

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke
Energy Ohio, Inc. for an Increase in Electric Case No. 21-887-EL-AIR
Distribution Rates

In the Matter of the Application of Duke Case No. 21-888-EL-ATA
Energy Ohio, Inc. for Tariff Approval

In the Matter of the Application of Duke
Energy Ohio, Inc. for Approval to Change Case No. 21-889-EL-AAM
Accounting Methods

**OBJECTIONS AND SUMMARY OF MAJOR ISSUES OF THE RETAIL ENERGY
SUPPLY ASSOCIATION**

Under R.C. 4909.19, Retail Energy Supply Association hereby files its Objections to the Staff Report and Summary of Major Issues in the above-captioned matters. RESA reserves the right to contest through cross-examination, testimony, or exhibits any newly raised issues, issues raised by any other party, or any position set forth in the Staff Report that changes prior to the close of the record.

I. Objections

Objection 1: The Staff Report’s failure to recommend the removal of generation-related costs to support the standard service offer from recovery in distribution rates is unlawful and unreasonable because it would result in the collection of generation-related costs in distribution rates.

Objection 2: The Staff Report’s failure to recommend the removal of generation-related costs to support the standard service offer from recovery in distribution rates is

unlawful and unreasonable because it would permit Duke to recover distribution revenue in excess of its distribution-related costs.

Objection 3: The Staff Report’s failure to recommend the removal of generation-related costs to support the standard service offer from recovery in distribution rates is unlawful and unreasonable because it results in a unduly discriminatory rates for default generation service.

Objection 4: The Staff Report’s failure to recommend recovery of costs to provide the standard service offer that would otherwise be collected in distribution rates through a rider or riders or deferral is unlawful and unreasonable because it permit Duke to collect generation-related costs in distribution rates, permit Duke to recover distribution revenue in excess of its distribution-related costs, and permit Duke to charge unduly discriminatory rates for default generation service.

In the order approving distribution rates for Duke Energy Ohio in Case No. 17-32-EL-AIR, et al., the Public Utilities Commission of Ohio directed Duke to include in its next rate case application a cost of service study to determine the extent to which distribution rates subsidize the standard service offer and certified retail electric service. In its Application and supporting testimony, Duke proposes a Retail Reconciliation Rider that would reallocate costs related to the provision of standard service or support the customer choice program. Application at 2-3 (Oct. 1, 2021). In supporting testimony, Duke identified costs associated with the provision of default service that are collected in distribution rates and calculated rates for the rider, but recommended that the rider not be implemented. Direct Testimony of James E. Ziolkowski on Behalf of Duke Energy Ohio, Inc. at 17-25 (Oct. 25, 2021). The Staff Report “agrees with [Duke] that the Rider should not be approved and implemented.” Staff Report at 41 (May 19, 2022).

The purpose of unbundling was to separate the competitive and non-competitive electric service functions so that customers could “shop” for their competitive retail electric service.

Industrial Energy Users-Ohio v. Pub. Utils. Comm’n of Ohio, 117 Ohio St. 3d 486, 487 (2008).

This goal is explicitly stated in Ohio law: “Beginning on the starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers.” R.C. 4928.03(A). Further, retail electric generation and other services declared competitive are no longer subject to Commission jurisdiction under Chapter 4909 of the Revised Code. To that end, R.C. 4928.05(A)(1) provides, “[A] *competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation ... by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963.*” (Emphasis added.) In other words, the Commission lacks authority to authorize the recovery of costs related to competitive retail electric services in a distribution rate case filed under R.C. 4909.18.

In contrast to distribution services offered as a monopoly service by the electric utility, the standard service offer, by law, is a utility offering of competitive retail electric services. R.C. 4928.03; R.C. 4928.141 (“a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers”).

Often ignored but particularly important in this case, the General Assembly also sought to assure that electric customers would have nondiscriminatory access to monopoly services. This policy is also expressed in R.C. 4928.03: “Beginning on the starting date of competitive retail electric service and notwithstanding any other provision of law, each consumer in this state and

the suppliers to a consumer shall have comparable and nondiscriminatory access to noncompetitive retail electric services of an electric utility in this state within its certified territory for the purpose of satisfying the consumer's electricity requirements in keeping with the policy specified in section 4928.02 of the Revised Code.” This requirement is rooted in the state electric policy that seeks to “[e]nsure the availability of unbundled and comparable retail electric service” and “nondiscriminatory, and reasonably priced retail electric service.” R.C. 4928.02(A) and (B). It also rests on the Commission’s role in assuring that the competitive market is not frustrated by cross-subsidies. To that end, the Commission also must “[e]nsure 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(H).

The Staff Report recommendation to collect identifiable costs of the provision of the default service offer in distribution rates violates Ohio law. Further, the failure to assign and allocate the costs of default service to the generation function results in base distribution rates that are unreasonable and standard service offer rates that are unduly discriminatory. The former are too high because they are set to recover costs to provide default generation service. The latter are too low because they exclude costs that are unlawfully collected in base distribution rates. Accordingly, the embedded subsidy of default service is unlawful, unreasonable, and unduly discriminatory.

To properly set distribution rates so that costs to provide default service proposed to be collected in distribution rates are properly collected from cost causers either now or in the future,

there are two options. Under the first, the Commission could approve a rider or riders that adjust rates so that the costs of the provision of the standard service offer are properly assigned and allocated. Under the second, the Commission could permit Duke to defer these costs for future recovery and direct Duke to include provision for recovery in an appropriate future case.

Objection 5: The Staff Report failed to address the rates for supplier charges to determine if they are cost based. As a result, those charges and the resulting rates for distribution service are not just and reasonable.

Objection 6: The Staff Report failed to recommend that switching fees applicable to only certified retail electric service providers be set to zero because the current fee lacks any cost justification and is unduly discriminatory.

In assessing the lawfulness and reasonableness of rates under R.C. 4909.15, the Commission is directed to determine the cost of service during a test year. In determining the cost of service, the Commission is to consider the revenue and expenses of the utility during the test period. *Id.* In this case, the utility has included as revenue amounts associated with supplier charges under its supplier tariff, but has not demonstrated that the charges are cost-based. The Staff Report fails to address the cost of service associated with those charges.

The burden rests with Duke to demonstrate that its charges are just and reasonable, particularly when the revenue from those charges is used to reduce the revenue requirement of other Duke customers, as is the case here. Because Duke has failed to demonstrate and the Staff Report has failed to investigate the costs associated with the supplier charges, the distribution rates proposed in the Application and Staff Report cannot be deemed just and reasonable under R.C. 4909.15.

Further, the revenue derived from supplier charges includes a charge for switching that applies to only competitive retail electric suppliers. Similar charges are not assessed on Duke when a customer returns to default service for any reason. There is not any reasoned basis for the difference in treatment. Thus, the supplier charge is an unduly discriminatory. To prevent the unlawful discrimination, the charge for any switching should be set to zero.

Objection 7: The Staff Report’s recommendation of approval of a proposed new rate, Rate TD-CPP, an optional time of use rate, is unlawful and unreasonable because it does not provide for the termination of the rate upon competitive provision of the service as provided by Commission precedent and sound regulatory policy.

In the Application, Duke seeks approval of a new and permanent time of day rate, Rate TD-CPP, that would be available to customers that do not take generation service from a competitive retail electric supplier. The Staff Report recommends approval of the new rate with a modification of the fixed charges. Neither recommends that the rate end when similar products are available from competitive retail electric suppliers.

The Commission has approved time of use rates for other electric distribution utilities, but has recognized that such approval must be conditioned. In the Matter of the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company of a Grid Modernization Business Plan, Case No. 16-481-EL-UNC, et al., Opinion and Order ¶ 110 (July 17, 2019).

Neither the Application nor the Staff Report similarly conditions the continuation of proposed Rate TD-CPP. The failure to recommend a provision that terminates the availability of Rate TD-CPP in Staff Report or to provide a reasoned basis for not conforming the rate to the

Commission's precedent is unlawful and unreasonable. Accordingly, the requested rate should be modified to comply with Commission precedent.

Objection 8: The Staff Report's recommendation that the Commission authorize a modification of the GoGreen Rider that would permit Duke to negotiate a price with customers not on Rates RS and DM for renewable energy credits is unlawful and unreasonable because it would permit Duke, an electric distribution utility, to expand its role in the competitive market for renewable energy credits without complying to statutory requirements concerning the provision of competitive services by an electric distribution utility.

Objection 9: The Staff Report's recommendation that the Commission authorize a modification of the GoGreen Rider that would permit Duke to negotiate a price with customers not on Rates RS and DM for renewable energy credits is unlawful and unreasonable because the modification relates to a competitive electric service or product that is not a lawful subject for consideration in a distribution rate case.

Duke is an electric distribution utility, and as such it has a state-approved monopoly in the provision of electric distribution service. Under state law, this monopoly is restricted and does not include the provision of competitive services except as permitted under R.C. 4928.142 or 4928.143 or under a corporate separation plan, which must include a provision for the sale of a competitive product or service through an affiliate. R.C. 4928.17. There is a competitive market in the provision of renewable energy credits. Nonetheless, the Staff Report is recommending approval of the rider with modifications without a demonstration of compliance with R.C. 4928.17. Under the circumstances presented in this application, approval of the

GoGreen rider or any revision of it in this Application, which is limited to base distribution rates, is illegal and unreasonable.

Further, Duke is seeking a modification of a rider that is not properly addressed in an electric base distribution rate case. These cases are limited to those charges related to non-competitive services. R.C. 4928.05. Given that the sale of renewal energy credits involves a competitive product, modifications of the rate in this proceeding are not lawful.

II. Summary of Major Issues

1. Is the failure to remove the costs of providing default generation service from the calculation of distribution base rates unlawful and unreasonable?
2. Is the failure to investigate and demonstrate that charges assessed competitive retail electric service providers are just, reasonable, and not unduly discriminatory unlawful and unreasonable?
3. Is the failure to conform a proposed time of day rate to Commission precedent unlawful and unreasonable?
4. Is the recommendation to modify the GoGreen Rider to permit Duke to negotiate charges for renewable electric credits unlawful and unreasonable?

Respectfully submitted,

/s/ Frank P. Darr

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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 the Objections and Summary of Major Issues of The Retail Energy Supply Association upon the interested parties, this 21st day of June 2022. The following parties were provided by electronic mail a copy of this document.

/s/ Frank P. Darr

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Summary: Objection Objections and Summary of Major Issues of the Retail Energy
Supply Association electronically filed by Frank P. Darr on behalf of Retail Energy
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