

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of its)
Fourth Amended Corporate Separation) Case No. 14-689-EL-UNC
Plan Under R.C. 4928.17 and Ohio)
Adm.Code 4901:11-37.)

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

FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) On April 16, 2014, Duke filed an application for approval of its fourth amended corporate separation plan, pursuant to R.C. 4928.17 and Ohio Adm.Code 4901:1-37-06.
- (3) By Entry issued May 6, 2014, interested entities were given until May 15, 2014, and May 21, 2014, to file comments and reply comments, respectively.
- (4) Comments were timely filed by Staff, Direct Energy, LLC and Direct Energy Business, LLC (jointly referred to as Direct Energy), and Interstate Gas Supply, Inc. (IGS). Reply comments were timely filed by Duke, Direct Energy, and IGS. The following is a summary of the portions of Duke's proposed fourth corporate separation plan that have been commented on, as well as the specific comments provided and any associated replies.

Parts IV and V of the Plan, a List Identifying Financial Arrangements and Transactions and a List of all Current Affiliates Identifying Each Affiliate's Product(s) and/or Service(s):

- (5) Duke proposes to update the plan as a result of the merger between Duke Energy Corporation and Progress Energy, Inc.

As the merger is completed, the listing of current affiliates and their products and services, and the listing of agreements among the various affiliates will be updated. (App., Ex. A at 6-65.)

- (6) Staff concurs with the addition necessitated by the merger; however, Staff is concerned about the intercompany asset transfer agreement language change proposed by Duke. Staff believes the new language may be interpreted as providing for accounting treatment of the transfer of assets that is not in conformance with the Commission's corporate separation rules. Therefore, Staff recommends Duke be directed to modify the proposed language to include a statement that detailed records will be kept which demonstrate that assets will be transferred at fully-allocated cost. (Staff at 4.) Duke agrees to make this revision (Duke Reply at 6).
- (7) The Commission finds that Staff's proposal is appropriate and reasonable. Therefore, Duke should make revisions to the plan reflecting Staff's recommendation.

Tariffed Service Offerings:

- (8) Duke proposes to amend its tariff to allow it flexibility to offer additional electric-related services to residential and nonresidential customers, contingent upon the Commission allowing all costs and revenues related to such services being treated, for ratemaking purposes, in parallel fashion. The proposal provides that these special customer services shall be provided at a rate negotiated with the customer, but no less than Duke's fully-allocated cost. Duke notes that such flexibility to offer additional electric-related services to customers has been allowed for other utilities in Ohio, *citing In re Application of FirstEnergy Corp., et al.*, Case No. 99-1212-EL-ETP, et al., Opinion and Order (July 19, 2000) (*FE ETP Case*). Duke states that such amendment is permissible as an amendment not for an increase in rates under R.C. 4909.18. (App. at 3, Ex. C at 3.)
- (9) Direct Energy opposes Duke's proposal to offer products and services other than retail electric service, opining that Duke should focus on its distribution business. Direct Energy asserts

that Duke fails to provide any justification or examples where customers are asking for these types of services from their distribution utility. Stating that Duke, as the customer's incumbent monopoly utility, possesses an inherent advantage over other competitors in these unregulated environments, Direct Energy believes Duke's entrance into the market for these types of products and services could cause significant harm to other competitors. In addition, Direct Energy argues that Duke fails to adequately explain how these new products and services will not be subsidized by its utility business; rather, Duke only states that it will charge customers at least its fully-allocated costs, with no explanation of what that entails. Direct Energy asserts, and IGS agrees, that, to the extent Duke is permitted to offer these products and services, the Commission should ensure that any Duke assets used to provide these services and products are also available to other competitors on a competitively neutral basis. For example, Direct Energy recommends competitors be permitted to put charges on Duke's bills or include inserts in the bills if Duke is permitted to do so, and, if call center employees take calls about the products and services, they should inform customers about other similar products and services from other companies. Finally, Direct Energy asserts that, if permitted to do so, Duke should only be allowed to offer the products and services through a separate affiliate and, such affiliate, should be prohibited from using any name referring to Duke's name, unless it is accompanied by a disclaimer that the company is not the utility. (Direct Energy at 3-5; IGS Reply at 4.)

