

Before the Public Utilities Commission of Ohio

**In the Matter of the
Commission's Review of the
Standard Filing Requirement
for Rate Increases in Ohio
Administrative Code 4901-7-01**

Case No. 19-2103-AU-ORD

Comments of Retail Energy Supply Association

**Frank P. Darr (Reg. No. 0025469)
6800 Linbrook Blvd.
Columbus, Ohio 43235
614-390-6750
Fdarr2019@gmail.com
(willing to accept service via email)**

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**Attorney for Retail Energy Supply
Association**

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I. Introduction

In this proceeding, the Public Utilities Commission of Ohio (Commission) seeks comments on the Standard Filing Requirements that drive investigations into the distribution rate increases that Ohio's electric distribution utilities seek. One proposal for which comment is sought is a requirement for electric distribution utilities to report the revenue, expenses, and plant involved in the provision of competitive services.²

¹ The statements expressed in this filing represent the position of the Retail Energy Supply Association as an organization, but may not represent the view of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable, and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service to retail, residential, commercial, and industrial customers. More information on RESA can be found at www.resausa.org.

² These comments focus on the appropriate unbundling of revenue, expenses, and plant to account for any subsidies to the standard service offer. The same logic, however, would apply to any competitive service offered by an electric distribution utility or a natural gas distribution company, if provision of that service was lawful. For electric distribution utilities, however, the only authorized competitive service that it may engage in is the standard service offer. Otherwise, the utility is required to have a corporate separation plan that segregates competitive products and services in an affiliate. R.C. 4928.17; see, also, *In re Application of Duke Energy Ohio, Inc. for Approval of its Fourth Amended Corporate Separation Plan*, 148 Ohio St. 3d 510 (2016). That legal requirement has not prevented attempts by the electric distribution utilities to secure recovery of the costs of competitive services that cannot be authorized as part of an electric security plan through riders or in base rates. See, e.g., *In the Matter of the Application of Ohio Power Company to Initiate its gridSmart Phase 3 Project*, Case No. 19-1475-EL-RDR, Application (July 26, 2019) (seeking authorization of cost recovery for broadband buildout); *In the Matter of the Application of The Dayton Power and Light Company to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR, Application (Nov. 30, 2020) (seeking authority to recover energy efficiency programs through base distribution rates). The Supreme Court has rejected as unlawful attempts to leverage the monopoly of the electric distribution utility in competitive markets. *Elyria Foundry Co. v. Pub. Utils. Comm'n of Ohio*, 14 Ohio St. 3d 305 (2007) (fuel costs).

Although the proposed changes to the standard filing requirements are a move in the right direction, detailed and expanded reporting that goes beyond what has been circulated by the Commission in its entry requesting comments is needed.

II. Proposed Changes to the Standard Filing Requirements Support Unbundling Standard Service Offer Costs, But Are Incomplete

Under R.C. 4909.18, a public utility seeking to increase its regulated rates must file an application with the Commission. In addition to some requirements set out in statute, “[t]he application shall provide such additional information as the commission may require in its discretion.” R.C. 4909.18(A). The Commission then is directed to make an investigation of the application to increase rates and file a report of the investigation. R.C. 4909.19(C).

Through its rule making authority, the Commission has adopted Rule 4901-7-01 and an appendix of standard filing requirements for an application seeking an increase in rates.³ The standard filing requirements detail the schedules that are the starting point for the Commission investigation. The major schedules include the A, B, C, and D schedules, which provide the “accounting” support for the proposed rate increase, and the E schedules, which provide the tariff language changes, rate changes, and the cost of service study by which the assignment of responsibility for the rate increases to particular classes of customers is justified.

³ The rule and a link to the Appendix containing the Standard Filing Requirements is available here: <http://codes.ohio.gov/oac/4901-7>.

The Standard Filing Requirements also provide that the applicant submit additional exhibits regarding its management practices and other supplemental information.

In this proceeding, the Commission is considering a change to the supplemental information that the utility must provide. In the draft Appendix attached to the Entry setting the rule review for comments, Chapter II, Part D, contains a proposed division (3) applicable to utilities that are providing both competitive and non-competitive services.⁴ This new division would appear to be applicable to electric distribution utilities that provide both distribution service, a non-competitive service, and standard offer service, a generation service that is provided to customers that have not selected a competitive retail electric service provider or whose generation service provider has defaulted or is otherwise unable to provide service. R.C. 4928.14 and 4928.141. These utilities are directed to provide a narrative description of the provision of each competitive service of the applicant utility which includes the revenues and expenses involved in its provision, the date the utility began providing the competitive service, a description of the procedures used to separate revenues, expenses, plant in service, and other balance sheet items between competitive and non-competitive services and the allocation factors used, and a list of the accounts and their location on the income and balance sheet, if separate accounts are maintained. Entry, Appendix A at 26.

