billing Practices

IGS offers a limited response to the Company's claim that this objection is not related to this case, and thus fails to address the substance of the Company's motion. IGS instead discusses a purported discriminatory practice of the Company's but does not address the fact that this practice has been addressed in a separate proceeding and relates to the Company's electric utility service. It continues to confound the Company how this objection is relevant to this natural gas base rate case, and IGS offers no additional insight. This objection simply bears no relevance to this case.

C. Reply to OCC's Memorandum Contra

a. OCC Objection 5: Amortization of Retired Propane Facilities

OCC misleads both the Commission and the parties to this case when it states that the testimony from the Company's 2012 natural gas rate case that OCC cites in its objection "is only *part* of the explanation for the objection."¹⁰ In reality, the testimony cited comprises the basis of the entire objection. Even if it did not, it would still be improper to cite in this instance, as this testimony was filed as part of an entirely different application and set of facts.

OCC misses the point when it states that the testimony is relevant because it shows "what [the Company] *itself* has said regarding the amortization period."¹¹ If this were relevant, there would be no reason for any party to file new testimony as part of new proceedings, as every party

¹⁰ Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Strike Objections by Office of the Ohio Consumers' Counsel at 6.

¹¹ *Id.*

would be bound by prior testimony. This is, of course, not the rule, nor should it be given the nonsensical outcomes that would result. OCC cannot compel the Company to litigate ten-year-old testimony that it did not introduce in support of its Application as part of this proceeding. Accordingly, this objection should be stricken.

b. OCC Objection 7: Customer Connect Amortization

O.A.C. 4901-1-28(B) provides the standard for objections:

Any party may file objections to a report of investigation Such objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items.

While OCC gets part of this regulation correct (insofar as objections must relate to the Staff Report), OCC misses the other operative portion of this regulation: that a party must file *objections* to a report of investigation. Objections, by definition, express opposition. Objections do not express agreement. Yet OCC agrees with Staff’s position that no amortization of Customer Connect operations and maintenance (O&M) costs should be allowed in this case. This is not an objection at all, and OCC’s memorandum contra confirms this. OCC attempts to introduce a new item into the record because it *would have* liked Staff to make a certain recommendation *if* Staff had made a different recommendation with which OCC *would have* disagreed. This argument is confusing and far too hypothetical to be properly considered an “objection” to the Staff Report. The Company maintains that this objection should be stricken.

c. OCC Objection 8: Rate of Return and Capital Structure

OCC objected to the Staff Report’s adoption of an “inappropriate capital structure,”¹² and the Company moved to strike this objection because, among other reasons, this objection provides no specificity about what flaws, if any, there are with the proposed capital structure. If OCC

¹² *Id.* at 3.

believes there are any substantive deficiencies with Staff’s proposed capital structure, it was required to identify them, in detail, so the Company could reasonably respond to the criticism, and so the Commission can assess the merits of OCC’s position. OCC does not dispute that it failed to do this, and instead continues to use a number of non-descriptive terms to suggest (quite unconvincingly) that its objection is specific. OCC may not force Staff, the Company, and the other parties to expend time and resources looking for problems that OCC cannot present in minimally descriptive terms.

OCC further notes that it will provide additional detail related to this objection “in testimony, which will be filed consistent with the Attorney Examiner’s January 20, 2023 Entry.”¹³ However, additional detail was required at the time of filing objections, and OCC failed to provide the requisite specificity. The Company thus reiterates its motion to strike this objection.

d. OCC Objection 10: Capital Asset Pricing Model (CAPM) Risk-Free Rate

OCC’s memorandum contra merely provides additional detail as to why this objection should in fact be stricken. OCC states that:

This objection meets the legal and rule requirements of giving notice about the issue to be litigated . . . OCC stated that the PUCO Staff used a 4.35% 30-day average yield for 30-year U.S. Treasury Bonds through September 1, 2021. It should have stated, instead, that the PUCO Staff used a 4.04% average yield through October 31, 2022. Still, that is a merits issue, not a notice issue.¹⁴

First, OCC plainly admits to using an incorrect and improper rate for purposes of its objection. That OCC believes that citation to a number that is not correct and does not put any party on notice as to OCC’s objection “meets the legal and rule requirements of giving notice about the issue to be litigated” is surprising given that neither the parties to this case nor the Commission will be able to review any portion of the Staff Report that cites the material in OCC’s objection.

