BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of OhioEdison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a New Service | )))) | Case No. 14-1980-EL-ATACase No. 14-1981-EL-ATACase No. 14-1982-EL-ATA |

**REPLY IN SUPPORT OF INTERSTATE GAS SUPPLY INC’S AND IGS ENERGY HOME SERVICE’S MOTION TO INTERVENE AND REQUEST FOR PROCEDURAL SCHEDULE**

1. **INTRODUCTION**

 In the Application filed in this docket (“Application”), Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (“FirstEnergy”)*, three regulated* *electric distribution* *utilities*, request permission from the Public Utilities Commission of Ohio (“Commission”) to utilize electric distribution assets to offer their customers unregulated insurance service including, *but not limited to,* disaster insurance. FirstEnergy indicates that it will be offering these services through “third party companies.” In the Application, FirstEnergy: 1) does not list the companies that will be providing these services; 2) does not indicate how much it will be charging third party companies for the right to utilize distribution ratepayer assets; 3) does not indicate whether FirstEnergy, or FirstEnergy’s parent company, will receive royalty payments from these third party companies; 4) does not indicate whether FirstEnergy will allow the use of distribution ratepayer assets in a non-discriminatory manner; and 5) does not limit the type of insurance services covered in the Application. In short, FirstEnergy’s Application is vague and opaque.

 On December 3rd 2014, Interstate Gas Supply, Inc. (“IGS Energy”) and IGS Home Services (collectively “IGS”) filed a Motion to Intervene and Request for Procedural Schedule in this proceeding. As a competitive retail electric service (“CRES”) provider in the FirstEnergy service territory, IGS Energy has a substantial interest in ensuring 1) that FirstEnergy’s markets remain competitive; 2) that FirstEnergy does not unduly favor a select group of companies while discriminating against all other companies; and 3) that FirstEnergy does not use distribution ratepayer assets to subsidize competitive products in the market. Further, IGS Home Services is a provider of non-commodity products and services (similar to the non-commodity products and services FirstEnergy is now selling to customers) and has a vested interest in ensuring that FirstEnergy does not use its monopoly status to favor competing non-commodity products in the market.

 In its Memorandum Contra IGS’ Motions (“Memo Contra”), FirstEnergy seeks to exclude IGS from this proceeding and would have the Commission rubber stamp its Application without any further investigation or inquiry. The Commission must not grant this request. Despite FirstEnergy’s erroneous claims in its Memo Contra, due process and Ohio law requires that IGS’ Motion to Intervene and Request for a Procedural Schedule be granted.

1. **ARGUMENT**
2. **IGS’ Motion to Intervene Should be Granted**

As explained in IGS Motion to Intervene, IGS Energy and IGS Home Services both have substantial interests in this proceeding that will be materially disadvantaged if IGS’ rights to participate in this proceeding is denied. Thus, given the Supreme Court of Ohio’s liberal intervention standard (which supersedes any case law FirstEnergy cites in its Memo Contra) the Commission must grant IGS’ Motion to Intervene.[[1]](#footnote-1)

 In its Memo Contra, FirstEnergy claims that IGS has no interest in this proceeding because IGS does not directly compete against the services FirstEnergy seeks to offer customers.[[2]](#footnote-2) However, because FirstEnergy’s Application is so devoid of information it is impossible to tell exactly the services FirstEnergy will be providing customers if FirstEnergy’s Application is granted. FirstEnergy asks permission to provide “insurance services” which is extremely broad and vague and could include a whole number of services including, but not limited to auto insurance, health insurance, life insurance, and home protection service. The Application does not limit the type of insurance services- it merely lists disaster insurance as an example of insurance service FirstEnergy “may” provide customers. Thus, FirstEnergy cannot now claim that IGS will not compete, either directly or indirectly, against the products FirstEnergy will be offering, when it is impossible to tell what products FirstEnergy actually will be offering to customers.

