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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code.	:	Case No. 12-1924-EL-ORD

INITIAL COMMENTS
OF
DOMINION RETAIL, INC.

Dominion Retail, Inc. ("Dominion Retail"), a duly-certified provider of competitive retail electric service ("CRES") in this state, hereby submits its initial comments in the above-captioned rulemaking proceeding pursuant to the Commission's November 7, 2012 entry in this docket. These comments address certain changes to Chapters 4901:1-21 and 4901:1-24, Ohio Administrative Code, proposed by the Commission staff ("Staff") in the rules appended as Attachment A to the November 7, 2012 entry, as well as certain provisions in the existing rules that Dominion Retail believes the Commission should revisit.

Proposed Rule 4901:1-21-06 Customer Enrollment.

As described in the entry issuing the proposed rules for comment, Staff has recommended that "short time requirements in Chapter 4901:1-21 be modified from calendar days to business days."[1] Dominion Retail has no objection to this proposal in those instances where the time frame in question is only a few days and relates to actions that must be taken by the host electric utility of the CRES provider. However, Dominion Retail opposes the Staff proposal to change

[1] November 7, 2012 Entry, 2,

the period afforded a customer to rescind a contract under Rules 4901:1-21-06(D)(1)(e) and (D)(2)(a)(viii) from the current seven calendar days to seven business days.

The logic of the change from calendar days to business days for calculating "short time requirements" is obvious. Where, by rule, an action must be taken in one, two, or three days and there is an intervening weekend or holiday, the action could well have to be taken outside of normal business hours if the period is counted in calendar days. However, the same cannot be said for a seven-day time frame, which is certainly not a "short time requirement." Moreover, the rescission period relates to an action to be taken by the customer, not the utility or the CRES provider. Although a seven calendar day time frame will always encompass two weekend days, many residential customers might well find it more convenient to deal with something of this nature on the weekend rather than on a workday and, thus, are not disadvantaged by an intervening weekend. More importantly, a change to a time period based on business days introduces the possibility for confusion on the part of the customer. If, as is currently the case, a customer is told that he/she has seven days to act, the customer knows the deadline precisely without having to perform a calculation to distinguish between business days, weekends, and holidays.

Dominion Retail would also point out that Staff has not suggested that the current seven calendar day rescission period has caused any problems, and no party commenting during the August 6, 2012 workshop identified this as an issue. The electric utilities are geared up to the use of the seven calendar day rescission period, and, in the absence of any evidence that the use of the seven calendar day deadline is inappropriate, these rules should not be changed.

In reviewing Rule 4901:1-21-06, Dominion Retail noticed that the title of subparagraph (D)(1)(j) – "Uniform" – has nothing to do with the subject matter of this provision, which sets

out a requirement that door-to-door solicitors display a valid photo identification of the approved retail natural gas supplier or governmental aggregator he or she represents. Thus, Dominion Retail suggests that the heading of this subparagraph be changed to "Photo Identification."

Rule 4901:1-21-09 Environmental Disclosure.

Rule 4901:1-21-09 establishes a detailed processes to assure that customers of CRES providers receive information regarding the approximate retail electric generation resource mix and environmental characteristics associated with electrical power offered in Ohio's competitive marketplace. Dominion Retail does not dispute that interested customers should have access to this information and has no objection to providing this information in connection with contract offers as required by Rule 4901:1-21-09(D)(3)(a). However, Dominion Retail believes that the requirement of Rule 4901:1-21-09(D)(3)(b) that CRES providers report this information quarterly to customers is unduly burdensome and, contrary to the objectives of the Common Sense Initiative, imposes substantial costs on CRES providers with no corresponding customer benefit.

Dominion Retail would point out that it has rarely, if ever, received any communication from a customer in response to the quarterly comparisons of actual to projected environmental data it has been required to provide since the rule was enacted. Accordingly, in lieu of providing this information quarterly through bill inserts or special mailings, Dominion Retail proposes that the rule be modified to allow CRES providers to satisfy this requirement by posting this information on their websites, and providing periodic notices to customers that this information can be accessed in that fashion. Thus, Dominion Retail recommends that Rule 4901:1-21-09(D)(3)(b) be revised as follows:

(b) Quarterly comparisons of actual to projected data.

