BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 No. 21-903-GA-EXM
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	))	Case No. 21-904-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 21-905-GA-AAM

REPLY BRIEF FOR CONSUMER PROTECTION BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

Maureen R. Willis (0020847)
Ohio Consumers' Counsel

William J. Michael (0070921)
Counsel of Record
Donald J. Kral (0042091)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215-4213
Telephone: [Michael]: (614) 466-1291
Telephone: [Kral]: (614) 466-9571
william.michael@occ.ohio.gov
donald.kral@occ.ohio.gov
(willing to accept service by e-mail)

November 14, 2023

TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. ARGUMENT 2

A. To consumers' detriment, the settlement lacked the serious bargaining needed to meet the PUCO's test, including a lack of serious bargaining with the OCC, the only party that represents the broad consumer interests of all residential consumers in Duke's service territory. 2

B. The PUCO should modify the Settlement because it is not in the public interest, violating the second prong of the PUCO's settlement standard. ...4

1. The PUCO-approved Global Settlement where the price to compare message was resolved is being breached by the settlement in this case. 5

2. Consumers would benefit from seeing price-to-compare messaging on their natural gas utility bills. To protect consumers, the PUCO should not entertain anyone's attempts to deny customers access to useful information regarding their energy choice. 10

3. Shifting balancing and storage costs from marketers and suppliers to consumers does not benefit consumers or the public interest....13

C. The settlement violates Ohio law and numerous important regulatory principles and practices, thereby harming consumers. The settling parties fail to demonstrate that the settlement satisfies prong three of the three-part settlement test. 13

1. Duke and the PUCO Staff are required to support the addition of price to compare language under the Global Settlement. Unlike the prior instances where the PUCO has considered and rejected price-to-compare language here Duke and the PUCO Staff were required under the Global Settlement to join with OCC in support of that language. 17

2. Duke's interpretation of Section C, Paragraph 24 of the Global Settlement is also mistaken. 19

3. The settlement's provisions regarding balancing violate important regulatory and legal principles and should be modified to protect consumers. 21

III. CONCLUSION 26

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 No. 21-903-GA-EXM
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	))	Case No. 21-904-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 21-905-GA-AAM

REPLY BRIEF FOR CONSUMER PROTECTION BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

Words matter. The Global Settlement reached between Duke, the PUCO Staff, OCC, and Ohio Energy Group required Duke and the PUCO Staff to support the reasonableness of the additional price-to-compare message set forth in the Global Settlement.[1] Duke and the PUCO Staff have breached that agreement. To protect consumers the PUCO should modify the proposed settlement to incorporate the agreed upon price-to-compare message. Consumer protection also

[1] *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates,* Consolidated Case Nos. 14-375-GA-RDR, et al., Case Nos. 15-452-GA-RDR, et al., Case Nos. 16-542-GA-RDR, et al., Case Nos. 17-596-GA-RDR, et al., Case Nos. 18-283-GA-RDR, et al., Case No. 19-174-GA-RDR, et al., and Case No. 20-53-GA-RDR and *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, et al. Stipulation and Recommendation (August 31, 2021) (" Global Settlement") at 22; OCC Ex. 2 (Adkins Testimony) at 10.

necessitates that the PUCO modify the proposal to preclude Duke from collecting storage and balancing fees that marketers and suppliers should be paying. Otherwise, consumers would be forced to pay for costs that they did not cause.

II. ARGUMENT

A. To consumers' detriment, the settlement lacked the serious bargaining needed to meet the PUCO's test, including a lack of serious bargaining with the OCC, the only party that represents the broad consumer interests of all residential consumers in Duke's service territory.

The parties argue that the settlement satisfies the first prong of the PUCO's three-part test to evaluate settlements. It doesn't. The settlement lacked the serious bargaining needed to meet the PUCO's test, including a lack of serious bargaining with OCC (the only party that represents the broad consumer interests of all residential consumers in Duke's service territory).

The settling parties argue that the first prong of the settlement test has been satisfied simply because OCC participated in settlement negotiations. However, the fact that OCC attended and participated in settlement negotiations is not (and cannot be) an automatic indicator that serious bargaining occurred. Attendance at meetings does not ensure that serious bargaining is occurring.

Duke's failure to engage in serious bargaining is evident by the ease with which it is willing to walk away from the terms of the Global Settlement to satisfy the narrow interests of marketers. Duke, the PUCO Staff, and marketers representing their private business interests (RESA, IGS, and Spire) here agreed to defer the price-to-compare language to a separate evidentiary hearing. At that separate proceeding, they, including Duke and the PUCO Staff, may take any

position they desire on the price-to-compare proposal. For instance, the settlement allows all parties to provide new testimony supporting, *remaining neutral on, or opposing* the PTC language at that evidentiary hearing. And the settlement provides that "[n]o Signatory Party *shall be obligated to support* or oppose" the PTC proposal. The Signatory Parties also agreed to the benefit of marketers and to the detriment of consumers, to redistribute balancing and storage costs from marketers to consumers.

