

**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) Case No. 21-0903-GA-EXM
Gas Commodity Sales Services or)
Ancillary Services)**

**In the Matter of the Application of Duke) Case No. 21-0904-GA-ATA
Energy Ohio, Inc. for Tariff Approval)**

**In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to) Case No. 21-0905-GA-AAM
Change Accounting Methods)**

**INITIAL BRIEF
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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**INITIAL BRIEF
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I. Introduction

In these proceedings, Duke Energy Ohio (“Duke”) proposes to implement an important change in the way natural gas supply is procured and charged to its default customers. Specifically, Duke proposes to exit the merchant function by replacing its gas supply contracts and its gas cost recovery (“GCR”) mechanism with a wholesale auction process that provides a standard service offer (“SSO”) for the default customers. After lengthy and serious discussions over numerous meetings, all but one party in these proceedings reached agreement on a recommended outcome for nearly all issues. Duke, Commission Staff, the Retail Energy Supply Association (“RESA”),¹ Interstate Gas Supply LLC (“IGS”), and Spire Marketing Inc. (collectively, “Signatory Parties”) agree and recommend that the Commission should approve the proposed transition to the SSO auction procurement process. They further agree that, as part of that exit, the Commission should modify and implement a consistent and direct assessment methodology for balancing fees for the shopping and nonshopping customers, approve related exit and balancing fee tariff modifications, approve a new Duke-obtained Gas Peaking Supply Service, and approve certain revisions to Duke’s customer bill formats. The Signatory Parties also agree to final audits for the GCR process, monitoring of the new process, and the withdrawal of the rehearing application pending in 18 other

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (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.

Commission cases (“predecessor cases”) that prompted Duke’s Application here. The Stipulation and Recommendation (“Stipulation”) is a comprehensive and detailed resolution of numerous complicated issues. It was seriously negotiated by the parties. RESA, and IGS presented convincing evidence from Mr. Bird, establishing that the balancing fee terms in the Stipulation, in particular, meet the Commission’s long-standing test for reasonableness because they will benefit the ratepayers and the public interest without violating public policies or practices. The Stipulation should be approved.

The Stipulation did not resolve one aspect of Duke’s Application, but specifically allowed the parties to address it at hearing—namely, whether to modify the PTC message on Duke’s customer bills by adding the following sentence: “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.” This issue was part of the Application as a result of an agreement between Duke and OCC in the predecessor cases (Case Nos. 14-475-GA-RDR et al.). Not surprisingly – given that the Commission has routinely rejected language of this nature over numerous years – RESA opposes this additional sentence (herein referenced as the “PTC language”).² To that end, RESA presented the expert testimony of Frank Lacey, who explained that the PTC language is contrary to Ohio law, is contrary to Commission precedent, is flawed, and is harmful to customers and the market. RESA also presented the testimony of Paul Coomes and Paul Leanza who corroborate the fact that

² See e.g., *In the Matter of the Commission’s Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order at ¶ 69, (February 24, 2021); *In the Matter of the Commission’s Review of Chapter 4901:1-13 of the Ohio Administrative Code, Regarding Minimum Gas Service Standards*, Case No. 13-2225-GA-ORD, Finding and Order at ¶¶ 86-88 (July 30, 2014); *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio, Inc., and Related Matters*, Case Nos. 18-218-GA-GCR, et al., Opinion and Order at ¶¶ 57 and 61 (December 18, 2019); *In the Matter of the Approval of Application of Duke Energy Ohio, Inc. for Approval of Bill Format Changes*, Case No. 21-1233-GE-UNC, Finding and Order (May 4, 2022); and *In the Matter of the Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 22-809-GA-ORD, Finding and Order at ¶ 19 (December 14, 2022).

sending a single incompatible price signal as the PTC language does would harm customers. Any one of the reasons identified by Mr. Lacey, standing alone, is a sufficient reason to reject the proposed PTC language and to retain the existing PTC message as is. RESA's evidence, however, establishes all of these reasons and establishes that the proposed PTC language should be rejected. When further coupled with admissions from the Office of the Ohio Consumers' Counsel ("OCC") (detailed below), there is no basis for approving the proposed PTC language.

Furthermore, the Commission should grant the exemption/exit as stipulated because the required statutory findings in Ohio Revised Code Section ("R.C.") 4929.04 have been met. Duke is subject to effective competition with respect to the commodity sales service and Duke's customers of the commodity sales service have reasonably available alternatives. Duke's competitive retail natural gas service ("CRNGS") market is well established – there are numerous suppliers of varying sizes and numerous varying CRNGS offers are available. As the Commission is aware, Duke has offered distribution services on a fully open, equal, and unbundled basis to all its customers for many years, and Duke's customers reasonably may acquire commodity sales services from suppliers other than Duke. In sum, the Stipulation should be approved without modification and the PTC proposal should not be adopted.

