BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver of Specific Sections of the Ohio Administrative Code.	)))	Case No. 21-1100-EL-WVR

PROPOSED REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

For the reasons explained in its accompanying Motion, Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) respectfully submits the below limited Proposed Reply Comments in response to two points in comments made by the Retail Energy Supply Association (RESA), and Interstate Gas Supply, Inc. (IGS).

II. COMMENTS

First and most importantly, IGS and RESA misapprehend the rule requirement at issue. They believe that the revised rule 4901:1-10-33(A), which states that a utility "cannot discriminate or unduly restrict a . . . CRES provider from including non-jurisdictional charges on a consolidated electric bill," affirmatively ***requires*** utilities to include non-jurisdictional charges on consolidated bills. For example, IGS says "Nowhere in the rule does it imply that if a utility or its affiliate do not offer any non-jurisdictional products then CRES suppliers cannot either."[1] However, neither IGS nor RESA meaningfully attempt to grapple with the Commission's orders implementing this

[1] Initial Comments of Interstate Gas Supply, Inc., p. 6 (January 6, 2022) (IGS Comments).

rule revision,[2] which clarified just this point repeatedly. The Company clearly quoted and cited such language in its Application in this case:

> Rule 4901:1-10-33(A), which states "[a]n electric utility cannot discriminate or unduly restrict a customer[']s CRES provider from including non-jurisdictional charges on a consolidated electric bill," was added specifically to "directly address[] the situation where an EDU consistently enters into a contract only with the EDU's affiliate regarding placement of only that affiliate's non-jurisdictional service charges on the EDU's bill at the exclusion of all potential providers." The Commission itself clarified that this provision "does ***nothing more than prohibit undue or unreasonable prejudice or disadvantage***, as already required in R.C. 4905.35(A), in a ***specific context***," and that "the need for this specified requirement [was] to address circumstances similar to those described in Paragraph 213 of the Finding and Order [which discusses the placement of only affiliate charges]." Furthermore, the Commission explicitly stated in its initial order that "this provision ***does not force*** the EDU to place the customer's CRES provider's non-jurisdictional service on the consolidated bill," but rather "***strikes a middle ground*** whereby fairness to the CRES provider is accounted for as is the ***EDU's freedom to contract is respected***."[3]

RESA simply dismisses this language by calling it a "separate discussion" that only applies to half the rule and therefore concludes that "the Commission thus directed the electric distribution utilities to accommodate the charges on bills unless there was a good reason to exclude them in a particular case."[4]

IGS and RESA's arguments do not leave any room for the "middle ground" contemplated by the Finding & Order and they do not respect the EDU's freedom to contract. Furthermore, their arguments flatly contradict the Commission's statement that the rule revision does "nothing more"

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[2] *In the Matter of the Commission's Review of Its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Finding and Order (February 26, 2020) (Finding & Order); *Id.*, Entry on Rehearing (January 27, 2021) (Rehearing Entry).

[3] *See* Application, p. 2 (November 1, 2021) (quoting Finding & Order, p. 79, Rehearing Entry, p. 32, and Finding & Order, p. 85) (emphasis added).

[4] Comments of the Retail Energy Supply Association, pp. 2, 6 (January 6, 2022) (RESA Comments).

than eliminate "prejudice or disadvantage" in a "specific context." In this case, IGS and RESA demand that the Commission ***force*** the Company to place non-jurisdictional charges on bills, despite the Commission's explicit statement in the Finding & Order that the rule "does not force" such an outcome.[5] This language was not limited to half of the rule as RESA claims—the Commission quoted the ***entire*** provision before making this limiting statement:

> the Commission has adopted amended subsection (A) to include the following sentence at the end of that provision, ***"An electric utility cannot discriminate or unduly restrict a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill."*** The EDU must allow the customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list the newly termed, "non-jurisdictional services" charges. ***While this provision does not force the EDU to place the customer's CRES provider's non-jurisdictional service on the consolidated bill,*** the Commission believes its amendment strikes a middle ground whereby fairness to the CRES provider is accounted for as is the EDU's freedom to contract is respected.[6]

As the Public Utilities Commission Staff correctly summarized, "the rules allow an electric distribution company to either allow all competitive retail electric service (CRES) providers to utilize the consolidated bill for non-jurisdictional charges or not allow any non-jurisdictional charges on the consolidated bill including those of an affiliate."[7]

Second, IGS misstates the Company's technical capabilities at this time. To be clear, the Company does not believe that any technical justification is required for a utility, under the rule, to elect to comply with the rule by not offering any non-jurisdictional charges on the bill. However, since IGS has brought this point up, the Company believes it is necessary to respond. IGS appears to believe that the Company's ability to place Duke Energy One charges on the bill

[5] Finding & Order, p. 85.
[6] *Id.* (emphasis added).
[7] Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, p. 4 (December 10, 2021.

proves automatically that the Company could place any entity's unregulated charges on the bill immediately.[8] This is a false equivalence.

The Company's existing ability to place Duke Energy One charges on the bill was put into place many years ago and this ability is unique to Duke Energy One from a technical standpoint currently. The information technology changes made over twenty years ago created interfaces between Duke Energy One's unregulated predecessor Cinergy Services and the Company's predecessor Cinergy that enabled Duke Energy One to communicate certain transactions into the Company's billing system. The new billing system, Customer Connect, contains interfaces mirroring those same capabilities that exist in the legacy system. The Company would not be able to simply insert another entity or multiple entities into these interfaces with a simple code block or table change. In order to open the consolidated bill to CRES providers generally, which would most likely have to be done via EDI transactions, the Company would need to design and build completely new functionality via a special project after the stabilization of Customer Connect. Such a project would proceed through the usual phases: the gathering of requirements, design, build, and testing in SAP. Thus, it is not correct that the Company "already possesses the functionality to add such charges" for entities other than Duke Energy One[9] and is simply refusing access to this existing capability to others. The existing capabilities are unique to Duke Energy One and the Company would need to build new functionality to enable similar capabilities for all CRES providers. The Company did not see a need to make any demonstration on this point in its Application because the Company was proposing full—albeit slightly delayed—compliance via removal of its affiliate's charges from the consolidated bill entirely. The Commission need not

[8] *See* IGS Comments, p. 5. It is not clear whether RESA shares this opinion.
[9] IGS Comments, p. 5.

reach this question at all to evaluate the Company's application for its lawful proposed avenue of compliance.

III. CONCLUSION

The Company respectfully requests that the Commission consider these Proposed Reply Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Proposed Reply Comments of Duke Energy Ohio, Inc. was served on the following parties this 21st day of January 2022 by regular U. S. Mail, overnight delivery or electronic delivery.

/s/ *Larisa M. Vaysman*
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Summary: Comments Proposed Reply Comments of Duke Energy Ohio, Inc. electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Rocco D'Ascenzo and Kingery, Jeanne W. and Vaysman, Larisa M.