 Further, while it is impossible to tell which new insurance products FirstEnergy intends to offer customers, IGS undoubtedly is a competitor of FirstEnergy’s existing unregulated product offerings to customers. IGS Home Services currently offers Home Protection products which are unregulated products FirstEnergy now offers to customers and advertises on its website.

 The Application also indicates that it will be utilizing the utility bill to bill for the non-commodity insurance services it wishes to offer customers.[[3]](#footnote-3) IGS has requested that FirstEnergy allow IGS to place charges on the EDU bill for similar non-commodity services. *See attached IGS’ Letter to FirstEnergy*. FirstEnergy has denied IGS’ request. *See attached letter denying IGS’ request*. In this proceeding, FirstEnergy is once again seeking to expand its non-commodity product offerings that can be billed on the utility bill, yet FirstEnergy is actively excluding CRES providers (such as IGS) from billing for non-commodity charges. Thus, IGS has a direct and substantial interest in this proceeding to ensure that preferential access to the electric distribution utility bill does not continue to be given to a select group of companies of FirstEnergy’s choosing.

Moreover, in its Memo Contra FirstEnergy only sites one case from 2005 that purportedly supports excluding IGS’ participation in this proceeding.[[4]](#footnote-4) That case, however, involved an unregulated entity attempting to intervene in rate case pertaining to regulated service; thus, the Commission determined the unregulated entity could offer little contribution to the issues in the case. And that case was determined *before* the Supreme Court of Ohio ruled that intervention ought to be liberally allowed, overruling the Commission’s previous stricter interpretation of the intervention standards. Moreover, even assuming the Akron Thermal proceeding governs (which it does not), under the Akron Thermal standards, IGS’ intervention would be allowed.

In *Ohio Consumers Counsel v. the Public Utilities Commission of Ohio* the Office of Consumer’s Counsel (“OCC”) filed a motion to intervene in two proceedings in which two Ohio electric utilities sought authority from the Commission to modify its tariffs to change accounting treatment for certain deferred utility charges. [[5]](#footnote-5) In overturning the Commission’s initial denial of OCC’s motion, the Supreme Court of Ohio held that “in our view . . . intervention in Commission proceedings ought to be liberally allowed.”[[6]](#footnote-6) The Ohio Supreme Court’s liberal intervention standard post-dates, and supersedes, the Akron Thermal case cited by FirstEnergy.

 Further, even under the Akron Thermal standard IGS would be allowed intervention in this proceeding. The Akron Thermal proceeding involved a case in which a competitor (FirstEnergy Facilities Group) intervened in a proceeding where Akron Thermal was seeking to increase its rates.[[7]](#footnote-7) In this proceeding, however, FirstEnergy is seeking to expand competitive product offerings - not increase distribution rates. Thus, clearly IGS, a competitor, has a direct interest in a proceeding where a regulated utility would leverage distribution assets to expand products in the markets which IGS competes.

 Finally, FirstEnergy makes the claim that because IGS appealed a recent Duke decision to the Ohio Supreme Court, it is somehow evidence that IGS’ participation in this proceeding would be unduly burdensome.[[8]](#footnote-8) However, if filing a Supreme Court of Ohio appeal is grounds for denying a party’s intervention, FirstEnergy would never be allowed in any Commission proceeding. FirstEnergy regularly files Supreme Court Appeals yet is not denied the ability to participate in proceedings in future cases.[[9]](#footnote-9)

 Further, IGS’ appeal of the Duke decision to the Supreme Court is a reason why the Commission should not give the issues presented in this proceeding short shrift. Utilities expanding into non-regulated competitive businesses raises serious legal concerns including but not limited to 1) concerns about corporate separation; 2) concerns about cost allocation; 3) concerns about whether FirstEnergy is inappropriately discriminating in the marketplace; 4) concerns about whether FirstEnergy is appropriately using regulated ratepayer assets; and 4) concerns about whether FirstEnergy is earning a profit above its Commission authorized rate of return. Thus, the Commission should not approve FirstEnergy’s application without developing a full record in this proceeding to determine whether FirstEnergy’s Application is consistent with Ohio law. To do otherwise would only create more litigation down the road.

