

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of its Rules for Standard Service Offers for)
Electric Utilities Contained in Chapter) Case No. 18-1190-EL-ORD
4901:1-37 of the Ohio Administrative Code.)

INITIAL COMMENTS

OF

DUKE ENERGY OHIO, INC.

On October 24, 2018, the Public Utilities Commission of Ohio (Commission) issued an entry commencing its five-year review of the rules in O.A.C. Chapter 4901:1-37 (1-37), relating to corporate separation for electric utilities and affiliates. Pursuant to that order, a workshop was held on November 8, 2018. The Commission’s entry of June 19, 2019 called for comments on staff’s proposed changes to that chapter, with due dates of July 12, 2019, for initial comments, and July 26, 2019, for reply comments. In accordance with the Commission’s schedule, Duke Energy Ohio, Inc., (Duke Energy Ohio) respectfully submits its comments.

Rule 37-04¹

In paragraph (D), subparagraph (D)(8) sets forth the requirement for an electric utility’s compliance officer to “promptly report . . . unreasonable sales practices, market deficiencies, and market power” to the appropriate Commission staff. Duke Energy Ohio interprets this subparagraph as obligating an electric utility’s compliance officer to promptly report instances of

¹ For purposes of readability, rule and chapter numbers will be designated without reference to the agency or division number. In addition, where Staff’s proposed revisions result in numbering changes, the new (proposed) numbering is used for reference purposes.

the listed problematic conduct *by his or her own electric utility*, but *not* obligating an electric utility's compliance officer to report problematic conduct by other entities.

Requiring electric utilities' compliance officers to report all market participants' problematic conduct would be improper, given that electric utilities lack the authority or ability to monitor other entities for compliance or to investigate ambiguous circumstantial evidence. Electric utilities sometimes find themselves privy to information indicating problematic conduct by other entities (including but not limited to competitive retail energy service providers). When such information appears to be reliable and meaningfully indicates that a third party may be engaging in the above-listed problematic conduct, Duke Energy Ohio's usual practice is to report to the Commission. However, this should be viewed as voluntary and not obligatory.

Interpreting an electric utility's reporting obligation as applying to the conduct of all market participants would have negative effects. Among other things, such an interpretation would encourage "defensive reporting," whereby utilities would report the vaguest of rumors and suspicions to avoid any possibility of violating the regulation. Defensive reporting would result in a high volume of low-quality reports that will ultimately detract from the effectiveness of high-quality reports based on reliable information. Accordingly, Duke Energy Ohio believes that an electric utility's reporting obligation should be interpreted to apply only to the utility's own practices. Respectfully, Duke Energy Ohio requests that the Commission confirm this interpretation as reasonable and proper.

Paragraph (E), titled "Emergency," appears to have been intended to strike a balance between the regulations' long-term goal of eliminating undue competitive advantages and the public's immediate need for physical safety and economic security. This paragraph sets out pressing circumstances under which an electric utility may disregard the generally applicable corporate separation rules and the manner in which the utility must document such instances.

However, its present narrow scope effectively nullifies any force it might have otherwise had. Duke Energy Ohio proposes that the paragraph be revised to enable electric utilities to act quickly in emergency situations other than declared emergencies and thereby maintain an optimal balance between the needs of the marketplace and the physical safety and economic security of Ohio residents.

The current version of Paragraph (E)—to which no changes have been proposed—permits an electric utility to “take actions necessary to ensure public safety and system reliability” only in a “declared emergency situation.” The term “declared emergency situation” is a narrow technical term, apparently referring to an energy emergency declared by the governor pursuant to R.C. 4935.03. Such a declared emergency is extremely rare—limiting the scope of paragraph (E) this way effectively renders paragraph (E) null.

To better ensure public safety, paragraph (E) should be revised to empower an electric utility to act swiftly and decisively whenever a consumer’s health, safety, or economic security faces an immediate threat. This requires (1) expanding the scope of the provision to include a functional definition of “emergency” that permits an electric utility to prioritize people’s health, safety, and economic security in dire situations, and (2) granting an electric utility the benefit of the doubt when reviewing its actions after-the-fact. Accordingly, Duke Energy Ohio proposes updating paragraph (E) as follows:

(E) Emergency.

- (1) Notwithstanding the foregoing, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability.
- (2) Notwithstanding the foregoing, an electric utility may also take actions reasonably necessary to prevent, reduce, or remedy any immediate threat to a person’s health and/or safety.

- (3) Notwithstanding the foregoing, an electric utility may also take actions reasonably necessary to avert or reduce any immediate threat of significant economic harm to a customer.
- (24) The electric utility shall maintain a log of all such actions that do not comply with this chapter, and such log shall be subject to review by the commission and its staff. On review, such actions shall be granted a rebuttable presumption of reasonableness.

These revisions will ensure that the corporate separation rules do not inhibit an electric utility from taking necessary actions when faced with an immediate threat to an individual's health, safety, or economic security.

Duke Energy Ohio appreciates the opportunity to provide its initial comments to the Commission and respectfully requests that the Commission revise the proposed rules in accordance with the suggestions herein.

Respectfully submitted,

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