The comparison of actual to projected environmental disclosure data shall be ~~provided to customers~~ performed on a quarterly basis, consistent with both the schedule presented in paragraph (C)(3) of this rule and the format depicted by appendix B to this rule.

These items will be disclosed to customers by posting the environmental disclosure information on the CRES provider's website. CRES providers will advise customers via bill inserts or by separate mailings that ~~The~~ the quarterly environmental disclosure can be ~~accomplished~~ be viewed on CRES provider's website. ~~electronically if a customer agrees to such an approach.~~

Proposed Rule 4901:1-21-12 Contract Disclosure.

Staff has proposed to revise Rules 4901:1-21-12(B)(10) and (11) to change the specified format for the statement of Commission and Ohio Consumers' Counsel contact information that must be included in contracts. Specifically, these proposed rules use lower case for the first letters of the agency names (*i.e.*, the "public utilities commission of Ohio" and the "Ohio consumers' counsel") and express the agencies' business hours in words rather than numbers (*i.e.*, "eight a.m." and "five p.m."). Dominion Retail assumes that these changes were made to comply with Legislative Service Commission OAC style requirements and is aware that a similar issue arose in connection with utility bill formats in Case No. 11-4910-AU-ORD, where the revised rules also used lower case for governmental agency names and expressed the agencies' business hours in words rather than numbers.

In reviewing proposed bill formats submitted in response to those rules, Staff took the position that the information had to be presented in the precise form specified in the rules, notwithstanding that the information was substantively identical and that the form required by the rule and simply looked odd. Upon a motion a for waiver filed by Columbia Gas of Ohio, Inc., the Commission ultimately permitted utilities to use the more customary method of

displaying these names (*i.e.*, the "Public Utilities Commission of Ohio" and the "Ohio Consumers' Counsel") and hours (*i.e.*, 8:00 a.m. and 5:00 p.m.) in the required statements,[2] but not until after a number of utilities had printed bill stock using the exact form specified in the rules in accordance with Staff's instructions. The Commission went on to find that any utility wishing to make the same changes referred to in its finding and order to any of the rules referenced in Case No. 11- 4910-AU-ORD need not file for a waiver.

To avoid a repeat of this exercise, Dominion Retail urges the Commission to grant a similar blanket waiver in its order adopting rules in this case, providing, as in Case No. 11-4910-AU-ORD, that where the departure from the language of the rule "is strictly limited to changes in capitalization and numeric references, which do not change the intent, application, or structure of the required language," companies may utilize the more typical format for required notices and statements. This comment also applies to the notices required by proposed Rules 4901:1-21-14(C)(13), 4901:1-21-18(C)(15),

Proposed Rule 4901:1-24-04 Filing of an application.

Staff proposes that existing Rule 4901:1-24-04, which sets out the application process for securing or renewing certification, be redesignated as Rule 4901:1-24-05, headed "Application content," and that a new Rule 4901:1-24-04 be inserted, which would provide as follows:

> Beginning on the effective date of this chapter, each application for certification or certification renewal shall be assigned a new case number in sequential order as the case is received, beginning with XX-7000 by the commission's docketing division.

In commenting on a parallel Staff proposal in Case No. 12-925-GA-ORD, Dominion Retail noted that, as is the case here, the entry contained no explanation of the reason for this

[2] *See* Case No. 11-4910-AU-ORD (Finding and Order dated May 9, 2012).

change to the existing practice of filing certificate renewal applications in the docket in which the initial certification was approved. Dominion Retail believes that, in the absence of a compelling justification for this new procedure, the existing practice should be retained. Utilizing the case number assigned to the original application for subsequent renewal applications facilitates researching the certification history of a particular supplier, broker, or governmental aggregator. Assigning a new case number to each renewal application would eliminate this easily-followed trail and greatly complicate such research efforts by requiring an interested party to perform a DIS name search (which, unfortunately, does not always yield complete results), identify all the CRS cases in which the company in question was involved, then look up and cull through each individual docket to find the desired information.