II. Background

These proceedings have a lengthy and contentious history. The Commission is familiar with the predecessor cases (Case Nos. 14-375-GA-RDR et al.) that led to the filing of Duke's Application in these proceedings. Those predecessor cases remain pending at this time. RESA will not delve into those cases, but notes them because they are relevant as context for understanding why the Application was filed, the parties' differing initial positions in these proceedings, and the significant compromise reached in the Stipulation.

Duke applied for an exemption on April 27, 2022, from certain chapters and sections of the Ohio Revised Code specified in R.C. 4929.04 for the provision of all commodity sales services (an exit of the merchant function). Duke asked that the Commission authorize a wholesale auction structure in the form of a SSO for procurement of the default service natural gas supplies.³ Duke further asked to be relieved, concomitantly, of the statutory and rule requirements for the GCR management performance and financial audits and of the long-term forecast report filing requirements.⁴ Duke also requested authority to implement associated tariff changes, including a proposed SSO reconciliation rider pursuant to R.C. 4929.11 to recover all costs related to the SSO auctions and the transition costs.⁵

Furthermore, the Application here contained changes to Duke's bill format, including one to modify the PTC message on its customer bills by adding the PTC language (underlined below to distinguish it):⁶

PRICE TO COMPARE: 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. When shopping for a natural gas supplier, it may be useful to compare supplier offers with the standard service offer (SSO) rate available to eligible customers, which varies monthly based on the market price of natural gas. Price represents one feature of an offer; there may be other features which you consider of value. More information about the SSO and other suppliers' offers is available at energychoice.ohio.gov or by contacting the PUCO.

The language that is not underlined is required text for Duke's natural gas bills, per Ohio Adm.Code 4901:13-11(B)(13). The issue under debate is solely with regard to adding the PTC language (underlined text); no party is contesting the language above that is not underlined. Duke

³ Duke Ex. 1.

⁴ *Id.* at 7.

⁵ *Id.* at 5-6.

⁶ Duke Ex. 1 at 8 and at Application Exhibit IX. The PTC language in the Application comes from the highly contested stipulation in the predecessor cases (Case Nos. 14-375-GA-RDR et al.).

Witness Gould made clear, if the Commission determines that the PTC language is approved, then Duke will add it to customer bills and if the Commission determines that PTC language should not be approved, Duke will not add it to customer bills.⁷

III. Standards of Review

In these proceedings, the Stipulation presents a recommended resolution for many issues, but not all issues. Ohio Adm.Code 4901-1-30 allows parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight.⁸ The ultimate issue for the Commission's consideration is whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria ("Stipulation Test") in a number of prior Commission proceedings:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using the Stipulation Test to resolve issues in a manner economical to ratepayers and public utilities.⁹ The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.¹⁰

⁷ Duke Ex. 3 at 9.

⁸ See, *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123,125, citing *Akron v. Pub. Util Comm.* (1978), 55 Ohio St.2d 155.

⁹ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126).

¹⁰ *Id.*

The Stipulation does not resolve and, instead, reserved for the parties to litigate modifying the utility's bill format further by adding the PTC language to the PTC message on customer bills.¹¹ Pursuant to Ohio Adm.Code 4901:1-13-11(D), a gas or natural gas company proposing any new bill format is required to file its proposed bill format with the Commission for approval. In many proceedings, the Commission has evaluated proposed bill format changes under a standard of just and reasonable.¹²

To grant the requested exemption, R.C. 4929.04(A) requires that the Commission to find either of the following conditions exists:

- (1) The natural gas company is subject to effective competition with respect to the commodity sales service or ancillary service; or
- (2) The customers of the commodity sales service or ancillary service have reasonably available alternatives.

R.C. 4929.04(B) explains that, in determining whether the conditions in (A)(1) or (2) of sR.C. 4929.04 exist, the Commission shall also consider:

- (1) The number and size of alternative providers of the commodity sales service or ancillary service;
- (2) The extent to which the commodity sales service or ancillary service is available from alternative providers in the relevant market;

¹¹ Jt. Ex. 1 at 9.

¹² See, e.g., *In the Matter of the Applications of Eastern Natural Gas Company, Pike Natural Gas Company, and Southeastern Natural Gas Company for Approval of New Bill Formats*, Case Nos. 09-1039-GA-UNC et al., Finding and Order at ¶ 7 (January 7, 2010) (“the applications are reasonable and should be approved”); *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio, Inc. for Approval of a Revised Bill Format etc.*, Case Nos. 12-889-GA-UNC et al., Finding and Order at ¶¶ 8 and 10 (April 11, 2012) (changes were found to be reasonable and the overall format to be understandable); *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio, Inc. for Approval of a Revised Bill Format etc.*, Case Nos. 17-926-GA-UNC et al., Finding and Order at ¶ 5 (May 3, 2017) (“application to amend [the] bill format and tariffs does not appear to be unjust or unreasonable”); *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Bill Format Changes*, Case No. 19-1593-GE-UNC, Finding and Order at ¶ 35 (December 18, 2019) (“new bill format is reasonable and should be approved, consistent with this Finding and Order”); and *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Bill Format Changes*, Case No. 21-1233-GE-UNC, Finding and Order at ¶ 32 (May 4, 2022) (“new bill format is reasonable and should be approved”).

