

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of Chapter 4901:1-10 of the Ohio)	Case No. 17-1842-EL-ORD
Administrative Code.)	

**MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING OF THE OHIO
CONSUMERS' COUNSEL, THE DAYTON POWER AND LIGHT COMPANY,
THE OHIO EDISON COMPANY, THE TOLEDO EDISON COMPANY, & THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY,
DUKE ENERGY OHIO, INC., AND THE OHIO POWER COMPANY
BY INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

On February 26, 2020, the Commission issued its Finding and Order ("Order") adopting amendments to Ohio Administrative Code Chapter 4901:1-10 regarding the rules for electrical safety and service standards. As is relevant to this pleading, the Order established common sense rules that ensure an electric distribution utility ("EDU") cannot favor specific products or services. Moreover, the Order lifted the uncertainty regarding access to customer usage data, which will facilitate the deployment of innovative products and services.

On March 27, 2020, the Office of the Ohio Consumers' Counsel ("OCC"), The Dayton Power and Light Company ("DP&L"), the Ohio Edison Company, The Toledo Edison Company, and The Cleveland Electric Illuminating Company ("FirstEnergy"), Duke Energy Ohio, Inc. ("Duke"), and Ohio Power Company ("AEP Ohio") filed applications for rehearing regarding the Commission's Order. Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") urges the Commission to deny certain portions of these applications of rehearing as set forth in greater detail below.

II. ARGUMENT

A. The Order correctly prohibited the EDUs from discriminating against CRES providers.

In the Order, the Commission amended Ohio Adm.Code 4901:1-10-33(A) to prohibit an EDU from discriminating or unduly restricting a customer's CRES provider from including non-jurisdictional charges on a consolidated electric bill.¹ In doing so, the Commission recognized the concerns raised by IGS regarding unreasonable preferences and competitive advantages that have been provided by some of the EDUs with regards to access to the utility-issued bills.² Thus, to promote competition and fairness between all parties, under the new rule, "[t]he EDU must allow the customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list the newly termed, 'non-jurisdictional services' charges."³

On rehearing, AEP Ohio, Duke, FE, DP&L, and indirectly OCC, raise challenges to the Commission's addition. Because the Commission issued a well-reasoned, fair decision, these arguments must be denied.

1. Although not required in a rulemaking proceeding, the Commission has evidence of the EDUs' discrimination against CRES providers.

¹ Order at ¶¶ 213, 242.

² *Id.*

³ *Id.*

FirstEnergy argues that the Commission's new provision in Ohio Adm.Code 4901:1-10-33(A) is unreasonable and unlawful and not based on the record before the Commission in this proceeding.⁴

However, the Supreme Court of Ohio has held that rulemaking proceedings before the Commission are not "contested cases," and thus, the requirements of R.C. 4903.09, such as reliance on the record, do not apply.⁵ In addition, the Commission has been given an express exemption from the record requirements during a rulemaking procedure through R.C. 119.01(A)(1).⁶ Accordingly, in this proceeding the Commission "was not required to develop an evidentiary record to support its rule making decision, and could adopt [] rules upon a variety of sources and expertise of the Commission."⁷ Further, no evidence is necessary to establish common sense rules that prohibit discrimination. Thus, FirstEnergy's application for rehearing should be denied.

In any event, several Commission proceedings and prior Commission orders are littered with evidence of EDU discrimination against CRES providers with respect to the provision of non-jurisdictional products and services. The Commission is in fact well

⁴ FirstEnergy RH App. at 11-12.

⁵ *Craun Transp., Inc. v. Pub. Util. Comm.*, 162 Ohio St. 9, 10 (1954) (determining that the Commission question was not subject to the procedural requirements of Section 614-46a, General Code, predecessor of R.C. 4903.09, in the promulgation and adoption of rules); see *In re Comm.'s Review of Chapter 4901:1-19 of the Ohio Adm.Code*, Case No. 17-1945-GA-ORD, Second Entry on Rehearing (Feb. 27, 2019).

⁶ *In re Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI, Finding and Order (Apr. 25, 2002) at 9.