In addition, maintaining a supplier's certification and renewal certification filings in a single docket assists the supplier in keeping track of the status of protective orders covering confidential information filed under seal. This capability will become increasingly important if the Staff's proposal to extend protection to certain application exhibits for a period of six years is adopted because the longer time frame increases the likelihood that there will be changes in supplier personnel and legal counsel between the filing of exhibits under seal. Plainly, the possibility of the expiration of protection slipping through the cracks is greater if one has to research multiple dockets to keep abreast of the protected status of these documents.

Although Dominion Retail opposes proposed Rule 4901:1-24-04 for the reason stated above, if this rule is to be adopted, two changes are required. First, the provision should be effective beginning on the effective date of the "rule," not the effective date of "this chapter," as Chapter 4901:1-24 has been in effect for many years. Second, the proposed language is extremely awkward. The syntax would be improved by moving the phrase "by the commission's

docketing division" from the end of the sentence to follow the words "shall be assigned a new case number."

Proposed Rule 4901:1-24-05 Filing of an application.

As noted above, Staff proposes that existing Rule 4901:1-24-04, which covers certification and certification renewal applications, be renumbered as Rule 4901:1-24-05. Staff has also proposed certain substantive changes to the existing rule, which are in keeping with Staff's proposed changes to the corresponding gas rule, Rule No. 4901:1-27-05. One such change is the inclusion of a requirement in subparagraph (B)(1)(f) that the applicant disclose any pending legal actions or past rulings against it. Dominion Retail agrees that this information should be included in the application, but questions whether, in view of this new language in subparagraph (B)(1)(f), the requirement in subparagraph (B)(1)(b) calling for the a description of "prior judicial or regulatory actions" is still necessary. Because the focus of subparagraph (B)(1)(b) is information regarding "(m)anagerial experience and capabilities," it would appear that the reference to "prior judicial or regulatory actions" (which will now be covered by new (B)(1)(f)) should be replaced with a requirement that the applicant identify all jurisdictions in which it is authorized to provide competitive retail services. This measure would be consistent with what the current application form actually requires in the "Managerial Capability and Experience" section.

Staff has also added new subparagraphs (i), (ii), and (iii) to proposed Rules 4901:1-24-05(B)(1)(c) and (B)(2)(b) specifying that applicants must provide "Financial Exhibit 1," "Financial Exhibit 2," and "Financial Exhibit 3" as a part of the financial information submitted pursuant to these provisions. However, the current application forms contain no references to such exhibits. Rather, the "Financial Capability and Experience" section of the current

application forms specify that the applicant must provide, as Exhibit C-3, copies of its balance sheets, income statements, and cash flow statements for the two most recent years, and, as Exhibit C-5, projected financial statements for the next two years. Accordingly, Dominion Retail believes that subparagraphs (i), (ii), and (iii) of proposed Rules 4901:1-24-05(B)(1)(c) and (B)(2)(b) should be eliminated because the "Financial Exhibits" to which they refer are not only undefined, but the nomenclature is inconsistent with the financial exhibit designations specified in the current versions of the application forms. Indeed, Staff has correctly identified these exhibits in its new proposed Rule 4901:1-24-08(A) providing for automatic protection of financial information filed under seal.

In this connection, Dominion Retail would also note that there are a number of other inconsistencies between the information that may be required by the application forms as set forth in the various subparagraphs of proposed Rules 4901:1-24-05(B)(1), (B)(2), and (B)(3) – currently Rules 4901:1-24-04(B)(1), (B)(2), and (B)(3) – and the far more detailed information that must, in fact, be provided by the applicant to complete the actual application forms themselves. As explained below, Dominion Retail believes that the appropriate fix for this awkward and confusing situation is simply to eliminate all the subparagraphs of Rule 490:1-24-05(B).

