

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE REVIEW OF OHIO)	
EDISON COMPANY, THE CLEVELAND)	CASE No. 17-0974-EL-UNC
ELECTRIC ILLUMINATING COMPANY, AND)	
THE TOLEDO EDISON COMPANY’S)	
COMPLIANCE WITH R.C. 4928.17)	
)	
)	

**REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY**

INTRODUCTION

Pursuant to the Attorney Examiner’s Entry on November 30, 2018, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) hereby submit their Reply Comments, responding to the Comments filed on December 31, 2018 by The Office of the Ohio Consumers’ Counsel (“OCC”), Interstate Gas Supply, Inc. (“IGS”), The Retail Energy Supply Association (“RESA”) and the Northeast Ohio Public Energy Council (“NOPEC”), with respect to the audit report (“Report”) filed by SAGE Management Consultants (“SAGE”).

The Companies’ initial comments explained how they successfully adhere to and comply with the requirements of R.C. 4928.17. While some of the Comments filed by these parties contend otherwise, their Comments are conspicuously devoid of support in the Report’s findings. At times, their Comments are flatly contradicted by the Report. Much of these parties’ Comments are replete with statements that lack any factual support, that are based on mere conjecture, or that are simply false. Thus, their Comments do nothing to call into question the Companies’ compliance with R.C. 4928.17 and should be disregarded.

COMMENTS

1. The Companies Function Independently of Their Affiliates

RESA's Comments misrepresent how the Companies and FirstEnergy Service Company ("Service Company") operate under their parent, FirstEnergy Corp.¹ For instance, RESA falsely asserts that the "Service Company does not serve FirstEnergy subsidiaries;" rather, "the subsidiaries serve the Service Company."² To the contrary, the Service Company is organized and operates to provide various services for FirstEnergy Corp. subsidiaries. RESA's assertions are based on nothing more than the public utility "holding company model of ownership and management."³ In a public utility holding company system, it is common to have a separate service company for the purpose of providing services to subsidiaries, including but not limited to financial, legal, engineering, purchasing, auditing, communications or tax. Contrary to RESA's claims, there is nothing extraordinary about the FirstEnergy Corp. holding company structure. The public utility holding company model is quite common. In fact, there are RESA members with similar public utility holding company models. Thus, it is no surprise that SAGE did not reach the same conclusion as RESA.

RESA's Comments also make assertions that even RESA suspects may be false, claiming that, "[t]o RESA's understanding (and we are happy to be corrected if wrong), most if not all executives and senior managers of the major subsidiaries are Service Company employees."⁴ RESA is in fact wrong. Each of the Companies functions independently of each other and has its

¹ The term "FirstEnergy" as used in this document includes FirstEnergy Service Company ("Service Company") and the Companies.

² RESA Comments at 6-7.

³ *Id.* at 7.

⁴ *Id.* at 8.

own regional president. Most regional presidents are employees of their respective utility. Likewise, FirstEnergy Solutions Corp. has its own President and independent board of directors.

Finally, RESA claims that the Service Company has devoted a great deal of effort to blur the distinction between regulated and unregulated business.⁵ This statement too lacks any factual support. In fact, it is RESA that attempts to blur lines between regulated and unregulated affiliates, by falsely alleging that the Companies jointly advertise or market with unregulated affiliates.⁶ Yet RESA can provide no examples of joint advertising. Certainly, the Report made no findings of joint advertising. RESA also quotes the SAGE Report's description of how the Service Company's communications department supports regulated and unregulated affiliates. However, this is the essence of a service company and nothing is wrong with it so long as the proper rules are followed. RESA fails to explain how this organization violates any corporate separation rules.⁷ RESA's Comments do nothing to demonstrate any failure to adhere to Ohio's Corporate Separation laws, and should be rejected.

2. The Companies' Offerings of Products and Services Are Authorized by Their Commission-Approved Corporate Separation Plan

RESA's and IGS's Comments challenge the Companies' right to offer products and services under their Commission-approved Corporate Separation Plan. Because these claims are the subject of litigation pending before the Commission,⁸ the Commission should reject these improper requests to prejudge the matter here. RESA incorrectly claims that an electric utility may not offer a "competitive retail electric service" or "a product or service other than retail

⁵ *Id.*

⁶ *Id.* at 5.

⁷ *Id.* at 8.