¹³ *Id.* at 4.

¹⁴ *Id.* at 7.

Further, an inaccuracy in OCC's objection is not a "merits" issue at all. OCC cannot require the parties to this case to litigate a value that OCC has admitted does not exist in the Staff Report. In fact, OCC's admission that its objection contains inaccurate information supports the Company's motion to strike. As such, this objection should be stricken.

e. OCC Objection 14: Class Allocations

Taking OCC's objection at face value, OCC agrees with the Staff Report. Specifically, OCC indicates that Staff should have recommended a residential class allocation under 67.00 percent, and Staff indeed recommended a residential class allocation of 66.98 percent (*i.e.*, under 67.00 percent). OCC is thus not objecting to, but endorsing, Staff's position, which is not an appropriate subject for an objection.

But OCC performs a mental gymnastics routine in its memorandum contra to conceal its agreement with the Staff Report. First, OCC states that this is a "merits" issue that should be addressed in testimony. This is absurd. OCC is not permitted to introduce provably false information into the record, provide a citation to the Staff Report that does not exist, and require the Company and all other parties to litigate that nonexistent material.

OCC also attempts to rationalize its misciting of the class allocation values contained in the Staff Report by stating that it performed its own calculation of Staff's residential class allocation to arrive at a purported 67.815% allocation of distribution revenues to the residential class.¹⁵ Notably, however, OCC did not provide any discussion of its alleged "calculation," upon which OCC rests its entire objection. OCC appears to be back-pedaling on what is, at best, a poorly written objection and, at worst, an attempt to manufacture an additional issue with the Staff Report.

¹⁵ As discussed above and in the Company's motion to strike, Staff did not recommend a 67.815% residential class allocation anywhere in the Staff Report, and the Company therefore reiterates its dispute with OCC's citing of this value.

If OCC so strenuously “objects to the Staff Report’s proposed rate allocation,”¹⁶ as it states in its memorandum contra, it should have done so with more clarity in its objections filing. This could have come in the form of discussing the specifics of its alleged own “calculation.” But, neither the Company nor the Commission, nor the other Intervenors to this case for that matter, should be forced to try to decipher between what OCC actually said and what it purportedly intended to argue. This objection should therefore be stricken.

f. OCC Objections 17: Convenience Fees

OCC believes that its suggestion that Staff should have recommended—and the Commission should approve—an unconstitutional taking of the Company’s property is a “merits” issue that the Company cannot have stricken from the record. Instead, OCC suggests that the Company should be prepared to litigate an objection that is patently unconstitutional in “testimony, hearing (cross-examination), and briefing.”¹⁷ Throughout its memorandum contra, OCC cites a slew of laws and rules that apply to its other objections, but in this case, OCC notably indicates that its objection should be litigated to the fullest extent despite the fact that it runs afoul of explicit constitutional principles.

As the Company explained in its motion to strike, the fees about which OCC is complaining are not charged or received by the Company; these fees are paid by consumers directly to third-party vendors that are not parties to this proceeding. The Commission cannot order these third-party vendors to eliminate the fees. Thus, this objection is neither relevant nor proper, and indeed suggests unlawful, unconstitutional action on both Staff’s and the Commission’s part. For the foregoing reasons, the entire objection should be stricken.

¹⁶ Memorandum Contra Duke Energy Ohio, Inc.’s Motion to Strike Objections by Office of the Ohio Consumers’ Counsel at 10.

¹⁷ *Id.* at 11.

g. OCC Objection 19: Weatherization Funding

Likewise, OCC indicates here that, despite the fact that its objection suggests unconstitutional action, the Company is required to expend extensive resources litigating this issue through the pendency of this case. OCC takes a “because I said so” approach to this issue, suggesting that, simply because it has raised this issue in objections, the Company and other parties to this case are now required to address it, despite the fact that it is extraneous, nonsensical, *and* unconstitutional. This position disregards Commission and ratemaking practice. Moreover, it harms the very consumers OCC claims to represent. OCC’s course of action would require both OCC and the other parties to litigate issues that the Commission ultimately cannot accept or rule on in lieu of litigating legitimate and legal issues, all to the detriment of consumers. OCC’s claim that the illegality of its objection should not be addressed at this stage of the proceeding is meritless and should be disregarded—and thus stricken—by the Commission in its entirety.

h. OCC Objection 20: Weatherization Program Audit

OCC wrongly indicates that objections that address items that were not placed at issue in the utility’s application are permissible so long as they address matters that Staff allegedly failed to address. If OCC were correct—which it is not—objections filings would be riddled with new issues that the parties would be required to litigate, and the Commission would be required to consider. Parties could raise an infinite number of items not related to the Company’s Application, ratemaking, or utilities in general and, as such, that the Staff Report failed to address, but that does not make any one of those issues relevant to the case at hand. The fact remains that OCC’s objection has not identified any particular issue with the Company’s weatherization program and only suggests that an audit should be conducted in case there are indeed issues with the program.