Duke states that, contrary to Direct Energy's assertions, justification for the change is not required, as long as the corporate separation plan adequately protects distribution ratepayers and the marketplace. The most important issue being that the services in question will be priced at no less than their fully-allocated cost, as Duke is proposing herein, noting the definition of fully-allocated cost set forth in Ohio Adm.Code 4901:1-37-01(G). In response to the suggestion that the assets used by Duke should be similarly available to competitors, Duke states that, to the extent such is required by law, Duke will make the facilities available to competitors. Duke also states that it does not seek to offer the services through an affiliate in this application, even though these

services can be offered by an affiliate under the terms of the existing corporate separation plan, without Commission authorization. As for any disclaimer that the entities are not related, Duke submits that a disclaimer is only needed if the entities were not related and the customers could be misled; however, in this situation, the companies would actually be affiliated; thus, there is no risk that customers would be misled. (Duke Reply at 4-5.)

- (10) IGS also objects to Duke's proposal, arguing that state policy, R.C. 4928.02, favors competition and prohibits the recovery of generation-related costs through distribution rates. In addition, because Duke is no longer authorized to operate pursuant to functional separation, unless it is granted a temporary waiver, R.C. 4928.17(A)(1) requires Duke to provide competitive retail electric service (CRES) of the nonelectric product or service through a fully-separated affiliate. Despite this requirement, IGS notes that Duke is requesting that its distribution business have authority to offer products that are available from competitive suppliers. Moreover, IGS asserts that Duke's request to recover the cost of providing competitive services through distribution rates is an unlawful anticompetitive subsidy. IGS believes Duke's proposal herein represents a step back from the full legal corporate separation authorized by the Commission in Duke's last electric security plan (ESP) case, *In re Application of Duke Energy Ohio, Inc.*, Case Nos. 11-3549-EL-SSO, et al., Opinion and Order (Nov. 22, 2011) (*Duke ESP Case*). IGS notes that, in the *Duke ESP Case*, Duke agreed to transfer its generating assets to an unregulated affiliate by the end of 2014. IGS also points out that, 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. While acknowledging that, in the *FE ETP Case*, FirstEnergy was permitted similar tariff language, IGS maintains that such language should not be used as a model; instead, the focus should be on eliminating such language. IGS states that FirstEnergy's language is narrower than Duke's proposal, in that it does not include language such as "providing whole-house surge protection, and providing energy consumption analysis service, tools and reports." (IGS at 2, 5-7; IGS Reply at 3.)

Duke submits that IGS has a mistaken understanding of both Duke's proposal and the law. Duke explains that its modifications to the plan are unrelated to its commitment to transfer its legacy assets to an affiliate by 2014, as agreed to in the *Duke SSO Case*. According to Duke, the Commission's Order in that case requires Duke to transfer generating assets; however, the Order does not address products or services other than retail electric service. In Duke's view, the Order in the *Duke ESP Case* does not limit Duke's business to distribution and transmission only, and any attempt to do so would be contrary to R.C. 4928.17, which allows Duke to provide other retail electric service, directly or through an affiliate, under appropriate terms of a corporate separation plan. Moreover, Duke is not requesting to recover the cost of providing the services through distribution rates; rather, it is proposing that the negotiated rate for any given service may not be less than its fully-allocated cost. Therefore, the services would be self-supporting and may even contribute to reductions in distribution rates. Finally, Duke offers that, by approving the stipulation and tariff language in the *FE ETP Case*, the Commission found that an arrangement, which is directly analogous to the one proposed in the instant case, is legal under Ohio corporate separation requirements. (Duke Reply at 2-4.)

- (11) Staff, in general, is not opposed to Duke's request to offer nonregulated services in the manner it proposes. However, due to the complexity of demonstrating whether a rule violation has occurred and ensuring that customers are aware, in real time, of their competitive supplier options, any customer requesting the proposed unregulated products or services should sign a work order stating that they have been informed that these products or services are unregulated and that they can be performed by other vendors. Therefore, Staff sets forth proposed language to be included in Duke's tariff. In addition, to improve readability, Staff recommends the tariff pages setting forth the special customer services be reformatted so customers will not miss certain relevant details. (Staff at 4-5.) Duke accepts Staff's recommendations (Duke Reply at 2).

In response to Staff's comments, Direct Energy states that Staff's proposal does not adequately mitigate the potential

harm explained in the comments filed by Direct Energy and IGS (Direct Energy Reply at 3). IGS disagrees that potential anticompetitive advantage can be resolved through disclosure requirements. IGS advocates that Duke not be allowed to offer unregulated service through its regulated distribution utility; however, IGS is not opposed to Duke offering unregulated service through its affiliates. (IGS Reply at 2.)

