

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke) | |
| Energy Ohio for Approval of the Fourth) | |
| Amended Corporate Separation Plan under) | Case No. 14-689-EL-UNC |
| Section 4928.17, Revised Code, and Chapter) | |
| 4901:1-37, Ohio Administrative Code.) | |

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| In the Matter of the Application of Duke) | |
| Energy Ohio for Authority to Amend its Retail) | Case No. 14-690-EL-ATA |
| Tariff, P.U.C.O. No. 19.) | |

**REPLY COMMENTS
OF
DUKE ENERGY OHIO, INC.**

On April 16, 2014, Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) filed an application (Application) for approval of its Fourth Amended Corporate Separation Plan (Plan), as well as certain corresponding modifications of its retail electric tariff. On May 6, 2014, the Attorney Examiner established a procedural schedule, calling for comments on the application to be filed by May 15, 2014, and reply comments by May 21, 2014. Initial comments were filed by the Staff (Staff) of the Public Utilities Commission of Ohio (Commission); Interstate Gas Supply, Inc. (IGS); and Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Direct Energy). With certain minor modifications, Staff supports the Company's application, while IGS and Direct Energy oppose it. In accordance with the Commission's schedule, Duke Energy Ohio respectfully submits comments in reply to those initial comments, addressing each of the expressed concerns.

I. Proposal to Offer Additional, Electric-Related Services

As explained in the Application, the Plan and the proposed tariff amendments will allow Duke Energy Ohio to offer additional electric-related services to customers. Staff indicates that,

in general, it is not opposed to this request. Staff discusses no policy concerns or statutory prohibitions that relate to the Company's offer. Rather, Staff suggests three minor modifications, all of which the Company is amenable to.

A. Staff's Comments

First, Staff proposes that customers who wish to take advantage of these services be required to initial a statement on the work order, indicating an understanding that the services are non-regulated and can be performed by other vendors. Such a confirmation will allow the Company to assure the Commission that no rule violation has occurred. Staff's related, second suggestion is that the customers' written verification of understanding be retained as provided for in the document retention provisions of O.A.C. Chapter 4901:1-9. Finally, Staff recommends certain reformatting changes to improve the readability of the proposed tariff sheet.

Duke Energy Ohio accepts Staff's recommendations regarding these customer services.

B. IGS's Comments

IGS opposes Duke Energy Ohio's proposal to offer additional services to customers on two grounds: one based on a mistaken understanding of the law and one based on a mistaken understanding of the proposal itself.

IGS begins its discussion with a recitation of what it terms "background," attempting to tie the Plan to the Company's commitment to transfer its legacy generating assets to an affiliate or subsidiary. IGS correctly indicates that Duke Energy Ohio has committed to make such a transfer by no later than the end of 2014.¹ However, the modifications to the Plan, as proposed in the Application, are entirely unrelated to that commitment. It is critical to note that, although

¹ *In the Matter of the application of Duke Energy Ohio 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 No. 11-3549-EL-SSO, *et al.*, Stipulation and Recommendation, VIII.A. (October 24, 2011) and Opinion and Order, pp. 29-31, 45-46 (November 22, 2011).

the Commission's order requires Duke Energy Ohio to transfer generating assets, such order does not address "products or services other than retail electric service."² The Commission's approval of the stipulation in the last standard service offer proceeding merely said that the Company's generation assets will be transferred to an affiliate. As much as IGS may wish otherwise, the Commission's order did not speak in terms of functional versus full separation; it has not limited Duke Energy Ohio's business to distribution and transmission only. Indeed, any attempt to so limit the Company's business would go beyond the corporate separation provisions established by the Ohio General Assembly. R.C. 4928.17 clearly allows a utility to provide services other than retail electric service, directly or through an affiliate, under appropriate terms of a corporate separation plan.³

IGS also alleges that the Company's Application would allow it to recover the cost of providing the services through distribution rates. But it is clear from the face of the Application that this is not the case. Rather, in addition to having the necessary accounting systems in place to ensure that the cost and revenues associated with the additional electric-related services are appropriately segregated from those associated with providing regulated utility service, the proposed tariff language specifically states that the negotiated rate for any given service may not be less than the Company's fully allocated cost. Thus, these services would be at least self-supporting and may even contribute to reductions in distribution rates.

One final issue raised by IGS must be addressed. Duke Energy Ohio pointed out, in the Application, that certain other Ohio utilities already have tariffs that include a similar ability to provide special services. IGS claims that, because those tariffs were adopted through a procedure that involved a stipulation, the Company cannot claim their existence as precedent.

² See R.C. 4928.17(A).

³ R.C. 4928.17(A) and (C).

What IGS fails to recognize is that the Commission's Opinion and Order approving the stipulation specifically found that it did not, in any regard, violate Ohio law.⁴ That finding – in contrast to the stipulation itself – is citable precedent. The Commission has concluded that an arrangement – directly analogous to that proposed here – is legal under Ohio corporate separation requirements.

Furthermore, the IGS concern about the difference between the services to be offered by Duke Energy Ohio and those offered by the FirstEnergy utilities is irrelevant. If, as has been shown above, Duke Energy Ohio can legally offer tariffed products or services other than retail electric service, then the choice of those products or services to be offered does not impact the underlying legality.