Moreover, Duke's willingness to violate several regulatory principles and practices in the process (as discussed in greater detail below) confirms the absence of serious bargaining.

Only OCC was advocating the interests of residential consumers without conflict during the settlement discussions. To the extent PUCO Staff is at times said to represent residential consumers, in this case it is representing the interests of all other parties in the proceeding to the detriment of residential consumers.

Duke's lack of serious consideration of OCC's proposals illustrates the unequal bargaining power inherent in the PUCO's settlement process. With its superior bargaining power, Duke had the advantage to bargain with narrow interests that are opposed to the broader, overall interests of its over 430,000 residential consumers. The PUCO should reject claims of serious bargaining that are based on OCC having a "seat at the table" during settlement negotiations. That seat means little where the utility is empowered in the settlement process to leverage its superior bargaining power to the detriment of residential consumers.

In this regard, there are virtually no settlements submitted to the PUCO (unfortunately) where the utility is not a party. So Duke can bargain basically as an essential party for a settlement – which undercuts serious bargaining.

And, as noted, Duke's ability to obtain a settlement through limited bargaining with parties having narrow private business interests works for Duke. The result does not cost Duke's shareholders where, as here, costs are simply being passed from the cost causers (marketers) to non-cost causers (utility consumers) who can do nothing to avoid such expense.

For the benefit of all residential consumers in a utility's service area, the PUCO needs to put more teeth into its existing settlement standards. Or it needs to reform the standards to assure fairness during the negotiation process.

The settlement should be modified consistent with OCC's recommendations.

B. The PUCO should modify the Settlement because it is not in the public interest, violating the second prong of the PUCO's settlement standard.

In the proposed settlement, Duke and the marketers, with the acquiescence of the PUCO Staff, are denying consumers access to useful and meaningful data regarding their energy choices. Moreover, by shifting balancing and storage costs from marketers and suppliers to consumers who have no control over those costs the proposed settlement seriously prejudices consumers and the public interest.[2]

[2] It should be remembered that without the settlement this action goes to trial which is likely to result in the same benefits to consumers (for example transition from the GCR to the SSO) without the corresponding detriments.

1. The PUCO-approved Global Settlement where the price to compare message was resolved is being breached by the settlement in this case.

Duke's arguments in its Initial Brief should be rejected. The arguments relate to the importance of price-to-compare and Duke's obligations (or alleged lack of obligations) under the Global Settlement.[3]

Under the Global Settlement, Duke and the PUCO Staff joined with OCC in committing to recommend to the PUCO a price-to-compare message. Under the Global Settlement, Duke, the PUCO Staff, and OCC (each a Signatory Party) agreed to support the reasonableness of the price-to-compare message. Duke also agreed to add the price to compare to consumers' bills.[4]

Duke and the PUCO Staff breached that agreement when they signed the settlement currently before the PUCO. This settlement proposes to first defer consideration of the additional price-to-compare message to a separate evidentiary hearing. Second, under the settlement the parties claim the right to become neutral or even oppose the additional price-to-compare message.

Both of these provisions directly violate the language and intention of the complex, carefully negotiated PUCO-approved Global Settlement. The PUCO should

---

[3] *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, et al.,* Case No. 21-903-GA-EXM, et al., Initial Post-Hearing Brief of Duke Energy Ohio, Inc. (October 24, 2023) at p. 12 (Duke claims that the "Global Settlement merely required the Company to include in its Application a proposal to add additional PTC language to its customer bills.")

[4] *Global Settlement*, Opinion and Order (April 20, 2022) at 55 (PUCO notes Duke's support for the market-related provisions of the Global Settlement including the price-to-compare message. The PUCO stated, "Similarly, OCC notes that Duke witness (Amy) Spiller testified that these market-related provisions will 'enhance[e] the competitive natural gas market and provid[e] more information to customers regarding their natural gas service and related choices.' (Duke Ex. 7 at 23). Duke and OCC further assert that Duke witness (Sarah) Lawler also testified that the Stipulation will 'enhance [the] competitive natural gas market in Ohio.' (Duke Ex. 6 at 16)).

reject efforts to rewrite the Global Settlement. The PUCO should enforce the Global Settlement by approving the agreed upon price-to-compare message.

Under the Global Settlement the Signatory Parties, which included Duke, the PUCO Staff, OCC, and Ohio Energy Group, agreed to the following[5]:

> 24. The Signatory Parties agree that Duke Energy Ohio shall add the SSO price-to-compare on its natural gas bills for customer information. Such billing system change shall commence with the second billing month that a customer is billed based upon the SSO. Duke Energy Ohio shall include this billing format change as part of its Auction Application.
>
> > a. The Price-to-Compare message on bills for shopping customers shall prominently include language similar to the following: "In order for you to save money, a natural gas supplier must offer you a price lower than $X.XX per CCF for the same usage that appears on this bill."
> >
> > b. The Price-to-Compare message should be included on all shopping customer bills, including those customers who have gas only and those customers who are combination gas and electric.

