

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review    )  
of Chapter 4901:1-37 of the Ohio                ) Case No. 18-1190-EL-ORD  
Administrative Code                                )

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

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**INTRODUCTION**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) hereby submit their Reply Comments, responding to Comments filed on July 12, 2019 by The Office of the Ohio Consumers’ Counsel (“OCC”).

The Companies believe the current rules in Chapter 4901:1-37 more than adequately regulate the relationship between regulated utilities and their unregulated affiliates. As explained below, OCC’s recommendations should be rejected. Some of OCC’s recommendations are redundant of current rules. Others lack, or even contradict, statutory authority. And others are not in customers’ best interests.

**REPLIES TO COMMENTS**

**1. The Commission should reject OCC’s recommendations.**

**a. OCC’s recommendation is redundant of existing Commission rules which already require structural separation.**

OCC, without proposing any rule changes, urges the Commission to require structural separation between regulated utilities and their affiliates. OCC asserts structural separation is necessary to minimize an alleged incentive for utilities to “game” the developing market for

distributed energy resources, and to safeguard against cross subsidization of unregulated services.<sup>1</sup> However, there is already an entire subsection of Chapter 4901:1-37 that requires structural separation and expressly prohibits cross-subsidies. Rule 4901:1-37-04, OAC provides that each electric utility must function *independently* from its affiliates.<sup>2</sup> It further provides that a utility's employees and those of its affiliates shall function *independently* of each other and that a utility and its affiliates shall maintain *separate* accounting.<sup>3</sup> In addition, cross-subsidies are prohibited.<sup>4</sup> Further, information about the distribution system must be equally available to all competitors.<sup>5</sup> Thus, the Commission already requires the structural separation OCC recommends. Moreover, OCC's allegations of the dangers that require a renewed emphasis on structural separation lack any basis in fact. OCC fails to identify any "incentive" for an electric distribution utility to game the market for distributed energy resources, or mechanism by which a regulated utility could game the market.

By OCC's own admission, structural separation is an effective remedy for potential market power abuses.<sup>6</sup> The Commission already has robust structural separation requirements in place. As a result, the Commission should reject OCC's recommendation.

**b. OCC's proposed category of competitive "unregulated service" lacks statutory support.**

Under the guise of consumer protections, OCC asks the Commission to define a host of behind the meter services as a competitive "unregulated service," which reads:

"Unregulated service" means a competitive service provided to a customer after the electric utility meter. These services include, but are not limited to, Distributed Energy Resources (including wind

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<sup>1</sup> OCC Comments at 2.

<sup>2</sup> OAC 4901:1-37-04(A)(1).

<sup>3</sup> OAC 4901:1-37-04(A)(3), (B).

<sup>4</sup> OAC 4901:1-37-04(A)(3).

<sup>5</sup> OAC 4901:1-37-04(D)(3).

<sup>6</sup> OCC Comments at 2.

and solar generation and battery storage), electric vehicle charging stations and associated equipment, energy management services (including demand response), energy monitoring and control systems and devices, lighting and other smart controls, maintenance services, and warranty programs.

There is no statutory authority for OCC's proposed regulation. The Revised Code defines which services are "competitive services" and which are "noncompetitive services." This demarcation does not align with OCC's recommended new category of competitive "unregulated" services.<sup>7</sup> In addition, OCC's recommended definition contradicts HB 6, which was enacted on July 23, 2019.<sup>8</sup> HB 6 creates a new section 4928.471 of the Revised Code, which permits an electric distribution utility, with Commission approval, to enter into an agreement with a mercantile customer for the purpose of constructing a customer sited renewable energy resource that will provide the mercantile customer with a material portion of the customer's electricity requirements. Also, OCC's recommended classification of services as "unregulated" contradicts the Companies' Commission-approved Corporate Separation Plan, which allows the Companies to offer products and services pursuant to the Companies' tariff. Accordingly, OCC's recommendation should be rejected.

**c. OCC's proposed rule setting accounting standards and price floors for unregulated affiliates lacks statutory support and would harm consumers and competition.**

OCC also proposes a safeguard against cross-subsidization by requiring an unregulated affiliate to account for the unregulated services it provides at fully allocated costs, and by using fully allocated costs to set a floor on the prices the affiliate charges its consumers. OCC's proposed rule reads:

To safeguard against cross subsidization from the regulated utility to the benefit of its affiliate, all unregulated services shall be

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<sup>7</sup> See, e.g., R.C. 4928.01(B), 4928.03, 4928.04.

<sup>8</sup> 133 G.A. Am. Sub. H.B. No. 6.

accounted for on the affiliate books at fully allocated costs. All unregulated service(s) provided by an affiliate shall be provided to its consumers at charges equal to or above its fully allocated cost.

OCC's recommendation exceeds the purpose of, and statutory authority for, the Corporate Separation Rules. The rules are intended to regulate the behavior of regulated utilities. The rules are not meant to control how an unregulated affiliate operates independently, or to force undue costs on an unregulated affiliate's consumers through price floors. Indeed, in its last review of this Chapter, the Commission recognized that this Chapter only applies to the utilities and is not an appropriate section to include requirements for other entities.<sup>9</sup>

Further, setting price floors for services an affiliate provides to consumers has no apparent connection to safeguarding against cross-subsidization, and OCC offers no explanation. This Chapter already has in place ample protections against cross-subsidization, such as the requirement that shared employees charge time based on fully allocated costs.<sup>10</sup> The current time allocation rule ensures that shared service employees are not working for an affiliate while charging their time to the regulated utility.

In addition, OCC's additions would harm consumers. While OCC's Comments assert that customers "can benefit from potentially lower, market driven prices,"<sup>11</sup> its recommended price floor for affiliates would create an unlevel playing field for market participants which would be disruptive to the market and could cause higher prices for consumers. While OCC asserts that "regulatory policies should promote a level playing field,"<sup>12</sup> its recommended price floor for only

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<sup>9</sup> In the Matter of the Review of Ohio Adm. Code Chapter 4901:1-37, PUCO Case No. 13-953-EL-ORD, et al. Order at ¶25 (September 10, 2014).

<sup>10</sup> OAC 4901:1-37-04(A)(5).

<sup>11</sup> OCC Comments at 4.

<sup>12</sup> *Id.*

competitors that are affiliates of regulated utilities, would have the opposite effect. For all of these reasons, OCC's recommendation should be rejected.

**d. OCC's recommendation to require an affiliate to purchase from the identical electric utility tariff as its competitors when providing unregulated services is incomprehensible.**

To "prevent unintended cross subsidies and unfair advantages," OCC recommends adding a rule requiring an affiliate to purchase from the identical electric utility tariff as its competitors when providing unregulated services. OCC's proposed rule reads:

When providing unregulated services, the affiliate shall be required to purchase from the identical electric utility tariff as its competitors for all similarly situated customers in the same service classification.<sup>13</sup>

This recommendation is incomprehensible and incapable of a reply. There is no apparent reason to require an affiliate to purchase a tariffed service from the regulated utility when providing unregulated services. This recommendation should be rejected.

**CONCLUSION**

The Companies appreciate the opportunity to participate in the rule review process. Because OCC's recommendations are either redundant of current rules, lacking or contradicting statutory authority, and not in the best interests of consumers, they should be rejected.

Respectfully submitted,

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<sup>13</sup> *Id.*

*On behalf of Ohio Edison Company,  
The Toledo Edison Company, and  
The Cleveland Electric Illuminating  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Reply 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 26<sup>th</sup> day of July 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**  
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Summary: Reply Comments electronically filed by Mr. Scott J Casto on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company