- (3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions; and
- (4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Finally, per R.C 4929.04(D), the Commission shall not issue an order that exempts all of a natural gas company's commodity sales services unless the Commission finds that the company offers distribution services on a fully open, equal, and unbundled basis to all its customers and that all such customers reasonably may acquire commodity sales services from suppliers other than the natural gas company.

IV. Argument

A. The Stipulation is reasonable and should be approved because it satisfies the Commission's three-part test.

1. The Stipulation was the product of serious bargaining among capable, knowledgeable parties.

There are six parties to these proceedings, including the Staff of the Commission. All six parties are knowledgeable and have participated in numerous Commission proceedings for many years. Those cases have included prior natural gas cases of Duke, with most of the parties here also having participated in the series of cases that were predecessors to these proceedings (Case Nos. 14-375-GA-RDR et al.). In particular, the Signatory Parties are capable and knowledgeable, and the settlement negotiations were open to all parties and involved many months of serious negotiations. Duke witness Gould provided details in his supplemental direct testimony that demonstrates the Stipulation in these proceedings is the product of serious bargaining among capable, knowledgeable parties, stating:¹³

¹³ Duke Ex. 3 at 3, 10.

Duke Energy Ohio met with the intervening parties numerous times, both individually and as a group, to discuss the issues raised in these proceedings. Following comprehensive and exhaustive negotiations, all but one of the parties to these proceedings reached agreement to resolve the matters raised in the Company's Application. That agreement is contained in the Stipulation, which identifies all agreements, conditions, and terms between and among the parties that have agreed to the Stipulation (Signatory Parties).

* * *

The capability and knowledge of the Signatory Parties and their counsel is readily apparent. The Signatory Parties comprise stakeholder interests that are impacted by this proceeding. Notably, Staff represents all interests, including customers. The Stipulation also includes IGS, Spire, and RESA representing competitive providers effected by the changes impacting both shopping and SSO suppliers. All these parties were represented by experienced and competent counsel and regularly participate in rate proceedings before the Commission. Based upon my experience, these parties and their counsel are highly knowledgeable in regulatory matters and competitive natural gas markets, including implementation of procurement auctions. The process that culminated in the Stipulation addressed all but one of the issues raised by the Signatory Parties in these proceedings, with those issues being thoroughly reviewed, discussed, and, to the extent agreement could be reached, resolved during negotiations. All parties had the opportunity to express their opinions during the negotiation process.

IGS/RESA Witness Bird also confirmed that there was serious bargaining – numerous settlement meetings, issue debates and negotiations.¹⁴

The testimony opposing the Stipulation from the OCC's witnesses did not contest this criteria.¹⁵ Nothing in the transcript challenges this criteria either. As a result, the record establishes that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. This criteria of the Stipulation Test has been satisfied.

¹⁴ IGS/RESA Ex. 1 at 5.

¹⁵ OCC Ex. 2 at 3; OCC Ex. 3 at 3, 5.

2. Multiple stipulated provisions will benefit ratepayers and the public interest.

The Stipulation will benefit ratepayers and the public interest in multiple ways. First and foremost is the Signatory Parties' agreement and recommendation that Duke should replace its GCR service and implement in its stead a default commodity service based on a wholesale auction SSO structure.¹⁶ This stipulated resolution will put into place a framework for market-based pricing for default natural gas supplies, which is a clear benefit for ratepayers and the public interest in Duke's service territory. This change will increase competitive activity in Duke's service territory (implementing competitive wholesale auctions in addition to the competition in the retail market). Under the Stipulation, various tariff changes will allow the new framework to be implemented and customer education will allow ratepayers and the public interest to be informed of and understand the changes.¹⁷ Duke Witness Gould affirmed that an auction-based procurement process for natural gas service for nonshopping customers is a benefit of the Stipulation.¹⁸ The testimony opposing the Stipulation from the OCC's witnesses did not contest the benefits of implementing the SSO auction framework.¹⁹ Thus, the record establishes that the ratepayers and public interest will benefit from these aspects of the Stipulation.

Second, the stipulated resolution of balancing and storage fees is also a benefit to ratepayers and the public interest. The Signatory Parties agree and recommend changes for Duke's balancing and storage fees.²⁰ Specifically, the Signatory Parties agree and recommend that the balancing and storage fees should be assessed in one consistent manner – directly to customers regardless of

¹⁶ Jt. Ex. 1 at 5.

¹⁷ Jt. Ex. 1 at Attachments A, D, E; Duke Ex. 1 at 5 and at Application Exhibit I, page 11-12.

¹⁸ Duke Ex. 3 at 16.

¹⁹ OCC Ex. 2 at 3; OCC Ex. 3 at 11.

