

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review of)
Chapter 4901:1-10, Ohio Administrative) Case No. 12-2050-EL-ORD
Code, Regarding Electric Companies.)

**MEMORANDUM CONTRA APPLICATIONS FOR REHEARING
OF DIRECT ENERGY, DUKE ENERGY OHIO, FIRSTENERGY AND
INTERSTATE GAS SUPPLY
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In this proceeding the Public Utilities Commission of Ohio (“PUCO” or “the Commission”) conducted its five-year review of its rules for the minimum service quality, safety, and reliability requirements concerning electric service to Ohioans¹ and adopted rules for residential customers to opt-out of having their electricity usage measured with a new advanced (“smart”) meter instead of a traditional meter.² These rules serve a critical purpose in helping promote the state policy for ensuring that consumers have adequate, reliable, safe, and efficient electric service.³

Direct Energy,⁴ Duke Energy Ohio (“Duke”), FirstEnergy,⁵ Interstate Gas Supply (“IGS”) and others are seeking rehearing on these rule requirements. The Office of the Ohio Consumers’ Counsel (“OCC”), in accordance with Ohio Adm. Code 4901-1-35(B),

¹ Ohio Adm. Code 4901:1-10.

² October 16, 2013 Finding and Order, Attachment B at pages 4-5.

³ R.C. 4928.02(A).

⁴ “Direct Energy” means Direct Energy Services, LLC and Direct Energy Business, LLC.

⁵ “FirstEnergy” means Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

files this Memorandum Contra Applications for Rehearing of Direct Energy, Duke, FirstEnergy, and IGS.

As further explained in this Memorandum Contra, the reasons alleged in the Applications for Rehearing by Direct Energy, Duke, FirstEnergy, and IGS provide no basis to conclude that the PUCO's January 15, 2014 Finding and Order is unlawful or unreasonable. Accordingly, the PUCO should deny these Applications for Rehearing for the reasons discussed in this Memorandum Contra.

II. ARGUMENT

The PUCO acted lawfully and reasonably when it adopted amendments to Ohio Adm. Code 4901:1-10.⁶ These rules concern the minimum service and safety standards that the Ohio electric utilities are required to provide Ohio residential customers. The PUCO is statutorily obligated to promulgate rules that specify the minimum service quality, safety, and reliability requirements concerning the supply of electric service in the state.⁷

FirstEnergy focuses on the PUCO's amendment to the rule (Ohio Adm. Code 4901:1-10-11(F)) that sets forth the method for determining the performance of each electric utility's distribution circuit. FirstEnergy claims the rule "is unjust and unreasonable because it presumes an EDU is in violation of the rule without taking into consideration fault or mitigation."⁸ FirstEnergy's claim is incorrect, for the following reasons.

⁶ *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD, Finding and Order (January 15, 2014).

⁷ R.C. 4928.11(A).

⁸ FirstEnergy Memorandum in Support at 5.

First, it should be noted that FirstEnergy does not allege that the rule amendment is unlawful.⁹ Second, FirstEnergy fails to cite any precedent that suggests that the rule adopted by the PUCO is “unjust or unreasonable.” Finally, as stated above, the PUCO is statutorily mandated to adopt rules that “provide for high quality, safe, and reliable electric service.”¹⁰

The PUCO’s creation of a rebuttable presumption of a rule violation is a very reasonable protection for Ohio electric customers. It works toward the state policy of “high quality, safe, and reliable electric service.”¹¹ The presumption is only activated after a circuit is listed as a worst performing circuit for three consecutive years for the customers served on it. That means customers have endured three years of the worst performing circuit and utilities have had three years to improve the circuit, before the presumption is activated. Customers should not have to endure unreliable service (as measured by being on the worst performing circuit report for whatever reason) for three years without assurance that the EDU will have to take the necessary actions to correct the deficiencies on the circuit. Accordingly, the PUCO should deny rehearing on this issue.

Additionally, the PUCO should deny rehearing on a claim by Duke. Duke’s assertion is that customers with advanced meters should not be provided with the beginning and ending meter reads on their electric bills.¹² It is sadly ironic for customers that, having paid much money for the smartgrid and smart meters based on Duke’s claim

⁹ *Id.* at 3-5.

¹⁰ R.C. 4928.11(A).

¹¹ *Id.*

¹² Duke Memorandum in Support at page 1 (page numbers not included on filing).

of customer benefits, Duke would use the occasion of its expensive investment to eliminate the longstanding customer information of beginning and ending meter reads.

Duke alleges (in the heading of its assignment of error)¹³ that the PUCO's rule on customer billing is "unlawful." But Duke fails to cite to any specific law that is allegedly being violated.¹⁴ Duke also fails to cite any precedent that suggests that the rule adopted by the PUCO is "unreasonable." Duke merely relies on an auditor finding that "Smart electric meters are significantly more accurate in all weather conditions, offering significantly smaller measurement variability than traditional electric meters."¹⁵ That finding does not support Duke's flawed notion that customers with advanced meters should not be provided with the beginning and ending meter reads on their electric bills.

