

FILE

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
DOMINION RETAIL, INC.

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By its entry of July 23, 2008, the Commission has requested comments from interested parties with respect to staff-proposed revisions to the Commission's rules governing various aspects of the provision of electric service to customers in this state, including rules governing the operations of suppliers of competitive retail electric service ("CRES"). As explained in the entry, these rules are similar to the set of proposed rules previously issued in this docket,¹ subject to revisions to reflect the impact of the recent enactment of Amended Substitute Senate Bill No. 221 ("SB 221") and to effectuate a reorganization of the rules intended to eliminate certain redundancies among various Ohio Administrative Code ("OAC") chapters.

Dominion Retail, Inc. ("Dominion Retail") is a Commission-certified CRES supplier, and, as such, will be subject to, and affected by, the rules ultimately adopted by the Commission in this proceeding. Dominion Retail hereby submits its initial comments in accordance with schedule set forth in the Commission's July 23, 2008 entry. Although Dominion Retail did not previously file comments in this docket, the July 23, 2008 entry does not appear to limit the

¹ Although the original comment cycle closed on July 24, 2007 (see Entry dated April 23, 2007), the Commission did not act on the proposed rules.

comments to changes to the rules as originally proposed.² Thus, Dominion Retail's comments go to various elements of the original version of the proposed rules as well as to the revisions to the original version identified in the attachment to the July 23, 2008 entry.³

Rule 4901:1-21-09(C)(3), OAC:

Proposed Rule 4901:1-21-09(C)(3) modifies the existing environmental disclosure requirements applicable to CRES providers by adding the following requirements:

- (3) Each CRES provider shall submit to staff for its review and approval a proposal for incorporating the use of renewable energy credits (RECs) within its annual and quarterly environmental disclosures. At a minimum, such submittal would be required for the following:
 - (a) A CRES provider sells RECs from one of its electric generating facilities.
 - (b) A CRES provider purchases RECs as a means of complying, in part or whole, with a renewable energy resource benchmark under the state's alternative energy portfolio standard requirements.

Dominion Retail recognizes that SB 221 establishes certain renewable energy resource benchmarks that are applicable to both electric utilities and CRES providers. However, Dominion Retail takes issue with the language of proposed subparagraph (3), which would

² In addition, Dominion Retail notes that the original version of these proposed rules predated Governor Strickland's Executive Order No 2008-04S. Thus, as discussed *infra*, the Commission has the obligation to take a fresh look at the original version of the proposed rules in to assure compliance with the governor's directives.

³ Dominion Retail recognizes that the Commission does not typically require participants in its rulemaking proceedings to file motions to intervene. However, Dominion Retail clearly has a real and substantial interest in this proceeding and otherwise satisfies the criteria for intervention set forth in Section 4903.221, Revised Code and Rule 4901-1-11, OAC. Thus, if the Commission determines that formal intervention is necessary as a condition of participating in this case, Dominion Retail requests that it be granted leave to intervene.

require CRES providers to obtain staff approval for the use of RECs as a means to comply with the applicable benchmarks. Not only is this measure inconsistent with the new statutory scheme, but it would unlawfully delegate authority to staff that can be exercised only by the Commission itself.

The existing Rule 4901:1-21-09 environmental disclosure requirements represent the mechanism by which a CRES provider keeps customers informed of the retail electric generation mix and environmental characteristics associated with the electricity it supplies. Although it may make sense to tie these periodic reporting requirements to the new statutory requirements regarding Commission review of the composition of the CRES providers' alternative energy portfolios, additional rule changes are necessary to accomplish this result. Section 4928.64(C)(1), Revised Code, provides:

The commission annually shall review an electric distribution utility's or electric services company's compliance with the most recent applicable benchmark under division (B)(2) of this section and, in the course of that review, shall identify any undercompliance or noncompliance of the utility or company that it determines is weather-related, related to equipment or resource shortages for advanced energy or renewable energy resources as applicable, or is otherwise outside the utility's or company's control.

