

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	Case No. 14-1297-EL-SSO
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)	

MEMORANDUM CONTRA OF INTERSTATE GAS SUPPLY, INC.

Joseph Olikier (0086088)
Counsel of Record
Email: joliker@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073

Attorney for Interstate Gas Supply, Inc.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	Case No. 14-1297-EL-SSO
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)	

MEMORANDUM CONTRA OF INTERSTATE GAS SUPPLY, INC.

I. BACKGROUND

On December 1, 2015, Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (collectively “FirstEnergy”) and a diverse group of parties, submitted a Joint Stipulation and Recommendation (“Stipulation”) to resolve the outstanding issues presented in this proceeding. On January 14, 2016, Interstate Gas Supply, Inc. (“IGS”) entered into a Competitive Market Enhancement Agreement (“Enhancement Agreement”) with FirstEnergy and joined the Stipulation as a signatory party. Pursuant to the Enhancement Agreement, FirstEnergy agreed to file an application “to establish a retail competition incentive mechanism [Incentive Rider] in addition to the bypassable charges applied to non-shopping customers with the purpose of incenting shopping.”¹

On March 31, 2016, the Public Utilities Commission of Ohio (“Commission”) issued an Opinion and Order (“Order”) modifying and approving the Stipulation. Among other things, the Commission authorized FirstEnergy to establish a placeholder

¹ Ohio Manufacturers’ Association Energy Group (“OMAEG”) Ex. 24.

Incentive Rider set at zero, which shall be the subject of a future application. Although the Enhancement Agreement did not specifically require FirstEnergy to unbundle additional generation-related costs embedded in distribution rates, the Order directed FirstEnergy to file an application to achieve that end. FirstEnergy filed an application for rehearing requesting that the Commission clarify that it need not unbundle distribution rates in order to satisfy the objective of the Enhancement Agreement. IGS represented in a letter submitted on May 2, 2016 that while IGS continues to support the concept of unbundling, “to the extent that FirstEnergy’s application for rehearing is consistent with the intent of the Enhancement Agreement, IGS is supportive of FirstEnergy’s requested modification to the Order.”

The Office of the Ohio Consumers’ Counsel (“OCC”), Northwest Ohio Aggregation Coalition (“NOAC”), and the Northeast Ohio Public Energy Council (“NOPEC”) challenge the lawfulness of the Incentive Rider. Because these arguments lack merit, the Commission should deny rehearing on this issue.

II. ARGUMENT

OCC and NOAC argue that the Order’s authorization of the Incentive Rider is not based upon record evidence, arguing that the Order therefore violated R.C. 4903.09.² This argument lacks merit. In its Order, the Commission specifically relied upon the prefiled testimony of Matthew White and oral testimony of Eileen Mikkelsen to approve the Incentive Rider. For example, the Order is properly supported by Mr. White’s assertion that “[i]t can be concluded that the Ohio competitive electric markets have done a good job encouraging opt-out aggregation in the FirstEnergy service territory,

² Application for Rehearing of the Office of the Ohio Consumers’ Counsel and Northwest Ohio Aggregation Coalition at 64-65.

but have done a poor job at encouraging customers to affirmatively enroll in a competitive product or otherwise engage in the competitive market.”³ And, as a solution to this shortcoming in the development of the competitive market, the Order properly relied upon Ms. Mikkelsen’s testimony that an Incentive Rider may encourage additional customer engagement and switching: the Incentive Rider “would potentially create greater supplier interest in participating in the competitive market for the companies and, in turn, provide . . . a more robust competitive environment for the customers of the companies.”⁴ Thus, the Order is properly supported by the evidence in the record. Specific details relating to the Incentive Rider will be addressed in a separate proceeding based upon additional record evidence to support the just and reasonableness of the Incentive Rider.

OCC and NOAC also argue that the Order is inconsistent with past Commission findings. Because OCC and NOAC fail to identify the past findings the Order conflicts with, IGS is unable to respond to this meritless argument.

