

**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) Case No. 12-1924-EL-ORD
Chapters 4901:1-21 and 4901:1-24 of the)
Ohio Administrative Code.)

**INITIAL COMMENTS
OF
DUKE ENERGY RETAIL SALES, LLC**

On July 2, 2012, the Public Utilities Commission of Ohio (Commission) commenced its five-year review of the rules in O.A.C. Chapters 4901:1-21 and 4901:1-24 (1-21 and 1-24), relating to the certification and operation of competitive retail electric service (CRES) providers. Pursuant to the Commission's order, a workshop was held on August 6, 2012. The Commission's entry of November 7, 2012, called for comments on staff's proposed changes to those chapters, with due dates of January 7, 2013, for initial comments, and February 6, 2013, for reply comments. In accordance with the Commission's schedule, Duke Energy Retail Sales, LLC, (DER) respectfully submits its comments.

Two principles are critical to an understanding of DER's approach to these rules.

1. Ohio is becoming a single, statewide market for electric and gas choice.

Any updates to the CRES rules should be made with a view to accelerating and sustaining the development of a single, statewide market through identical CRES-related systems and practices across every electric distribution utility (EDU) in the state. Most, if not all, CRES providers offer their services in the certified territories of all of the EDUs in Ohio. All EDUs are governed by the same laws and all CRES providers are governed by the same laws. The exact same state policies apply in all territories. It is equally important in all EDUs' certified

territories to ensure diversity of electricity supplies and suppliers, to give consumers effective choices, to ensure the availability of comparable retail electric service that provides options for the consumers, and to ensure consumers protection against unreasonable sales practices, just to name a few such policies. While the rules in 1-21 and 1-24, as currently effective and as proposed, aim for statewide consistency, there remain certain areas in which deviations among the EDUs remain. DER's comments will address such areas. DER recognizes that the Commission may deem some of the consistency-related comments to be inappropriate for these chapters, as solutions may require actions or changes by EDUs, which are not bound by these chapters as they currently stand. However, the Commission could – and should – revise the applicability of the chapters to encompass EDUs to the extent impacted by the requirements, just as is true in O.A.C. 4901:1-29-02(A)(2), the analogous rule for the gas industry.

2. Consumer understanding and support is critical in advancing retail electric markets.

All CRES rules should be reviewed from the consumers' perspective. Rules that make sense to CRES providers, EDUs, and the Commission may in fact create confusion for consumers. The CRES rules should support a market design that is intuitive for consumers to grasp and sustains positive customer experiences throughout the life-cycle of a consumer purchase. In order to be intuitive, the CRES rules should support a market design that is consistent with consumer expectations in purchases of similar goods and services. Rules that make sense to a consumer will greatly lower barriers to the customer's engagement in electric choice. In order to support positive customer experiences, the CRES rules should mandate truth and fair play in this growing market. By doing so, DER believes that consumers will have more positive experiences in their electric choices, which in turn will encourage other consumers to

make their own choices. This positive cycle of referrals is critical to propelling Ohio's energy market forward and fostering innovation in new electric products and services.

With these two principles in mind, DER recommends to the Commission that it consider addressing various deficiencies in the rules. For example, the current consolidated billing payment process is not intuitive to customers, is inconsistent among the EDUs, and limits CRES providers' ability to enhance their product and service offerings. How EDUs apply a customer's payment to the charges on a consolidated bill is inconsistent across EDUs and confusing to consumers. DER believes there should be one consistent methodology for processing any payment on any consolidated bill throughout the state.

The existing rules may have made sense from the historical industry perspectives of EDUs, the Commission, and perhaps the consumer. However, from a consumer's perspective, the current rules are inconsistent with expectations and are therefore a barrier to further advancements in Ohio's choice markets. Currently, the consumer receives a single, monthly bill and makes a single payment for both the EDU and CRES charges. What the consumer does not intuitively understand – and may have no way of knowing – is that he has two outstanding balances on his account. If the consumer is behind on paying his bill, the consumer has two account payables: one with the EDU and one with the CRES provider. These two balances do not clearly appear on all EDU consolidated bills. Adding to the consumer's confusion is the fact that customers have no knowledge that the prioritization rules will result in their payments being automatically applied to one balance or another. Further confusion may result if the consumer shops for both electric and gas services, as the prioritization rules differ between the two industries.

