

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio for Approval of the Fourth	)	
Amended Corporate Separation Plan	)	Case No. 14-0689-EL-RDR
under Section 4928.17, Revised Code,	)	
and Chapter 4901:1-37, Ohio	)	
Administrative Code.		

In the Matter of the Application of Duke	Case No. 14-0690-EL-ATA
Energy Ohio for Authority to Amend its	
Retail Tariff, P.U.C.O. No. 19.	

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**OBJECTIONS OF IGS ENERGY**

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**I. INTRODUCTION**

On April 16, 2014, Duke Energy Ohio (“Duke”) filed an application seeking approval to amend its corporate separation plan and authority to amend its Retail Tariff, P.U.C.O. No. 19, Sheet 23, to correspond with changes in the corporate separation plan (“Application”). As discussed below, Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) objects to Duke’s request.

Initially, Duke’s requested relief is not entirely clear. But, at best, Duke requests that the Public Utilities Commission of Ohio (“Commission”) authorize Duke’s distribution utility to offer services that are available from competitive suppliers. At worst, Duke requests authority to recover the cost of providing competitive services through distribution rates. Because both of these outcomes contravene Ohio law and policy, IGS urges the Commission to reject Duke’s Application to the extent discussed herein.

## II. BACKGROUND

In Duke's last electric security plan ("ESP"), the Commission approved a settlement in which Duke agreed to transfer its generating assets to an unregulated affiliate by the end of 2014.<sup>1</sup> In support of the settlement, Duke witness Whitlock, stated "that the objective of transferring the generation assets to an affiliate or subsidiary is to allow Duke to fully embrace competitive markets and bring the benefits of competition in both wholesale and retail markets to Duke's customers."<sup>2</sup> In approving the settlement, the Commission stated:

The stipulation provides that the Commission's approval of the stipulation will constitute approval of Duke's Third Amended CSP and full legal corporate separation, as contemplated by Section 4928.17(A), Revised Code, such that the transmission and distribution assets of Duke will continue to be held by the distribution utility and all of Duke's generation assets will be transferred to an affiliate.<sup>3</sup>

Thus, the Commission's approval of full legal separation ended over a decade of functional separation and required Duke to henceforth (post generating asset transfer) provide competitive and non-competitive services through separate affiliates, as required by R.C. 4928.17(A)(1).

Despite the Commission's order and its prior commitment, on April 16, 2014, Duke requested approval of an amendment to its corporate separation plan. Duke claims that its proposed amendments "will allow Duke Energy Ohio the flexibility to offer

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<sup>1</sup> *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO, *et al.*, Opinion and Order at 29 (Nov. 22, 2011).

<sup>2</sup> *Id.* at 31-32.

<sup>3</sup> *Id.* at 45.

additional electric-related services to customers, as has been allowed elsewhere in the state since the beginning of deregulation. Duke Energy Ohio proposes this amendment, contingent on the Commission allowing all costs and revenues related to such services being treated, for ratemaking purposes, in parallel fashion.”<sup>4</sup>

To that end, Duke proposes to alter the description of distribution service in its corporate separation plan as follows (new language in bold; additional emphasis added in italics):

Duke Energy Ohio operates its distribution system under the governance and rate authority of the Commission. Duke Energy Ohio offers all customers safe and reliable distribution service on a non-discriminatory basis. Duke Energy Ohio's tariffs define rates for its distribution services and products. Duke Energy Ohio provides and operates new distribution facilities, or the extension of distribution facilities, pursuant to such tariffs.

**Duke Energy Ohio *may also offer products and services other than retail electric service*, consistent with Ohio policy. Such services will allow additional service options for residential and non-residential customers and will help to ensure customers the ability for an expeditious return from service interruptions, among other benefits. Upon customer request, Duke Energy Ohio may use contractors or employees to provide other utility-related services, programs, maintenance, and repairs related to customer-owned property, equipment, and facilities. In addition, Duke Energy Ohio may provide products and services other than tariffed retail electric service in an effort to advance the State's interests in energy efficiency and peak demand reduction and to comply with the benchmarks set forth in RC. 4928.66. These programs give the Company the opportunity to serve customers more completely and to assist in meeting statutory requirements.**<sup>5</sup>

Additionally, Duke requests authority to amend Tariff P.U.C.O. Electric No. 19—a distribution-specific tariff—to allow it to provide additional services that a customer would otherwise procure through the competitive market (emphasis added):

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<sup>4</sup> Application at 3 (citation omitted).

<sup>5</sup> Application, Exhibit A at 84 (containing a proposed 4<sup>th</sup> Corporate Separation Plan).

