

FILE

IN THE SUPREME COURT OF OHIO

INTERSTATE GAS SUPPLY, INC.

Appellant,

v.

The Public Utilities Commission of Ohio,

Appellee.

:
:
: Case No. 19-1269
:
: Appeal from the Public Utilities
: Commission of Ohio
:
: Public Utilities Commission of
: Ohio Case Nos. 17-32-EL-AIR
17-33-EL-ATA
17-34-EL-AAM
17-872-EL-RDR
17-873-EL-ATA
17-874-EL-AAM
17-1263-EL-SSO
17-1264-EL-ATA
17-1265-EL-AAM
16-1602-EL-ESS

NOTICE OF APPEAL OF INTERSTATE GAS SUPPLY, INC.

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RECEIVED-BOOKING DIV

Notice of Appeal of Interstate Gas Supply, Inc.

Appellant Interstate Gas Supply, Inc. (“IGS Energy” or “IGS”), hereby gives its notice of its appeal, pursuant to R.C. 4903.11, 4903.13 and S. Ct. Prac. R. 10.02(A), and Ohio Adm. Code 4901-1-02(A) and 4901-1-36, to the Supreme Court of Ohio and Appellee the Public Utilities Commission of Ohio (“Commission” or “PUCO”), from the Commission’s Opinion and Order issued on December 19, 2018 (“Opinion and Order”) (Attachment B), and the Commission’s Entry on Rehearing issued on July 17, 2019 (“Entry on Rehearing”) (Attachment A) (collectively, “Orders”) in Case Nos. 17-32-EL-AIR, *et al.*. Collectively, the Orders approved Duke Energy Ohio’s (“Duke”) application to increase its distribution rates and to establish a standard service offer, including a default offering of competitive retail electric service in the form of an electric security plan.

The Orders are unjust, unlawful and unreasonable inasmuch as they authorized Duke to increase its non-competitive service rates to recover costs associated with competitive retail electric service. Further, the Orders permitted Duke to assess discriminatory and unsubstantiated fees on competitive retail electric service (“CRES”) providers without record support.

Appellant was and is a party of record in Case Nos. 17-32-EL-AIR, *et al.*, and on January 18, 2019, filed an Application for Rehearing (Attachment C) of the Opinion and Order. The Entry on Rehearing denied Appellant’s Application for Rehearing on July 17, 2019 (Attachment A). The Orders are unjust, unlawful and unreasonable for the reasons set out in the following Assignments of Error:

- 1. The Orders are unlawful and unreasonable because they authorized Duke to recover the cost of competitive retail electric service through non-competitive service rates. R.C. 4928.05(A)(1) prohibits the Commission from exercising Chapter 4909 to regulate competitive retail**

electric services; therefore, the Orders exceeded the scope of the Commission's jurisdiction.

2. The Orders authorized an anticompetitive, unlawful, and unreasonable subsidy to Duke's competitive retail electric service in violation of precedent and State policy enumerated in R.C. 4928.02. *Elyria Foundry Co. v. Pub. Util. Comm'n*, 14 Ohio St.3d 305, 315 (2007).
3. The Orders are unlawful and unreasonable inasmuch as they rejected IGS' proposal to remedy Duke's unlawful collection of competitive retail electric service costs through non-competitive service rates.
4. The Orders are unlawful and unreasonable because they violated R.C. 4903.09 by failing to state findings of fact and reasons prompting the Commission's decisions. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512,519, 526-27 (2011). The Orders failed to appropriately consider or address IGS' arguments that the Stipulation recommended that the Commission: (1) unlawfully and unreasonably apply Chapter 4909 to authorize recovery of competitive retail electric service costs through non-competitive service rate structures; (2) unlawfully and unreasonably provided a subsidy to Duke's competitive retail electric service rates in violation of R.C. 4928.02; and (3) the Orders further failed to evaluate and address IGS' analysis and quantification of competitive retail electric service costs proposed for recovery in distribution rates.
5. The Orders are unlawful and unreasonable because they concluded the existence of costs related to Duke's facilitation of the choice market may justify subsidizing standard service offer ("SSO") service. The Orders' reasoning circumvents the statutory limitation against regulation of competitive retail electric services under Chapter 4909. The Orders are also arbitrary, capricious, and an abuse of discretion given that choice-related costs are already directly assigned to CRES providers. *Forest Hills Utility Co. v. Pub. Util. Comm'n Ohio*, 31 Ohio St. 2d 46 (1972).
6. The Orders' determination that choice costs may justify subsidizing the SSO is against the manifest weight of the evidence. The record reflects \$23 million in SSO-related costs proposed for recovery in distribution rates; substantial CRES provider fees to cover choice-related costs; thus, the record demonstrates that additional costs should be allocated to the SSO even under the Orders' unlawful reasoning. *Westside Cellular, Inc. v. Pub. Util. Comm.*, 98 Ohio St. 3d 165; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm'n Ohio*, 76 Ohio St.3d 163, 166 (1996).