 For all of the reasons stated herein the Commission should grant IGS’ Motion to Intervene in this proceeding.

1. **IGS’ Request for a Procedural Schedule Should be Granted**

 The Commission should also grant IGS’ request for a procedural schedule in this proceeding. As already noted, FirstEnergy’s Application is devoid of any meaningful information that will enable the Commission to make a determination of the reasonableness of the Application. Thus, at a very minimum the Commission should grant parties the opportunity to conduct discovery in this proceeding; and, if necessary, the Commission should hold a hearing.

 With its Application FirstEnergy attached just a one page “Description of Change in Rule or Regulation” (hereinafter “Tariff Description”) which is the only document that provides any detail on the nature of the tariff changes FirstEnergy is requesting in this proceeding.[[10]](#footnote-10) The Tariff Description states that “this tariff filing is designed to permit Applicants to work with insurance companies and insurance producers to permit the insurance companies and insurance producers to make available to customers insurance products and related services.” The Tariff Description then goes on to list disaster insurance as an insurance product that FirstEnergy “may” be offering customers. The Application contains no limitation on the products FirstEnergy is seeking to offer other than that the products will be “insurance products and *related services*.”

 The Application also indicates FirstEnergy does intend to bill for these insurance services stating “the Applicants will receive compensation for billing and administrative services they provide to the insurance companies in connection with the program.” The remainder of the Tariff Description is simply a number of vague and conclusory statements. The tariff filing cites no statute or Commission rule that gives FirstEnergy the authority to offer the proposed insurance products to customers.

 In its Memo Contra FirstEnergy cites Ohio Revised Code (“R.C.) 4909.18 claiming that this statute does not give the Commission the authority to order a procedural schedule in this proceeding. FirstEnergy’s interpretation of R.C. 4909.18, however, contradicts the express language of R.C. 4909.18 which states “if it appears to the commission that the proposals in the application may be unjust or unreasonable, the Commission shall set the matter for hearing (emphasis added).” FirstEnergy, though, concludes that because the Commission has not made a determination that the Application was unjust or unreasonable, then the Commission cannot establish a procedural schedule in this proceeding.[[11]](#footnote-11)

 First, 4909.18 does not require that the Commission make a determination that the Application is unjust and unreasonable, the Application must merely “appear” to the Commission to be unjust or unreasonable. That said, even if an initial finding of unjustness or unreasonableness is required by the Commission, the Application on its face is unjust and unreasonable. FirstEnergy is asking for blanket approval to offer “insurance products and related services” without limitation (which is unjust and unreasonable). FirstEnergy is seeking to further the unlawful and preferential access to the EDU bill to select companies chosen by FirstEnergy while denying others access to the EDU bill (which is unjust and unreasonable). FirstEnergy has provided no transparency with respect to its cost allocation methodology (which is unjust and unreasonable). FirstEnergy has provided no transparency with respect to the royalty payment its parent company will receive from this application (which is unjust and unreasonable). In short, there is a whole litany of items that are unjust and unreasonable about FirstEnergy’s Application.

 FirstEnergy also cites the Duke corporate separation case as an example of how the Commission approved another EDU’s application to offer competitive products and services without a full procedural schedule.[[12]](#footnote-12) In that proceeding Duke sought authority to amend its corporate separation plan to provide non-commodity services.

 First, it should be noted that no party in the Duke corporate separation proceeding asked for a procedural schedule as IGS has in this proceeding. Further, while there is much that IGS disagrees about the Commission’s decision in the Duke corporate separation case (as evidenced by IGS’ pending appeal to the Supreme Court of Ohio) the Commission did indicate that parties will have an opportunity on a “case-by-case basis” to access the merits of the particular products Duke ultimately offers customers.[[13]](#footnote-13) In this case FirstEnergy is asking permission from the commission to offer a specific range of products – namely “insurance products and related services” – and presumably FirstEnergy will immediately begin offering these products to customers if its Application is approved. Thus, this proceeding *is* the “case-by-case” review that must be had in order to determine whether FirstEnergy’s Application is just and reasonable.