⁸ *Complaint of the Retail Energy Supply Association v. Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 18-736-EL-CSS.

electric service,”⁹ omitting reference to important exceptions under the law. IGS also opportunistically attempts to litigate the pending complaint in its Comments, by stating that “[b]ased upon the undisputable facts, FirstEnergy provides unregulated non-electric products and services in violation of Ohio Law, precedent, and in a fashion that discriminates against other suppliers of similar products.”¹⁰ However, even IGS admits elsewhere in its Comments that the facts regarding the Companies’ offers of products and services are in dispute. IGS acknowledges that the Companies “filed an answer, admitting and denying certain aspects of RESA’s complaint.”¹¹ Indeed, the Companies’ answer avers that the Companies’ offers of products and services are authorized by their Commission-approved Corporate Separation Plan.

Both IGS and RESA fail to acknowledge that Section VI of the Companies’ Corporate Separation Plan, entitled “Consumer Products,” specifically permits the Companies to offer products and services other than electric service:

The Companies offer a limited number of products and services other than retail electric service pursuant to existing tariff provisions and plan to continue offering the same types of products and services in the same manner. Upon customer request, the Companies may use contractors to provide other utility-related services, programs, maintenance and repairs related to customer-owned property, equipment and facilities. In addition, the Companies plan to provide products and services other than retail electric service in an effort to comply with energy efficiency and peak demand reduction benchmarks set out in R.C. Section 4928.66. These programs give the Companies the opportunity to more completely serve customers and assist in meeting statutory requirements.

⁹ *Id.* at 4.

¹⁰ IGS Comments at 4.

¹¹ *Id.* at 9.

In addition, the Commission approved the Companies' tariff provisions relating to Special Customer Services in Case No. 07-551-EL-AIR. This provision authorizes, among other things, "customer equipment maintenance, repair or installation."

Recognizing the terms of the Companies' Corporate Separation Plan, IGS urges the Commission to direct the Companies to modify it.¹² IGS incorrectly claims that the Corporate Separation Plan was a temporary solution, and that it was subsequently amended and the Companies never again received exceptions to provide non-electric services¹³ In fact, however, the Corporate Separation Plan has been approved by the Commission multiple times. The Companies requested Commission approval of the Corporate Separation Plan in Case No. 09-462-EL-UNC. The Commission approved the Corporate Separation Plan in the Companies' second Electric Security Plan ("ESP") proceeding, Case No. 10-388-EL-SSO, and approved continuation of the Corporate Separation Plan in the Companies' third and fourth ESP proceedings, Case No. 12-1230-EL-SSO and Case No. 14-1297-EL-SSO, respectively. No modification is needed. IGS also asserts that the Report identifies that FE Products and Smart Mart provide services to FES upon request."¹⁴ This is a gross mischaracterization of the Report. In fact, the Report says that FE Products will respond to an FES request to acquire a product that FES sells independently.¹⁵

IGS also claims, without evidence, that the FirstEnergy Products group has access to restricted utility customer information.¹⁶ These remarks overlook the fact that FirstEnergy Products performs a service for the Companies, permitted under the Companies' Corporate Separation Plan.¹⁷ IGS is essentially arguing that the Companies are not permitted access to the

¹² *Id.* at 4-5.

¹³ *Id.* at 5.

¹⁴ IGS comments at 13.

¹⁵ Report at 94.

¹⁶ IGS Comments at 15.

¹⁷ *Id.* at 16.

Companies' own information to provide tariffed products and services consistent with their approved Corporate Separation Plan. The Companies also point out that, contrary to IGS' misinformed assertions, there is no risk – nor was there ever any risk – of any sensitive regulated customer information making its way to FES.¹⁸ Similarly, IGS fails to understand that FE products performs a service for the Companies when it argues that “FirstEnergy does not allow other participants to use the utility bill.”¹⁹ When the Companies offer services and products through Smartmart or HomeServe, it is the Companies using the Companies' bill. Additionally, IGS claims “[t]he Audit Report concludes that FES receives a competitive advantage from inappropriate changes made to the Retail Operations Group.”²⁰ To the contrary, the Report contains no such conclusion. In fact, the Report clearly states there is no preferential treatment or advantages conferred on FES by the Companies.²¹ This is just another example of IGS using this proceeding to seek its own competitive advantage by making false allegations without any basis in fact.

Likewise, RESA falsely claims that the Service Company, through its support for the FirstEnergy Products group, acts as a conduit for the unlawful flow of subsidies to FES.²² Again, this “fact” does not appear anywhere in the Report. The Companies also note that on May 27, 2018, the back office operations for FirstEnergy Products were reorganized such that they now report to an organization that does not include any FES employees. .²³ Therefore, the reporting structure referenced by the Report no longer exists, and IGS and RESA's unsubstantiated attacks on this structure are moot.²⁴

¹⁸ Companies' Comments, pp. 3-4.

