

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION TO
DUKE ENERGY OHIO, INC.’S MOTION TO STRIKE
SPECIFIC INTERVENOR OBJECTIONS TO THE STAFF REPORT**

I. INTRODUCTION

Duke Energy Ohio, Inc. (“Duke”) claims that the objections from Retail Energy Supply Association (“RESA”)¹ are unrelated to setting natural gas distribution rates, the Company’s Application, or this case as a whole. Duke’s arguments should be rejected because the challenged RESA objections appropriately take issue with matters directly included in Duke’s cost recovery

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

requests, were incorrectly omitted from the Staff Report or relate to Duke's provision of natural gas services. Ohio Adm.Code 4901-1-28(B) states that, in rate proceedings like these, any party may file objections to the Staff's report of investigation. Those 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. The objections must be specific. Following that rule, RESA raised relevant objections to matters that are within the scope of this proceeding. Duke's motion to strike RESA's objections should be denied.

II. ARGUMENT

A. RESA Objections 1, 2 and 3 are related to the issues in this proceeding because Duke seeks to recover costs related to Customer Connect.

Duke implemented a new customer information system called Customer Connect and seeks to recover costs associated with that system in this proceeding. (*See e.g.* Hunsicker Direct Test. at p. 9 and Brown Direct Test. at 27). Staff referred to this system in its Staff Report, discussing its operational issues and recommending amortization and recovery of over \$2 million a year in deferred system expenses if recovery is authorized in a separate proceeding. (*See* Staff Report at pages 18-19, Schedule C-3). Because RESA is aware of many issues related to that system and the impact on suppliers, it appropriately raised objections that are relevant to Duke's sought cost recovery and whether the sought recovery related to an asset that was "used and useful." By putting the Customer Connect system at issue in this proceeding and by seeking recovery of associated costs, Duke has made the system relevant to this proceeding.

RESA's Objections 1, 2 and 3 are not only relevant but specific to the Customer Connect system. RESA's first, second and third objections are:

RESA Objection 1: The Staff Report erred in including in rate base any costs associated with Duke's new customer information system (called Customer Connect), in recommending recovery of any Customer Connect costs, and in recommending Duke be granted authority to seek recovery in a future proceeding

because Customer Connect was not used and useful as of the date certain, and was/is not used and useful.

RESA Objection 2: The Staff Report erred in including in the rate of return any valuation that included Customer Connect because Customer Connect was not used and useful in rendering service.

RESA Objection 3: The Staff Report erred in not investigating Duke's management and operation of the Customer Connect system, and in not concluding that there was mismanagement as evidenced by the significant issues that Customer Connect has caused, and continues to cause, for customers and competitive retail suppliers.

Although Duke is seeking cost recovery related to the Customer Connect system, Duke claims that RESA's objections are not relevant because it is allegedly only seeking recovery for part of the system. Specifically, Duke argues that the "core" Customer Connect system was not included for recovery and that the issue of its management and operation of the Customer Connect system as a "whole" is not relevant. (Motion to Strike at 9-10). To the contrary, regardless of whether some or all of the costs to implement the system are being included in this case, Duke is seeking recovery in this proceeding for costs associated with implementing the system. That makes Staff's recommendations and lack of recommendations on this system relevant, and a valid basis for RESA's objections. Duke's motion to strike should be denied.

B. RESA Objections 8, 9 and 10 are related to the issues in this proceeding because Duke seeks to continue to collect the fees/charges on Tariff Sheets 33.16 (page 2 of 4) and Tariff Sheet 45.3.

RESA's objections 8, 9 and 10 all relate to fees being recovered by Duke. Those objections are:

RESA Objection 8: The Staff Report failed to analyze and recommend removal of the switching fee from Tariff Sheet 33.16 (page 2 of 4) in light of Duke's acknowledgement that there is no discernible incremental cost for any EDI enrollment.

RESA Objection 9: The Staff Report failed to review and recommend reduction of the Customer Information List fee on Tariff Sheet 45.3.

RESA Objection 10: The Staff Report failed to review and determine a cost basis for the governmental aggregator eligible customer list fees and the monthly fee for additional rate codes, or recommend removal of those fees from Tariff Sheet 45.3 for lack of a cost-based justification.

While Duke does not propose changing those fees, those fees are revenue to Duke and thus within the scope of this rate-making proceeding. For that simple reason, RESA's Objections 8, 9 and 10 are relevant.