Furthermore, some EDUs will negotiate payment plans with customers for the entire outstanding balance (without any input from the CRES provider) and may have special rules allowing them the right to return consumers back to the EDU's standard service offer, when there is an outstanding balance due to the EDU. Adding EDU cancellations and rebills to the equation can make it even more confusing.

In addition, because only EDUs have the ability to disconnect consumers, the CRES provider has limited ability to collect on its outstanding balances. For example, if a CRES provider contacts a customer about an outstanding balance and the customer then makes an additional payment, that payment (a) must be sent to the EDU and (b) will be applied to balances using the EDU's payment process rules. Thus, the extra payment may not go to the CRES, as was intended by the customer. Furthermore, a CRES provider's outstanding balance will eventually be removed from the EDU bill after a consumer is no longer the CRES provider's customer. Once this occurs it is the CRES provider's responsibility to collect the outstanding balance directly from the consumer. Unfortunately, many consumers logically assume that they no longer owe this outstanding balance when they receive the credit on their EDU bill. This makes collection of CRES providers' balances more difficult and causes additional customer confusion.

Regardless of the product or service, consumers expect an intuitive and consistent process for paying their bills and handling their outstanding balances. Those consumers that fall behind on their bills do not have the right information, do not understand the rules, and have to deal with two separate companies in resolving their past due balances.

DER believes that the current processes were appropriate in an earlier, transitional phase of Ohio's electric choice markets but are now limiting the advancement of electric choice in

Ohio. DER believes that a purchase of receivables (POR) program, such as the one offered by Duke Energy Ohio, is the best way to mitigate these billing issues and advance Ohio's choice market. A POR program consolidates the accounts receivable with the one company (the EDU), which sends the bill, receives and processes payments, and has the ability to disconnect for non-payment. From the consumer's perspective, this is intuitive and fair. From an industry perspective, it is a fair and streamlined process as well.

DER recognizes that other parties may not support a POR program. As an alternative, DER would recommend, although less enthusiastically, the following: (a) All EDU consolidated billing would include a break-out of the separate outstanding balances, which balances would remain on the bill until paid or otherwise resolved. (b) The Commission would establish consistent payment processing across the state and mandate that this information be included on the consumer bill. (c) EDUs would not be authorized to negotiate payment plans for CRES balances and would not have the ability to return consumers to the default service after non-payment. (d) CRES providers' outstanding balances would be factored into disconnection decisions and a consumer's ability to switch in the future.

Another example of an issue that should be approached with the two guiding principles in mind, relates to truth and fair play in the growing market place. The rules, even in their current form, do require honesty in market offers. However, the rules do not provide enough detail to ensure that interpretation does not get in the way of the desired outcome. This is not an area where it is sufficient to rely on the hope that we will all recognize it – dishonesty, that is – when we see it. The rules must be clear. And the rules must include sufficient requirements and controls that the Commission will be in a position to ensure compliance with its standards. DER respectfully suggests that the Commission develop simple ways in which customers – or

potentially other market participants – can monitor and report violations of marketing requirements. While the Commission’s call center does an admirable job, many customers may remain unaware of its availability or apprehensive of their ability to satisfactorily report these abusive behaviors. This might also be an area in which CRES providers and EDUs can work together to monitor potential slamming behavior.

DER’s comments will address the areas in which the rules should be further strengthened.

DER’s comments on the individual rules are as follows:

Rule 1-21-01

DER notes that subparagraph (V) defines “market development period,” a term that has no further relevance (as all such periods have terminated) and is not used in Chapter 1-21. The definition should be deleted.