Although the proposed change implies that the Commission will consider the identification and separation of competitive and non-competitive services in its review of an application to increase rates, the proposed changes to the standard filing requirements

⁴ See note 2 above regarding the limits on the authority of an electric distribution utility to provide competitive services and products.

end with the change to the supplemental filing requirement in Part D(3) of Chapter II. To the extent that revenues, expenses, or plant in service are identified, there is no provision to adjust plant accounts, revenues and expenses, or the cost of service study to remove them from the calculation of base distribution rates.

III. Ohio Law and Sound Public Policy Require Unbundling the Standard Service Offer Costs from Distribution Rates

Although the Commission has recognized that a portion of the costs associated with the provision of the standard service offer may be collected in utility distribution rates, the Commission has not segregated those costs to the standard service offer. The failure to do so violates Ohio law and is not consistent with basic ratemaking principles designed to prevent cross-subsidy and unfair competition.

A. Ohio Law Prohibits the Commission from Setting Distribution Rates to Bill and Collect for Competitive Services

By law, generation service, including the standard service offer, is declared a competitive service. R.C. 4928.03 and 4928.141. This declaration precludes the Commission from regulating the prices of these competitive services under R.C. Chapter 4909. R.C. 4928.05(A). As a result of this legislative constraint, the Commission may regulate only non-competitive services in a base distribution rate case initiated under R.C. 4909.18.

In practice, however, electric distribution utilities continue to recover generation-related service costs in their distribution rates. Embedded in the distribution rates are costs associated with the administration of the standard service offer that are not being recovered in the administrative costs that are recovered through standard service offer

rates.⁵

The issue presented here is not whether those costs are recoverable or whether the electric distribution utility should be authorized the cost of a service that it provides to support the standard service offer, but how to appropriately assign the costs to the proper service so that they are recovered from the cost causers through rate setting in the proper proceeding, i.e. a standard offer proceeding or a rate case. See note 5. The first step to reaching the lawful result is proper filing requirements to identify cost causation.

B. Sound Public Policy Requires Unbundling Standard Service Offer Costs from Distribution Rates

Cost of service principles for setting just and reasonable rates are embedded in Ohio law. R.C. 4909.15(A) directs the Commission in a rate case to determine a just and reasonable rate. “In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission may consider the costs attributable to such service.” R.C. 4909.151.

The direction provided by Ohio law to consider the costs attributable to each service rest on sound rate making policy. As the Electric Cost Allocation Manual published by the National Association of Regulatory Utility Commissioners states, “While opinions vary on the appropriate methodologies to be used to perform cost studies, few analysts seriously question the standard that service should be provided at

⁵ For a discussion of the cost assignment issue, see In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates, Case Nos. 15-1830-EL-AIR, et al., Opinion and Order ¶¶ 17-32 (Sept. 26, 2018). In that case, the Commission noted that there may be costs recovered through the electric distribution utility’s distribution rates that are attributable to the standard service offer, but concluded that it could not authorize an adjustable rider in a distribution rate case. Id., ¶¶ 28-32.

cost. Non-cost concepts and principles often modify the cost of service standard, but it remains the primary criterion for the reasonableness of rates.” Nat’l Assoc. of Reg. Util. Comm’nrs, *Electric Cost Allocation Manual* at 12 (1992).⁶ While an absolute match between cost of providing a service and its regulated price is unlikely, “rate schedules should, to the extent practicable, be predicated upon the cost associated with a particular service rendered.” In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates, Case Nos. 20-585-EL-AIR, et al., Staff Report at 36 (Nov. 25, 2020).

Fixing on cost of service principles when setting distribution rates has increased importance in a state like Ohio that has declared generation service to be a competitive service. Underlying this declaration is a state electric policy to “ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs,” “ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers,” and “ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, *including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.*” R.C. 4928.02(B), (C), and (H)

⁶ The principles of cost assignment when services are provided to a particular customer or class of customer are understood. Some costs can be identified as logically incurred to serve a particular customer or customer class, and these costs can be assigned to those customers and then classified to determine how the customer is to be charged. *Id.* at 20 and 22.

(emphasis added). Consistent with these policy goals, proper cost assignment is fundamental to enhancing a competitive market for generation service.

As long as default service remains the benchmark against which other offers are compared, it should be priced so that all of the costs incurred to provide default service are included. For it is only in that circumstance [that] competitive retail energy markets empower customers to meaningfully compare energy offers. ... Until the pricing distortion is corrected, utility default service providers will continue to hold an anti-competitive pricing advantage in the provision of what should be a competitive retail electricity service.

Frank Lacey, Default Service Pricing—The Flaw and the Fix, 32 Electricity J. 4, 4 (2019)

To prevent anticompetitive effects, default service pricing should cover all retail risks and costs, including the risks of migration to and from default service to competitive service, which should not be limited by exit fees, minimum stay periods, or other artificial barriers.⁷ Charges should not be authorized in a manner that shifts costs between customers obtaining their electricity from competitive retail electric service providers and those who choose or are relegated to receive the electric distribution utility's default service. Accordingly, regulated distribution utility rates should be unbundled so that any costs the distribution utility incurs in providing electric generation service to default customers are transparent and not disguised as part of regulated distribution rates.