The Staff Report, however, did not address whether these sources of revenue should be continued or reduced. There are five fees addressed in RESA's Objections 8-10 (switching fee, customer information list fee, two types of governmental aggregator eligible customer list fees, and the monthly fee for additional rate codes). They are charges in Duke's gas tariff today and charges that have been a source of revenue for Duke for years – including during the test year. While the Staff Report analyzed Duke's cost of service, and determined a revenue requirement and income, the Staff Report did not and should have analyzed the five fees like the many other sources of revenue Duke recovers.

Duke contends that RESA's Objections 8, 9 and 10 are not relevant because Duke has not proposed in its application to change these fees in its tariff and they are therefore not at issue. (Motion to Strike at 10-11). Duke also takes issue with RESA's reference to a recently approved stipulation. *Id.* Duke's arguments should be rejected for several reasons. First, in these proceedings, the Commission and its Staff are reviewing the utility's finances and services overall, which is not limited to just the changes Duke proposed in the Application but include, as noted above, revenues received by Duke. The Staff Report confirms that the Staff is presenting for the Commission's consideration the results of a broad-based Staff investigation – an investigation that includes looking at operating income. (*See* Staff Report at 15-20).

Second, Ohio Adm.Code 4901-1-28(B) expressly permits a party to object to matters that the Staff Report failed to address. There is no requirement in the rule limiting objections to the Staff Report to address only the changes proposed in the utility's rate case application. Third, RESA's objections are directly related to the parts of Duke's tariff that it is proposing to retain for purposes of providing services going forward. RESA is taking issue with the Staff investigation's failure to review and consider the retention of tariffed fees for the services to be rendered, fees that Duke will continue to collect as revenue.

As to Duke's argument that RESA's objection should be struck because RESA referred to the stipulation approved in Duke's recent rate case, the Commission approved that stipulation on December 14, 2022. There is no dispute that fees were modified as a result of that proceeding. The objections RESA raises are to the fees, the continued collection of those fees as allowable revenue for Duke, and Staff's failure to consider whether those fees should be continued or reduced. The objections are valid regardless of any dispute as to whether RESA's reference to a stipulation in another proceeding was proper. Duke's motion to strike should be denied.

C. RESA Objection 12 is related to the issues in this proceeding because Staff's recommendations are based on its investigation, which included reliance on a customer service audit from 2019.

Duke claims that RESA Objection 12 is not relevant because Duke did not raise the audit as an issue in its Application. (Motion to Strike at 12). In making that claim, Duke ignores that RESA's objection was to the Staff Report and its reliance upon the 2019 Customer Service Audit. RESA's twelfth objection was:

RESA Objection 12: The Staff Report erred in not conducting and relying on a current, complete Customer Service Audit regarding the customer service performance, practices, and procedures of the company, rather than the 2019 Customer Service Audit referenced.

There is no dispute that the Staff Report referenced and relied upon the 2019 Customer Service Audit. The Staff Report states:

Customer Service Audit Staff completed a customer service audit in 2019 regarding the customer service performance, practices, and procedures of the company. As a result of the audit, Staff determined that the overall customer service practices and policies of the Applicant, as reviewed and observed by SMED, generally comply with the applicable rules and regulations set forth by the Commission.

(Staff Report at 43). As the text indicates, Staff relied upon that audit to make conclusions about Duke's compliance with Commission rules and regulations. Staff did so because by law (R.C. 4909/154) the Commission is to consider in part the management policies, practices and organization of a public utility when setting rates. (Staff Report at 44).

RESA properly objected to Staff's reliance on a 2019 audit given significant customer-related changes that have occurred, including the implementation of the Customer Connect system that has created significant issues for suppliers. The Staff Report expressly acknowledges these issues stating the system created a "significant amount of billing issues for customers and suppliers[.]" (Staff Report at 43). Rather than a current audit, Staff relied upon a 2019 audit that did not reflect the current status of Duke's overall customer service practices and policies, including its use and experience with the Customer Connect system. RESA's Objection 12 is relevant and valid. Duke's motion to strike this objection should be denied.

III. CONCLUSION

RESA's objections were properly raised as to issues relevant in this proceeding, both in Duke's Application and the Staff Report. Any item for which Duke seeks cost recovery in this

proceeding is relevant as well as any part of its tariff that generates revenue or controls how Duke receives revenue. Duke's motion to strike RESA's objections should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 6th day of February 2023 upon the persons listed below.

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**Case No(s). 22-0507-GA-AIR, 22-0508-GA-ALT, 22-0509-GA-ATA, 22-0510-GA-
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Summary: Memorandum Contra to Motion to Strike Objections electronically filed
by Mr. Michael J. Settineri on behalf of Retail Energy Supply Association