BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37.	))))))	Case No. 17-974-EL-UNC

SUPPLEMENTAL REPLY COMMENTS OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

When the Commission ordered this audit in the *Retail Market COI*, it recognized that it is "imperative" that the EDUs and their affiliates "undergo vigilant monitoring" in order to ensure compliance with R.C. 4928.17 and Ohio Adm.Code 4901:1-37, and in order to further Ohio's policies pursuant to R.C. 4928.02.[1] In this proceeding, the Audit Report, Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (collectively "FirstEnergy"), and stakeholders agree that the regulated electric distribution utilities ("EDUs") are selling products and services other than retail electric service. As this practice patently violates R.C. 4928.17(A)(1), it is imperative that the Commission correct it.

Additionally, IGS urges the Commission to correct the anticompetitive preferences and practices between FirstEnergy and its competitive affiliates. The addition of a new competitive affiliate does not change the purpose of corporate separation plans or the prohibition on providing anticompetitive subsidies. Therefore, the Commission should

[1] *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market ("Retail Market COI")*, Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 17.

adopt and apply the recommendations to any of FirstEnergy's unregulated affiliates operating in Ohio to ensure that FirstEnergy will not extend undue preference to these entities.

II. COMMENTS

A. FirstEnergy is not in compliance with corporate separation requirements.

In response to the argument that FirstEnergy's Corporate Separation Plan fails to comply with R.C. 4928.17, FirstEnergy continues to rely on the assertion that its Commission-approved Corporate Separation Plan and tariff allow sales of products and services other than retail electric service.[2] But the purpose of this audit is not to examine FirstEnergy's compliance with its own Corporate Separation Plan; rather, the purpose of this audit is to examine FirstEnergy's compliance with R.C. 4928.17 and Ohio Adm.Code Chapter 4901:1-37.[3] This proceeding is to uncover and correct insufficiencies and a simple reading of FirstEnergy's Corporate Separation Plan has uncovered an insufficiency.[4]

Further, although the Audit Report failed to evaluate FirstEnergy's provision of products and services other than retail electric services, the evidence in this proceeding exposes more issues. For example, the Auditor was directed to examine compliance with the following the rule: "The electric utility shall not, through a tariff provision, a contract,

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[2] *See* FirstEnergy Supplemental at 4.

[3] Entry (May 17, 2017) at ¶ 4 ("The Commission, in adopting one such recommendation, directed that each of the Ohio electric distribution utilities would be subject to an audit to ensure their compliance with R.C. 4928.17 and the Commission's corporate separation rules, as enumerated in Ohio Adm.Code Chapter 4901:1-37, as well as to further Ohio's policies pursuant to R.C. 4928.02.")

[4] *See* IGS Supplemental Comments at 4-6.

or otherwise, give its affiliates or customers of affiliates preferential treatment or advantages over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service."[5] As used in this rule, the definition of "affiliates" includes "any internal merchant function of the electric utility whereby the electric utility provides a competitive service."[6] However, the Audit Report neglects to opine on whether FirstEnergy is providing preferential treatment or advantages to its merchant function of competitive products and services, FirstEnergy Products, or those customers.

Although the Audit Report does not make a specific finding on this issue, the evidence in this proceeding provides the Commission with support that FirstEnergy's Corporate Separation Plan, as executed by FirstEnergy, is failing to prevent the EDUs from giving FirstEnergy Products and the customers receiving these good and services with an advantage. Namely, FirstEnergy provides an unfair advantage to FirstEnergy Products by allowing it to utilize the EDU bill for billing purposes, and an unfair advantage to the customers of FirstEnergy Products through the offering of this convenient bill pay option. Thus, this is another insufficiency that must be remedied by the Commission in order for FirstEnergy to be in compliance with corporate separation laws.

B. Energy Harbor's divorce from the FirstEnergy family does not make the findings in the Audit Report moot.

FirstEnergy submits that because Energy Harbor, LLC ("Energy Harbor") is no longer a FirstEnergy Corp. affiliate, the findings and recommendations in the Audit Report

[5] Audit Report (May 14, 2018) at 1-2, *citing* Ohio Adm.Code 4901:1-37-04(D)(10).

[6] Ohio Adm.Code 4901:1-37-01(A).

are moot.[7] As noted in IGS' Supplemental Comments, IGS disagrees.[8] The removal of Energy Harbor as an affiliate of FirstEnergy does not remove the concerns of anticompetitive advantages identified in the Audit Report or raised by stakeholders.

Indeed, in its Supplemental Comments, FirstEnergy states that "[t]he Companies have and will continue to treat Suvon as they would any competitive affiliate, in compliance with corporate separation requirements."[9] A corporate separation plan must "ensure that the utility will not extend any undue preference or advantage to ***any*** affiliate," not one specific affiliate.[10] Thus, the Commission should adopt and apply the recommendations to any of FirstEnergy's unregulated affiliates operating in Ohio to ensure that FirstEnergy will not extend undue preference to these entities.

III. CONCLUSION

For the reasons set forth above, IGS recommends that the Commission adopts the comments submitted by IGS in this proceeding.

Respectfully submitted,

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[7] FirstEnergy Supplemental at 2.

[8] *See* IGS Supplemental at 9-13.

[9] FirstEnergy Supplemental at 3.

[10] R.C. 4928.17(emphasis added).

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CERTIFICATE OF SERVICE

I certify that this *Supplemental Reply Comments of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on June 15, 2020. The PUCO's e-filing system will electronically serve notice of the filing on the subscribed parties. Additionally, the parties below have received a copy of this filing via electronic transmission.

*/s/ Bethany Allen*__________
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