²⁰ Jt. Ex. 1 at 6-8; Tr. 13.

their shopping/non-shopping status and without mark-up. This is a change from how balancing and storage fees are charged today and how they were proposed to be charged in Duke’s Application, as reflected in the chart below:

Balancing Provided for	Current Assessment²¹	Application Assessment²²	Stipulation Assessment²³
Nonshopping customers	Charged via the GCR	Charged via Rider SSOCR ²⁴	Charged directly via Rider SBC
Shopping customers	Charged to CRNGS suppliers based on supplier’s elected balancing service (FBS or EFBS) ²⁵	Charged to CRNGS suppliers based on supplier’s elected balancing service (FBS or EFBS)	Charged directly via Rider SBC

Duke Witness Gould explained that, Duke has tried to have all the customers pay a similar fee for balancing for storage per unit, but it has not always occurred.²⁶ The Application would not alter that situation. The Stipulation, however, changes the method of who pays for the balancing for storage costs. To be clear, the Stipulation does not change the method in terms of how balancing for storage costs are calculated; instead, it makes all consumers pay the balancing fee.²⁷

IGS/RESA Witness Bird explained how the Stipulation promotes a level playing field with the balancing fee changes:

²¹ Tr. at 14; IGS/RESA Ex. 1 at 2, 3.

²² Duke Ex. 1 at 2, 6.

²³ Jt. Ex. 1 at 7.

²⁴ The proposed SSO Cost Reconciliation Rider (“Rider SSOCR”) is to recover costs or refund overcollections for incremental costs associated with providing service under the Company’s SSO, including costs associated with storage and transportation costs needed to utilize storage, revenues and penalties received from Commission-approved balancing services. Duke Ex. 1 at 5, 6. Rider SSOCR was proposed to be bypassable, which means that the balancing and storage costs associated with CRNGS would continue to be assessed to those CRNGS suppliers by Duke as is done today through the balancing services.

²⁵ “FBS” is Firm Balancing Service and “EFBS” is Enhanced Firm Balancing Service, both of which are the balancing services available to CRNGS suppliers in Duke’s service territory.

²⁶ Tr. at 14.

²⁷ *Id.* at 15.

- All storage-related demand costs will be allocated to a single charge imposed on the customers;²⁸
- Disparate imposition of risks and obligations is eliminated;²⁹ and
- The difficult reconciliation issue for the EFBS (which was identified in a prior proceeding) is eliminated.³⁰

Having the balancing-related storage costs recovered via a direct customer charge will also allow for much easier reconciliations in the future³¹ and allow for a similar fee per unit. In addition, the Stipulation envisions ample lead time for the changes to be implemented (until April 1, 2025) and further steps to ensure that customers are not double-charged for balancing and storage costs.³² The record establishes that the ratepayers and public interest will benefit from this aspect of the Stipulation.

Third, the stipulated resolution of the gas peaking supply services will benefit ratepayers and the public interest. This provision of the Stipulation will require SSO suppliers to participate in a Duke-obtained new Gas Peaking Supply Services (“GPSS”). As testified by Duke Witness Gould, this service will assist the SSO suppliers in providing their natural gas supplies to customers as needed, allowing them to supplement system demand during the months of December through February.³³ It will be similar to the peaking service in place today for Duke’s GCR.³⁴

Each SSO supplier will be assigned an equal portion of the GPSS based upon the number of tranches they are awarded in the auction. When an SSO Supplier calls on any volume of the GPSS, the commodity costs the

²⁸ IGS/RESA Ex. 1 at 3, 5.

²⁹ *Id.* at 6.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 6-7. Specifically, Duke will notify all CRNGS providers of the change with the balancing services and require each CRNGS provider to submit a statement/affidavit to Duke Energy Ohio that it has modified its customer rates accordingly and has complied with the terms of this Stipulation provision. Jt. Ex. 1 at 6.

³³ Duke Ex. 3 at 6.

³⁴ *Id.* at 7.

Company is charged by the Peaking Supplier will be netted with the amount owed to the SSO Supplier. SSO Suppliers will have the right to call on their portion of the GPSS up to their maximum daily quantity on a daily basis and up to the three-month maximum quantity.

This provision ensures that natural gas supplies will be available to SSO customers during the coldest winter months. The record establishes that the ratepayers and public interest will benefit from this aspect of the Stipulation.

Fourth, the stipulated resolution of the retroactive nominations language proposed in the Rate SSOS tariff and the SSO Supplier Agreement will benefit ratepayers and the public interest. The Signatory Parties agree and recommend that Duke should revise its proposed language such that it will use reasonable efforts to accommodate retroactive nominations, instead of flatly stating that it will have no obligation to accommodate retroactive nominations.³⁵ More specifically, per the Stipulation, the language in the tariff and in the agreement would state:³⁶

The Company will use reasonable efforts to accommodate retroactive nominations, or changes thereto, that are made after the NAESB deadline for the intraday 3 nomination cycle; however, the Company has no obligation to accommodate such nominations or changes thereto if they would adversely impact the Company's management of storage or balancing on its system.

This revised tariff language proposal is better balanced than what was originally proposal, taking multiple parties' interests into consideration. This provision is another benefit of the Stipulation.