¹⁹ IGS Comments at 14.

²⁰ *Id.* at 10

²¹ Report at 80.

²² RESA Comments at 10.

²³ Report at 34.

²⁴ See generally IGS' Comments at 12, 15. See generally RESA Comments at 6-7, 10.

IGS also challenges the operations of FirstEnergy Products by agreeing with SAGE's finding that "the cost allocation manual does not contain all of the requirements detailed in the Commission's rules, including the requirement to keep "[a] log of all complaints brought to the electric utility regarding this chapter."²⁵ The Companies' Initial Comments explained that this finding in the Report is based on a misunderstanding of the Companies' CAM.²⁶ This explanation would address IGS's Comments as well.

3. Use of the "FirstEnergy" Name is Protected by Law

RESA, IGS, NOPEC and OCC all assert that the "FirstEnergy" name should be removed from "FirstEnergy Solutions."²⁷ The Companies' Initial Comments responded to this recommendation, noting that such an action would be unlawful and was previously rejected by the Commission.²⁸ Use of the FirstEnergy name merely reflects the corporate structure of the Companies and their affiliates, and is yet another activity that is part of the Companies' approved Corporate Separation Plan.²⁹ NOPEC, for its part, falsely claims that the Report concluded there were violations related to the use of the name "FirstEnergy."³⁰ NOPEC's Comments are unreliable and should be disregarded.

In addition, IGS, OCC, and NOPEC agree with SAGE that any links between the FirstEnergy and FES websites should be removed. The Companies' Initial Comments addressed the mistaken premise of this recommendation.

4. The Companies Treat All Suppliers Equally

²⁵ IGS Comments at 11.

²⁶ Companies' Comments at 15-16.

²⁷ RESA Comments at 9; IGS Comments at 17; NOPEC Comments at 3; OCC Comments at 3.

²⁸ Companies' Comments at 12.

²⁹ Application, Corporate Separation Plan, Case No. 09-462-EL-UNC (June 1, 2009) at 6.

³⁰ NOPEC Comments at 4.

The Report found that the Companies provide electric generation supplier coordination services to FES pursuant to their Commission-approved tariffs, and “there were no anticompetitive subsidies provided to FES CRES related activities.” The Report also noted the amounts received from this tariff were immaterial for financial reporting purposes.³¹ RESA incorrectly distorts this finding to conclude that FES paid only a negligible amount in supplier fees,³² and to claim that the Report offers reason to question whether the Companies treat all suppliers in an equal manner.³³ RESA’s comments overlook the FERC Form 1 reporting requirements. Because FES is an affiliate of the Companies, certain information is required on the Companies’ FERC Form 1, subject to a specified materiality threshold, including the fees referenced in the Report. FERC does not require the Companies to report fees paid by unaffiliated suppliers. RESA’s concern is completely unfounded, and is essentially a misplaced collateral attack on FERC’s reporting rules. The Commission should disregard RESA’s concern in its entirety. The Companies treat all suppliers in the same manner and do not give any preferences to any affiliates. This was specifically acknowledged by SAGE as Finding III-B-1 in the Report: “Tariffed services provided by the Ohio Companies to FES are controlled and governed by regulatory-approved tariff rates and there were no anticompetitive subsidies provided to FES CRES related activities.”

5. SAGE Made No Findings of Market Abuse

OCC claims that its Comments “center on those issues directly related to the prevention of market power abuse by the Utilities, the FirstEnergy Corporation, and its subsidiaries.” The Companies note that the SAGE Report made no finding that the Companies engaged in “market

³¹ Report at 68.

³² RESA Comments at 2.

³³ *Id.* at 12.

power abuse,” and therefore object to OCC’s characterization of the SAGE Report’s findings in this way.

Otherwise, OCC’s Comments, in large part, simply restate Findings and Recommendations of the SAGE Report to which the Companies responded in their Initial Comments. The Companies addressed these issues in their Initial Comments and will not reiterate them in response to every instance in which OCC simply reiterates a SAGE Report Finding or Recommendation.

CONCLUSION

The Companies respectfully urge the Commission to consider these Reply Comments as the Commission reviews SAGE’s Report and disregard the Comments of the other parties that raise new issues outside of the scope of SAGE’s report.

Respectfully submitted,

/s/ **Scott J. Casto**

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*On behalf of Ohio Edison Company,
The Toledo Edison Company, and
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Company*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 7th day of January 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ **Scott J. Casto**
Scott J. Casto

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Summary: Reply Comments electronically filed by Mr. Scott J Casto on behalf of The Cleveland Electric Illuminating Company and The Ohio Edison Company and The Toledo Edison Company