Furthermore, Duke's request should be denied because customers must, to the extent practicable, be provided with the necessary information to be able to recalculate their electric bill to determine its accuracy.¹⁶ And in opposing the standardization of bill formats, some utilities expressed concern with the high costs associated with modifying bill formats.¹⁷ Moreover, there could be additional bad consequences for customers if the PUCO modified its rules to reflect Duke's recommendation (that customers with advanced meters should not be provided with the beginning and ending meter reads on their electric bills). In this regard, Duke (and other utilities) might then seek for customers to be required to pay for billing system changes that remove information that

¹³ Duke Application for Rehearing, No. 1.

¹⁴ *Id.* and Memorandum in Support.

¹⁵ Duke Memorandum in Support at page 2 (page numbers not included on filing).

¹⁶ See R.C. 4928.10(C).

¹⁷ See *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service*, Case No. 12-3151-EL-COI, Market Development Work Plan, (January 16, 2014) at 19.

they found to be helpful. For all the reasons discussed above, Duke's request for rehearing on this issue should be denied.

Finally, the PUCO should deny the requests for rehearing of Direct Energy and IGS in regard to an EDU's obligation to protect customer-specific information.¹⁸ Direct Energy alleges that the rule protecting customer information is unreasonable because it is overly broad (as it is not just limited to new customers), burdensome and will hinder a competitive retail electric supply provider's ("CRES provider") ability to provide new and innovative products.¹⁹ IGS alleges that the PUCO's rule that protects customer-specific information is unlawful and unreasonable in that it fails to provide for release of customer usage data by an EDU upon recorded telephone consent.²⁰ Direct Energy does not allege that the PUCO's rule amendment is unlawful.²¹ And although IGS alleges in its Application for Rehearing²² that the PUCO's rule on customer-specific information is "unlawful," IGS fails to cite to any specific law that is allegedly being violated.²³

Because of the impact that an unauthorized release of granular customer energy data could have on a customers' privacy, the PUCO has consistently required written customer consent before an EDU is permitted to release this customer information.²⁴ Both Direct Energy and IGS fail to provide any compelling reason why the rule, that protects customers, should be changed at this time.

¹⁸ Ohio Adm. Code 4901:1-10-24(E).

¹⁹ Direct Energy Application for Rehearing at 1.

²⁰ IGS Application for Rehearing and Memorandum in Support at 4.

²¹ Direct Energy Application for Rehearing at 1.

²² IGS Application for Rehearing.

²³ *Id.* and Memorandum in Support.

²⁴ Ohio Adm. Code 4901:1-10-24(E) (current version).

Moreover, the PUCO's rule on the release of customer-specific information is not overly broad. The PUCO is statutorily mandated to adopt rules that "ensure that each *** utility, company, cooperative, or aggregator provide clear and **frequent** notice to its customers of the right to object and of applicable procedures."²⁵ And R.C. 4928.10(G) makes it clear that while generic load pattern information may be shared with CRES providers (which the PUCO rule provides for), a customer has the right to object to the sharing of his/her specific data with CRES providers. Therefore, R.C. 4928.10(G) requires customer consent—for both new and existing customers. The PUCO's rule on protecting customer-specific information is not overly broad. The PUCO should not grant rehearing as requested by Direct Energy and IGS.

III. CONCLUSION

For all the reasons discussed above, the PUCO should deny the Applications for Rehearing by Direct Energy, Duke, FirstEnergy, and IGS because they provide no basis to conclude that the PUCO's January 15, 2014 Finding and Order is unlawful or unreasonable in regard to the matters discussed herein. Furthermore, the requests in those Applications for Rehearing are unreasonable because they can result in degraded service quality and increase the potential for privacy breaches for Ohioans. Privacy protections must be carefully and deliberately crafted to prevent the unauthorized disclosure of customer-specific information as smartgrid technologies emerge in Ohio. The coordination that the PUCO has mandated between the PUCO Staff and other state

²⁵ R.C. 4828.10(G). (Emphasis added).

and federal entities is reasonable while appropriate privacy protections and disclosure requirements are being considered.²⁶

Respectfully submitted,

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²⁶ See *In the Matter of the Review of the Consumer Privacy Protection and Customer Data Access Issues Associated with Distribution Utility Advanced Metering and Smart Grid Programs*, Case No. 11-277-GE-UNC, Finding and Order, (May 9, 2012) at 21.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Memorandum Contra upon the following via electric transmission, this 24th day of February 2014.

/s/ Melissa R. Yost

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Summary: Memorandum Memorandum Contra Applications for Rehearing of Direct Energy, Duke Energy Ohio, FirstEnergy and Interstate Gas Supply by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Yost, Melissa R. Ms.