BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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.In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Retail Tariff, P.U.C.O. No. 19. | ))))) | Case No. 14-0689-EL-RDRCase No. 14-0690-EL-ATA |

**REPLY COMMENTS OF IGS ENERGY**

On April 16, 2014, Duke Energy Ohio (“Duke”) filed an application seeking approval to amend its corporate separation plan to offer special non-regulated customer services and authority to amend its Retail Tariff, P.U.C.O. No. 19, Sheet 23, to correspond with changes in the corporate separation plan (“Application”). Under R.C. 4928.17(B), “any person having a real and substantial interest in the corporate separation plan [must have an opportunity] to file specific objections to the plan . . . .” Public Utilities Commission of Ohio (“Commission”) Staff, Direct Energy Services, LLC (“Direct”), and Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) submitted comments and objections regarding the Application on May 15, 2014. As discussed below, IGS respectfully disagrees with Staff’s comments and supports comments filed by Direct Energy.

Staff states that “in general, [it] is not opposed to Duke Energy Ohio’s request to offer non-regulated services in the manner it has proposed.” Staff Comments at 4. While Staff’s comments recognize that Duke has requested authority to offer unregulated services, Staff does not provide any discussion of the specific type of services that Duke intends to offer or the manner in which Duke intends to recover the cost of providing those services.[[1]](#footnote-1)

Staff, however, recognizes that allowing Duke to offer non-regulated services through its distribution utility may provide Duke an unfair competitive advantage over CRES providers. Rather than prohibit Duke from offering these services, Staff suggests that Duke be required to disclose to customers that non-regulated services are also available from CRES providers.[[2]](#footnote-2)

 It is encouraging that Staff recognizes that Duke’s proposal may work against development of the competitive market. But IGS disagrees that potential anti-competitive advantage can be resolved through disclosure requirements. Duke should simply not offer unregulated services through its regulated distribution utility. IGS does not oppose Duke or other utilities offering unregulated services through their affiliates, but it would not be appropriate to do so through a distribution utility.

Moreover, with the approval of Duke’s last corporate separation plan, after it transfers its generating assets, Duke will be required to offer regulated and unregulated services through separate affiliates.[[3]](#footnote-3) Duke has failed to request a waiver of the requirement to provide regulated and unregulated services through separate affiliates.[[4]](#footnote-4)

Regardless, Duke cannot demonstrate good cause for a waiver. After finally approving Duke’s structural separation, it would be a step backwards to allow Duke to offer unregulated services through its regulated distribution utility. Besides, there are market participants that are already willing and able to offer “special customer services”, and those market participants do not have the luxury of having all electric distribution customers subsidize their product offerings. The only purpose that it would serve to allow Duke to also offer these services through the regulated utility would be to undermine the competitive market and ultimately limit the number and type of competitive products and services available to customers in the long run.

Moreover, Duke’s application is so vague that there is no way of knowing what products and services Duke intends to offer or how it will offer its products to customers. Nor is there any information to determine how Duke intends to utilize the regulated distribution utility assets, to make products available to customers. Therefore, it would be imprudent for the Commission to approve Duke’s Application with so little detail disclosed in Duke’s Application.

Finally, as noted by Direct Energy, it is unclear whether Duke intends to market these unregulated special services through its bill or bill inserts or whether Duke may put these charges on customer bills.[[5]](#footnote-5) To the extent that is Duke’s plan—and the Commission approves it—CRES providers should have the same opportunity to advertise and charge for special services through the utility bill. Rather than allowing Duke to offer unregulated services, however, IGS recommends that the Commission deny Duke’s Application in its entirety.

Because Duke’s Application contravenes Ohio law and policy, and provides scant detail, IGS urges the Commission to reject Duke’s Application to the extent discussed herein.

Respectfully submitted,

*/s/ Joseph Oliker*

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**CERTIFICATE OF SERVICE**

 The undersigned hereby certifies that a copy of the foregoing *Reply Comments of IGS Energy* was served this 21st day of May 2014 via electronic mail upon the following:

*/s/ Joseph Oliker*

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1. For example, it is unclear whether Duke requests authority to recover the cost of providing unregulated services through distribution rates. [↑](#footnote-ref-1)
2. Staff states, “[d]ue to the complexity of demonstrating whether a rule violation has occurred, and ensuring that customers are aware, in real time, of their competitive supplier options, Staff believes any customer requesting the proposed unregulated products or services sign a work order stating that they have been informed that these products or services are unregulated and that they can be performed by other vendors.” Staff Comments at 4. [↑](#footnote-ref-2)
3. *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO, *et al.*, Opinion and Order at 29 (Nov. 22, 2011); Objections of IGS Energy at 2; R.C. 4928.17(A)(1). [↑](#footnote-ref-3)
4. *See* R.C. 4928.17(C). [↑](#footnote-ref-4)
5. Initial Comments of Direct Energy at 5. [↑](#footnote-ref-5)