⁷ *Id.*

aware that some of the EDUs are placing non-jurisdictional charges on their bills. For example, in a case currently pending before the Commission, FirstEnergy admitted that it has arranged with HomeServe USA Repair Management Corp. to offer various repair plans to the Companies' customers, with charges for these plans appearing on the customers' utility bill.⁸ In fact, a solicitation for this service, which notes that the monthly service charges would appear on the customer's electric bill, was submitted into evidence in FirstEnergy's most recent electric security plan proceeding to demonstrate the discrimination experienced by CRES providers wanting to provide the same service.⁹

Additionally, as discussed in Duke's last two electric security plan proceedings, Duke affiliate's, Duke Energy One, currently bills for its surge protection product and underground electric line insurance products on the Duke-issued bill, yet prohibits a CRES provider from doing the same.¹⁰ Therefore, there is ample evidence to show that EDUs are discriminating against CRES providers.

2. Revisions to the new provision are unnecessary.

⁸ *Retail Energy Supply Association v. FirstEnergy*, Case No. 18-736-EL-CSS, Answer of FirstEnergy (May 15, 2018) at 3.

⁹ *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Test. of Matthew White (Dec. 22, 2014) at Ex. MW-2; see Attachment 1 (letter from FirstEnergy dated Aug. 15, 2014 to IGS President Scott White regarding FirstEnergy's relationship with HomeServe).

¹⁰ *In re Duke Energy Ohio, Inc.*, Case Nos. 14-841-EL-SSO, et al., Test. of Matthew White (Sept. 26, 2014) at 6-15, Ex. MW-1; *In re Duke Energy Ohio, Inc.*, Case Nos. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) at ¶ 59.

In its application for rehearing, Duke argues that the Commission should modify the new provision in Ohio Adm.Code 4901:1-10-33(A) to state that an EDU “cannot unreasonably discriminate” against a CRES provider.¹¹ Duke asserts this will allow the Commission to evaluate each case according to the facts.

IGS urges the Commission to reject this addition. In the Order, the Commission determined that the amendment properly strikes a middle ground between fairness to a CRES provider and the EDU’s freedom to contract,¹² so there is no need for further evaluation. This is simply an attempt to stall the implementation of the Commission’s new rule by forcing a supplier to submit a complaint. Therefore, Duke’s application for rehearing should be denied.

3. IGS does not oppose the recovery of reasonable, non-discriminatory implementation costs from CRES providers.

AEP Ohio requests that the Commission either grant it the authority to charge CRES providers the incremental IT/coding/billing costs associated with this new requirement or create an accounting deferral to subsequently recover those costs.¹³ Similarly, DP&L’s argues that the Commission’s order is unreasonable to the extent it would require EDUs to bill for these services without cost-recovery.¹⁴

¹¹ Duke RH App. at 8.

¹² Order at ¶ 242.

¹³ AEP RH App. at 5-6.

¹⁴ DP&L RH App. at 2.

IGS does not oppose these recommendations, subject to one clarification. In its application for rehearing, AEP Ohio notes that this new billing requirement will cause new billing complexities and associated incremental costs. IGS submits that many, if not all, of the examples provided by AEP Ohio would also apply when the EDU incorporates the charges for non-jurisdictional services onto a utility bill from itself, an affiliate, or a third-party. Thus, CRES providers should not be required to pay more than what these other entities paid to add the charges for their non-jurisdictional services onto the utility bill.

4. IGS does not oppose modification of the payment priority rule to incorporate this new provision.

On rehearing, AEP Ohio requests that the Commission modify the phrase “non-regulated charges” as used in the partial payment priority rule to incorporate the new term “non-jurisdictional services.”¹⁵ Additionally, FirstEnergy raises a similar concern regarding partial payments.¹⁶ To the extent that this change is required to comport with the existing payment priority rules for “products and services other than retail electric service,” IGS does not oppose AEP Ohio’s suggested change.

5. R.C. 4928.10 only speaks to the minimum content that is required for bills.

In its third assignment of error, OCC asserts that the Commission violated R.C. 4928.10 by not prohibiting the inclusion of non-jurisdictional services on retail electric customer bills issued by the EDU.¹⁷ OCC is simply incorrect.

¹⁵ AEP RH App. at 5-6.

¹⁶ FirstEnergy RH App. at 12, fn. 42.

¹⁷ OCC RH App. at 9-11.

R.C. 4928.10 speaks to *minimum* service requirements and *minimum* content requirements for bills. It does not mandate a limitation on what can be on the bill. Thus, OCC's assignment of error must be denied.

