

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of
Duke Energy Ohio, Inc. for a Waiver of Case No. 21-1100-EL-WVR
Specific Sections of the Ohio
Administrative Code

INITIAL COMMENTS OF INTERSTATE GAS SUPPLY, INC.

Summary

Duke Energy Ohio (“Duke”), as of November 2021, may no longer discriminate in the provision of non-jurisdictional charges or unreasonably restrict access to the utility consolidated bill.¹ Duke has long provided discriminatory non-jurisdictional billing services to its affiliate. In this proceeding Duke is seeking the ability to continue discriminating against other market participants by offering the current service for an additional 12 months without making the ability available outside of Duke’s affiliate during that time.² On December 10th the Public Utilities Commission Staff issued Comments recommending that the waiver be granted but for six months rather than the requested full year.³ Duke has not demonstrated any true need for an extension in order to comply with the long-anticipated rule changes. Moreover, Duke’s waiver request provides no justification for continuing to exclude other market

¹ O.R.C. 4901:1-10-33(A)

² Duke Application at 2-3.

³ Commission Staff Comments at 5.

participants from the placing non-jurisdictional charges on the consolidated utility bill—clearly, Duke already has the capability, given that it has provided the service to its affiliate for many years. The Commission should deny Duke’s waiver request and instruct Duke to immediately comply with 4901:1-10-33(A) by allowing Competitive Retail Electric Service Suppliers (“CRES” or “CRES Suppliers”) non-discriminatory access to consolidated utility bills.

Background

The issue of discriminatory and unfair use of the utility consolidated bill for non-jurisdictional services was heavily discussed during the last review of the rules pertaining to standards of electric distribution utilities.⁴ Ultimately the Commission determined that open and nondiscriminatory access to consolidated utility bills was necessary in order to promote fairness among all parties.⁵ The rule the Commission chose to adopt dictates that “an electric utility *cannot discriminate or* unduly restrict” a customer’s CRES provider from including non-jurisdictional charges on the utility bill.⁶

On rehearing, The Commission rejected the Electric Distribution Utility’s (“EDU”) requests to water down the Commissions’ requirement for access, specifically rejecting the EDUs’ attempt to insert the word “unreasonably” before the word restrict so that the new rule would not have barred discrimination of bill access unless

⁴ *In the Matter of the Commission’s Review of its Rule for Electric Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD.

⁵ Case No. 17-1842-EL-ORD, Finding and Order at ¶213 (Feb. 26, 2020).

⁶ O.A.C. 4901:1-10-33(A) (emphasis added).

it was determined to be unreasonable.⁷ The new rule became effective on November 1, 2021.

The same day that the rule change became effective, Duke filed the application in this case seeking a full year waiver of the rules which would allow Duke to continue offering discriminatory service to its affiliate while continuing to bar any non-jurisdictional CRES charge.⁸ Duke states in its Application that it eventually plans to comply with the new rules by ending all non-jurisdictional charges on its consolidated bills and thus removing unfair prejudice towards its affiliate.⁹ Duke did not address how it plans to comply with the second part of the rule which explicitly prohibits undue restrictions on a customer's CRES provider from including non-jurisdictional charges on the consolidated utility bill, given that Duke already has the IT functionality to incorporate non-jurisdictional charges on their bill. In its Application Duke states that the waiver is also needed due to Duke's new Customer Information System ("CIS") but provided no justification as to why this new system would impact existing functionality and/or prohibit Duke from immediately dropping all non-jurisdictional charges from its bills or adding other non-jurisdictional charges.¹⁰

⁷ Entry on Rehearing ¶49.

⁸ Duke Application at 1.

⁹ Duke Application at 3.

¹⁰ Duke Application at 3.

A. The Commission should deny Duke’s waiver request because it fails to demonstrate good cause

Duke was on notice of the pending rule change since the issuance of the Finding and Order in Docket 17-1842-EL-ORD on February 26, 2020. Despite over 600 days of notice, Duke was unable to propose a solution that would have allowed them to comply with the new rules upon their effective date of November 1, 2021. Duke has demonstrated the ability to comply with the rules as adopted by adding non-jurisdictional charges to its bills, but yet refuses to do so for any company that is not an affiliate.