- 7. The Orders are unlawful, unreasonable, and discriminatory because they authorized Duke to impose switching fees and historical usage fees on CRES providers without evidentiary support in violation of R.C. 4909.15 and R.C. 4909.18. The application of these fees to CRES providers is discriminatory in violation of R.C. 4905.35 and 4928.02.**

WHEREFORE, Appellant IGS respectfully submits that Appellee Commission's Orders are unlawful, unjust, and unreasonable and should be reversed. These cases should be remanded to the Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,



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CERTIFICATE OF FILING


I hereby certify that, in accordance with S.Ct.Prac.R. 3.11(A)(2), the foregoing Notice of Appeal of Interstate Gas Supply, Inc's Notice of Appeal has been filed with the Docketing Division of the Public Utilities Commission of Ohio by leaving a copy at the office of the Commission in Columbus, Ohio, in accordance with Ohio Adm. Code 4901-1-02(A) and 4901-1-36, on September 13, 2019.

A handwritten signature in black ink, appearing to read "Joseph Oliker", written over a horizontal line.

Joseph Oliker
Counsel for Appellant
Interstate Gas Supply, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of Interstate Gas Supply, Inc. was served upon the parties of record to the proceeding before the Public Utilities Commission of Ohio listed below and pursuant to S.Ct.Prac.R. 3.11(A)(2) and R.C. 4903.13 on September 13, 2019, via electronic transmission, hand-delivery, or first class U.S. mail, postage prepaid.


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**PUBLIC UTILITIES COMMISSION OF
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THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR AN
INCREASE IN ELECTRIC DISTRIBUTION
RATES.

CASE No. 17-32-EL-AIR

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR TARIFF
APPROVAL.

CASE No. 17-33-EL-ATA

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR APPROVAL
TO CHANGE ACCOUNTING METHODS.

CASE No. 17-34-EL-AAM

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR APPROVAL
TO MODIFY RIDER PSR.

CASE No. 17-872-EL-RDR

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR APPROVAL
TO AMEND RIDER PSR.

CASE No. 17-873-EL-ATA

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR APPROVAL
TO CHANGE ACCOUNTING METHODS.

CASE No. 17-874-EL-AAM

IN THE MATTER OF APPLICATION OF DUKE
ENERGY OHIO, INC. FOR AUTHORITY TO
ESTABLISH A STANDARD SERVICE OFFER
PURSUANT TO R.C. 4928.143 IN THE FORM
OF AN ELECTRIC SECURITY PLAN,
ACCOUNTING MODIFICATIONS, AND
TARIFFS FOR GENERATION SERVICE.

CASE No. 17-1263-EL-SSO

IN THE MATTER OF APPLICATION OF DUKE
ENERGY OHIO, INC. FOR AUTHORITY TO
AMEND ITS CERTIFIED SUPPLIER TARIFF,
P.U.C.O. No. 20.

CASE No. 17-1264-EL-ATA

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR
AUTHORITY TO DEFER VEGETATION
MANAGEMENT COSTS.

CASE No. 17-1265-EL-AAM

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., TO ESTABLISH