NOPEC argues that the Incentive Rider is unlawful because the Commission lacks authority to authorize a placeholder rider. Contrary to NOPEC’s claim, the Commission is permitted to authorize a placeholder rider and has done so in several prior cases.⁵

³ IGS Ex. 11 at 17-18.

⁴ Tr. Vol. XXXVII at 7927-28.

⁵ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.*, Opinion and Order at 25 (Feb. 25, 2015) (hereinafter “AEP ESP III Case”); *id.* at 25, 81, 87 (establishing three placeholder riders). *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case Nos. 08-920-EL-SSO, *et al.*, Opinion and Order (Dec. 17, 2008) at 17; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, *et al.*, Second Opinion and

NOPEC argues that the Incentive Rider cannot be lawfully approved in an ESP case, alleging that it is not authorized under any of the categories of R.C. 4928.143(B)(2).⁶ NOPEC's argument is conclusory on its face. The Supreme Court of Ohio has held that such "[u]nsupported legal conclusions do not demonstrate error."⁷ In any event, NOPEC takes an overly restrictive view of the ESP statute that does not comport with Ohio law and the Commission's past precedent.

Several provisions within R.C. 4928.143 permit the Commission to authorize bypassable charges applicable to default service, and they are not all contained within R.C. 4928.143(B)(2). For example, R.C. 4928.143(B)(1) permits "provisions relating to the supply and pricing of electric generation service." Further, R.C. 4928.143(B)(2)(e) permits "[a]utomatic increases or decreases in any component of the standard service

Order (Mar. 25, 2009) at 15; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*. Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 39-40, 50, 56 (Dec. 14, 2011) (approving three placeholder riders to be the subject of potential later applications) (hereinafter "*AEP ESP II Case*"); *AEP ESP II Case*, Opinion and Order at 24-25, 49 (Aug. 8, 2012) (approving two placeholder riders); *See also In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 52, 64 (Mar. 23, 2009) (permitting Ohio Power Company to file additional applications based upon additional information not present in existing ESP application).

⁶ Application for Rehearing of Northeast Ohio Public Energy Council at 23-24. IGS recognizes that the Order initially authorized the Incentive Rider as a mechanism to enable FirstEnergy to unbundle generation-related costs in distribution rates. As noted by IGS in its letter submitted on May 2, FirstEnergy has requested that the Commission modify the Incentive Rider to comport with the objective of the Enhancement Agreement—to incentivize shopping and customer engagement. While IGS is supportive of FirstEnergy's request, unbundling is in fact supported by Ohio law as a straightforward application of rate design and cost allocation. As the Supreme Court of Ohio has noted, it will defer to the Commission on matters of rate design, stating "[w]e have long given great deference to the commission on matters of rate design." *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608 at 21. Evaluating the Commission's determinations with respect to rate design issues would require the Court "to assume powers which this court is not suited to exercise." *Id.* at 21-22 quoting *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n*, 46 Ohio St.3d 105, 108. Moreover, as discussed throughout this memorandum contra, several sections in R.C. 4928.143 permit the Commission to approve bypassable charges applicable to default service. IGS is not requesting that the Commission approve the Incentive Rider as an unbundling mechanism at this time, but such a result would otherwise be lawful.

⁷ *See In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, ¶ 28. Slip Opinion No. 2016-Ohio-1607.

offer price.” The bypassable Incentive Rider could easily be justified under either of these provisions of Ohio law.

Likewise, R.C. 4928.143(B)(2)(d) permits the Commission to authorize charges that relate to bypassability that may have the tendency to effectuate stability or certainty with respect to retail electric service. The Commission has previously invoked this provision of Ohio law in an ESP case to authorize a \$10 per megawatt hour shopping credit.⁸ Moreover, the Commission relied upon the same provision to authorize two different non-bypassable demand charges coupled with non-bypassable credits (The Market Transition Rider and the Load Factor Provision) in order to stabilize retail electric service in the transition to market-based rates.⁹ The Incentive Rider will stabilize retail electric service for customers that elect service from a competitive retail electric service provider by ensuring that these customers receive a credit on their bill, as the revenue neutral charge is returned to all customers.

