

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy)
Ohio, Inc. for Waiver of Rules 4901:1-10-19,)
4901:1-18-03, 4901:1-18-05(A), and 4901:1-29-) Case No. 06-688-GE-UNC
12(K), Ohio Administrative Code, and) Case No. 06-689-GE-ATA
Approval of Applicable Tariff Revisions.)

FINDING AND ORDER

The Commission finds:

- (1) On May 11, 2006, Duke Energy of Ohio, Inc. (Duke), filed a request for waiver of Rules 4901:1-10-19, 4901:1-18-03, 4901:1-18-05(A), and 4901:1-29-12(K), Ohio Administrative Code (O.A.C.),¹ to allow Duke to disconnect customers for failure to pay competitive retail electric and/or gas charges. Duke also requests approval of certain tariff revisions to allow competitive retail electric and gas providers to retain delinquent customers.
- (2) Several Commission rules set forth the Commission's policy regarding the disconnection of a customer's service for failure to pay for competitive retail services. Rule 10-19, in relevant part, states:

No EDU [electric distribution utility] may disconnect service to a residential customer when:

- (A) That customer fails to pay any charge for nontariffed service, including competitive retail electric service;
- (3) Chapter 4901:1-18, O.A.C., sets forth the disconnection provisions applicable to residential customers. Rule 18-03, in relevant part, provides:
 - (A) Individually metered residential service accounts will be considered delinquent and subject to the company's

¹ Hereinafter the rules will be referred to by chapter number and rule number only. For example, Rule 4901:1-29-12(K), O.A.C., will be Rule 29-12(K).

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disconnection procedures for nonpayment if the account meets one of the following criteria:

- (1) The customer has not made full payment or arrangements for payment by the due date, for any given bill containing a previous balance for regulated services provided by the distribution utility....
- (B) The minimum payment necessary in order to avoid the disconnection procedures shall not be greater than the delinquent amount, i.e., that portion of the bill that represents a previous balance for regulated services provided by the distribution utility.
- (4) Rule 18-05(A) outlines the requirements which must be met before a residential customer's natural gas or electric service is disconnected for nonpayment. The rule specifically notes that a residential customer may be subject to disconnection only for the nonpayment of "regulated services provided by the distribution utility."

The Commission's policy that the distribution utility may only disconnect a customer's service for failure to pay for regulated services provided by the distribution utility is reinforced in the Minimum Service Requirements for Competitive Retail Natural Gas Service at Chapter 4901:1-29, O.A.C. The service requirements in Chapter 4901:1-29, O.A.C., are applicable to all customers except mercantile customers.² More specifically, Rule 29-12(K), O.A.C., states:

Natural gas companies shall not disconnect a customer's natural gas service for nonpayment of competitive retail natural gas service charges or in the event of a bill dispute of such charges.

² Section 4929.01(L)(1), Revised Code, states in part:

Mercantile customer means a customer that consumes, other than for residential use, more than five hundred thousand cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. . . .

- (5) Duke requests a waiver of the above-noted rules to allow the disconnection of a customer's service for failure to pay a competitive retail supplier's gas commodity charges and/or electric generation or transmission charges, as well as Duke's distribution charges, when Duke purchases the accounts receivable of the competitive retail natural gas supplier (CRNGS) or competitive retail electric service (CRES) provider. Duke states that it purchases the receivables of CRNGS and CRES providers participating in Duke's gas and electric choice programs. Duke argues that, when the company purchases the accounts receivables of the competitive suppliers, Duke also purchases the collection rights associated with the receivables. Therefore, Duke contends that the debt should be recognized as a regulated utility debt emanating from a regulated utility service. Duke notes that the Commission has granted the same waivers requested in this application to Columbia Gas of Ohio, Inc., Vectren Energy Delivery of Ohio, Inc. and Dominion East Ohio.³
- (6) Duke claims that there are three aspects of the company's current disconnection practices that are detrimental. First, Duke notes that choice customers are not returned to Duke until after a 60-day delinquency of competitive charges has accrued. However, Duke states that the disconnection process cannot be initiated until the customer has returned to Duke's service and has accrued an additional 60 days of past due charges with Duke for regulated utility services. Second, Duke argues that Duke's gas system supply customers subsidize gas choice customers to the extent that Duke charges a zero percent discount to purchase the accounts receivables of CRNGS. Duke states that such bad debt costs are passed on to gas system supply customers. On the electric side, Duke contends that CRES providers pay a higher discount rate since Duke cannot minimize bad debt arrearages by disconnecting non-paying customers in a more timely fashion. Thirdly, Duke notes that the current process requires that the delinquent choice

³ See Case No. 04-1631-GA-UNC, *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Rules 4901:1-18-03, 4901:1-18-05(A), and 4901:1-29-12(K), O.A.C.*, entry issued January 5, 2005; Case No. 04-1878-GA-UNC, *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for a Waiver of Rules 4901:1-18-03, 4901:1-18-05(A), and 4901:1-29-12(K), O.A.C.*, entry issued February 23, 2005; and Case No. 05-123-GA-UNC, *In the Matter of the Application of The East Ohio Gas d/b/a Dominion East Ohio for a Waiver of Rules 4901:1-18-03, 4901:1-18-05(A), and 4901:1-29-12(K), O.A.C.*, Entry issued March 9, 2005.

customer be returned to Duke's system supply, upon the accrual of 60 days past due charges. Duke argues that the process deprives the competitive supplier of a customer. Duke believes that the choice customer is also harmed in that the customer is not able to maintain the benefits of the contract with the competitive supplier. Further, Duke asks that its waiver requests be granted such that Duke may implement the revised disconnection practices by September 1, 2006.

- (7) On July 6, 2006, Interstate Gas Supply, Inc. (IGS), a certificated CRNGS, filed comments supporting Duke's request for waivers as to its gas service.
- (8) The Commission recognizes that similar waiver requests have been granted to other Ohio gas distribution utilities. The Commission believes that Duke has demonstrated good cause for the Commission to consider the requested waivers pursuant to Rules 18-08 and 29-02(C), O.A.C. Furthermore, in recognition of Duke's unique position of being an electric distribution utility (EDU) and a gas local distribution company (LDC) and recognizing that there are likely some benefits to processing disconnections for its gas and electric customers in the same manner, the Commission concludes that Duke's request for waiver of Rules 10-19, 18-03(A)(1) and (B), 18-05(A), and 29-12(K), O.A.C., to the extent that the rules prohibit the disconnection of a customer's service for failure to pay past due competitive supplier commodity and/or generation charges is reasonable and should be granted when Duke purchases the accounts receivable of the CRES provider and/or CRNGS.
- (9) The Commission notes that the current method for processing a delinquent choice customer account is different than the method used to process a delinquent non-choice account. Pursuant to current rules, for example, a gas choice customer need only pay the distribution company's regulated charges to avoid the disconnection of his/her gas service. The commodity charges billed by a CRNGS may continue to accrue until a customer's contract with his/her CRNGS is terminated and the customer is returned to the LDC's sales service. By this point, the customer may have accrued a relatively substantial gas bill. On the other hand, gas cost recovery (GCR) customers who receive their distribution service and gas commodity from the

LDC must pay all regulated past due charges owed to the LDC or enter into a payment arrangement for such charges to avoid disconnection. The same inequities are true for electric choice customers as compared to electric customers that receive their generation service from the EDU. Duke's waiver will require gas and electric choice customers to pay both past due distribution and past due commodity and/or generation charges billed by the competitive supplier(s) to avoid the disconnection of service like non-choice customers.

Duke will notify gas and/or electric choice customers in the same manner as GCR and/or standard offer service customers of the impending disconnection of their service for nonpayment pursuant to the requirements of Rule 18-05. To the extent that any CRNGS's or CRES provider's customer contract states more than the Commission rules require, the CRNGS or CRES provider will need to review its customer contracts and revise the contracts accordingly.

- (10) The Commission finds that Duke has made a compelling case for treating choice customers the same as non-choice customers when Duke purchases the accounts receivable of the CRNGS or CRES provider. Requiring Duke to terminate the choice customer's participation in the choice program and to return the customer to Duke's sales service before beginning the disconnection process has the *unfortunate effect* of putting the choice customer in breach of the competitive gas and/or competitive electric supplier contract, potentially subjecting the former choice customer to early termination fees, and, in some cases, returning the customer to higher rates than what the customer received under their supplier's contract. Additionally, as the rules are currently effective, because disconnection procedures do not begin for choice customers until after they have been in arrears for at least 60 days, these choice customers likely face higher payments to avoid disconnection than had Duke been able to address the situation earlier. The Commission believes that granting this waiver will have a positive effect on the competitive local retail gas and electric markets, resulting in less churn in the market and better planning of supply/demand by both Duke and the competitive suppliers. Thus, the Commission grants Duke's request to allow the choice provider to retain the delinquent choice

customer during the disconnection process (in the hope that the delinquency will be cured) until the customer's gas and/or electric service is actually disconnected.

- (11) The Commission acknowledges that approval of the requested waivers will place the residential gas/electric choice customer in a disconnect status on the same basis as a non-choice customer, sooner than under the current rules for choice customers. The Commission also recognizes that granting this waiver request may place the residential choice customer who has failed to pay his/her bill in a disconnect status sooner than the current rules and, as such, requires the residential customer to address the situation before it exacerbates into a severe financial burden; to enter into a payment arrangement; to seek, if applicable, a medical certification; or to seek assistance from a community action agency.⁴ Accordingly, we approve Duke's request for waivers and direct that:

- (a) When Duke purchases the accounts receivable of a CRNGS or CRES provider, Duke shall only include past due distribution, transportation and gas commodity charges and/or past due generation and transmission charges on the disconnect notice and any partial payments shall be applied to such past due charges before current charges or any other charges. Duke shall not disconnect a choice customer's service for failure to pay ancillary, non-regulated (i.e. line maintenance fees or late fees) service charges.
- (b) Duke shall review its disconnect notice and work with the Commission Staff to revise the disconnect notice for residential choice customers.
- (c) After the implementation of the requested waiver, Duke shall provide residential choice customers with all the required notices, assistance information and payment plans required pursuant to Rules 18-04 and 18-05 that are offered

⁴ We note that a customer must be in a disconnection status to be eligible for the Emergency Home Energy Assistance Program (E-HEAP).

to residential sales customers without the prior consent of a CRNGS and/or CRES provider.

- (d) The Commission reminds Duke that it shall not impose a late payment penalty on its residential choice customers unless such a late payment fee is a part of the competitive supplier's contract with the customer and, if such a penalty is in the contract, the fee shall only be applied to the commodity or generation charges imposed by the competitive supplier. The Commission also reminds Duke that budget billing payments and deferred payment plan payments shall not be considered partial payments.
 - (e) CRNGSs and CRES providers currently operating in Duke's service area shall review and immediately revise their customer contracts, if necessary, to be consistent with the waiver granted.
 - (f) Duke shall submit to the Commission's Chief of Investigations and Audits of the Service Monitoring and Enforcement Department a report detailing the number of actual service disconnects, the number of disconnection notices mailed to choice customers by industry and to sales customers by industry, separately. The report shall be due on March 1 of each year until the Commission Staff advises otherwise.
 - (g) Duke shall implement the necessary programming updates to its computer systems to initiate the requested waiver by no later than October 15, 2006. If Duke has not implemented the requested waiver by October 15, 2006, Duke shall file a statement in this case explaining the delay and the date by which the company expects to initiate the waiver.
- (12) Approval of the requested waivers are contingent upon Duke's purchase of a CRNGS's or CRES provider's accounts

receivable. The Commission emphasizes that any violation of the terms and conditions of this waiver may result in the rescission of the waiver and/or other measures, as the Commission deems appropriate.

- (13) Finally, Duke's request to amend its tariff in accordance with this waiver request is granted. The proposed tariff revisions attached to the application are appropriate and should be approved.

It is, therefore,

ORDERED, That Duke's request for a waiver of Rules 10-19, 18-03, 18-05(A) and 29-12(K), O.A.C., to permit the disconnection of a choice customer's service on the same basis as a non-choice customer for the failure to pay for past due charges is granted. It is, further,

ORDERED, That Duke's request to amend its tariff is granted. Accordingly, Duke shall file the approved tariff sheets to be effective not earlier than both the date of this Finding and Order and the date upon which four complete printed copies of the final tariffs are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, that Duke is authorized to file, in final form, four complete copies of tariffs consistent with this Finding and Order. One Copy shall be with this case docket, one copy shall be with Duke's TRF docket and the remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. Duke shall update their tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

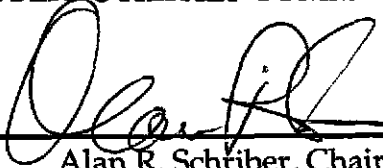
ORDERED, That Duke shall notify all affected customers via a bill message or bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That a copy of this entry be served upon Duke and its counsel, all CRNGSs and CRES providers operating in Ohio, and all other interested persons of record. It is, further,

ORDERED, That these cases be closed as a matter of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Alan R. Schriber, Chairman

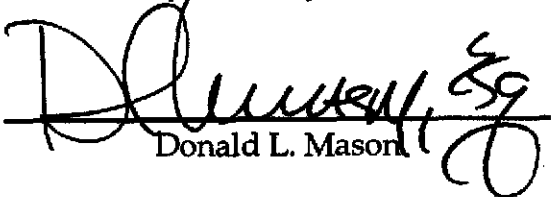


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