Rule 1-21-02

DER agrees with the concept of expanding the description of the Commission’s intention with regard to this chapter. As is apparently the effort, the intent should correspond with the state policies, as set forth in R.C. 4928.02. However, the wording in the proposed new subparagraph (A)(2)(d) should be modified, as the rules cannot maintain service or switch CRES providers. DER suggests the following (marked to show DER’s suggested alterations): “The rules in this chapter . . . [a]re intended to . . . [p]romote nondiscriminatory access to competitive retail electric services, ensure timely enrollment with CRES providers, ensure maintenance of ~~maintain~~ electric service, and ensure timely and accurate switching of ~~correctly switch~~ CRES providers.”

DER also questions the substance of the proposed new subparagraph (A)(3). Although the term “jurisdictional customers” is undefined, it appears that the Commission intends to

suggest that it has jurisdiction over electric customers. However, nothing in Title 49 of the Revised Code gives the Commission such jurisdiction. The Commission has jurisdiction over EDUs and CRES providers, but not over their customers. The Commission has no power to order customers to take any particular action or to refrain from taking any action. This new language should be deleted in its entirety.

Subparagraph (C) should be amended to delete the second sentence, which sentence requires waiver requests to be served on the Ohio Consumers' Counsel (OCC) and on all EDUs in Ohio. This requirement differs from the Commission's typical such rule, in other chapters, for no apparent reason. For example, O.A.C. Rule 4901:1-24-02(C), being reviewed in this same docket, requires no such broad service. Similarly, O.A.C. Rules 4901:1-27-02(B) and 4901:1-29-02(C), analogous rules applicable to competitive gas providers, do not require such service. The Commission's publicly available docketing notices should provide ample notice to the OCC and interested EDUs, just as they do for all other motions for rule waivers.

Rule 1-21-03

DER agrees that paragraph (D) should be amended to include reference to percent-off rates. However, the proposed language is unclear. What sort of "explanation of the discount" is staff hoping to receive? And what does staff mean by asking for the "basis" of the calculation? DER suggests that the new provision be amended as follows: "For percent-off ~~percent-of~~ discounted rates, the amount of the discount and a description of the portion of the EDU's rate to which such discount applies ~~an explanation of the discount, and the basis on which any discount is calculated.~~"

While DER is in agreement with the content of proposed new paragraph (E), it does appear that such requirement would be more appropriately included in Chapter 1-24, as such chapter relates to certification.

Rule 1-21-04

DER suggests that this rule be amended to provide specifically that the maintenance of records electronically is sufficient for compliance with all Commission mandates. For example, customer contracts may be scanned and retained on electronic media, rather than in hard versions, even if the original existed only on paper.

Rule 1-21-05

Paragraph (A), in its current form, requires marketing materials to detail the offered price. Separate paragraphs apply to fixed-rate and variable-rate offers. However, as staff has recognized through its proposed revisions to Rule 1-21-03, percent-off offers have now become common. DER suggests that this paragraph be amended to address percent-off offers specifically.

Paragraph (C) is critically important, as this provides CRES suppliers with the boundaries on their activities and provides the Commission with regulatory control over the marketplace. As indicated at the outset of these comments, DER believes that it is vitally important to the state's policies that the market for CRES be conducted in a fair and transparent manner. This rule puts the market into effect. DER has several, specific comments.

Subparagraph (C)(2) should be amended to correspond with the rule currently proposed for the analogous situation in the gas market (O.A.C. 4901:1-29-05(C)(2)). That is, the provision should apply when a solicitation is being made and it should be clarified that failing to make the required disclosures is an unfair, misleading, deceptive, or unconscionable act. Further, this

provision should not cross-reference subparagraph (B), as failure to provide materials to staff on a timely basis does not cause the offer to be unfair, misleading, deceptive, or unconscionable. Thus, DER proposes to amend this paragraph as follows: “Failing to comply with paragraph (A) ~~or (B)~~ of this rule when soliciting a sale of CRES and failing to disclose all terms, conditions, and limitations including but not limited to contract length, prices, fees and termination fees, or penalties and any discretionary charges.”