Fully consistent with Duke's unequivocal support of a price-to-compare message, the Global Settlement provided that the Signatory Parties would support the reasonableness of the Global Settlement (including the additional price-to-compare message) before the PUCO. Section IV, Paragraph 34 of the Global Settlement provided that:

> Unless a Signatory Party exercises its right to terminate its Signatory Party status or withdraws from the Stipulation as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission and in any appeal that it participates in from the Commission's adoption and/or enforcement of this Stipulation.[6]

---

[5] *Global Settlement* at 18.

[6] OCC Ex. 2 (Adkins) at 10; Global Settlement at 22.

Duke, in its efforts to hide from its obligations under the Global Settlement fails in its Initial Brief to even address this provision of the Global Settlement. Duke agreed to support the reasonableness of the Global Settlement (which includes adding a price-to-compare message on consumer bills).

The proposed settlement contains language that directly breaches the agreement reached in the Global Settlement. Regarding the additional price-to-compare message, this settlement proposes, among other things that:

a. An additional evidentiary hearing as to the adoption of the proposed PTC language in the Application;[7]

b. That "(e)ach Signatory Party shall be entitled to provide, in its sole discretion, new testimony supporting, *remaining neutral on, or opposing* the PTC language at that evidentiary hearing;

c. No Signatory Party *shall be obligated to support* or oppose the PTC proposal as a result of this Stipulation."[8]

Despite agreeing under the Global Settlement to support adding a price-to-compare message on consumer bills, Duke now claims non-opposition on the price-to-compare proposal. In its Initial Brief Duke states that its "position is not to oppose the PTC proposal."[9] According to Duke, its intention is to "rely on the Commission's determination regarding the merits of the PTC proposal."[10] Duke is no longer supporting the addition of a price-to-compare message on consumer bills.

[7] Stipulation and Recommendation at 9.

[8] *Id.* (Emphasis added).

[9] Initial Post-Hearing Brief of Duke Energy Ohio, Inc. ("Initial Brief") at 15-16.

[10] *Id.*

The PUCO should reject Duke's attempt to deny consumers access to the price-to-compare information by backing out of the PUCO-approved agreement. The PUCO should modify the settlement in this case to either (1) adopt the additional price-to-compare message proposed by Duke in its application, or (2) require that Duke and the PUCO Staff support the reasonableness of adding a price-to-compare message to consumer bills as required under the Global Settlement.

Moreover, denying consumers the information contained in the additional price-to-compare message does not benefit consumers. OCC witness Mr. Adkins provided extensive undisputed testimony about the fact that price has been the primary reason that residential consumers consider switching to or from a natural gas or electric marketer.[11]

To the extent that the additional price-to-compare message enables consumers to more effectively evaluate their energy choices is a good thing. OCC Witness Adkins testified about how marketers' rates in Ohio have penalized Ohio consumers by being higher than the utility standard offer rates. The evidence demonstrates that Duke shopping customers have cumulative losses since January 2019 of $53 million for its shopping customers.[12] In other words, Duke's consumers would have saved $53 million by staying on the standard offer rate rather than choosing a marketer rate.

That's the crux of the whole situation. Marketers don't want residential consumers to have access to better information. They want to collect additional profits from those residential consumers. OCC, looking out for the interests of those residential

[11] OCC Ex. 2 (Adkins Testimony) at 13; *see* OCC's Initial Brief at 5-10.

[12] OCC Ex. 2 (Adkins Testimony) at 16.

consumers, wants them to have the additional information so they can make truly informed choices.

Marketers IGS & RESA offered testimony from Paul Leanza, employed by IGS, forecasting dramatic and factually incorrect natural gas price volatility. Mr. Leanza provided dire estimates regarding pricing data forecasts for default service customers. He explained that the SSO is a monthly variable rate tied to the Henry Hub NYMEX clearing price plus an adder established by an online auction."[13] Mr. Leanza, who submitted his testimony on September 7, 2022, dramatically forecasted Henry Hub NYMEX clearing prices in February 2023 as high as $30.[14]

However, he admitted under cross-examination that in fact, the NYMEX clearing price was nowhere near that amount in February 2023. Instead, in February 2023 the NYMEX clearing price was around $2.15 Moreover, throughout 2023 the NYMEX clearing price for natural gas has been right around $2.50.16 Mr. Leanza admitted that contrary to the dire price forecasts contained in his Direct Testimony there has been an ongoing decline in natural gas rates since he submitted his testimony.[17]

Mr. Leanza went on to confirm that Columbia Gas' residential consumers who selected IGS as a supplier in September, 2022 (the month he submitted his testimony) would have consistently paid more for the IGS rate than for the default service rate. In fact, the evidence showed that at times residential consumers paid 300% more on the IGS

[13] Tr. Vol. II (Leanza Cross) at 216:22 – 217:1.

[14] *Id.* at 217:9-13.

[15] *Id.* at 219:8-9.

[16] *Id.* at 220:1-5.