B. The Commission must decline to adopt OCC's new proposal regarding customer data.

In its fourth assignment of error, OCC asserts that the Commission erred by not prohibiting the EDU from releasing customer contact information to CRES providers unless consumers opt-in to the release of their personal information.¹⁸ In the alternative, OCC suggests that the rules should be amended to require offer an electronic method and/or automated telephone method for customers to use to opt out of the pre-enrollment lists.¹⁹

The Commission must decline to adopt this suggestion. Initially, IGS notes that OCC is alleging the Commission erred by failing to adopt a provision that was not proposed in the draft rules, nor raised in stakeholder comments. As this was not a matter determined in this proceeding, OCC's application for rehearing on this issue is improper.²⁰ Further, OCC's initial suggestion that a customer must opt-in to be included on pre-enrollment list is contrary to R.C. 4928.10(G), which explicitly requires the EDUs to provide certain information, unless the customer objects.

¹⁸ OCC RH App. at 11-12.

¹⁹ *Id.*

²⁰ See R.C. 4903.10.

Additionally, OCC provides no examples or support that the current opt-out method is somehow insufficient or that the very limited information a CRES provider receives through the pre-enrollment list is causing privacy concerns. The limited information provided on the list assists the CRES provider and the customer during the sales process, such as the PIPP Plus indicator to advise the CRES provider that the customer is ineligible to shop, and the customer's meter type, which indicates whether the customer is eligible for time-differentiated rates—something especially important as the EDUs move forward with their grid modernization efforts.

Finally, it is unknown the difficulty and costs associated with each EDU implementing these capabilities. Therefore, the Commission should reject OCC's suggestions.

C. The Commission properly declined to adopt OCC's proposal to require the EDUs to record and publicly release shadow billing data.

In the Order, the Commission properly rejected OCC's proposal to require the EDUs to provide shadow billing data to customers on an annual basis, as well as publicly release a report containing the data.²¹ The Commission found it unnecessary because the price-to-compare statement ("PTC") is already included on a customer's monthly bill and each EDU's standard service offer ("SSO") rate is available on the Commission's Apples-to-Apples website.

²¹ Order at ¶ 162.

In its first assignment of error, OCC asserts the Commission acted unreasonably by rejecting its proposal because the “decision does not adequately protect consumers.”²² On rehearing, OCC raises no new compelling arguments, instead submitting unsupported generalizations about Ohio’s residential customers. OCC argues that “[t]rying to assess if they are saving or spending more money on their electricity through a marketer is not a priority with Ohio families’ limited time and resources.”²³ Yet, OCC acknowledges that over 50% of residential customers in Ohio are shopping. OCC’s argument should be ignored. Clearly, if a customer took the time to shop, they thought it was a priority.

Further, OCC provides no rationale for its apparent belief that customers would make the time to review this annual statement, despite not making time to review their monthly utility bill containing their electric charges and the PTC.

Additionally, OCC provides no explanation for its assertion that an annual shadow billing data report could “guide the need for developing additional resources that customers may need to further understand their retail electric experience.”²⁴ That is because it will not. For example, IGS only offers a 100% green electricity product to residential customers in Ohio. Thus, the shadow billing data for IGS customers will be comparing the prices between two different products.

²² OCC RH App. at 3-6.

²³ OCC RH App. at 5.

²⁴ *Id.*

Finally, many of arguments initially raised by IGS in this proceeding remain, such as the misrepresentation of the benefits of the retail market by claiming that lower prices are the only benefits customers can receive, the confusion and harm caused by failing to encompass the true value of CRES offerings in these comparisons, and the fruitlessness of backward looking data in a fluctuating market.²⁵ Therefore, the Commission should deny OCC's application for rehearing.

D. The Commission properly declined to adopt a customer block.

In the Order, the Commission found that *exhaustive* procedures are already in place to prevent CRES provider abuses, such as Ohio Adm.Code 4901:1-10-21(H) and 4901:1-21-08(C), so that the customer block is not necessary.²⁶ As noted by IGS in Initial Comments, this includes Commission approval before operating in the market; third-party verification to complete enrollment; immediate post-enrollment protections, such as a seven-day contract rescission period and written notice of this period; and continuing post-enrollment protections, such as a monthly utility bill that explicitly lists the generation supplier and a customer complaint process with the Commission.²⁷

²⁵ Order at ¶ 160.

²⁶ Order at ¶ 178.

²⁷ Order at ¶ 170, *citing* IGS Comments at 8-10.