In turn, Section 4928.64(C)(2), Revised Code, provides:

Subject to the cost cap provisions of division (C)(3) of this section, if the commission determines, after notice and opportunity for hearing, and based upon its findings in that review regarding avoidable undercompliance or noncompliance, but subject to division (C)(4) of this section, that the utility or company has failed to comply with any such benchmark, the commission shall impose a renewable energy compliance payment on the utility or company.

Plainly, these provisions require the Commission to undertake a formal annual review to determine a CRES provider's compliance with the statutory benchmarks and, in the event the

Commission determines that there may be “avoidable undercompliance or noncompliance,” to schedule the matter for hearing. Dominion Retail believes that separate rules should be established to create the structure for the annual review and the related hearing process,⁴ and that it is inappropriate to attempt to introduce a review and approval requirement relating solely to the role RECs may play in a company’s compliance plan in the rule governing the environmental disclosure made to customers for informational purposes. Moreover, in no event can the Commission delegate approval authority to its staff.

Consistent with the foregoing discussion, Dominion Retail recommends that proposed Rule 4901:1-21-09(C)(3) be eliminated, and that the Commission open a separate rulemaking proceeding to develop the protocol and process that will apply in the annual review of a company’s compliance with the statutory benchmarks governing the composition of its supply portfolio. As noted above, it may be appropriate to marry the periodic reporting requirements relating to the environmental disclosures to customers set forth in current Rule 4901:1-21-09 to the structure ultimately established for the annual review process, but the Commission should not attempt to impose a substantive standard regarding the utilization of RECs in the context of a customer notice rule.

Proposed Rule 4901:1-21-18, OAC:

Staff has proposed to amend the rule governing consolidated billing arrangements by changing payment priority in instances where the customer pays only a portion of its bill. Under proposed Rule 4901:1-21-18(H), “(b)illed and past due CRES provider charges or, if applicable, CRES provider payment arrangement or past due CRES provider billings” would move to the top of the list specifying the order in which partial payments are credited. As a CRES provider,

⁴ The Commission’s rule governing GCR audits might, for example, provide a useful model in this regard. See Rules 4901:1-14-07 and 4901:1-14-08, OAC.

Dominion Retail, of course, endorses this staff proposal, but recommends an additional amendment to address the purchase of receivables by electric utilities providing consolidated billing services to CRES providers.

Dominion Retail asks the Commission to amend Rule 4901:1-21-18 to include a requirement that electric utilities that provide consolidated billing service to CRES providers operating on their systems purchase the receivables of the CRES provider. Such an amendment would create uniformity in the consolidated billing arrangements applicable to CRES providers and providers of competitive retail natural gas service ("CRNGS") in this state. In so stating, Dominion Retail recognizes that the CRNGS rules (*see* Chapter 4901:1-29, OAC) do not require that a host natural gas company that furnishes consolidated billing services to CRNGS providers purchase the provider's receivables. However, it is Dominion Retail's understanding that, at this juncture, all natural gas companies with choice programs are required to purchase the receivables of providers for which they perform billing services as the result of separate Commission orders in other proceedings. There is no reason for a distinction between CRNGS providers and CRES providers in this regard. Indeed, Duke Energy Ohio ("DE-Ohio"), which provides consolidated billing services to Dominion Retail in connection with the CRES it supplies within DE-Ohio's service territory, does, in fact, purchase Dominion Retail's receivables pursuant to the terms of its supplier tariff. There is no reason why other electric utilities should not do the same.

Dominion Retail would also point out that proposed subparagraph (C)(2) of Rule 4901:1-21-10, the rule governing release of customer account numbers and social security numbers, expressly states that the customer's social security number may be disclosed by a CRES provider without the customer's consent or without a court order for purposes of the "(e)lectric utility's or CRES provider's own collection and/or credit reporting." Thus, this rule implicitly recognizes

that the electric utility may undertake collection actions with respect to the CRES provider's receivables, a result that could not occur unless the electric utility purchased the receivables.