[17] *Id.* at 223:1-6.

rate than they would have paid had they been on the default service rate.[18] Those consumers would have been locked in at the 12-month IGS rate of $1.199 with the default service rate consistently falling from $1.10 per CCF to as low as $0.379 per CCF.[19]

OCC witness, Mr. Adkins testified that the ability of marketers to stay in business and attract and enroll consumers despite price offers that are two or more times higher than the utility standard rate demonstrates that consumers are unknowingly acting counter to their own interests, likely due to a lack of information.[20] Denying consumers convenient access to information about comparative supply prices and allowing millions of dollars of unnecessary losses to continue is not in the public interest.

The PUCO-approved the Global Settlement where the price to compare message was essentially resolved by parties agreeing to similar price to compare language being added to consumers' bills, . That settlement is being breached by the settlement in this case. The PUCO should modify the settlement consistent with OCC's recommendations.

2. Consumers would benefit from seeing price-to-compare messaging on their natural gas utility bills. To protect consumers, the PUCO should not entertain anyone's attempts to deny customers access to useful information regarding their energy choice.

The Marketers (RESA and IGS) make various claims about the price-to-compare language. While the current settlement calls for these claims to be considered in an additional separate proceeding, a brief response is necessary.

[18] *Id.* at 228:1 – 229:24.

[19] *Id.*

[20] OCC Ex. 2 (Adkins Testimony) at 17.

According to the Marketers, the price-to-compare is misleading because (i) the SSO product is not identical to marketer products, and (ii) price-to-compare is backward looking and therefore detrimental.[21] First, it should be noted that price-to-compare is already a beneficial staple of electric service competition for consumers in Ohio, per O.A.C. 4901:1-10-22(B)(24).

Regarding the claim that the SSO product is not identical to marketer products, two products need not be identical for their comparison to be relevant to consumer decision-making. Consumers routinely evaluate products that are different and consider both their similarities and differences in deciding which one to purchase. Knowing the difference in price between two products is relevant, even if the products have differences other than price.

The PUCO should likewise reject the Marketers' argument that price-to-compare information is unhelpful because it is backward-looking. Even if the SSO rate is historical, it is still highly relevant for consumers. People rely on historical data all the time for purposes of decision-making. It is not credible for the Marketers to claim that historical price data is irrelevant and has no bearing whatsoever on future prices. Even the PUCO's own Apples to Apples website includes both the utility's standard offer price for purposes of comparison, as well as historical rate data.[22]

Consumers receiving price-to-compare messaging can give it whatever weight they deem fit, along with other factors, and use that data to make an informed decision. This information is good for consumers – even if it might be bad for those marketers

[21] *See, e.g.,* IGS Initial Brief at 14.

[22] *See* https://energychoice.ohio.gov/ApplestoApples.aspx.

seeking to sell gas at high prices. And that gets to the real effect of the Marketers' position, to avoid the transparency that consumers need about their pricing. The PUCO should not entertain anyone's attempts to deny customers access to useful information regarding their energy choice.[23]

RESA similarly argues that the proposed price-to-compare language in the Settlement is contrary to the purpose of O.A.C. 4901:1-13-11(B)(13).[24] This is not correct. The additional message simply adds useful information regarding consumer energy choice.

Moreover, the additional price-to-compare message proposed in the Application is just that, an additional message. It does not replace the required language from the O.A.C. It will be in addition to, and thus is not contrary to the purpose of the O.A.C.

Second, the existence of the O.A.C. rule supports the use of the additional price-to-compare message. One of the marketer's primary arguments is that comparing a utility's standard offer to marketer offers is *per se* invalid because the products are not comparable. But this O.A.C. rule is proof that the PUCO does consider it valid to compare the utility's default offer to marketer prices, as one factor among others that a customer might consider.

The PUCO should modify the settlement in this case to require that the price-to-compare message be included on the natural gas bills of Duke's consumers as set forth in

---

[23] *Global Settlement*, Opinion and Order (April 20, 2022) at 55 (PUCO notes Duke's support for the market-related provisions of the Global Settlement including the price-to-compare message. The PUCO stated, "Similarly, OCC notes that Duke witness (Amy) Spiller testified that these market-related provisions will "enhance[e] the competitive natural gas market and provid[e] more information to customers regarding their natural gas service and related choices." (Duke Ex. 7 at 23). Duke and OCC further assert that Duke witness (Sarah) Lawler also testified that the Stipulation will "enhance [the] competitive natural gas market in Ohio." (Duke Ex. 6 at 16).

[24] RESA Initial Brief at 14.

the Global Settlement. This was recommended by Duke in its Application in this case. It was agreed to by Duke and the PUCO Staff in the Global Settlement. The PUCO should enforce the settlements that it approves.[25]

3. Shifting balancing and storage costs from marketers and suppliers to consumers does not benefit consumers or the public interest.

As discussed below, the testimony of IGS & RESA witness, Mr. Bird, along with OCC's witness Mr. Kumar, both confirm that the settlement will shift costs. According to the witnesses certain balancing and storage costs will be shifted from the cost causers (marketers and suppliers) to consumers who cannot avoid those costs. This is yet another example of why the settlement does not benefit consumers or the public interest.

C. The settlement violates Ohio law and numerous important regulatory principles and practices, thereby harming consumers. The settling parties fail to demonstrate that the settlement satisfies prong three of the three-part settlement test.

