BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37.	))))))	Case No. 17-974-EL-UNC

THIRD SET OF REPLY COMMENTS OF INTERSTATE GAS SUPPLY, INC.

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I. INTRODUCTION

On November 21, 2021, a diverse group of parties filed a third round of comments in the above captioned proceeding. The third round of comments relates to the Daymark Report Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (collectively "FirstEnergy" or the "FirstEnergy EDUs"). IGS filed extensive initial comments outlining the many areas of the Daymark Report that should be acknowledged and recommendations for the Commission to correct the many market inequities that have occurred. Namely, the Commission should require the divestiture of FirstEnergy's nonelectric products and services business to a completely standalone company that does not leverage the FirstEnergy name and branding while also allowing competitive players the same billing access enjoyed by FirstEnergy for years.

As IGS urged the Commission in Initial Comments, each of these matters should be set for hearing.

II. COMMENTS

A. The Commission should avoid potential violations of 4928.02(H) and bar any profit-sharing or cross-subsidization of rates from profits derived from competitive services.

The Daymark Audit Report recommends that a profit-sharing mechanism be implemented regarding products and services other than retail electric services offered by FirstEnergy through their FirstEnergy Products ("FEP") business line.[1] The Initial Comments of many parties disagree with this recommendation as it would create more compliance and oversight challenges while potentially violating current state law.[2] In its Initial Comments, the Industrial Energy Users-Ohio ("IEU-Ohio") question whether or not a profit-sharing approach is practical or goes far enough to address the overall concerns of corporate separation and subsidization outlined in the Daymark Report.[3] Additionally, the Initial Comments of the Office of the Ohio Consumers' Counsel ("OCC") state that the Daymark Report recommendation is "too kind" in recommending a profit-sharing agreement and that fully barring agreements and resource sharing between with the FEP group is encouraged.[4] However, OCC concedes that should the Commission not completely bar the connection with First Energy Products that a profit-sharing mechanism should be implemented.

Any profit-sharing mechanism would likely run afoul of settled and longstanding state law. In fact, R.C. 4928.02(H) requires the Commission to avoid "anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or *to a product or service other than retail electric service*, ***and vice versa*** . . .." (emphasis

[1] Audit Report at 12-13.
[2] See Comments of IEU Ohio at 2-4, *See also* OCC Initial Comments at 35-36.
[3] Initial Comments of IEU-Ohio at 2-4.
[4] Initial Comments of OCC at 35-36.

added). Consistent with state policy, distribution rates should stand on their own without subsidies. As recommended by IGS, IEU-Ohio, and others in their initial comments, avoiding subsidization completely by barring such activities as warm transfers and the use of the captive utility customer bill to hawk products goes much further to solving these longstanding issues than a profit-sharing agreement that would continue damaging the competitive market.

B. The Commission should force FirstEnergy to open their billing platform to the competitive market to level the tilted playing field that FirstEnergy created.

It is well documented in both the Daymark Audit Report and OCC's Initial comments that the First Energy Products have held a competitive advantage over the rest of the market due to their status as the only entity permitted to utilize the utility bill.[5] It is undeniable that harm is caused to the overall market by having a single monopoly entity control a major sales channel of captive customers and be able to directly bill them for competitive products and services. OCC recommends that the arrangement be completely scrapped, or a profit-sharing mechanism be implemented. While IGS agrees that FirstEnergy should be forced to completely divest of all competitive products and services businesses, IGS also believes that the harm done to the market should be remedied.

To begin to level the playing field, the Commission should force FirstEnergy to allow competitive providers the same billing rights and privileges as those enjoyed by FirstEnergy Products. The functionality clearly already exists, and any additional

[5] OCC Initial comments at 35 and Daymark Audit Report at 71.

infrastructure needed to create such functionality should be funded with the ill-gotten revenues of FirstEnergy Products.

III. CONCLUSION

For the forgoing reasons and those outlined in the Initial Comments of IGS, the Commission should hold a hearing in this proceeding. After creating a record, the Commission should ultimately require FirstEnergy to completely divest all businesses that offer products and services other than retail electric services, cease using the utility name to offer such products, and allow the competitive market the same privileges extended to FirstEnergy's own products for many years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this Third *Set of Reply Comments of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on December 13, 2021. The PUCO's e-filing system will electronically serve notice of the filing on the subscribed parties. Additionally, the parties below have received a copy of this filing via electronic transmission.

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