- (12) Initially, the Commission finds that Staff's proposed language requiring the provision of a signed work order from customers stating their understanding that the products and services are unregulated and offered by other vendors is necessary and appropriate; therefore, Duke is directed to incorporate Staff's recommendation into its tariff language. In addition, we agree that the reformatting suggested by Staff improves the readability of the tariff language for the customer and we find that Duke should incorporate this revision in its plan. The Commission notes that, in considering Duke's proposal to add offerings to its tariff for electric-related services to residential and nonresidential customers, Duke's commitment to ensure that these special customer services will be provided at a rate negotiated with the customer, but no less than Duke's fully-allocated cost, is of paramount importance. While we find that Duke's proposal in this regard is reasonable and should be approved, we emphasize that none of the costs associated with the services and products may be passed on by Duke to the regulated utility's customers. Furthermore, as a condition to our approval of this provision of the plan, we direct Duke to establish the necessary agreements and processes to guarantee that, upon the request of the Commission or Staff, Duke has access to the information necessary to prove that no costs associated with these products or services are being borne by the regulated utility's customers.

With regard to the concerns raised by Direct Energy and IGS, the Commission appreciates their comments; however, upon consideration of Duke's proposal, we find no substantiated reason, at this time, to find that the proposed revisions to the plan are not in compliance with state policy or the Commission's corporate separation rules. Having said that, it is our expectation that through its implementation of this corporate separation plan, Duke will adhere to all applicable

rules and regulations. Any concerns raised once Duke has implemented its plan will be reviewed and considered by the Commission on a case-by-case basis.

Employee Transfers:

- (13) Duke sets forth certain items that must be contained in the cost allocation manual (CAM), including a copy of the previous and new job descriptions for all transferred employees from the electric utility to an affiliate or vice versa (App. at 72).
- (14) Direct Energy recommends Duke be required in the CAM to specifically indicate, as applicable to an electric utility employee transfer to an affiliate: whether the employee played any role in the development of an ESP or market rate offer (MRO) filing; the date the employee was transferred to the affiliate; and the role the employee played in the development or preparation of the ESP or MRO. According to Direct Energy, this would ensure transparency and that Duke affiliates do not possess any competitive advantage over the other CRES providers. (Direct Energy at 3.)
- (15) Duke replies that Direct Energy's proposal has already been rejected by the Commission in *In re Investigation of Ohio's Retail Service Market*, Case no 12-3151-EL-COI. Moreover, Duke states that the Commission's rules specifically allow for shared services and the limitations proposed by Direct Energy are more onerous than what are allowed by law. (Duke Reply at 6.)
- (16) The Commission finds that it is unnecessary, at this time, to require Duke to provide the information requested. There has been no evidence indicating that such information is either appropriate or warranted.

Conclusion:

- (17) Accordingly, the Commission finds that the application filed by Duke on April 16, 2014, requesting approval of its fourth amended corporate separation plan should be approved, subject to the revisions and directives set forth in findings (7) and (12) above. Duke should revise its plan, in accordance with the directives of this Order.

It is, therefore,

ORDERED, That the application filed by Duke on April 16, 2014, is approved, subject to the revisions and directives set forth in this Finding and Order. It is, further,

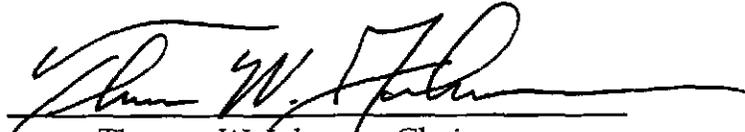
ORDERED, That Duke be authorized to file, in final form, two complete copies of the tariff pages consistent with this Finding and Order and to cancel and withdraw its superseded tariff pages. Duke shall file one copy in its TRF docket and one copy in this docket. It is, further,

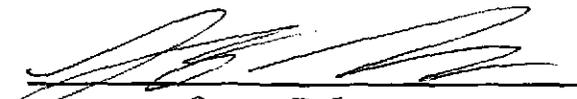
ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date of this Finding and Order and the date upon which the final tariffs are filed with the Commission. It is, further,

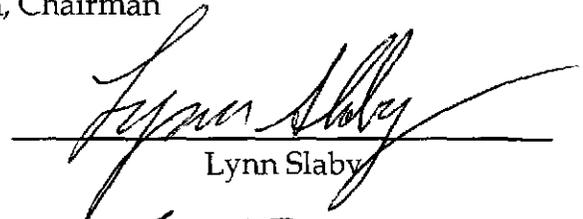
ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

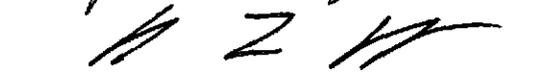
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

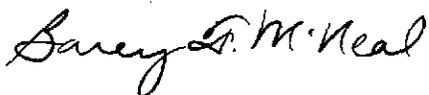

Lynn Slaby


M. Beth Trombold


Asim Z. Haque

CMTP/vrm

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Barcy F. McNeal
Secretary