C. Direct Energy's Comments

Direct Energy also comments negatively on the Application's proposal to offer special services to customers. Initially, it focuses on whether Duke Energy Ohio has provided "any justification" for the change. But "justification" is not required, if the corporate separation plan adequately protects distribution ratepayers and the marketplace. The most important issue in corporate separation is that the services in question will be priced at no less than their fully allocated cost. Although Direct Energy finds this term to be "ambiguous," it is well known to the Commission. The definitions of terms used in the Commission-promulgated rules relating to R.C. 4928.17 include the following:

Fully allocated costs are the sum of the direct costs plus an appropriate share of indirect costs. For purposes of these rules, the term fully allocated costs shall have the same meaning as the term fully loaded embedded costs as that term appears in division (A)(3) of section 4928.17 of the Revised Code.⁵

⁴ *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 No. 99-1212-EL-ETP, *et al.*, at pg. 66 (July 19, 2000).

⁵ O.A.C. 4901:1-37-01(G).

The various questions that Direct Energy poses with regard to this term are moot. The Commission's definition controls.

Direct Energy goes on to propose two limitations on any authorization the Commission may grant under the Application. First, Direct Energy suggests that any assets used by the Company to provide these services be similarly made available to competitors. Such a provision would be unnecessary, as the law already addresses this issue. To the extent existing law requires Duke Energy Ohio to make facilities available to competitors, a new requirement is merely redundant. And to the extent existing law does not require such availability, any mandate in that regard is beyond the Commission's authority.

Second, Direct Energy believes that the Company should only be allowed to offer these services through an affiliate, and then only under limitations as to name and logo, and mandated disclosure of the relationship. This concept has two major flaws.

First, the Application does not seek approval to offer the services through an affiliate, nor would such approval be necessary. These services can be offered by an affiliate under the terms of the existing corporate separation plan, without Commission authorization.

Furthermore, Direct Energy attempts to analogize this request to a prior case where the Commission required disclosure of the fact that two entities were not related, even though one was using the name of the other. The risk of customer confusion in that situation was extremely high, as the sharing of the name led customers to believe a falsehood. Here, on the other hand, the companies actually would be affiliated; thus, there is no risk that customers would be misled. There is no analogy to be drawn between these two situations.

III. Additional Issues Raised in Comments

A. Staff's Comments

Staff also comments on the revised description of the “Inter-Company Asset Transfer Agreement.” Pointing to the Commission’s rules on the topic, Staff requests that the language be modified to indicate that records will be kept that demonstrate that assets will be transferred only at the fully allocated cost.

Duke Energy Ohio agrees to make this revision, such that the description of the agreement reads as follows:

This Agreement permits asset transfer agreements for inventory items between Duke Energy Ohio and its affiliated regulated utility operating companies. The transfers among the regulated utilities are priced at the transferring party’s fully allocated cost (as defined in Ohio Administrative Code Rule 4901:1-37-01(G)) or through in-kind replacements, providing the transfers do not jeopardize the transferring party’s ability to provide service. The pricing under this agreement is consistent with Ohio’s affiliate transaction pricing rules. Duke Energy Ohio “Generation/Non-regulated” and regulated utilities use FERC’s asymmetrical pricing for transfers among themselves. Detailed records will be retained to demonstrate compliance with pricing under this Agreement.

B. Direct Energy

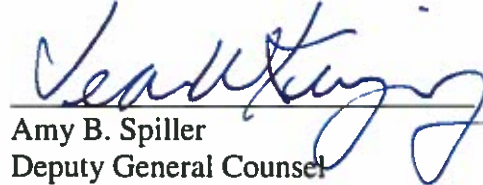
Following up on a proposal that the Commission has already rejected in another proceeding, Direct Energy asks that the Commission establish a variety of limitations around employee transfers.⁶ Direct Energy, in lodging this complaint, fails to account for the fact that the Commission’s own rules specifically allow shared services. The limitations that this commenter proposes to place on the Company are more onerous than are allowed by law. These suggestions should be rejected.

⁶ See, e.g., *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Direct Energy Reply Comments, at pg. 2 (February 20, 2014)

Duke Energy Ohio appreciates the opportunity to provide its initial comments to the Commission and respectfully requests that the Commission approve the Company's Application, as filed, with the modifications agreed to herein.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

A handwritten signature in blue ink, appearing to read 'Amy B. Spiller', is written over a horizontal line.

Amy B. Spiller
Deputy General Counsel
Jeanne W. Kingery (Counsel of Record)
Associate General Counsel
Duke Energy Business Services LLC
139 East Fourth Street, 1303 Main
Cincinnati, OH 45202
(513) 287-4359
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 21st day of May, 2014, to the following parties.


Jeanne W. Kingery

Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad St., 6th Floor
Columbus, Ohio 43215
Thomas.McNamee@puc.state.oh.us

Counsel for Staff of the Commission

Joseph Olier
Matthew White
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
joliker@igsenergy.com
mwhite@igsenergy.com

Counsel for IGS Energy

Joseph M. Clark
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
Joseph.clark@directenergy.com

Counsel for Direct Energy Services, LLC, and
Direct Energy Business, LLC

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Summary: Comments Reply Comments of Duke Energy Ohio, Inc. electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.