

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of Chapter 4901:1-10 of the Ohio) Case No. 17-1842-EL-ORD
Administrative Code.)

REPLY COMMENTS OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On July 17, 2019, the Commission issued amended rules for comment regarding the minimum electric service standards for investor-owned electric utilities and transmission owners. Multiple stakeholders filed initial comments, including The Ohio Consumers' Counsel (OCC), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy"), Duke Energy Ohio, Inc. ("Duke"), Ohio Power Company ("AEP Ohio"), and The Dayton Power and Light Company ("DP&L"). Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") appreciates the opportunity to respond to these comments.

II. COMMENTS

A. Definition of "Non-commodity good" or "Non-commodity service" in Ohio Adm.Code 4901:1-10-01(W)

FirstEnergy requests that the Commission add the phrase "or product" to the proposed definition of "Non-commodity good" or "Non-commodity service," which would exclude tariffed products, in addition to services, provided by the electric distribution utility

“EDU”) from the definition. FirstEnergy believes that that definition conflicts with its Corporate Separation Plan and tariff provisions.¹

The Commission should reject FirstEnergy’s suggestion. Ohio law prohibits EDUs from directly offering non-electric products—referred to as non-commodity services here. Therefore, FirstEnergy’s proposed modification would conflict with Ohio law.²

B. Non-Commodity Billing in Ohio Adm.Code 4901:1-10-22 (“EDU-only bill”) and 4901:1-10-33 (“UCB”)

Duke argues that customers prefer to receive an invoice for non-commodity charges on the bill issued by the EDU because customers do not want to “manage multiple bills that might have different deadlines and payment directions.”³ Additionally, Duke notes nothing in the law prohibits this practice, and that it would actually provide customers with more context and transparency regarding their energy services, which will “enable better-informed customer decision-making than separate bills would.”⁴ Finally, Duke notes that the Commission has the ability to address any concerns stemming from these goods and services.⁵ Consistent with IGS’ Initial Comments, IGS emphatically agrees with these assertions.

¹ FirstEnergy Comments at 2-3.

² See R.C. 4928.17(A). In April of 2018, RESA filed a formal complaint with the Commission requesting, among other things, that the Commission issue the necessary orders to modify FirstEnergy’s existing corporate separation plan to be in compliance with the law. See *RESA v. FirstEnergy*, Case No. 18-736-EL-CSS, Complaint (Apr. 25, 2018) (hereinafter “*RESA Complaint*”). In January 2019, the proceeding was stayed until the outcome of a previously ordered audit FirstEnergy’s compliance with its corporation separation plan. *RESA Complaint*, Entry (Jan. 15, 2019).

³ Duke Comments at 4-6.

⁴ *Id.*

⁵ *Id.*

However, IGS strongly disagrees with Duke's contention that allowing CRES providers to include non-commodity goods and services on a supplier consolidated bill, while prohibiting the EDU's bill from including any of these charges is "especially unfair."⁶ Contrary to Duke's claim, there is no blanket requirement to treat CRES providers and EDUs equally with respect to non-commodity services. In fact, the law does not. To establish a level playing field, Ohio law requires EDUs to provide non-commodity services through an affiliate. In so doing, EDU's are prohibited from leveraging their monopoly distribution assets for the benefit of their own unregulated non-commodity services. There are very strong reasons for such a prohibition.

Indeed, Duke's billing system is paid for by all distribution customers. It should not be permitted to utilize such a monopoly asset as a platform to make unregulated profits for its own unique benefit. In contrast, when a CRES provider issues a bill, it must pay for the employees involved, information technology development, office space, computers, printers, ink, stamps, and envelopes.

Moreover, when a CRES provider offers a customer a non-commodity service or product, there can be no confusion that the product does not relate to non-competitive retail electric service. Whereas, when an EDU markets a non-commodity product or service, a customer may be misled into believing that such a service is necessary to keep the lights on and that failure to pay may result in service disconnection.