## Special Customer Services

The Company may, but is not obligated to, furnish residential or nonresidential customers special customer services as identified in this section. No such special customer service shall be provided except where the Company has informed the customer that ***such service is available from and may be obtained from other suppliers***. A customer's decision to receive or not receive special customer services from the Company will not influence the delivery of competitive or non-competitive retail electric service to that customer by the Company. ***Such special customer services shall be provided at a rate negotiated with the customer***, but in no case at less than the Company's fully allocated cost. Such special customer services shall only be provided when their provision does not unduly interfere with the Company's ability to supply electric service under the Schedule of Rates, Classifications, Rules and Regulations for Retail Electric Service. Such special customer services may include, but are not limited to: design, construction and maintenance of customer-owned substations; resolving power quality problems on customer equipment; providing training programs for construction, operation, and maintenance of electric facilities; performing customer equipment maintenance, repair, or installation; providing service entrance cable repair; providing restorative temporary underground service; providing upgrades or increases to an existing service connection at customer request; performing outage or voltage problem assessment; disconnecting a customer-owned transformer at customer request; loosening and refastening customer owned equipment; determining the location of underground cables on customer premises; covering up lines for protection at customer request; making a generator available to customer during construction to avoid outage; providing pole-hold for customer to perform some activity; providing a "service saver" device to provide temporary service during an outage; resetting a customer-owned reclosure device; providing phase rotation of customer equipment at customer request; conducting an evaluation at customer request to ensure that customer equipment meets standards; upgrading the customer to three-phase service; ***providing whole-house surge protection, and providing energy consumption analysis services, tools and reports.***<sup>6</sup>

As discussed below, IGS objects to Duke's proposals to amend its corporate separation plan and tariff.

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<sup>6</sup> Application, Exhibit C, at P.U.C.O. Electric No. 19, Sheet No. 23 (Containing proposed tariff language).

### **III. OBJECTIONS**

An electric utility must operate pursuant to a corporate separation plan, which must promote the policy contained in R.C. 4928.02. State policy favors competition. Likewise, state policy prohibits the recovery of generation-related costs through distribution rates.<sup>7</sup>

And, because Duke is no longer authorized to operate pursuant to functional separation, R.C. 4928.17(A)(1) requires Duke to provide “competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility.”<sup>8</sup> Despite this prohibition and the pro-competitive nature of Ohio law, Duke requests that its distribution utility business have authority to offer products that are currently available in the marketplace from competitive suppliers.

As discussed above, Ohio law is pro-competitive. As an exception to this policy, Duke has been granted a limited monopoly for the purpose of providing distribution service to customers. Unlike the delivery of electricity, however, there are market participants that are already willing and able to offer “special customer services.” Thus, there is no policy reason to authorize Duke to provide these services to customers. Accordingly, IGS objects to Duke’s request to provide these services to customers through its regulated distribution utility.

Moreover, to the extent that Duke’s Application requests authority to recover the cost of providing competitive services through distribution rates, Duke’s request is an

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<sup>7</sup> R.C. 4928.02(H).

<sup>8</sup> A utility may obtain a temporary waiver from this requirement under R.C. 4928.17(C).

unlawful anticompetitive subsidy.<sup>9</sup> Further, it would violate the requirement that Duke provide competitive and non-competitive services through separate affiliates.<sup>10</sup>

If Duke's Application does not in fact request authority to recover the cost of competitive services through distribution rates, it should still be rejected. Duke's request to offer products and services that are available from other suppliers contravenes Ohio's pro-competitive policy and represents a step back from the full legal corporate separation authorized by the Commission in Duke's last ESP.

Duke's claim that the Commission approved FirstEnergy's request to include similar tariff language does not support Duke's Application. First, the Commission approved FirstEnergy's request as part of a stipulation and recommendation entered into over fourteen years ago in its electric transition plan case. That Stipulation included a provision which indicated that it could not be cited as precedent in any future proceeding.<sup>11</sup>

Second, because all of the investor-owned utilities are on the path toward structural separation and competition, it would be counterproductive and contravene state policy for Duke's distribution business to offer competitive services. FirstEnergy's tariff language is a step backwards—it should not be held out as a model. Rather than

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<sup>9</sup> R.C. 4928.02.

<sup>10</sup> R.C. 4928.17(A)(1).

<sup>11</sup> *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, *et al.*, Stipulation and Recommendation (Apr. 17, 2000) ("This Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, except as expressly provided herein, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation . . . . The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission.").

perpetuating FirstEnergy's tariff language, the focus should shift to eliminating it from FirstEnergy's tariffs in the near future.<sup>12</sup>

Third, the language in FirstEnergy's tariff is narrower than the language proposed by Duke. More specifically, FirstEnergy's tariff does not include the following language, "providing whole-house surge protection, and providing energy consumption analysis services, tools and reports." This language is a considerable expansion and would allow Duke to provide competitive products and services that would be best left to the competitive market.

#### **IV. CONCLUSION**

Because Duke's Application contravenes Ohio law and policy, IGS recommends that the Commission reject the Application to the extent discussed in these objections.

Respectfully submitted,

/s/ Joseph Olikier

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<sup>12</sup> The settlement approving the FirstEnergy stipulation was entered into over fourteen years ago—a lot has changed with respect to Ohio's competitive landscapes over the last fourteen years.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Objections of IGS Energy* was served this 15th day of May 2014 via electronic mail upon the following:

/s/ Joseph Olikier  
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Summary: Objection of IGS Energy electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy