BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market.	)))	Case No. 12-3151-EL-COI

APPLICATION FOR REHEARING OF DUKE ENERGY OHIO, INC.

Pursuant to R.C. 4903.10 and Rule 4901-1-35, Ohio Administrative Code, Duke Energy Ohio, Inc., (Duke Energy Ohio) hereby submits its Application for Rehearing of the Finding and Order issued on March 26, 2014, in the above-captioned case. As explained in more detail in the attached Memorandum in Support, the Finding and Order issued by Public Utilities Commission of Ohio (Commission) is unjust and unreasonable for the following reasons:

A. The Commission's Finding and Order that requires electric distribution utilities to provide competitive retail electric service (CRES) provider logos on customer bills is unjust and unreasonable in that it mandates changes to billing systems that are costly and unnecessary and there is no record support to suggest that such changes are needed.

B. The Commission's Finding and Order is unjust and unreasonable in that it requires a price-to-compare to be displayed on the customer's bill that is calculated using a rolling annual average that will further mislead customers.

C. The Commission's Finding and Order is unjust and unreasonable in that it orders electric distribution utilities to incur costs without providing for adequate recovery of those costs through a deferral or otherwise.

For these reasons, Duke Energy Ohio respectfully requests that the Commission grant Duke Energy Ohio's Application for Rehearing and modify its Finding and Order as set forth herein.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market.	)))	Case No. 12-3151-EL-COI

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

On December 12, 2012, the Public Utilities Commission of Ohio (Commission) initiated this docket to evaluate the vitality of the competitive retail electric service markets. The Commission stated that it was concerned with alleviating possible transmission constraints and wished to encourage market access for retail electric service, including both supply- and demand-side products, and to protect consumers against market deficiencies and market power. Thereafter, the Commission sought responses to various questions posed, and held workshops to facilitate discussions related to these topics. On September 25, 2013, Ohio's electric distribution utilities (EDUs), including Dayton Power and Light Company, Ohio Power Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Duke Energy Ohio, submitted a letter to the Legal Director of the Commission expressing concern with respect to the process. The gist of the EDUs' concern was the lack of formal due process that would be necessary if the Commission were to mandate changes as a result of its investigation. Now, as the docket has been concluded with a Finding and Order that, in fact, directs the EDUs to undertake costly and arguably unnecessary steps to change billing systems and billing formats, it appears that those concerns were well-founded. During the entire conduct of the investigation there was no record made of the proceedings, no expert testimony provided, no advance notice of the direction the docket was taking since the topics were devised during the process, no opportunity to cross-examine witnesses, and no due process at all. Despite this lack of formality, and despite the participants' efforts to engage in good faith in the discussions to assist the Commission in understanding relevant issues, the Commission nonetheless seeks to impose requirements that are not supported by statute.

Furthermore, the changes mandated by the Commission are solutions in search of a problem. As of April 21, 2014, fifty-percent of Duke Energy Ohio's residential customers are shopping with CRES providers. Seventy-five percent of commercial customers are shopping and approximately seventy-seven percent of industrial customers are shopping. There are fifty-eight suppliers approved to serve customers in the Duke Energy Ohio service territory, and forty-seven of those suppliers are actually serving customers. Competition is alive and well in southwest Ohio! Despite this evidence, which is reported monthly to the Commission, there appears to be concern that competition is in need of some enhancement. This concern is misplaced and ill-advised.

II. DISCUSSION

A. CRES Provider Logos

The Public Utilities Commission of Ohio has only the jurisdiction conferred upon it by statute.[1] In its Finding and Order in this proceeding, the Commission has exceeded the authority

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[1] *Canton Storage and Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St. 3d 1, 5 (1995).

conferred upon it and has ordered EDUs to, *inter alia*, include the relevant CRES provider's logo on customer bills, matching the size of the EDU's logo and in color if the EDU's logo is in color. The Commission asserts that doing so will bring clarity and uniformity to customer bills and promote further development of Ohio's CRES markets. The Commission further states that the format changes are required in order to implement policy directives found in R.C. 4928.02, R.C. 4928.07, and R.C. 4928.10. However, nothing in those sections gives the Commission power or authority to require EDUs to add these logos to the bills. Indeed, nothing contained in these statutory provisions even supports a requirement that an EDU provide a CRES provider logo on a customer's bill. In fact, R.C. 4928.07 and R.C. 4928.10, do not govern billing by EDUs in any respect unless the EDU is required to be certified to provide competitive retail electric service pursuant to R.C. 4928.08. As Duke Energy Ohio does not provide such service, it is not certified pursuant to R.C. 4928.08, nor is it required to be. R.C. 4928.02 sets forth state policy with respect to the initiation of customer choice for electric service in Ohio, but none of its provisions suggests that an EDU be required to change billing systems in order to include a CRES provider's logo on bills. Thus, the statutory references in the Finding and Order do not support this decision or provide the Commission with the authority to demand this change.

Furthermore, the process undertaken in this investigation did not provide the Commission with any record on which to base this decision. As Duke Energy Ohio has commented, the development costs to add CRES providers' logos would entail information technology (IT) changes that will be costly and time consuming. But the Commission gathered no formal evidence as to those costs. The Commission has no record support, in fact no record at all, that suggests that a CRES logo is needed or wanted by customers on their bills. Indeed, providing two logos on one bill creates the possibility of further confusion of customers rather than fostering competition.

If the Commission determines a need to further consider requiring a logo, it should undertake a study of the issue, to learn whether such a requirement is cost beneficial and in the best interests of the customer. This would require evidence to be gathered and considered. But there is no record in this proceeding to support the new mandate. The Commission should grant rehearing and omit this requirement until it has record support to establish that such changes are justified.

B. Price to Compare Calculation

The Commission adopted Staff's recommendation to standardize the price-to-compare across the state of Ohio in order "to bring transparency to the market and clarity to customers." The Commission's refers to R.C. 4928.07 for authority to require this change. But, as noted above, R.C. 4928.07 is not applicable to EDUs unless they are also certified to provide CRES services. The Commission further directed EDUs to calculate the price-to-compare by using the Standard Service Offer (SSO) rate for the previous twelve months and dividing it by the customer's usage. Duke Energy Ohio's billing practice is to provide this information in the bill message portion of the bill. However, the billing system does not presently contain the logic to calculate the price in the manner directed by the Commission. Again, in order to comply with this directive, along with including the additional Staff-proposed language to inform customers that they can review available competitive supplier offers by visiting the PUCO website, Duke Energy Ohio would be required to make IT changes that will be costly and will require some period of time to accomplish. But there is no record evidence to support these requirements.

There is nothing in this proceeding that suggests that customers have experienced any confusion or otherwise misunderstand the price-to-compare that is currently displayed on the bill. Nor is there any cause to believe that calculating the price-to-compare by this methodology will provide any additional information to customers or aid in their selection of a CRES provider.

The decision is also substantively incorrect. Duke Energy Ohio believes that its current methodology is more accurate than the one mandated in the order and that it yields more comprehensible and current data, since using a twelve-month rolling average necessarily entails inclusion of outdated information. Additionally, some CRES providers contract with customers based upon an offering of a percent off the existing price to compare. A change in this methodology will require CRES providers to engage with customers and seek new contracts where necessary. This, in turn, will actually cause customer confusion rather than alleviating it.

For these reasons, the Commission should grant rehearing and not require EDUs to change the calculation of the price-to-compare.

C. Cost Recovery Provisions

With respect to requiring bill format changes, as well as other mandates in the Commission's Finding and Order, the Commission states that it deems it appropriate for the EDUs to seek cost recovery in a distribution rate case or in other rider proceedings. However, the timeline for making the required changes may not coincide with a test year or with the opportunity to include such costs in a rate case or a rider proceeding. The Commission's Finding and Order is unjust and unreasonable in that it requires EDUs to make changes to IT systems and EDI billing operations without providing a fair opportunity to recover costs for doing so.

The Commission must grant rehearing on this issue and should consider providing deferral authority pursuant to R.C. 4905.13 so that EDUs may recover costs incurred in complying with the various directives resulting from this Commission-ordered investigation.

III. CONCLUSION

For these reasons, Duke Energy Ohio respectfully requests that the Commission grant its Application for Rehearing and modify its Finding and Order as set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 25th day of April, 2014, to the parties listed below.

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