⁶ *Id.*

C. Third-Party Consolidated Bills

In its comments, DP&L raises concerns regarding consolidated billing for utility services provided by a third-party, namely Arcadia Power.⁷ DP&L suggests additions to the EDU-only bill and UCB rules to “ensure the utilities are not held responsible for the actions of a third-party over which they have no control...”⁸ In addition, DP&L believes third-party consolidated billing providers should be subject to certain Commission rules.⁹ IGS opposes both suggestions.

Initially, IGS disagrees with DP&L’s characterization of this offering as an “attempt[] to circumvent rules.”¹⁰ There is no evidence that Arcadia Power’s business model violates any Commission laws, and DP&L itself notes that it is unaware of any customer complaints regarding this service.¹¹ DP&L’s proposal would interfere with consumer preferences for the manner in which they are invoiced and pay for retail electric service. So long as a customer’s arrangement with a third party agent is transparent and legitimate, the Commission should not second guess consumer preferences.

Additionally, IGS disagrees that these entities must abide by the same consumer protections as the EDUs and CRES providers. No evidence suggests that these third

⁷ DP&L Comments at 10-11, 15.

⁸ *Id.* at 11.

⁹ *Id.*

¹⁰ *Id.* at 10.

¹¹ *See Id.*

parties are engaging in activities as power brokers or marketers.¹² Therefore, it does not appear that the Commission has jurisdiction over these entities.

However, although IGS does not believe this is necessary, should the Commission wish to explore whether this business lies within the scope of its jurisdiction, IGS suggests it investigate through a separate docket. This will allow for a full understanding of the function(s) of these entities, as well as a complete record and full stakeholder participation for the Commission's consideration.

D. Customer Block & Supplier List in Ohio Adm.Code 4901:1-10-24(H)

Notably, only one stakeholder filed comments in favor of the customer block proposed in Ohio Adm.Code 4901:1-10-24(H).¹³ The stakeholder, AEP Ohio, alleges that it has "some customers who do not understand the customer choice process and end up switching suppliers sometimes as often as monthly."¹⁴

IGS questions the validity of this assertion. First, it should not be assumed that a customer who switches suppliers frequently does not "understand the customer choice process." In fact, that can indicate quite the opposite. Some suppliers offer low introductory rates or incentives for an initial period. Customers that take advantage of these promotions frequently switch to receive the maximize benefits. Second, IGS notes that 4901:1-10-21(G) & (H) require an EDU to take certain steps should a customer

¹² Power brokerages and power marketers assume "the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state." Ohio Adm.Code 4901:1-21-01(DD), (FF). DP&L does not provide any facts to suggest that Arcadia is supplying retail electric generation service to retail customers.

¹³ *AEP Comments* at 18-19.

¹⁴ *Id.* at 19.

contact the EDU with CRES issues. If a customer does not understand the choice process, it seems highly likely that these requirements would be triggered, perhaps monthly, and would provide some assistance to this customer. Finally, IGS is concerned that if a customer truly does not understand the customer choice process, then the customer will also not understand the block. Thus, this addition should be rejected.

AEP Ohio also suggests removing the requirement that the EDUs maintain a list of CRES providers active in their territory.¹⁵ IGS opposes this suggestion. As the EDUs are already required to have this information, the benefit to customers of having this easy to read informational resource outweigh the light burden required to post the list. AEP Ohio presented no arguments to the contrary. Thus, this proposal should be rejected.

E. Shadow Billing

OCC proposes a requirement that the EDUs record “shadow-billing data” to compare the difference between an EDU’s standard service offer (“SSO”) and the rates charged by CRES providers. OCC alleges this would “determine the total savings or spending by shopping for generation service from an electric marketer.”¹⁶ IGS is disappointed in OCC’s continued misrepresentation of the benefits of the retail market and urges the Commission to reject this suggestion.

Gas stations provide a great analogy to the retail electricity market. All gas stations sell gas, but customers may choose one gas station over another for a whole host of reasons. Some have credit cards or rewards programs, and some are linked to purchases made at a grocery store. Some gas stations are easier to access from the road, and some

¹⁵ *Id.* at 18.

¹⁶ OCC Comments at 15.

offer car washes and free vacuums and air. Some have cleaner bathrooms, friendlier employees, or your favorite slushy. And as technology has advanced, some gas stations have even made modifications to the gas itself. Some folks hunt for the lowest price, and others simply choose the most convenient.

The retail electricity market operates the same way. While all CRES providers supply electricity, customers choose are free to choose one supplier over another. Some CRES providers offer incentives like airline miles, while others include products like a smart thermostat or energy efficiency light bulbs. Some customers elect to enter into multi-year contracts as a form of risk mitigation from market volatility, and others choose a product that fluctuates with the market or the time of day the electricity is used. Some customers choose to meet part or all of their demand with renewable energy, while some pair electricity from a CRES provider with power generated at their home. And just as some customers give the cashier a twenty-dollar bill to fill up and others just pump until the tank is full, some customers in the retail electric market prepay for generation and others just use as much as they need.

Adoption of OCC's suggestion would further its mistaken belief that the only benefit customers receive from competition is lower prices. This narrow view of electric choice is inconsistent with the state policy provided in R.C. 4928.02. The General Assembly clearly envisioned a more dynamic retail electric market when requiring the Commission to ensure diversity of suppliers **and supplies** and "encourage innovation and market access for cost-effective supply- and demand-side retail electric service..."¹⁷ Further, retail

¹⁷ R.C. 4928.02(C), (D); See R.C. 4928.06(A).

electric service should “provide consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.”¹⁸ Reducing the benefits of the retail electric market to a simple price comparison unreasonably raises the importance of one benefit above the rest.

Additionally, it is unclear what purpose this annual comparison will serve. Aside from it comparing apples to oranges, it will be backward looking data about a fluctuating market. And while one utility has implemented shadow billing, it did so as part of a major settlement, which should not be interpreted as support in future proceedings by any of the signatory parties or the Commission.¹⁹

Finally, this approach to viewing customer benefits will become even more troublesome as the distribution grid continues to advance. Customers will be exposed to more offerings for time-of-use rates, prepaid electric service, and on-site generation, which do not neatly fall into OCC’s price-based comparison. For example, if the customer is currently on a rate that reflects its individual capacity contribution, the “Price-to-Compare” could mislead the customer into higher prices for generation because of the class-based capacity allocation. Thus, OCC’s revisions are misleading, harmful, and unreasonable and should be rejected.

F. Prepaid Service in 4901:1-10-22 and 4901:1-10-33

In its comments, AEP Ohio proposes multiple additions to the Prepaid service provisions, including the exclusion of five groups of customers from the Prepaid service.²⁰

¹⁸ R.C. 4928.02(B).

¹⁹ *In re App. of Columbia Gas of Ohio, Inc. for Approval of a General Exemption from Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Stipulation (Oct. 7, 2009) at 20.

²⁰ AEP Comments at 15-16, 24-25.

AEP Ohio further suggests removing all language regarding Prepaid service from the current utility consolidated bill (“UCB”) section in Ohio Adm.Code 4901:1-10-33(F), to be replaced with “(F) Prepaid service as provided for in OAC 4901:1-10-22 (C) is limited to EDU consolidated rate ready billing” for alleged consistency.²¹ IGS urges the Commission to reject these changes.

Most notably, AEP Ohio failed to provide any support or rationale for the proposed exclusions, so IGS cannot properly respond to the proposal. However, in general, IGS believes inserting these limitations, with no justification, at such an early stage of development is unnecessary and unreasonable, especially as AEP Ohio labels them only as customers that “*may* not be eligible for pre-paid service.”²² IGS is especially concerned by the unsupported exclusion of those customers utilizing SCB or bill ready billing on a UCB, and the harm this would cause to shopping customers.

IGS also notes that Ohio Adm.Code 4901:1-10-22 applies to EDU-only bills that do not include any charges from a CRES provider, so references to SCB and UCB in that section are misplaced and confusing. Instead, IGS simply suggests the Commission decline to adopt any of AEP Ohio’s proposals.

