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**

Reply Comments of the Retail Energy Supply Association

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I. Introduction

In this rule review proceeding, the Public Utilities Commission of Ohio is considering amendments to the standard filing requirements for applications seeking increases in distribution rates. Among the changes being considered is one requiring utilities to identify revenues, expenses, and plant in service used to provide competitive services. Although this proposed revision is a needed step toward advancing competition and removing unnecessary subsidies from distribution rates, see Comments of Retail Energy Supply Association (Jan. 15, 2012) (RESA Comments),[2] Duke Energy Ohio, Inc. recommends that the Commission leave out the change. For the reasons discussed in the following section, the Commission should reject that recommendation.

[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. Delivering value-added electricity and natural gas service to retail, residential, commercial, and industrial customers, RESA members operate throughout the United States. More information on RESA can be found at www.resausa.org.

[2] The need for separation can be based on other issues as well. The Federal Energy Regulatory Commission opened a proceeding to address the addition of accounts for renewable resources. Although the owners of these assets generally seek market based rates, the owners may on occasion seek recovery for services that are subject to cost based ratemaking. The proposed accounting changes, which may be flowed through to annual reports, would separately identify the assets. Accounting and Reporting Treatment of Certain Renewable Energy Assets, 174 FERC ¶ 61,032 (Jan. 19, 2021). For a discussion of the proposed rulemaking, see Stephen Hug and Blake Urban, FERC Issues Notice of Inquiry on Possible Expansion of Accounting and Reporting Requirements for Renewable Energy Assets, viewed at https://www.jdsupra.com/legalnews/ferc-issues-notice-of-inquiry-on-5847291/.

II. The Commission should require distribution utilities to report the revenues, expenses, and plant involved in the provision of competitive services, remove the effects of them from the revenue requirement, and adjust the cost of service study to properly set rates

In the entry requesting comments, the draft Appendix to Rule 4901-7-1 included a proposed provision requiring utilities to report the revenue, expenses, and plant involved in the provision of competitive services. Entry, Appendix at 26 (Dec. 16, 2020). In its initial comments, RESA recommended that this requirement be revised to include specific accounts that must be addressed, explanations if those accounts were not assigned or allocated to competitive services, and additional reporting regarding the effect of the removal of revenues, expenses, and plant for competitive services on the revenue requirement and cost of service study. RESA Comments at 10-11.

In contrast to RESA's support for the staff proposal with modifications, Duke Energy Ohio stated that the change was unnecessary since electric distribution utilities, in particular, were not permitted to engage in competitive services. Initial Comments of Duke Energy Ohio, Inc. at 4 (Jan. 15, 2021). Duke's legal claim, however, is faulty because it does not account for the standard service offer.

An electric distribution utility like Duke generally may not offer competitive electric or other products or services. R.C. 4928.17. Although retail generation service is declared a competitive service in Ohio under R.C. 4928.03, R.C. 4928.17 necessarily carves out an exception for the default service offer because an electric distribution utility must provide a standard service offer for customers that either fail to choose or whose competitive retail electric service provider terminates service. R.C. 4928.14 and 4928.141. By definition, the standard service offer must include a generation service component. R.C. 4928.142 (market rate offer) and 4928.143(B)(1) (electric security plan). In turn, the Commission treats the bypassable generation-related components of the standard service offer as the "price to compare" with offers provided by competitive retail electric service providers.[3] Thus, an electric distribution utility is required to provide a competitive electric service, the standard service offer, that the Commission regulates and promotes as a yardstick for competitive offers.

The Commission's authority over the standard service offer, however, is limited to its authority under Chapter 4928. Because generation service has been declared competitive, the Commission is not legally permitted to set rates for a competitive service in a distribution rate case. R.C. 4928.05(A).

Despite the legal bar, current electric distribution rates include recovery of costs incurred by the utility to provide the standard service offer. 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 ¶¶ 28-31 (Sept. 26, 2018). Because an electric distribution utility recovers costs of providing the standard service offer in distribution rates rather than the standard service offer, the standard service offer rates that serve as a yardstick for competitive offers are wrongly stated, customers are misled as to the relative cost of the standard service offer, and markets are both less efficient and more unfair. Frank Lacey, Default Service Pricing—The Flaw and the Fix, 32 Electricity J. 4, 4 (2019).

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[3] Energy Choice Ohio, Glossary of Terms, viewed at http://energychoice.ohio.gov/Pages/Glossary%20of%20Terms.aspx ("Price to Compare: The price for an electric supplier to beat in order for you to save money. It will be shown on residential customer's electric utility bill. You can use this amount to compare with prices offered by suppliers."). Commission rules require bills for electric service to include the price to compare. See, e.g. Rule 4901:1-10-22(B)(24).

Thus, the basis for Duke's argument to reject the proposed change in the standard filing requirements is not legally correct since an electric distribution utility must offer a standard service offer, effectively the offer of a competitive electric service. Moreover, it is sound public policy for the Commission to require the identification and removal of revenues, expenses, and plant used to provide the standard service offer from the calculation of base distribution rates since doing so will promote improved economic outcomes.

III. Conclusion

The state energy policies for electric and gas utility service encourage the creation and maintenance of competitive energy supply markets. R.C. 4928.02 and 4929.02. Although those policies have been in effect for two decades, their implementation remains a work in progress. To continue the progress that has been made, the Commission should expand the requirements of the standard filing requirements to identify specific accounts related to the provision of competitive services that must be addressed in an application for an increase in distribution rates and require that revenues, expenses, and plant in service associated with the provision of competitive services be removed from the determination of distribution rates.

Respectfully submitted,

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Certificate of Service

I certify that on January 29, 2021 a copy of the Reply Comments of the Retail Energy Supply Association was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio and that the Reply Comments were served on the following persons by email.

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