Finally, the stipulated agreement to withdraw the rehearing application pending in the 18 predecessor cases (if the Stipulation is approved without modification) will benefit ratepayers and the public interest. Duke Witness Gould testified that this provision in the Stipulation will provide

³⁵ Jt. Ex. 1 at 10-11.

³⁶ *Id.*

certainty and finality to all interested parties regarding those predecessor proceedings.³⁷ This provision is another benefit of the Stipulation.

In summary, the evidence demonstrates that multiple provisions of the Stipulation collectively will provide benefits to the Duke ratepayers and the public interest. This criteria of the Stipulation Test has been satisfied.

3. Multiple stipulated provisions are consistent with important regulatory principles.

In addition to the above provisions being beneficial to customers and suppliers, those provisions will not violate any important regulatory principles or practices. The provisions are consistent with important regulatory principles:

- Developing the competitive market – the stipulated provisions promote competition by agreeing to a framework for implementing competitive auctions for the default commodity service, consistent with R.C. 4928.02(A)(1) and (2);
- Ensuring customers do not pay twice for the balancing and storage costs; and
- Resolving issues in multiple Commission cases.

Duke Witness Gould testified that the Stipulation – which includes the supplier-related provisions discussed in this brief – complies with and furthers numerous important principles and practices.³⁸ The Commission should also conclude that the stipulated supplier-related provisions do not violate any important regulatory principle or practice.

³⁷ Duke Ex. 3 at 4, 9, 11.

³⁸ Duke Ex. 3 at 11-16.

B. The Commission should reject the proposed PTC language because it is not just or reasonable.

1. The PTC language is contrary to the purpose of the Commission's billing rule and to Commission precedent.

Ohio Adm.Code 4901:1-13-11(B)(13) applies to Duke's natural gas customer bills and requires the following:

(B) Bills issued by or for the gas or natural gas company shall be accurate and rendered at monthly intervals and shall contain clear and understandable form and language. Each bill shall display all of the following information:

* * *

(13) The following prominently displayed price to compare statement on residential and small commercial customer bills, if the company has a choice program:

“When shopping for a natural gas supplier, it may be useful to compare supplier offers with the standard choice offer (SCO) rate [or, if applicable, the gas cost recovery (GCR) rate] available to eligible customers, which varies monthly based on the market price of natural gas. Price represents one feature of any offer; there may be other features which you consider of value. More information about the SCO [or GCR, if applicable] and other suppliers offers is available at energychoice.ohio.gov or by contacting the PUCO.”

The rule requires that the utility bill direct the customer to the Commission's choice webpage where a customer can obtain additional information on supplier offerings and the distribution utility's default service offering. The Commission's rule also requires that the utility bill direct the customer, in the alternative, to contact the Commission. The requirements in Ohio Adm.Code 4901:1-13-11(B)(13) were adopted for the natural gas customer bills after the Commission *considered and rejected PTC language supported by OCC that is similar to what is*

proposed in Duke's Application.³⁹ The Commission rejected the language again in that proceeding on rehearing when OCC sought reversal, noting among other things that “customers have other existing resources for comparing pricing and available offers” and concluding that the adopted PTC message is a straightforward and reasonable statement “to include on customer bills, as an additional way in which to facilitate the comparison of available offers, [but it] does not mean that OCC’s distinct shadow-billing recommendations are likewise reasonable.”⁴⁰

As Mr. Lacey pointed out, the PTC language essentially defeats the purpose of the Commission’s language in the rule on how to obtain comparable information.⁴¹ Defeating the purpose of the rule would be contrary to the Commission’s rule. There has been no additional information or evidence provided in these proceedings to justify adopting language that is contrary to the Commission’s billing rule. Indeed, OCC Witness Adkins testified in support of the PTC language, but did not take into consideration the *2019 Gas Standards Case*, essentially ignoring that the Commission had already rejected similar PTC language for customer bills.⁴²

The *2019 Gas Standards Case* is not the only time the Commission has said no to including PTC-type language with SSO rates on the bills. The Commission rejected such language on multiple other occasions. A second example is the 2013 review of the minimum gas standards. The Commission concluded that the apples-to-apples chart provides sufficient information regarding the comparison of rates, such that customers are able to make informed decisions about

³⁹ *In the Matter of the Commission’s Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 19-1429-GA-ORD, Finding and Order at ¶ 69, (February 24, 2021) (“*2019 Gas Standards Case*”).

⁴⁰ *Id.*, Entry on Rehearing at ¶ 20 (April 21, 2021).

⁴¹ RESA Ex. 6 at 9.

⁴² Tr. at 113.

their choice of supplier.⁴³ The Commission, therefore, rejected as unnecessary the same kind of language as the PTC language being sought by OCC in these proceedings.

A third example is the 2015 review of Duke's purchased gas adjustment clauses and other issues. The Commission rejected a request by OCC to require Duke to provide a comparison of its GCR price to the weighted average of the CRNGS suppliers' prices for natural gas on the ground that it was unnecessary and on the ground that the stipulation in that case was reasonable.⁴⁴

A fourth example is the 2018 review of Duke's purchased gas adjustment clauses and other issues. The Commission rejected a request by OCC to require Duke to provide a comparison on the bills of its GCR price to the CRNGS suppliers' prices for natural gas on the ground that it was outside the scope of the audit proceeding and on the ground that the stipulation in that case was reasonable.⁴⁵

A fifth example is the 2021 review of proposed bill formats from Duke. The Commission rejected a request by OCC and others to require Duke to add language to the PTC message similar to the PTC language being sought by OCC in these proceedings.⁴⁶ In particular, the Commission stated the following in rejecting the request:⁴⁷

The Commission generally agrees with Duke and IGS that many of the recommendations advanced by Joint Consumer Advocates have been previously reviewed and rejected by the Commission and we do not find it

⁴³ *In the Matter of the Commission's Review of Chapter 4901:1-13 of the Ohio Administrative Code, Regarding Minimum Gas Service Standards*, Case No. 13-2225-GA-ORD, Finding and Order at ¶¶ 86-88 (July 30, 2014).

⁴⁴ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio, Inc., and Related Matters*, Case Nos. 15-218-GA-GCR, et al., Opinion and Order at ¶¶ 59 and 69 (September 7, 2016).

⁴⁵ *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Duke Energy Ohio, Inc., and Related Matters*, Case Nos. 18-218-GA-GCR, et al., Opinion and Order at ¶¶ 57 and 61 (December 18, 2019).

⁴⁶ *In the Matter of the Approval of Application of Duke Energy Ohio, Inc. for Approval of Bill Format Changes*, Case No. 21-1233-GE-UNC, Finding and Order (May 4, 2022).

⁴⁷ *In the Matter of the Approval of Application of Duke Energy Ohio, Inc. for Approval of Bill Format Changes*, Case No. 21-1233-GE-UNC, Finding and Order at ¶ 33 (May 4, 2022).

appropriate to reverse precedent on these issues. Thus, the similar arguments advanced by OCC in previous cases concerning the location of the PTC message, enhanced PTC language with SSO rates, the description of OCC's role, and the adequacy of the disconnection notice and any required actions related to retaining service, are not persuasive in this case.

A final example is 2022 review of the natural gas standards. In December 2022, the Commission rejected a request from OCC to create a new rule that would mandate the same kind of language as the PTC language being sought by OCC in these proceedings.⁴⁸ The Commission concluded that the reasons for which the Commission previously rejected the proposal still apply.⁴⁹

Mr. Lacey's expert testimony and the above list of Commission rulings provide ample evidence in these proceedings that the PTC language conflicts with the purpose of Ohio Adm.Code 4901:1-13-11(B)(13) and also conflicts with at least seven rulings from the Commission. The PTC language should be rejected.

2. The PTC language would provide inaccurate and misleading information to customers.

The Commission requires that Duke's bills provide accurate information to the customers. Ohio Adm.Code 4901:1-13-11(B) states in part "[b]ills issued by or for the gas or natural gas company shall be accurate." The PTC language implies that it is accurate information for a customer. However, that will not be the case.

Mr. Lacey explained the serious flaw if Duke's bills state: "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." The \$X.XX in this statement reflects a historic price, and has no bearing on a future GCR, SSO, or SCO price.⁵⁰ In the context of the recent run-up in natural gas prices, Mr.

⁴⁸ *In the Matter of the Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code*, Case No. 22-809-GA-ORD, Finding and Order at ¶ 19 (December 14, 2022).

⁴⁹ *Id.*

⁵⁰ RESA Ex. 6 at 13.

Lacey testified that this message would have been *wrong every time* a customer saw it and it would misrepresent the price a customer could receive from the utility if a customer chose to switch to the utility as a result of the message.⁵¹ He further testified that the inaccuracy problem also exists in a market with falling prices because the PTC language will be behind in that circumstance too.⁵²

So you might have -- you might have a customer, say they are paying a dollar per CCF, and the rates are coming down.

Your bill might say -- the bill message might say you need to save a dollar -- or you need to pay a dollar to save.

But if the market is coming down and they see a price that they say, okay, I'm going to get on the dollar, if the market is falling, the market price might be 50 cents in a month or two.

So the inaccuracy of the statement harms customers when the market is going up and when the market is going down.

The example in the [direct] testimony only used the market going up because that was what was happening at the time the testimony was written. But the same damage can be done to a customer when the market is coming down if they have bad information.

As Mr. Lacey explained, the level of accuracy of the PTC language that includes a monthly price will not change; *it will repeatedly be inaccurate*.⁵³

Even OCC Witness Adkins conceded that the PTC language might not be accurate in the following exchange:⁵⁴

Q. You agree that it's possible that the PTC price that a shopping customer would see on their bill, if this bill message were to be approved, is not necessarily going to be the SSO price that they would be charged when taking SSO service if they switched, correct?

⁵¹ *Id.*

⁵² Tr. at 69-70.