G. Seamless Move

In its comments, DP&L proposes modifications to the rules to account for the Commission’s decision to implement seamless move.²³ IGS appreciates DP&L’s

²¹ *Id.* at 24-26.

²² *Id.* at 15 (emphasis added).

²³ DP&L Comments at 2, 5-6, 12-14; *In re the Market Development Working Group*, Case No. 14-2074-EL-EDI, Finding and Order (February 7, 2018) (“*MDWG Order*”).

willingness to incorporate this improvement. IGS agrees that a definition in the rules would be appropriate, but suggests the description used by the Commission in the proceeding.²⁴

Thus, IGS recommends the following:

“Seamless move” means the transfer of an existing CRES contract to a new address, if the customer and CRES provider both consent to the transfer of the contract. The customer would receive generation service from the CRES provider on the first day of service at the new address.

Further, to carry this definition through the rules, IGS also suggests modifying DP&L’s proposed additions in Ohio Adm.Code 4901:1-10-12(F)(1) and 4901:1-10-24(E)(1):²⁵

(d) Coordination with a CRES provider to effectuate a seamless move when a customer affirmatively chooses that opportunity when calling the electric utility to transfer service.

Similarly, IGS suggests removing “from the customer” from DP&L’s proposed addition to Ohio Adm.Code 4901:1-10-29(F)(1).²⁶ Because a seamless move means the CRES provider and customer have consented to the transfer, the additional verbiage is unnecessary and incomplete.

H. Application of Ohio Adm.Code 4901:1-10-33

AEP Ohio suggests that the Ohio Adm.Code 4901:1-10-33 be revised to apply to both utility consolidated bills and supplier consolidated bills (“SCB”). This should be rejected.

²⁴ *MDWG Order* at 2, fn. 1.

²⁵ DP&L Comments at 4-5.

²⁶ *Id.* at 14.

First, this is not the appropriate place to propose requirements for CRES providers. Ohio Adm.Code Chapter 4901:1-21 governs CRES providers and already establishes certain requirements for a CRES provider-issued bill. Second, there are currently two SCB Pilot Programs under development. Because Staff is involved in the development of the programs and must approve the format and content of the bills, IGS believes that appropriate consumer protections will be in place during the pilot period.

Additionally, AEP Ohio proposes additions to the EDU-only bill and UCB requiring a CRES provider to utilize a certain formula to determine the rate for generation service that will be displayed on the bill.²⁷

Initially, IGS notes the suggested change to the EDU-only bill rule, Ohio Adm.Code 4901:1-10-22, should be rejected because the rule explicitly applies to “electric utility bills that do not includes any competitive retail electric service (CRES) provider charges.”²⁸ Thus, any provisions regarding CRES providers are unnecessary and confusing.

Regarding the UCB rule, AEP Ohio suggests that CRES providers include on the bill “[t]he unit price per kWh for competitive service shall include all costs associated with providing the customer complete service including any fixed charges, administrative fees (billing, mailing, etc.), service fees, and all additional fees passed along associated with the generation or transmission of service.” The Commission should reject this proposal.

²⁷ See AEP at 15, 24.

²⁸ Ohio Adm.Code 4901:1-10-22(A).

First and foremost, IGS notes that the EDU’s “price-to-compare” **does not include any** of the charges that AEP Ohio suggests including. All customers, regardless of whether they receive generation or even a bill from the EDU, pay the fixed charges, administrative fees, services fees, and all other additional fees associated with an EDU’s billing system through distribution rates. Thus, this is not a true “price-to-compare,” and would be incredibly misleading to customers.

Additionally, charging or displaying anything other than the agreed upon contract price would be inappropriate, misleading, and in violation of Ohio law. Although AEP Ohio asserts, with no further explanation, that its formula would somehow “reduce customer confusion,” IGS is confident that this would have the exact opposite effect.²⁹ This would also not make it easier for the Commission to answer questions, as believed by AEP Ohio,³⁰ because of the mismatch between the contract price and AEP Ohio’s suggested formula.