Finally, R.C. 4928.143(B)(2)(i) permits the Commission to authorize provisions that promote economic development. Because the Incentive Rider will provide economic incentives to promote shopping and encourage competitive retail electric service providers to invest resources in the FirstEnergy service territory, the Incentive Rider may be authorized under this provision of Ohio law.

In summary, there are several provisions within R.C. 4928.143 that permit the Commission to approve the Incentive Rider.

III. CONCLUSION

⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 20, 36-38 (Dec. 14, 2011) (reversed on rehearing based upon findings of fact).

⁹ *Id.* at 19, 36-38, 64.

For the reasons stated herein, IGS urges the Commission to reject the applications for rehearing submitted by OCC, NOAC, and NOPEC.

Respectfully submitted,

/s/ Joseph Olikier

Joseph Olikier (0086088)

Counsel of Record

Email: joliker@igsenergy.com

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

Telephone: (614) 659-5000

Facsimile: (614) 659-5073

Attorney for Interstate Gas Supply, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Memorandum Contra of Interstate Gas Supply, Inc.* was served this the 12th day of May 2016 via electronic mail upon the following:

Thomas.mcnamee@puc.state.oh.us Thomas.lindgren@puc.state.oh.us Ryan.orourke@puc.state.oh.us mkurtz@BKLLawfirm.com kboehm@BKLLawfirm.com jkylern@BKLLawfirm.com stnourse@aep.com mjsatterwhite@aep.com yalami@aep.com joseph.clark@directenergy.com ghull@eckertseamans.com myurick@taftlaw.com zkravitz@taftlaw.com Schmidt@sppgrp.com ricks@ohanet.org mkl@bbrslaw.com gas@bbrslaw.com ojk@bbrslaw.com wttpmlc@aol.com lhawrot@spilmanlaw.com dwilliamson@spilmanlaw.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us jscheaf@mcdonaldhopkins.com gkrassen@bricker.com dstinson@bricker.com dborchers@bricker.com drinebolt@ohiopartners.org meissnerjoseph@yahoo.com LeslieKovacik@toledo.oh.gov trhayslaw@gmail.com Jeffrey.mayes@monitoringanalytics.com mhpeticoff@vorys.com mjsettineri@vorys.com glpetrucci@vorys.com msoules@earthjustice.org sfisk@earthjustice.org Larry.sauer@occ.ohio.gov Michael.schuler@occ.ohio.gov	burkj@firstenergycorp.com cdunn@firstenergycorp.com jlang@calfee.com talexander@calfee.com dakutik@jonesday.com sam@mwncmh.com fdarr@mwncmh.com mpritchard@mwncmh.com cmooney@ohiopartners.org callwein@wamenergylaw.com mswhite@igsenergy.com Bojko@carpenterlipps.com Allison@carpenterlipps.com hussey@carpenterlipps.com barthroyer@aol.com athompson@taftlaw.com Christopher.miller@icemiller.com Gregory.dunn@icemiller.com Jeremy.grayem@icemiller.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us tdougherty@theOEC.org finnigan@edf.org Marilyn@wflawfirm.com todonnell@dickinsonwright.com matt@matthewcoxlaw.com mfleisher@elpc.org mitch.dutton@fpl.com selisar@mwncmh.com ccunningham@akronohio.gov asonderman@keglerbrown.com sechler@carpenterlipps.com gpoulos@enernoc.com toddm@wamenergylaw.com amy.spiller@duke-energy.com Jeanne.kingery@duke-energy.com dwilliamson@spilmanlaw.com lhawrot@spilmanlaw.com Kevin.moore@occ.ohio.gov
--	--

--	--

/s/Joseph Olier

Counsel for Interstate Gas Supply, Inc.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/12/2016 4:36:24 PM

in

Case No(s). 14-1297-EL-SSO

Summary: Memorandum Contra electronically filed by Mr. Joseph E. Olier on behalf of IGS Energy