⁵³ RESA Ex. 6 at 16.

⁵⁴ Tr. at 112.

A. It could, and it could not.

As IGS/RESA Witness Leanza explained, natural gas prices have experienced high volatility since 2020.⁵⁵ In his opinion, another period of price volatility is anticipated.⁵⁶ This is further evidence that the inaccuracy of the PTC language is significant.

There is another reason why the PTC language is inaccurate and misleading. The PTC language provides a one-month price signal. As Mr. Lacey testified, a price signal of such a limited duration “cannot be indicative of any level of savings or customer satisfaction.”⁵⁷ To suggest such, as the PTC language does, is also inaccurate and misleading for customers.

Given all of this testimony from the witnesses who addressed the PTC language, it is well established that the language is inaccurate and misleading. The Commission should reject the PTC language and not modify the PTC message on Duke’s bills.

3. The PTC language would provide outdated and unactionable information to customers.

It is important to understand that customers will not necessarily receive or review their bills at the time the SSO rate is in effect because the rate will vary monthly. The PTC rate is composed of an SSO rate that varies monthly – and both Mr. Lacey and Mr. Adkins agree it is likely that the SSO rates will be different from one month to the next.⁵⁸ In addition, customers who would respond to the PTC language may not be switched back to the SSO at the same SSO rate as in the PTC rate in the language. Mr. Lacey explained, by way of example, that the PTC language will provide an outdated and unactionable PTC rate to the customers:⁵⁹

⁵⁵ IGS/RESA Ex. 2 at 7.

⁵⁶ *Id.* at 8, 10-13.

⁵⁷ RESA Ex. 6 at 15.

⁵⁸ RESA Ex. 6 at 5, 18; Tr. at 110, 111.

⁵⁹ RESA Ex. 6 at 13.

In this example, the price-to-compare is based on a NYMEX natural gas price set on a specific date in late January, usually the third to last day of the month, which is the last day to purchase gas for the following month. Assuming the customer has a mid-month meter read date, the customer receives the pricing information in the invoice sometime in mid-February, a few days after the meter read. The customer might not open the invoice to pay it until early March. When the customer opens the bill, the price-to-compare message will indicate a price that is different from the price the customer will actually be billed. In this example, the customer reacts to the price signal the day after the bill is paid in March. Unfortunately for the customer, that decision and transaction fell within twelve days of the next meter read date, so the customer's directive to move suppliers based on a January price signal cannot be implemented until the customer's April meter read date. According to Duke's gas supplier tariff, if that switch request is made within 12 calendar days of the customer's March meter read date, the customer will not be switched to the new supplier until its April meter read date. In this example, this customer took an action in March, based on a January data point and was not able to make a change in response to the January price signal until April. In April (and in February and March), the January data is meaningless to a customer as it has no bearing on what options are available to the customer. The combination of delayed billing, delays in bill processing, future bill payment deadlines, and utility data processing delays means that it can take up to four months between the time the price signal is set and the time a customer can execute a change in supplier. And it will be five months before the new price signal is realized by the customer, after the first bill with the new supplier is delivered. This is what I mean when I say that the price-to-compare is not an actionable price. It is outdated by the time the customer sees it.

OCC Witness Adkins also admitted that the PTC rate might not be actionable, in the following exchange:⁶⁰

Q. And you would agree that under the SSO format proposed by Duke in this case, the default service that would be provided by Duke would be a variable product?

A. Yes.

Q. And you would agree that a customer's request to switch from a competitive product to the default service rate generally takes one to two billing cycles, correct?

A. Yes.

⁶⁰ Tr. at 124.

Q. So following that logic, you would also agree that there's a possible scenario in which a customer acted upon a Price to Compare on their bill the day it was received, and that that customer, by the time the switch was effectuated, the price of the default service would have changed?

A. That's possible, yes.

Given this testimony from both witnesses who addressed the PTC language, the evidence establishes that the PTC language will provide outdated and unactionable information to customers. The Commission should, therefore, reject the PTC language and not modify the PTC message on Duke's bills.

4. The PTC language suggests to customers that they compare vastly different products.

The PTC language would provide one point of comparison for the customers.⁶¹ It instructs the customers to consider a retail supplier rate and compare it with only a single PTC – as if they are fairly comparable to one another. They, however, are not comparable products.

The PTC rate has two pieces – the SSO rate and Duke's costs to transition.⁶² The SSO rate will be a no-value wholesale cost, pass-through variable-priced product.⁶³ The PTC will always be a “backward looking” rate, reflecting actions taken in the past to procure gas resources to meet an expected demand at that time. It will not be a rate that would be available to the customer. By contrast, a competitive retail product has a forward-looking price that incorporates market expectations at the time the customer agreement is signed.⁶⁴ The retail products can, and often do, have different attributes such as carbon offsets, efficiency components or services, long terms and

⁶¹ Tr. at 113.

⁶² Tr. at 111.

⁶³ Duke Ex. 1 at 4; RESA Ex. 6 at 5; IGS/RESA Ex. 2 at 2.