In addition, IGS expresses similar concerns with AEP Ohio’s proposal that it raised regarding OCC’s shadow billing suggestion. The policy of the state is to implement “flexible regulatory treatment” for the competitive electricity markets.³¹ The notion of a single kilowatt hour price is a step backward that would hamper IGS’ ability to provide dynamic pricing to customers, and therefore, the Commission should reject AEP Ohio’s suggestion.

²⁹ AEP Comments at 23-24.

³⁰ *Id.*

³¹ See R.C. 4928.02(G).

Finally, AEP Ohio proposes additional terms to be defined on the UCB, as well as explanation of “other fees contained on the bill.”³² IGS believes that if the Commission wishes to further educate consumers about charges on their electric bill through the adoption this proposal, then there should also be descriptions of every rider that is charged to the customer. This would provide customers with a complete understanding of the costs that make up their electricity bill.

I. Customer Consent in Ohio Adm.Code 4901:1-10-24

DP&L and AEP Ohio both provide modifications to Ohio Adm.Code 4901:1-10-24(E)(3), which relates to the disclosure of a residential customer’s energy usage data (“CEUD”) of certain granularity.

AEP Ohio suggests adding the clause “as required for billing purposes” to allow for the disclosure of hourly consumption data for those customers on time-of-use rates.³³ IGS believes that should the Commission adopt this modification, the rule should be amended to ensure this provision is read as a new exception and not a new limitation on a current exception. In other words, consistent with AEP Ohio’s recognition that “disclosing a customer’s hourly usage may be necessary for CRES billing purposes,” the provision should read “without the customer’s consent or a court or commission directive ordering disclosure, or as required for billing purposes.” This makes it clear that that customers may consent to disclosure of CEUD for any purpose the customer desires, not just as required for billing purposes.

³² AEP Comments at 24.

³³ *Id.* at 18.

DP&L suggests amendments to Ohio Adm.Code 4901:1-10-24(E)(3), as well as its sister provision, Ohio Adm.Code 4901:1-10-12(F)(3). IGS believes DP&L's ultimate goal is to provide flexibility in the method a customer may provide consent for the release of his or her CEUD. IGS strongly supports this goal and believes flexibility in this provision will be very useful as innovation further shapes the retail market. However, for ease and clarity, IGS suggests that the Commission revise Ohio Adm.Code 4901:1-10-24(E)(3) and 4901:1-10-12(F)(3) to be identical to the version suggested by DP&L for (F)(3).³⁴

I. PIPP Arrearages in Ohio Adm.Code 4901:1-10-29

In this section, AEP Ohio suggests modifications to the provisions related to the Ohio Development Service Agency and the PIPP program. This includes limiting the responsibility of an EDU to submit PIPP arrearages to ODSA on behalf a CRES provider to only those situations when an EDU is billing on behalf of the CRES provider. AEP Ohio reasons that "the utility would not be able to transfer pre-PIPP arrearages to ODSA on behalf of the CRES provider."³⁵

IGS cautions the Commission on making changes applicable to all EDUs at the assertion of incapability of one. Additionally, as noted above, the capability of a CRES provider to bill customers for the EDU's charges is currently under development through Pilot Programs. As this issue has yet to be addressed by the Pilot Program, IGS suggests the Commission maintain the current language until the SCB Pilot Programs have been implemented.

³⁴ See DP&L Comments at 5, 12. ("A statement that the electric utility shall not disclose residential customer energy usage data that is more granular than the monthly historical consumption data, provided on the customer pre-enrollment list pursuant to paragraph (E) of rule 4901:1-10-29 of the Administrative Code, without the customer's written consent or electronic authorization or without a court or commission order.")

³⁵ AEP Comments at 21.

III. CONCLUSION

For the foregoing reasons, IGS recommends that the Commission decline to adopt proposed revisions to Ohio Adm.Code Chapter 4901:1-10.

Respectfully submitted,

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