The settling parties have failed to meet their burden to demonstrate that the settlement satisfies prong three of the three-part settlement test. Part three of the settlement standard requires the settlement not violate any important regulatory practices or principles.

The PUCO Staff proclaims in its brief (with no argument at all) that "(t)he Stipulation does not violate any regulatory principle or practice."[26] Although the PUCO Staff suggests certain policy considerations it claims the settlement will further, they do not address any of the policies or procedures violated by the settlement. Contrary to the

[25] OCC Ex. 2 (Adkins) at 13.

[26] PUCO Staff Brief at 4.

PUCO Staff's bald assertion, OCC presented ample evidence demonstrating specifically how the settlement violates Ohio law and regulatory principles.[27]

OCC's witnesses, who are regulatory and financial experts with decades of professional experience, provided detailed evidence as to how the settlement:

- Violates regulatory principles and policies regarding the sanctity of settlement by allowing Signatory Parties to one complex, fully negotiated and PUCO approved settlement to breach that settlement;[28]
- Violates the regulatory policies of equity and utilitarianism by providing specific benefits to settling partes that agreed to pass costs for which they were responsible to non-settling parties who represented customers that had no responsibility for the creation of those costs;[29]
- Violates regulatory principles and policies under the cost causation principle that the entity that causes a cost should pay the cost caused by the entity;[30]
- Violates regulatory principles and policies of the utility operations risks by shifting balancing and storage cost risks for which the utility already receives compensation as part of their return on equity to consumers;[31]
- Violates Ohio law and policy requiring utilities to charge just and reasonable rates in all respects (O.R.C. §4905.22);[32]

[27] OCC Initial Brief at 13-23.

[28] *Id.*

[29] *Id.* at 10-13, 22-3.

[30] *Id.*

[31] *Id.*

[32] *Id.*

Moreover, the settlement violates regulatory principles by allowing Duke and the PUCO Staff to renege on their commitments under the Global Settlement. Indeed, once a settlement is reached, it should be enforced. Otherwise, there is no point to settlement negotiations in the first place.

Parties spend substantial time and resources on reaching a settlement. They compromise. Settlements (as demonstrated by the Global Settlement itself) often resolve complex, sophisticated issues that would otherwise have to be litigated. Parties rely on settlement terms for regulatory certainty. As the PUCO has recognized, settlements also add to administrative efficiency.[33] If settlements are not enforced, parties will be much less inclined to settle disputes, thereby increasing costs and reducing administrative efficiency. The PUCO, Duke, PUCO Staff, and OCC all understood what the PUCO ordered when it adopted the Global Settlement. Duke was to "seek Commission authorization to include a price-to-compare calculation on the Company's natural gas bills…."[34]

Duke is no longer seeking such authorization. Instead, through the present settlement, Duke will be allowed to file new testimony supporting, *remaining neutral on, or opposing* the PTC language. And Duke will no longer *be obligated to support* or oppose the PTC proposal. Not only is Duke breaching the Global Settlement but the PUCO Staff (as a Signatory Party to the Global Settlement and to this settlement) is,

[33] *Global Settlement*, Opinion and Order (April 20, 2022) at 36 (stating that the PUCO has "repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing issues before the Commission, while also, often times, avoiding the considerable time and expense associated with the litigation of a fully-contested case.").

[34] *Id.* at 73.

unfortunately, empowering Duke to accomplish that end by joining the current proposed settlement.

The Global Settlement was a hard fought highly contentious settlement. The competitive market provisions including the price-to-compare language were, as recognized by the PUCO, an essential part of that settlement. The unequivocal terms of the PUCO-approved settlement required Duke to seek PUCO authorization for proposing price-to-compare language. The PUCO itself recognized that fact. The Global Settlement was a properly executed settlement approved by the PUCO. Its terms should not be disturbed. The sanctity of settlements should not be undermined by the PUCO.

In its Initial Brief, the PUCO Staff provides absolutely no argument justifying its failure to support adding price-to-compare language to consumers bills in this proceeding. The PUCO Staff was an active participant in the Global Settlement negotiations. The PUCO Staff was a Signatory Party to the Global Settlement. Yet the PUCO Staff provides no explanation of why it is not supporting the addition of price-to-compare language.

Duke's abandonment of its agreement under the Global Settlement was not addressed by any of the other Signatory Parties to the current proposed settlement. Spire said nothing in its Initial Brief about price-to-compare. IGS and RESA do not address the breach of the Global Settlement.

1. Duke and the PUCO Staff are required to support the addition of price to compare language under the Global Settlement. Unlike the prior instances where the PUCO has considered and rejected price-to-compare language here Duke and the PUCO Staff were required under the Global Settlement to join with OCC in support of that language.

The Global Settlement requires Duke and the PUCO Staff to support the reasonableness of the Global Settlement terms, including the addition of a price-to-compare message. Their agreement under the Global Settlement is clear and this PUCO should enforce that agreement.

