

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of its Rules for Corporate Separation for)
Electric Utilities and Affiliates Contained in) Case No. 18-1190-EL-ORD
Chapter 4901:1-37 of the Ohio)
Administrative Code.

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and respectfully submits its reply comments on proposed changes to administrative rules addressing corporate separation for electric utilities and affiliates, as issued by the Public Utilities Commission of Ohio (Commission) on June 19, 2019.

OCC’s Proposed Language Targeting Behind-The-Meter Services Is Redundant, Confusing, and Would Unnecessarily Constrain the Commission’s Discretion Regarding Future Regulations.

The Office of the Ohio Consumers’ Counsel (OCC) proposes to define an “[u]nregulated service” as a “competitive service provided to a customer after the electric meter,” including but not limited to a laundry list of examples of behind-the-meter services.¹ OCC’s proposal presumes too much and adds nothing to existing consumer protections.

First, competitive services offered by affiliates are already subject to the existing corporate separation rules, which already distinguish between “noncompetitive retail electric service[s]” and “competitive retail electric service[s],” and forbid any “anticompetitive subsidies.” See Rule 37-

¹ OCC Comments, pg. 3.

04(D)(6).² There is no added benefit or concern that justifies distinguishing “competitive service[s] provided . . . after the . . . meter”³ as a category.

Second, the Commission may eventually choose to approve tariffs for the provision of certain behind-the-meter services. If it was to do so, it would not be accurate to define such services as “unregulated” or appropriate to impose the same restrictions to avoid any potential cross-subsidization by a utility. The Commission should preserve its flexibility to approve behind-the-meter services on a case-by-case basis, rather than create a new—and unnecessary—category of “unregulated services.”

At Least One Of OCC’s Proposed Additional Requirements For Behind-The-Meter Services Is Unlawful, And The Rest Are, At Best, Duplicative And Confusing.

OCC proposes additional provisions governing the accounting and charge structure of so-called “unregulated services,” as well as a provision to regulate affiliates’ purchases of electricity for such services.⁴ These provisions are superfluous at best and unlawful at worst.

The Commission lacks any jurisdiction to regulate competitive services, and therefore cannot require unregulated affiliates to provide “unregulated service(s) . . . at charges equal to or above [the affiliates’] fully allocated cost.”⁵ Regulating the charges set by affiliates for competitive services would be far beyond the Commission’s lawful jurisdiction. And even if it did not violate Ohio law—which it does—such a requirement would impact situations beyond possible cross-subsidization and interfere with legitimate business reasons (marketing, promotions, etc.) for taking a loss on a particular service.

² For purposes of readability, rule and chapter numbers will be designated without reference to the agency or division number.

³ OCC Comments, pg. 3.

⁴ OCC Comments, pg. 4.

⁵ OCC Comments, pg. 4.

OCC's remaining two proposed requirements—that an affiliate account for all “unregulated services” on its books at fully allocated costs and purchase from the same electric tariff as its competitors—are simply redundant because existing provisions address the same cross-subsidization concerns. The existing Cost Allocation Manual provisions already demand that the “method for charging costs and transferring assets [between affiliates and utilities] shall be based on fully allocated costs.” Rule 37-08(E). And the existing rules already contain a long list of requirements to ensure that a utility will apply its tariff equally to both affiliates and non-affiliates,⁶ as well as a separate requirement that the utility keep a log “detailing each instance” where it exercises discretion in tariff application.⁷ OCC's provisions would merely duplicate existing requirements and introduce confusion.

Dayton Power & Light's Proposal To Treat Certain Regulated Services As Non-Competitive Is Both Practical And Consistent With The Purpose Of Corporate Separation.

Acknowledging the Commission's discretion to potentially approve tariffs for certain behind-the-meter services in the future, The Dayton Power & Light Company (DP&L) proposed language to deem any such regulated service a noncompetitive service and thereby exempt it from corporate separation plan requirements.⁸ This is appropriate. A regulated service poses no cross-subsidization risk when offered by a utility providing other regulated services. Drafting and filing a corporate separation plan in such cases would be a pure formality, wasteful and inefficient.

It should also be recognized that the Ohio General Assembly has unequivocally indicated the importance of competition in the electric market. State policy supports the availability of electric service that provides consumers with options they may choose. It also encourages diversity of suppliers, such that consumers have effective choices in the selection of those

⁶ Rule 37-04(D)(10).

⁷ Rule 37-08(D)(7).

⁸ DP&L Comments, pg. 2.

suppliers. And it recognizes the importance of flexible regulatory treatments in the development of the competitive market.⁹ Nothing in state policy suggests that the utility—a trusted and experienced energy advisor that knows its customers—should be eliminated from the pool of possible providers of competitive products and services. Indeed, the legislature is currently considering a proposal that would allow a utility to offer customer-focused energy services or products.¹⁰ Certainly the rules promulgated under current law should not be designed to move the Commission in the opposite direction as that being considered by the General Assembly.

Conclusion

For the reasons stated above, Duke Energy Ohio respectfully suggests that the Commission reject the modifications proposed by OCC and adopt the modification proposed by DP&L.

Respectfully submitted,

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⁹ R.C. 4928.02.

¹⁰ G.A. 133, H.B. 247.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following counsel of record by electronic service on this 26th day of July, 2019:

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