IV. The Scope of the Costs Collected in Distribution Rates Are Spread Across Executive, Finance, Regulatory, and Customer-Facing Operations and Should be Addressed by the Electric Distribution Utility in its Filings

The proposed changes to the standard filing requirements found in the appendix to the entry begin to capture the fact that costs used to support the standard service offer

⁷ This principle is one of the core policy standards approved by the Retail Energy Supply Association. See RESA Statement of Principles at <https://www.resausa.org/about-us/resa-principles>.

may be embedded in revenues, expenses, plant in service, and other balance sheet items and requires a list of the accounts and their location on the income and balance sheet, if separate accounts are maintained. Entry, Appendix A at 26. This description is a start, but should be made more specific to minimize the inevitable quibbling about what the Commission intends to be included in this analysis.

Under a coherent approach that identifies the costs of providing the standard service offer, the electric distribution utility should identify and allocate the portion of costs incurred to operate the standard service offer to that business and bill the default customers for those costs. Lacey, *supra* at 5. With this starting point, default customers should be charged for billing, information service overhead, and any other costs that should be allocated to default service customers. *Id.* Both direct and indirect costs of overheads such as executive functions, information technology services, regulatory functions, and legal services, metering, and marketing should be assigned and allocated to default service. *Id.* at 5 and 9.⁸ Additionally, plant in service accounts should be assigned and allocated because the executive, regulatory, and legal functions of the electric distribution utility have offices and staff assigned to them that incur costs associated with the provision of the standard service offer. Failure to assign and allocate indirect costs and related plant costs will render the cost of default service artificially low, in effect a subsidy of the standard service offer. *Id.* at 5.

⁸ Included in the costs and plant that should be assigned or allocated to standard offer service are those related the utility call center, outside and inhouse legal, regulatory, and compliance personnel, information technology plant and staff, administrative space and personnel supporting the standard service offer, office supply expenses supporting the standard service offer; accounting and auditing expenses, communications expenses, and uncollectible expenses to the extent there is no purchase of receivables program or to the extent that a purchase of receivable program contains a discount rate. Typically, Ohio electric distribution utilities do not recover a return on cash working capital, but if that were to change some adjustment of the cash working capital balance should be made as well.

Although the proposed changes to the standard filing instructions begin to capture the need to assign and allocate standard service offer revenue, expenses, and plant, they could do more by providing specific direction as to the accounts that should be reviewed and requiring explanations for when additional accounts are included or, more importantly, when an identified account is not adjusted to account for revenue, costs, or plant used to support the standard service offer. In particular, the electric distribution utility should be required to address its treatment of FERC Accounts 580 (operation supervision and engineering), 586 (meter expenses), 589 (rents), 597 (maintenance of meters), 901-905 (customer account expenses), 907-919 (customer service and informational expenses), and 920-935 (administrative, general, and general plant maintenance expenses). See FERC Uniform System of Accounts, 18 C.F.R. Part 101, viewed at <https://www.law.cornell.edu/cfr/text/18/part-101>.

V. The Standard Filing Requirements Should Include Adjustments to the Costs of Service Study and Plant and Revenue and Expense Schedules

Although the proposed change to the standard filing requirements would identify revenues, expenses, and plant in service adjustments, those must be carried into rates. In light of the requirement for the Commission to establish just and reasonable rates and the discretion afforded the Commission to require an electric distribution utility to provide additional information with its application to increase rates, the Commission should also require modifications to the various schedules used to calculate the revenue requirement that would be affected by removing revenue, expenses, and plant in service used to

support the standard service offer. Further, the cost of service study should include only that revenue and those expenses that are properly assignable to base distribution service.⁹

VI. Conclusion

For the reasons discussed above, the Commission should expand the requirements of the standard filing requirements to identify specific accounts related to the provision of a competitive service that must be addressed in the application and require that revenue and expense associated with that service be removed from the calculation of base rates and the cost of service study.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (0025469)

6800 Linbrook Blvd.

Columbus, Ohio 43235

(614) 390-6750

fdarr2019@gmail.com

Counsel for Retail Energy

Supply Association

Will accept service by email

⁹ These adjustments do not imply that standard service offer-related revenue and costs are not recoverable, only that they are not recoverable in base distribution rates. Separately, the electric distribution utilities may be required to seek mechanisms to true up cost recovery. See Dayton Power and Light Company for an Increase in its Electric Distribution Rates, Case Nos. 15-1830-EL-AIR, et al., Opinion and Order ¶¶ 29-31 (Sept. 26, 2018).

Certificate of Service

I certify that a copy of the Comments of the Retail Energy Supply Association was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on January 15, 2021.

/s/ Frank P. Darr
Frank P. Darr

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Summary: Comments Comments of Retail Energy Supply Association electronically filed by Frank P. Darr on behalf of Retail Energy Supply Association