Duke mischaracterizes and takes out of context language in the PUCO Order approving the Global Settlement to attempt to allege that OCC should have sought rehearing of the PUCO's Order.[35] After the Global Settlement was reached, IGS and RESA raised concerns regarding the price-to-compare language. Duke's response included the undisputed fact that "although the proposed price-to-compare message is included within the Stipulation it will still be subject to approval and modification by the Commission in a subsequent proceeding."[36] In other words, PUCO approval of the Global Settlement did not necessarily constitute approval by the PUCO of the price-to-compare language itself. OCC had no issue with that statement by Duke.

The PUCO confirmed that understanding as part of its Opinion and Order. The PUCO stated:

> In response to the arguments raised by RESA/IGS, Duke contends that two of the competitive market provisions, i.e., the commitment to file an application to transition from the GCR to an SSO and the commitment to include within that application proposed price-to-compare messaging to be included on customer bills, are merely commitments to file the proposals in a future proceeding. The

[35] *See Duke's Initial Brief* at 13-14.

[36] *Global Settlement,* Reply Brief of Duke Energy Ohio, Inc. (December 23, 2021) at 19.

> Commission agrees and finds these provisions on the Stipulation to be of no adverse consequence to the opposing parties or the retail market, in general. Any intervenors in that case will be afforded an opportunity for input and comment on the eventual SSO application. The Commission will, at that point, fully consider the SSO application and the comments before any decision is reached in that case.[37]

As set forth by the PUCO, it was merely confirming that Duke's subsequent filing of the application to transition to a SSO and Duke's commitment to include price-to-compare messaging did not bind the PUCO in any way to either of those proposals. The filing would have no "adverse consequences to the opposing parties or the retail market, in general. Any intervenors in that case (would) be afforded an opportunity for input and comment on the eventual SSO application."[38] This language by the PUCO is commonly offered when the marketers raise concerns about a future proposal that will then be subject to review by the PUCO.[39] The entire paragraph in the PUCO Opinion and Order was speaking to RESA and IGS concerns that they would not be able to oppose the PTC language.

Duke's attempt to twist the above language from the PUCO's Opinion and Order to somehow confirm that its only obligation under the Global Settlement was to "include the PTC proposal as part of the Application in this proceeding" is misleading and out of

[37] *Global Settlement,* Opinion and Order (April 20, 2022) at 63.

[38] *Id.*

[39] *See, e.g., In re Application of Ohio Power Co. for an Increase in Elec. Distrib. Rates,* Case No. 20-585-EL-AIR, Opinion & Order ¶ 131 (November 17, 2021)(rejected marketers' complaints about a price-to-compare settlement because it required the utility to make a future filing, and the marketers' concerns would be addressed then).

context.[40] Duke mistakenly claims that somehow OCC was obliged to seek rehearing given the PUCO language set forth above. That's simply wrong.

OCC does not dispute that under the Global Settlement, the price-to-compare language itself would be subject to challenge by other intervenors in the subsequent action. Duke and the PUCO Staff would not constitute "other intervenors" in a subsequent action. There is no justification for either Duke or the PUCO Staff to renege on their obligations to support adding a price-to-compare on consumer bills.

Further, OCC does not dispute that the PUCO retains the right to fully consider all views and arrive at its decision regarding the exact price-to-compare language. That's all the above language was addressing. Thus, OCC had no reason to seek rehearing.

2. Duke's interpretation of Section C, Paragraph 24 of the Global Settlement is also mistaken.

Similarly, Duke's attempt to twist to its favor the language in Section C, Paragraph 24 of the Global Settlement, also fail fails.[41] Section C, Paragraph 24 of the Global Settlement provides, in relevant part:

> 24. The Signatory Parties agree that Duke Energy Ohio shall add the SSO price-to-compare on its natural gas bills for customer information. Such billing system change shall commence with the second billing month that a customer is billed based upon the SSO. Duke Energy Ohio shall include this billing format change as part of its Auction Application.[42]

[40] *See 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, et al.,* Case No. 21-903-GA-EXM, et al., Initial Post-Hearing Brief of Duke Energy Ohio, Inc. (October 24, 2023) at 13.

[41] *See id.* at 12-13.

[42] *Global Settlement,* Stipulation and Recommendation (August 31, 2021) at 18.

Duke mistakenly claims that reading all the provisions of Paragraph 24 somehow confirms that it is merely required to include the PTC proposal as part of its Application in this proceeding.[43]

First, that conclusion ignores the first sentence which states that the "Signatory Parties agree that Duke Energy Ohio *shall add* the SSO price-to-compare on its natural gas bills for customer information." Duke's conclusion also ignores the second sentence which clearly mandates that the "billing system change *shall commence* with the second billing month that a customer is billed based upon the SSO." Finally, the most logical reading of sentence three of Paragraph 24 is that it merely sets forth the procedural mechanism by which Duke will apply to the PUCO for the changes it agreed to seek in sentences one and two.

Duke claims that it has "fulfilled its obligation under the Global Settlement by proposing the PTC message in this case."[44] Duke is wrong. By stepping aside and not supporting the price-to-compare proposal, Duke is breaching the agreement and its obligations under the Global Settlement.