For the reasons discussed above, Dominion Retail proposes that the following be added as subparagraph (K) of Rule 4901:1-21-18, and that electric utilities providing consolidated billing services be required to amend their tariffed rules applicable to CRES suppliers accordingly.

(K) An electric utility that provides consolidated billing service to a CRES provider shall, at the request of the CRES provider, purchase the receivables of the CRES provider subject to mutually acceptable terms and conditions. If the electric utility and the CRES provider cannot reach agreement with respect to terms and conditions for the purchase of receivables, the CRES provider may seek Commission resolution of the issue in accordance with the dispute resolution provision of the electric utility's tariffed rules governing the provision of CRES service within its service territory.

Proposed Rule 4901:1-24-09(A), OAC:

Staff proposes to amend the rule governing renewal of CRES provider certificates by, *inter alia*, revising subparagraph (A) of Rule 4901:1-24-09 to reduce the window for filing a renewal application from "no less than thirty and no more than one hundred twenty days prior to the expiration date" of the current certificate to "no less than thirty and no more than sixty days" from the certificate expiration date. Dominion Retail assumes that the rationale for tightening the time frame is to assist staff in prioritizing its workload and to reduce the potential for amended filings to address changes in the required information supplied in the renewal application between the time it is filed and the expiration of the current certificate. However, shortening the timetable in this fashion would add to the administrative pressures to which suppliers that provide competitive electric and gas service in numerous jurisdictions are subject.

Thus, as a compromise, Dominion Retail proposes that the renewal applications be due “(n)o less than thirty and no more than ~~sixty~~ ninety days prior to expiration date” of the CRES provider’s current certificate.

Rule 4901:1-25-02(A)(3). OAC:

Rule 4901:1-25-02 sets forth the reporting requirements for various entities in connection with the Commission’s market monitoring efforts. Although staff has proposed a number of changes to the subparagraph (A)(2) reporting requirements applicable to electric distribution utilities (EDUs), subparagraph (A)(3) of the rule, which sets out the reporting requirements for CRES providers, remains intact, except for a few housekeeping changes. Under subparagraph (A)(3)(b) of the rule, CRES providers are required to submit quarterly reports to staff showing, by month, by EDU service territory, and by rate schedule class (and, if applicable, by subclass) the number of customers served and the megawatt hours sales involved, and, under subparagraph (A)(3)(c), the total billed revenues for generation service by rate schedule class.

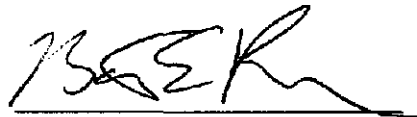
Although Dominion Retail certainly does not challenge the right of the Commission to require that CRES suppliers provide this information, Dominion Retail does question whether any purpose is served by requiring that this information be reported quarterly, as opposed to annually. Although, viewed in isolation, this may seem to be a minor imposition, providers, like Dominion Retail, that supply competitive retail electric and gas service in numerous jurisdictions, face a significant administrative burden in attempting to comply with the regulations to which they are subject in all the various states in which they operate.

In crafting rules, regulators should weigh the tangible benefits, if any, that the rules actually produce against the burden the rules impose on those that must comply with them. Indeed, Governor Strickland’s February 12, 2008 executive order entitled “Common Sense

Business Regulation," recognizes this very point. That order, Executive Order 2008-04S, requires the Commission to review its existing body of rules to ensure, *inter alia*, that each of its rules is needed in order to implement the underlying statute and to amend or rescind rules that are unnecessary or needlessly burdensome. Consistent with that directive, Dominion Retail asks the Commission to consider whether this quarterly reporting requirement is actually necessary. If the Commission determines that annual reporting of this information is adequate for its purposes, Dominion Retail urges the Commission to revise Rule 4901:1-25-02(A)(3) to so provide.

Dominion Retail appreciates the opportunity to comment on the proposed revisions to these rules, and urges the Commission to adopt these comments in formulating the final version of the rules.

Respectfully submitted,



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