 It would be unreasonable and would materially disadvantage IGS’ interests to deny IGS or other interested parties the opportunity to fully develop the record in this proceeding. Given that there is very little information provided in FirstEnergy’s Application IGS, and other interested parties, must have an opportunity to conduct discovery. IGS, and other interested parties, should also have an opportunity to put on evidence that pertains to the merits of FirstEnergy’s Application. For these reasons, IGS’ Request for procedural schedule should be granted.

1. **CONCLUSION**

For the foregoing reasons, IGS has established that it satisfies the Commission’s liberal intervention criteria. Therefore, IGS requests that the Commission grant its Motion to Intervene.

Moreover, it is clear that FirstEnergy is currently using distribution assets to uniquely advantage certain providers of non-commodity services of its choosing. The Application provides little detail, and, if approved in its current form, it would further enhance FirstEnergy’s ability to discriminate against competitive suppliers. Therefore, the Application appears to be unjust and unreasonable. Accordingly, the Commission should establish a procedural schedule that will allow parties to adequately develop the record in this proceeding.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 The undersigned hereby certifies that a copy of the foregoing Reply in Support of *Interstate Gas Supply, Inc.’s and IGS Energy Home Service’s Motion to Intervene and Request for Procedural Schedule* was served this 26th day of December, 2014 via electronic mail upon the following:

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1. *See also In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Entry at 6 (Dec. 1, 2014) (*“*The attorney examiner finds that, considering the standard for intervention set forth in Ohio Adm.Code 4901-1-11(B), particularly in light of Supreme Court precedent finding that statutes and rules should be liberally construed in favor of intervention, the motion to intervene filed by the Market Monitor should be granted.”). [↑](#footnote-ref-1)
2. Memo Contra, at 3-4. [↑](#footnote-ref-2)
3. Application, Exhibit B. [↑](#footnote-ref-3)
4. See FirstEnergy’s Memo Contra at 2 citing, *In the Matter of the Application of Akron Thermal, Limited Partnership for an Increase in its Rates for Steam and Hot Water Service*, Case No. 05-5-HT-AIR Entry at 3 (June 14, 2005) (hereinafter “Akron Thermal Entry”). [↑](#footnote-ref-4)
5. *Ohio Consumers' Counsel v. Pub. Util. Comm.,*111 OhioSt.3d 384, 388 (2006). [↑](#footnote-ref-5)
6. *Id.*  [↑](#footnote-ref-6)
7. Akron Thermal Entry at 1. [↑](#footnote-ref-7)
8. Memo Contra, 5-6. [↑](#footnote-ref-8)
9. *See FirstEnergy Corp. v. Public Utilities Comm’n*, 95 Ohio St. 3d 401 (2002); *FirstEnergy Corp. v. Public Utilities Comm’n*, 96 Ohio St. 3d 371 (2002); *DiFranco v. FirstEnergy Corp.*, 134 Ohio St.3d 144 (2012); *Huff v. FirstEnergy Corp.*, 130 Ohio St. 3d 196 (2011). [↑](#footnote-ref-9)
10. Application, Exhibit B. [↑](#footnote-ref-10)
11. Memorandum Contra at 7. [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *In the Matter of the Application of Duke Energy Ohio for Approval of the Fourth Amended Corporate Separation Plan under Section 4928.17, Revised Code and Chapter 4901:1-37, Ohio Administrative Code and In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Retail Tariff, P.U.C.O. No. 19*, Case Nos. 14-689-EL-UNC, *et al.*, Entry on Rehearing at ¶14 (August 26, 2014). [↑](#footnote-ref-13)