By now claiming "no opposition" on adding the price-to-compare language to consumer bills, both Duke and the PUCO Staff have breached the Global Settlement. They both have ignored their obligations and agreements that led to the Global Settlement in the first place. Tearing apart the package adopted in the Global Settlement cannot be reasonably described as *supporting* the Global Settlement's provisions

---

[43] *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, et al.,* Case No. 21-903-GA-EXM, et al., Initial Post-Hearing Brief of Duke Energy Ohio, Inc. (October 24, 2023) at 13.

[44] *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, et al.,* Case No. 21-903-GA-EXM, et al., Initial Post-Hearing Brief of Duke Energy Ohio, Inc. (October 24, 2023) at 15.

(including the PTC) as *was* required in the Global Settlement. The PUCO should modify the settlement to include the price-to-compare language set forth in the Application or reject the settlement entirely and require Duke and the PUCO Staff support the reasonableness of adding price-to-compare language on consumer bills as they agreed to in the Global Settlement.

3. The settlement's provisions regarding balancing violate important regulatory and legal principles and should be modified to protect consumers.

Joseph Bird, witness for both IGS & RESA, confirmed OCC Witness Kumar's testimony that the settlement shifts certain balancing and storage costs from those parties responsible for the costs to consumers, including residential consumers.[45] As set forth below, Mr. Bird confirmed that the settlement enables marketers and suppliers to cause Duke to incur additional costs that previously would have been paid by the marketers and suppliers. Under the settlement those costs are now to be paid for by Duke's consumers.

Mr. Bird testified that each day Duke provides a Target Supply Quantity ("TSQ") to suppliers including, for example, IGS.[46] Suppliers then deliver the TSQ at Duke's City Gates.[47] Duke allows marketers and other suppliers a certain range above or below the TSQ to deliver on a daily basis.[48] As long as they don't exceed the maximum variation permitted by Duke, marketers and other suppliers are not charged any extra penalties or fees.

---

[45] *See* OCC's Initial Brief for Consumer Protection at 10-13 (summarizing Mr. Kumar's testimony regarding the shifting of costs from marketers and suppliers who create them to consumers).

[46] Tr. Vol. I (Bird Cross by OCC) at 33.

[47] *Id.*

[48] *Id.* at 34.

When the TSQ is exceeded Duke has to store the extra gas.[49] Duke stores that gas through its interstate pipeline suppliers.[50] Mr. Bird admitted that when the TSQ is exceeded Duke incurs additional expenses for the storage of the extra gas.[51]

Under the current rates schedules, the fees for the additional gas delivered to Duke beyond the TSQ are paid for by the suppliers (those responsible for the costs) under the Enhanced Firm Balancing Service ("EFBS") tariff. Mr. Bird testified:

> Q. Okay. Now, when the Target Supply Quantity is exceeded, then Duke has to store that extra gas, correct?
>
> A. That is correct.
>
> Q. And that's through its interstate pipeline suppliers, correct?
>
> A. Correct.
>
> Q. And it would incur – I believe Mr. Gould was just describing commodity costs or fees that get charged for the storage of gas, correct?
>
> MR. OLIKER: Objection. The question is vague. I'll withdraw it if the witness understands it, but I did not.
>
> ATTORNEY-EXAMINER SANDOR: You may answer it if you understand.
>
> THE WITNESS: Yes, so generally there are commodity fees for moving gas in and out of storage and to and from the city gate, and the – **those fees that Duke is paying is wrapped up into the EFBS commodity rate that suppliers are now paying**.
>
> By Mr. Kral:

[49] *Id.* at 36.

[50] *Id.*

[51] *Id.* at 36-8 (emphasis added).

Q. So is it your understanding that as long as you stay below that maximum daily injection or withdrawal rate, the extra cost to Duke that it's incurring for the storage or withdrawal of that gas are built into the EFBS Tariffs?

A. Yes.[52]

This testimony by Mr. Bird (IGS & RESA's witness) confirms that under current tariff schedules additional storage and balancing costs incurred by Duke are paid for by suppliers under the EFBS Tariff. The extent to which some or all of those costs are eventually passed on by suppliers or marketers to consumers was never specifically identified or confirmed. That amount is pure speculation.

Mr. Bird then testified that under the settlement Duke will charge those costs created by suppliers and marketers directly to consumers:

Q. Now, under the Stipulation would Duke continue to provide the Target Supply Quantity for each day to suppliers?

A. Yes.

Q. And would suppliers continue to nominate gas equal to that TSQ within the range you discussed at Duke's city gates?

A. Yes, that is correct.

Q. Okay. And under the Stipulation, if a supplier delivered more gas to Duke than the TSQ called for, Duke would continue to incur costs for the storage of that gas, correct?

A. That is correct.

Q. And under the Stipulation, who are those costs charged to by Duke?

A. **So under the Stipulation the cost of the EFBS balancing service would move to a rider that would be paid for by all customers**.[53]

[52] Tr. Vol. I at 36-7.

[53] *Id.* at 37-8.