⁶⁴ RESA Ex. 6 at 5.

potentially other features.⁶⁵ As a result, the SSO and competitive retail products are fundamentally different from one another. The PTC language, however, does not disclose these fundamental differences.

The PTC language also does not disclose other key considerations. The proposed PTC language will not disclose:

- The price is variable and will change monthly.⁶⁶
- How long a competitive retail natural gas supplier's contract term may be.⁶⁷
- Whether a competitive retail natural gas supplier's contract includes an early termination fee.⁶⁸
- Whether a competitive retail natural gas supplier's product is a variable rate product.⁶⁹

RESA Witness Coomes explained that customers will react to the price signal in the PTC language but they may not appreciate the very real differences between the products:⁷⁰

Here, some customers will simply compare the price shown on the notice with the price they are currently paying a competitor supplier. If their current price is higher, some will likely switch to the SSO. Other customers may recognize the difference between a spot market price from a prior month to a contract price they may have contracted for over the next year. Those customers may do more analysis and make their decision based, at least partly, on a forecast of what they believe the market price is likely to be over the next year.

The PTC language instructs the customers to compare a retail supplier rate with a single PTC – as the point of comparison – even though the record establishes that they are different in

⁶⁵ RESA Ex. 6 at 5; OCC Ex. 7; OCC Ex. 2 at Attachment KJA-05.

⁶⁶ RESA Ex. 4.

⁶⁷ RESA Ex. 1.

⁶⁸ RESA Ex. 2.

⁶⁹ RESA Ex. 3.

⁷⁰ RESA Ex. 5 at 6-7.

multiple ways. The evidence establishes that this instruction would be wrong and harmful. The Commission should reject the PTC language and not modify the PTC message on Duke's bills.

5. The PTC language hampers development of alternative goods and services and thus would be bad policy.

Mr. Lacey testified that the PTC on customer bills will also have a broader impact – it will hamper development of alternative goods and services. He reached this conclusion for several reasons:⁷¹

- The PTC language implies to customers that all products are the same and that price is the only attribute that matters, which is fundamentally untrue.
- The PTC language is a misleading message that stifles consumer interest and hampers innovation.
- The PTC language will result in consumers receiving delayed and inappropriate price signals that can lead to poor consumer decisions such as breaking contracts, entering contracts at inopportune times, or staying out of the market altogether and suffering the fate of SSO gas price volatility.
- The PTC language will create confusion in the market because the statements might be completely untrue at the time the customer reads them or can react to them. For example, for the customers who desire a fixed-price, longer-term product, a message about the historical rate of the variable default service product is meaningless, is confusing and might persuade a customer to take an action that is not in the customer's best financial interest, such as reverting to the varying utility price (whether GCR or SSO).

By wrongly promoting the SSO in those ways, the PTC language would violate Ohio's natural gas policies in R.C. 4929.02(A), including the following statutory policies:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier,

⁷¹ RESA Ex. 6 at 19, 20.

price, terms, conditions, and quality options they elect to meet their respective needs;

- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;

* * *

- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;

* * *

- (11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation;

Collectively, including the PTC message on Duke's natural gas customer bills would not only be bad for the individual customers, it would be bad policy and would violate multiple state policies. The Commission should, therefore, reject the PTC language and not modify the PTC message on Duke's bills.

C. The stipulated exit-the-merchant-function satisfies the statutory requirements, and should be approved.

As noted earlier, R.C. 4929.04 requires the Commission to make certain findings in order to grant the requested exemption/exit. These findings are easily reached because Duke has a well-

established CRNGS market. Duke is and has been subject to effective competition with respect to the commodity sales service and Duke's customers of the commodity sales service have reasonably available alternatives.⁷² There are numerous suppliers of varying sizes and numerous CRNGS offers available for customers to choose. For instance, the Energy Choice Ohio website snapshot listed as available 70 CRNGS offers from 33 different CRNGS suppliers in September 2023.⁷³ Duke has offered distribution services on a fully open, equal, and unbundled basis to all its customers for many years, and Duke's customers reasonably may acquire commodity sales services from suppliers other than Duke.

V. Conclusion

The Stipulation presented in these proceeding was seriously bargained, and will benefit the ratepayers and public interest. It will not violate any regulatory principle or practice. As a result, the Stipulation should be approved.

In addition, the Commission should reject the PTC language. The language is contrary to the Commission's billing rule, and contrary to numerous prior Commission rulings. The message will providing inaccurate, misleading, outdated and unactionable information, which is harmful to customers. Furthermore, the PTC language suggests that customers compare different products, while at the same time hampering the development of the competitive market. The Commission should, therefore, reject the PTC language and not modify the PTC message on Duke's bills.

⁷² See OCC Ex. 2 at Attachment KJA-05; Tr. 117.

⁷³ *Id.*

Finally, based on Duke's well-established CRNGS market, the Commission should conclude that the required statutory findings in R.C. 4929.04 have been met. The Commission should therefore grant the exit as stipulated.

Respectfully submitted,

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