

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review    )  
of its Rules for Standard Service Offers for    )  
Electric Utilities Contained in Chapter        ) Case No. 13-2029-EL-ORD  
4901:1-35 of the Ohio Administrative        )  
Code.    )

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**INITIAL COMMENTS**

**OF**

**DUKE ENERGY OHIO, INC.**

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On October 9, 2013, the Public Utilities Commission of Ohio (Commission) issued an entry commencing its five-year review of the rules in O.A.C. Chapter 4901:1-35 (1-35), relating to standard service offers. Pursuant to that order, a workshop was held on December 10, 2013. The Commission’s entry of January 29, 2014, called for comments on staff’s proposed changes to that chapter, with due dates of February 26, 2014, for initial comments, and March 13, 2014, for reply comments. In accordance with the Commission’s schedule, Duke Energy Ohio, Inc., (Duke Energy Ohio) respectfully submits its comments.

**Rule 35-01**<sup>1</sup>

Duke Energy Ohio suggests that the Commission update this rule by deleting paragraphs (H), which defines “market development period,” and (K), which defines “rate plan.” “Market development period” is only used in the definition of “rate plan,” and “rate plan is only used in a portion of Rule 35-04(A) that is already proposed for deletion.

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<sup>1</sup> For purposes of readability, rule and chapter numbers will be designated without reference to the agency or division number. In addition, where Staff’s proposed revisions result in numbering changes, the new (proposed) numbering is used for reference purposes.

### **Rule 35-03**

In paragraph (A), Staff is to be commended for proposing a reduction in the required number of paper copies of an application from 15 to 10. However, it is unclear why any paper copies at all are necessary. Duke Energy Ohio notes that the Commission's procedural rules, currently in the process of amendment, will likely allow applications to be filed electronically – even applications for distribution rate increases.<sup>2</sup> A standard service offer should be no different and, indeed, is not singled out in the procedural rules for special treatment.

In paragraph (B), relating to the filing of market rate offers (MROs), subparagraph (B)(1)(c) requires published information to be “representative of prices and changes in prices in the electric utility's electricity market . . .” As the electric utilities in Ohio provide only standard service and do not compete in the electricity market, the meaning of the term “electric utility's electricity market” is unclear. Duke Energy Ohio respectfully suggests that this term be changed to “electric utility's certified territory,” as defined in R.C. 4933.81(G).

Also in paragraph (B), the current draft of the revisions includes two sections that appear to overlap in purpose and content. Subparagraph (B)(2)(a) requires a complete description of all aspects of the competitive bid process, including a discussion of alternative procurement approaches and the rationale for the applicant's choice. Subparagraph (B)(2)(k) similarly addresses procurement options that were considered, and the rationale for the choice. These two sections should be consolidated.

Next, subparagraph (B)(2)(l) requires that the applicant include a policy discussion. As it currently stands, the requirement is analogous to the similar requirement for electric security plan (ESP) applications, found at 35-03(C)(8). However, Staff is proposing to simplify the ESP-

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<sup>2</sup> *In the Matter of the Commission's Review of Chapters 1901-1, Rules of Practice and Procedure; 4901-3, Commission Meetings; 4901-9, Complaint Proceedings; and 4901:1-1, Utility Tariffs and Underground protection, of the Ohio Administrative Code*, Case No. 11-776-AU-ORD, Finding and Order (January 22, 2014).

related rule. The same simplification would be appropriate with regard to MROs. In addition, Duke Energy Ohio suggests that both the MRO provision and the ESP provision be altered to use the same language chosen by the Ohio Supreme Court. The Court has ruled that the Commission is to use the statements in R.C. 4928.02 in its evaluation of proposals, “to **further** state policy goals . . . .”<sup>3</sup> The Court did not say that proposals should “be consistent with and advance” such goals, just that the Commission should consider whether the proposals “further” those goals.

In paragraph (C), relating to ESP applications, the Commission should consider a clarification to subsection (7). That provision requires a description of the impact on governmental aggregations of any “unavoidable generation charge” that is requested in the ESP. As ESPs do allow for unavoidable charges that are not directly related to generation, the intent of the section would be clearer if the language simply referred to “unavoidable charges established under the ESP.”

Also in paragraph (C), subsection (8) should be revised as discussed above with regard to the analogous MRO requirement.

Paragraph (C)(9)(b)(i) sets forth a requirement, with regard to unavoidable surcharges for certain generation expenditures, that the need for the proposed facility must have been reviewed and determined by the Commission through an integrated resource planning process, prior to the application for the surcharge through the ESP. This language is based on the statutory requirement, in R.C. 4928.143(B)(2)(b), that the Commission shall **first** determine the need for the facility, based on resource planning projections, before authorizing the surcharge in the ESP. However, the rule’s language is in direct conflict with the Commission’s apparent interpretation of the statute to allow authorization of the surcharge without a prior determination of need, so

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<sup>3</sup> *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 525, 2011-Ohio-1788.

long as the need is determined before the actual recovery – under that surcharge – is authorized.<sup>4</sup> Duke Energy Ohio proposes that the rule be modified to reflect the Commission’s interpretation, both to memorialize the Commission’s authorized process and so that all regulated electric utilities may rely upon the same approach.

Paragraph (B) also includes requirements for applications seeking certain distribution service riders. The applicable statute, R.C. 4928.143(B)(2)(h), references a wide variety of aspects of distribution service, using an open-ended set of options: “including, without limitation . . . single issue ratemaking, a revenue decoupling mechanism, or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives . . .” The rule, similarly, begins with a broad approach. However, the rule’s language then changes such that it refers only to infrastructure modernization plans. This is problematic both because the term is undefined and because it is unclear whether the rule’s intention is to address only filing requirements for one of the possible cost items that could be covered by R.C. 4928.143(B)(2)(h).

Paragraph (E) of Rule 35-03 is duplicative of sections that specifically address MRO and ESP applications. It should be deleted.

#### **Rule 35-04**

Paragraph (A) requires the electric utility to keep a copy of its application available at its main office. Duke Energy Ohio respectfully suggests that this requirement be deleted. While customers may wish to review the application, and the company is happy to provide a copy or an electronic link for customers, those interested in the filing do not go to the headquarters to review a hard copy in the lobby of the headquarters. In the spirit of avoiding unnecessary regulatory expenses, the rule should be amended to discontinue this outdated practice.

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<sup>4</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Opinion and Order, at pp. 23-24 (August 8, 2012).

**Rule 35-08**

This rule addresses filing requirements for CBPs. Recognizing that all current ESPs provide that the electric utility procures its supply for the SSO through a CBP, Staff's proposed revisions add ESPs to the introductory language of paragraph (A). However, as written, the rule could be read as applicable to market-rate offers in ESPs. Duke Energy Ohio suggests that the first sentence of paragraph (A) be rewritten as follows: "An electric utility proposing a standard service offer in which the energy supply is to be procured through a competitive bidding process (CBP) shall comply with this rule."

**Rule 35-10**

This rule sets forth the requirement that each electric utility operating under an ESP must file an application for an annual review by a set date. This rule, for purposes of simplification and clarity, should be combined with the substantive requirements for that filing, as spelled out in detail in Rule 35-03(C)(10).

Duke Energy Ohio appreciates the opportunity to provide its initial comments to the Commission and respectfully requests that the Commission revise the proposed rules in accordance with the suggestions herein.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

Amy B. Spiller (Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303 Main

Cincinnati, OH 45202

(513) 287-4359

[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)

[Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)