Mr. Bird then admitted that if, for example, IGS injected above the TSQ and created the additional storage costs, under the settlement IGS would not be paying those storage costs.[54] He also testified that under the settlement IGS would "fully utilize the asset of storage to the best of (their) ability" for the purpose to "maximize the best price (they) can offer to (their) customers."[55]

Again, Mr. Bird (IGS & RESA) testified that consumers not the suppliers responsible for incurring the costs would be paying those costs:

> Q. But the additional costs incurred by Duke, if a supplier or more than one supplier are over injecting gas beyond the TSQ, those additional storage costs under the Stipulation Duke is going to be passing on to all of its customers, correct?
>
> A. That is correct.[56]

Contrary to the assertions of Duke and others, OCC's witness Mr. Kumar is correct in testifying that the settlement shifts certain storage and balancing costs from marketers and suppliers who create those costs to consumers who can do nothing about those costs. The PUCO should modify the settlement consistent with OCC's recommendations because it shifts costs to the consumers who are not the cost causers.

Mr. Kumar testified that the settlement as currently constructed is a "gross violation of sound regulatory principles and practice.[57] He explained that the settlement violates three regulatory principles: (1) Cost Causation Principle; (2) Utility Operational

[54] *Id.* at 41.

[55] *Id.* at 38.

[56] *Id.* at 50.

[57] OCC Ex. 3 (Kumar) at 6.

Risks; and (3) Necessary and adequate facilities and services at just and reasonable rates.[58]

As set forth above, Mr. Bird on behalf of IGS & RESA essentially conceded and confirmed that the settlement shifts certain balancing and storage costs from supplier and marketers who created those costs to consumers who cannot do anything about those costs. Mr. Kumar testified that this result violated the cost causation principle. This principle is simply that the entity that causes a cost should pay the cost caused by the entity.[59]

Here, the certain balancing and storage costs outlined above result directly from marketers and/or suppliers exceeding the Target Supply Quantity. Currently those costs are paid for by those responsible under the EFBS tariff. However, as explained above, under the settlement both standard service offer suppliers and marketers who have control over and cause storage and imbalancing costs will not be paying those costs. Instead, the settlement redistributes those costs to customers who have no ability to control the costs.

And under the settlement marketers and suppliers can game Duke and create unnecessary storage and balancing costs yet face no penalty or cost for doing so. They will be doing this to maximize their profits. These are violations of the cost causation regulatory principle.

Also, as set forth above, Mr. Kumar testified that risks of storage and balancing costs are part of the return on equity that utility companies receive. Duke and not consumers should be responsible for the system's operational risks such as imbalances.[60]

---

[58] *Id.* at 7.

[59] *Id.*

[60] *Id.* at 9.

By inappropriately shifting all the risks and costs associated with storage and balancing services to consumers the settlement violates this operational risk principle.

Finally, by requiring consumers to pay for balancing and storage costs that they do not cause and over which they have no control, the charges that Duke would receive under the settlement are not "in all respects just and reasonable."[61] This violates Ohio policy and law as set forth in R.C. 4905.22. Accordingly, the PUCO should reject the Settlement.

III. CONCLUSION

Words matter. The PUCO should enforce the words of the Global Settlement, not run from them. For Duke's consumers that means including the all-important price to compare language on their gas bills.

The new settlement undermines the Global Settlement. And it will cause residential consumers lots of money because it will shift balancing costs to them, even though they are not the cost causers.

The PUCO should modify the settlement consistent with OCC's recommendations. As proposed, it does not meet the PUCO's three prong standards. It is not in the public interest. It was not the result of serious bargaining, and it violates important regulatory practices and principles. To protect consumers, the PUCO should modify the Settlement.

[61] *See, e.g.,* OCC Ex. 3 at 10.

The PUCO should enforce and implement the Global Settlement reached between Duke, PUCO Staff and OCC. That would be just and reasonable and protective of consumers.

Respectfully submitted,

Maureen R. Willis (0020847)
Ohio Consumers' Counsel

/s/ William J. Michael
William J. Michael (0070921)
Counsel of Record
Donald J. Kral (0042091)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215-4213
Telephone: [Michael]: (614) 466-1291
Telephone: [Kral]: (614) 466-9571
william.michael@occ.ohio.gov
donald.kral@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Brief for Consumer Protection by Office of the Ohio Consumers' Counsel has been served via electronic transmission upon the following parties of record this 14th day of November 2023.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

rhiannon.plant@ohioAGO.gov
mjsettineri@vorys.com
glpetrucci@vorys.com
tjwhaling@vorys.com
Michael.nugent@igs.com
joe.oliker@igs.com
Evan.betterton@igs.com
Stacie.cathcart@igs.com

Rocco.dascenzo@duke-energy.com
Jeanne.kingery@duke-energy.com
Larisa.vaysman@duke-energy.com
Elyse.akhbari@duke-energy.com
talexander@beneschlaw.com
mkeaney@beneschlaw.com
dparram@bricker.com

Attorney Examiner:
matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov

Summary: Brief Reply Brief for Consumer Protection by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Michael, William J..