Duke admits that it currently allows its affiliate to place non-jurisdictional charges on the consolidated utility bill, yet it has provided no evidence or justification as to why it cannot provide the same billing functionality for similar CRES non-jurisdictional charges. Additionally, Duke admits that it has incurred no costs over the past decade in order to provide the non-jurisdictional billing functionality to its affiliate.¹¹ However, in its application Duke simply states that “the technical requirements of implementation” necessitate more time.¹² Duke does not specify what the additional time would accomplish or lay the reasoning for what changes are needed. Duke’s reasoning is nothing more than vague jargon with no evidence or justification to lend it credence. Given that Duke has successfully demonstrated the ability to include non-jurisdictional charges and provides no evidence as to why CRES charges would be any different functionally than those already being offered, Duke’s

¹¹ Duke Response to IGS INT-01-002.

¹² Duke Application at 3.

waiver request should be denied and Duke should immediately comply with the new rules.

B. Duke's waiver request should be denied because it has not demonstrated good cause to restrict CRES non-jurisdictional charges on the consolidated utility bill.

The new Rule 4901:1-10-33(A) contains two distinct provisions. The first portion of the rule is a prohibition on discrimination in the provisions of non-jurisdictional service—an EDU simply cannot provide preferential access to its own and affiliated offerings of non-jurisdictional services. The second provision of the rule provides that EDUs may not unduly restrict CRES providers from placing non-jurisdictional charges on the consolidated utility bill. In its Application Duke makes it clear that it intends to comply with the first provision of the rule by removing all current affiliate non-jurisdictional charges from its bill.¹³ Duke, however, does not address how it plans to comply with the second half of the rule which prohibits any undue restriction of a customer's CRES provider from adding non-jurisdictional charges to the consolidated bill.

Duke admits that it already possesses the functionality to add such charges, has incurred no additional costs in the past decade in order to maintain or upgrade that functionality, and wants to continue offering the service for at least twelve additional months. There is zero evidence that should lead the Commission to believe that Duke is entitled to twelve additional months, or longer, of undue restriction of their consolidated bill.

¹³ Duke Application at 2.

Duke's only real argument boils down to playground logic of "if we don't do it then they can't either." Nowhere in the rule does it imply that if a utility or its affiliate do not offer any non-jurisdictional products then CRES suppliers cannot either, this would be counterintuitive to state policy encouraging the development and deployment of innovative products and services.¹⁴ The rule simply states that a utility may not discriminate *or* unduly restrict. Simply removing affiliate charges from the company bill may remove the discrimination but with the functionality already enabled and paid for, prohibiting CRES providers access would constitute undue restriction with no justification. Given that Duke has utterly failed to even attempt to demonstrate why CRES providers should be denied comparable access to that which Duke's affiliate has enjoyed for several years, the Commission should deny Duke's waiver request and enforce the rules as written.

C. The Commission should give Duke no more than 30 days to cease all non-jurisdictional billing or open the functionality to CRES providers.

In its Application Duke requests a full twelve months in order to drop customers currently paying for non-jurisdictional charges of its affiliate through the consolidated billing mechanism. Duke has demonstrated no need for any time beyond a single billing cycle to drop all of these customers. Duke is under no obligation to communicate with these customers or aid its affiliate in retention of these customers now that their billing arrangement is unlawful. One of the core abilities of any billing system is to allow for the addition and removal of customers.

¹⁴ O.R.C.4928.02.

In addition to the 600 days of notice leading up to the enactment of these rules Duke has not demonstrated any reason why it cannot immediately remove all non-jurisdictional charges. To the extent that Duke continues to desire to discriminate against CRES providers in the provision of non-jurisdictional products, the Commission should not grant Duke any additional time to complete a process that should have been ready on November 1, 2021.

Conclusion

The Commission should deny Duke's waiver application because Duke's proposed solution does not comply with the rule as written and would only allow an additional 12 months of discrimination and restriction. Moreover, Duke has had 600 days of notice regarding these rules and is not entitled to additional time to seek compliance. For the reasons set forth in the above comments the Commission should deny Duke's request and enforce rules that prohibit discrimination against CRES Suppliers and their customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 6th day of January 2022. The following parties were provided by electronic mail a copy of this document.

/s/ Evan Betterton

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Summary: Comments electronically filed by Mr. Evan F. Betterton on behalf of
Interstate Gas Supply, Inc.