OCC simply has not made the requisite showing of nexus to this case, and this objection should therefore be stricken.

i. OCC Objection 23: Capital Expenditure Program Rider (Rider CEP) Charges

This objection states only a concern that the Company’s automatic approval process for its Rider CEP charge is “vague and undefined.”¹⁸ OCC argues that the objection should not be stricken because the parties now have notice that OCC believes the process to be “vague and undefined.” This argument is unconvincing. OCC must, at a minimum, identify some alleged reason why the process is not well-defined in accordance with the applicable statutory and regulatory provisions. It cannot simply state that it believes the proposals of the Company and conclusions of Staff to be wrong—it must explain, even if only in minor detail, why. Even the Commission’s examples of improperly vague objections—“the staff incorrectly calculated test year labor expense” and “the staff unreasonably determined rate case expense”¹⁹—are more specific than OCC’s unsupported objection to the Company’s approval process for Rider CEP charges. Accordingly, this objection should be stricken.

j. OCC Objection 24: Rider CEP Caps

OCC’s ill-conceived campaign to introduce extraneous issues into the record under the pretense of objections continues here, as OCC plainly states that “evidence is not required of objections.”²⁰ This statement is unsupported, but sheds light on OCC’s strategy in this case: throw everything at the wall and see what, if anything, sticks. OCC believes that it should be able to proffer any issue under the sun as an “objection” regardless of whether it can point to any

¹⁸ *Id.* at 4.

¹⁹ *In the Matter of the Application of the Cincinnati Gas & Elec. Co. for an Increase in Its Rates for Gas Serv. to All Jurisdictional Customers*, Case No. 95-656-GA-AIR, Entry at 1 (July 15, 1996).

²⁰ Memorandum Contra Duke Energy Ohio, Inc.’s Motion to Strike Objections by Office of the Ohio Consumers’ Counsel at 6.

evidence in support, and that all parties to this case should be required to litigate those issues no matter how superfluous or gratuitous they may be. This approach to ratemaking procedure is careless and distracting to the legitimate issues at hand. The Commission should strike this objection in accordance with its rule relating to specificity.

k. OCC Objection 26: Rejection of the Company's Application

The Company has not misread OCC's Objection 26, contrary to OCC's claim otherwise. The Company has simply revealed OCC's objection as lacking relevance to the Staff Report and this case. First, the Commission has already accepted the Company's filing; Staff's duties upon such acceptance are to investigate the Application and make recommendations as to the items put at issue in the Application, which Staff has done in the Staff Report. Staff's job is not to overturn the Commission's acceptance. OCC's response is not meaningful and does not support the rejection of an entire Application that has already been accepted as complete.

Further, OCC states that the "rationale underlying the objection is the cumulative rationale of the previous objections,"²¹ but OCC's previous objections simply make suggestions—albeit a number of irrelevant, non-specific, and unlawful suggestions—as to certain adjustments, approvals, or denials Staff should have made. Why Staff should have recommended a number of adjustments to the Company's Application, only to then recommend outright rejection of the Company's filing, is unclear. Nothing in OCC's memorandum contra the Company's motion to strike justifies this objection.

III. CONCLUSION

For the reasons provided above, Duke Energy Ohio respectfully reiterates its request that the Commission grant its motion to strike the specified objections of the Intervenors.

²¹ *Id.* at 9.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Objections to Staff Report was sent by, or on behalf of, the undersigned counsel to the following parties of record this 13th day of February, 2023, via e-mail.

/s/ Rocco O. D'Ascenzo

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Summary: Reply Duke Energy Ohio, Inc.'s Reply Memo to Memoranda Contra Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Objecting to Staff Report electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Kingery, Jeanne and Akhbari, Elyse Hanson and Vaysman, Larisa and Brama, Elizabeth and Verhalen, Kodi J.