On rehearing, OCC also challenges the Commission’s decision to decline to adopt the creation of a customer block mechanism on electric accounts.²⁸ OCC disagrees with the Commission’s finding that current customer protections are adequate.

OCC is challenging this finding based on the actions of just two CRES suppliers, both of which are no longer operating in the Ohio retail energy marketplace.²⁹ Notably, it was some of the exhaustive procedures referenced by the Commission in the Order that enabled Staff to address these bad actors and provide remedies to those customers impacted.

Further, OCC’s allegation that waiver requests by CRES providers are somehow “eroding consumer protections” is simply incorrect.³⁰ In fact, in the example cited by OCC, the Commission found the waiver providing for electronic verification was actually “more expansive than telephonic verification” and added customer information that might be more of a fraud-deterrent.³¹

²⁸ OCC RH App. at 6-9.

²⁹ See *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-0958-GE-COI, Opinion and Order (Feb. 26, 2020); *In the Matter of the Commission’s Investigation into PALMco Power OH, LLC d/b/a Indra Energy’s Compliance with the Ohio Adm.Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-0957-GE-COI, Opinion and Order (Jan. 29, 2020).

³⁰ *Id.* at 6.

³¹ *In the Matter of the Application of Direct Energy Business, LLC and Direct Energy Services, LLC for Waivers of Certain Provisions of Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29, to Permit Third-Party Verification by Digital Confirmation*, Case No. 18-0382-GE-WVR, Entry on Rehearing (Nov. 21, 2019) at ¶ 8.

Finally, OCC does not address the concerns raised by IGS and other parties regarding the practical implementation of a customer block, such as the procedure for removing the block.³² Therefore, the Commission should deny OCC's application for rehearing on this issue.

III. CONCLUSION

For the foregoing reasons, IGS recommends that the Commission deny the applications for rehearing as specified above.

Respectfully submitted,

/s/ Bethany Allen

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³² Order at ¶ 175.

CERTIFICATE OF SERVICE

I hereby certify that a service copy of the foregoing *Memorandum Contra the Applications for Rehearing of the Ohio Consumers' Counsel, the Dayton Power and Light Company, the Ohio Edison Company, The Toledo Edison Company, & The Cleveland Electric Illuminating Company, Duke Energy Ohio, Inc., and the Ohio Power Company by Interstate Gas Supply, Inc.* was sent by, or on behalf of, the undersigned counsel to the following parties of record on April 6, 2020, via electronic transmission.

/s/ Bethany Allen
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August 15, 2014

VIA ELECTRONIC MAIL

Mr. Scott White
President
IGS Energy

Dear Mr. White:

This letter is in response to your July 16, 2014 letter to the FirstEnergy Utilities' Executive Vice President and President Charles Jones regarding IGS's formal request to utilize certain assets of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's (the "Companies") to market and invoice warranty products and services to the Companies' customers. The letter also alleges that the Companies are providing marketing and billing services to HomeServe without providing that same benefit to other companies in violation of Ohio Revised Code 4905.35(A).

Under their tariff, the Companies are permitted to offer to their customers' products and services. The Companies do have a program offering such services and has contracted with a vendor, HomeServe, to implement that program. HomeServe is a vendor for the Companies and is not, as the letter suggests, simply a third party to whom the Companies allow to market and invoice their customers.

In addition, the Companies chose HomeServe as a result of a public request for proposal. Any company providing similar services, such as IGS, was welcome to submit a proposal in response. This public request for proposal demonstrates that no undue preference or advantage was given to HomeServe.

Finally, the Companies have been providing these programs through a vendor for several years without concern that the programs violate their tariffs, Commission regulations or Ohio law. We are also aware that IGS raised similar concerns in Case No. 14-0689-EL-ATA and 14-0690-EL-ATA related to Duke Energy Ohio Inc.'s tariff authorizing similar programs and that the Commission did not adopt those conclusions.

I hope that this response addresses IGS's concerns. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Carrie M. Dunn". The signature is fluid and cursive, with a long, sweeping underline.

Carrie M. Dunn

Cc: Joseph Olikier, counsel for IGS.

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Summary: Memorandum Memorandum Contra the Applications for Rehearing of the Office of the Ohio Consumers' Counsel, The Dayton Power and Light Company, Ohio Edison Company, The Toledo Edison Company, and The Cleveland Electric Illuminating Company, Duke Energy Ohio, Inc., and Ohio Power Company by Interstate Gas Supply, Inc. electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc.