

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of)	
Chapters 4901:1-9, 4901:1-10, 4901:1-21,)	Case No. 06-653-EL-ORD
4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25)	
Of The Ohio Administrative Code.)	

**INITIAL COMMENTS OF
CONSTELLATION NEWENERGY, INC.**

Now come Constellation NewEnergy, Inc. ("CNE") and pursuant to the April 4, 2007 and April 23, 2007, Entries in this matter, submits these Initial Comments for consideration by the Public Utilities Commission of Ohio ("Commission"). CNE believes that additional information will be important to the Commission's deliberations and, toward that end, has focused its comments on two parts of the Electric Service and Safety Standards. Thus, CNE's silence on a particular rule or rule subpart should not be interpreted as an endorsement of the rule. These comments are arranged on a rule-by-rule basis.

1. Uniform System of Accounts ("USOA") [4901:1-9-05]

Proposed Rule 4901:1-9-05 of the Ohio Administrative Code would require Competitive Retail Electric Service providers ("CRESs") to maintain their accounting records in accordance with the USOA, as adopted by the Commission. As drafted, the Rule would also allow the Commission to create additional accounts.

The Federal Energy Regulatory Commission's predecessor created the USOA as a set of standards that all jurisdictional electric public utilities and licensees, natural gas and oil pipeline companies (collectively "public utilities") must follow when maintaining

financial records. The USOA provides basic account descriptions, instructions, and accounting definitions that aid in the understanding of information reported in utilities' Annual Report Forms. By following the USOA, regulators could better track accounting changes for purposes of evaluating rates, maintaining continuous property records and tracking information needed for regulation to be submitted in the context of annual reports.

However, the differences between CRES providers and public utilities are quite profound. A few of these differences are: CRES do not have a franchised monopoly service territory, are not subject to price regulation, are not granted a guaranteed return on and of the their investments, do not set their rates by cost-of service methods, are not subject to the same regulatory requirements, and do not maintain continuous property records.

At the May 3rd technical conference, Staff was asked to clarify the intent and objective of this proposed revision to make these rules applicable to CRES providers. Staff responded that they included this revision because they mistakenly believed that the USOA currently governs CRES providers. As such, Staff's desire for uniformity is predicated on the mistaken belief that CRES providers currently employ the USOA.

As the Commission is well aware, the Commission has a very different set of regulatory requirements that apply to CRES providers; this set of regulatory requirements are properly tailored to the nature of the services that CRES providers bring to Ohio consumers. Conversely, the Commission's CRES Annual Report is primarily used to calculate the assessments for the Commission and the Office of the Consumers' Counsel.

Because CRES providers do not follow the USOA, and the USOA is designed primarily for public utilities that subject to price regulation, it follows that CRES providers should not be required to now employ the USOA.

CNE currently maintains its books and records in accordance with Generally Accepted Accounting Principles (“GAAP”). Adoption of this revision would require CNE to maintain a dual set of books. Such a requirement would be extremely costly and burdensome. Because GAAP accurately reflects CNE’s operations, it is an appropriate procedure that comports with the principles embodied in the USOA provisions.

We certainly appreciate that the Commission’s objective to develop a standardized system of accounting records for regulated entities. However, we do not believe that this proposed revision will serve any legitimate purpose. Accordingly, CNE requests that the Commission maintain the current rule without revision.

2. Consolidated Billing .4901:1-10-13(C)

Staff proposed a revision to Section 4901:1-10-13(C) that would require CRES providers to issue accurate and understandable customer bills at *monthly* intervals. The current rule requires CRES providers to do so at *regular* intervals. CNE seeks clarification that this revision does not preclude CRES suppliers from providing customers with more frequent billings, as requested by and negotiated with retail customers. Even with more frequent billing, CRES providers render customer bills that comport with the electric distribution companies’ interval schedule. CNE does not seek to revise this aspect of the Rule. The Commission has previously recognized, however,

that many customers need regular and frequent billings in order to be able to pay for their electric service.

CNE respectfully submits that CRES providers should be permitted to respond to customers' requests for more frequent billing arrangement plans. In a competitive market, customers' demands and requirements should dictate the products that are offered. Indeed, many customers turn to the market to tailor their electric supply needs to better match the required flexibility of their operating needs, leading to both direct energy cost savings per unit of production and to other operational savings. Administrative rules or government fiat should not dictate the development of the market. Accordingly, CNE requests that the Commission maintain the current rule without revision.

Conclusion

CNE respectfully asks the Commission to adopt the revisions proposed herein and to adopt revised rules that reflect these changes.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments were served or will be served by U.S. First Class Mail or e-mail upon all those persons who filed Initial Comments.

/s/

Stephen M. Howard

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Summary: Comments Initial Comments of Constellation NewEnergy, Inc. electronically filed by Stephen M Howard on behalf of Constellation NewEnergy, Inc.