Proposed Rule 4901:1-24-05(A) continues to require that applications be made on forms authorized by the Commission and generally describes the information that the forms are intended to elicit, while proposed Rule 4901:1-27-05(B) continues to require that the applicant complete the appropriate application form in its entirety and supply all required attachments, affidavits, and evidence of capability specified in the form. However, like current Rules 4901:1-24-04(B)(1), (B)(2), and (B)(3), proposed Rules 4901:1-24-05(B)(1), (B)(2), and (B)(3), after

again stating that the applicant "shall file general, technical, managerial, and financial information as set forth in the application," then provide that "(t)his information" – *i.e.*, the information specified in the application form – "includes, but is not limited to" the information identified in the various subparagraphs of the rule. In Dominion Retail's view, there is no purpose served by identifying the information that can be requested via the application form (beyond the general description in Rule 4901:1-24-05(A)) in view of the fact that the application form can – and, in fact, does – require that the applicant provide information beyond that specifically identified in the rule. Simply stated, the Commission does not need a rule telling itself what information the application forms can require, particularly when the information that can be required is not limited to the information identified in the subparagraphs of the rule and when the applicant, by rule, has to complete the application form, whatever it requires. Accordingly, Dominion Retail believes that the subparagraphs of proposed Rule 4901:1-24-05(B) should be eliminated. This measure would, in no way, change the information an applicant has to provide, but would tidy up the inconsistencies that currently exist.

Proposed Rule 4901:1-24-08 Protective orders.

Dominion Retail supports Staff's proposal to allow financial exhibits to certification and renewal certification applications to be filed under seal without the need for an accompanying motion for a protective order and also endorses Staff's proposal to extend the protection for six years from the date the certificate or renewal certificate is issued. As noted in Dominion Retail's comments regarding proposed Rule 4901:1-24-05, proposed Rule 4901:1-24-08(A), unlike the corresponding proposed gas rule, proposed Rule 4901:1-27-08(A), correctly identifies the financial exhibits – Exhibits C-3 and C-5 – required by the current application forms. However, Staff has also included application Exhibit C-4 as an exhibit entitled to automatic protection.

Exhibit C-4 requires the applicant to provide copies of its financial arrangements to conduct CRES as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.,). Exhibit C-3, which requires the applicant to provide copies of its balance sheets, income statements, and cash flow statements for the two most recent years, and Exhibit C-5, which requires the applicant to provide projected financial statements for the next two years, are, for obvious reasons, routinely granted protected status. On the other hand, it is far from clear why the Exhibit C-4 information should be automatically accorded confidential treatment since this information would typically be publicly available. Accordingly, Dominion Retail suggests that the reference to Exhibit C-4 should be eliminated from proposed Rule 4901:1-24-08(A). If an applicant believes it can make the case for confidential treatment of these financial arrangements, the applicant would still be free to apply for a protective order pursuant to proposed Rule 4901:1-24-08(B).

In addition, although Dominion Retail assumes that the proposed rule is intended to apply to financial exhibits filed in connection with both initial certification applications and renewal certification applications, because this rule refers only to the issuance of a "certificate," there could be some confusion in this regard. Thus, Dominion Retail suggests that the rule be revised to provide that financial exhibits filed under seal will be "will be afforded protective treatment for a period of six years from the date of the certificate or renewal certificate for which the information is being provided."

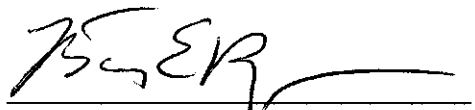
Proposed Rule 4901:1-24-11 Material changes to business operations.

Rule 4901:1-24-11(B) lists various circumstances that constitute a material change that must be reported to the Commission pursuant to Rule 4901:1-24-11(A). Although the circumstances identified in the various subparagraphs of the this rule are, for the most part,

identical to the circumstances set out in the corresponding gas rule, Rule 2901:1-27-11(B), the gas rule lists a change in the applicants name or a change in a fictitious name as a material change. Although recognizing that circumstances identified in the subparagraphs of Rule 4901:1-24-11(B) are not exclusive, to provide consistency between the two sets of rules, Dominion Retail proposes that a new subparagraph (12) be added to the electric rule identifying "Any change in the applicant's name or any use of a fictitious name" as a material change.

Dominion Retail also notes that Rule 4901:1-24-11(A)(1) provides that notices of material changes are to be filed in the company's initial certification docket or the docket of "most recent certification renewal application, whichever is the most recent." As previously discussed, Dominion Retail opposes the proposed requirement that certification renewal applications be filed in separate dockets. Thus, Dominion Retail urges that Rule 4901:1-24-11(A)(1) be modified by eliminating the reference to the most recent renewal certification application.

Respectfully submitted,



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