DER also proposes a revision to subparagraph (5), also to be analogous with gas rules. It is vitally important that potential CRES customers understand who is soliciting their business. Many people are unaware of the fact that competitive providers exist and that such providers are not the same company as the one from whom they obtain distribution services. Thus, although subparagraph (8)(h) provides that a misleading statement concerning the soliciting provider’s identity is an unfair act, that provision only addresses such statement that are made as part of advertising or marketing offers. They also must be identified as unfair when a part of any solicitation.

Furthermore, DER strongly believes that it is not enough for suppliers simply to avoid misleading potential customers into thinking that they are soliciting on behalf of the EDU or have a relationship with the EDU; rather, the soliciting supplier should be required to affirmatively state that there is no such relationship. Without a clear statement to that effect, potential customers will continue to be confused or misled.

Therefore, paragraph (5) should be amended to read as follows: “Engaging in ~~telephone~~ any solicitation (a) that leads the customer to believe that the CRES supplier or governmental aggregator or its agent is soliciting on behalf of or is an agent of an Ohio electric utility where no such relationship exists or (b) that does not include an affirmative statement of the relationship or

lack thereof between the CRES supplier or governmental aggregator or its agent and the Ohio electric utility that supplies distribution service to the customer~~of individuals who have been placed on the federal trade commission's 'do not call' registry and who are not otherwise exempted."~~

DER also notes its strong agreement with proposed new paragraph (D).

Rule 1-21-06

Paragraph (A) requires enrollment to be coordinated with the local EDU, pursuant to the EDU's tariffs. This is an area where statewide consistency should be a consideration. Where each EDU remains in a position to create its own enrollment requirements, the development of the competitive market, in furtherance of the state's policies, remains hampered. Specific areas of inconsistency, each of which should be addressed in this rule, are as follows:

- EDUs should be required to allow enrollment on the basis of account numbers, not customer numbers, names, addresses, or Service Delivery Indicator (SDI) numbers.
- EDUs should all be required to allow the CRES supplier to rescind an enrollment request, on behalf of the customer, up to four days before the date on which the supplier would otherwise start supplying service to a given customer. This is currently allowed by only certain EDUs, making consistent marketing impossible.

DER applauds staff's proposal to supplement the requirements concerning the identification of door-to-door solicitors, in subparagraph (D)(1)(j) and to require independent third-party verification of door-to-door solicitations, as set forth in subparagraph (D)(1)(h). DER would also suggest adding one further protection to these requirements. Not only should the solicitors carry an approved, photo identification, they should also be required to physically provide their identification card to each solicited customer, in a format to be left with that

customer. Without having an identification card left with them, many customers will be unable to recall who they spoke with, who was being represented, or any contact information. The Commission should approve the format of such material, which should include the solicitor's name, the name of the company for which the solicitor works, the name of the supplier on behalf of which the solicitation is being made, a toll-free telephone number for both the employer and the supplier, and PUCO and OCC contact information. Subparagraph (D)(1)(j), which does not specifically relate to uniforms, should be amended to add this requirement. Further, subparagraph (D)(1)(h) should also be amended such that the third-party verification would include the questions to confirm compliance with this requirement. Possible questions include: "Who did the representative state that he or she was representing?" "Did the representative provide you with a written copy of his identification information?" Finally, DER also suggests that EDUs be directed to notify their customers that all legitimate door-to-door solicitations from CRES suppliers must begin with this identification process and the provision of written information.

DER strongly supports the addition of subparagraph (2)(a)(iii). In addition, DER suggests that it would be appropriate to obtain third-party verification that the customer understands that (1) the CRES provider is not representing the utility or obtaining the enrollment on behalf of the utility, (2) other CRES providers also could provide this service, and (3) the customer could remain a customer of the EDU.

Subparagraph (D)(3)(b)(ii), relating to internet enrollment, should correspond to the analogous requirements relating to telephonic and direct marketing. Therefore, it should refer to business days, not calendar days. The same is true in subparagraphs (D)(3)(d) and (f).

Rule 1-21-07

DER has no comments on this rule.

Rule 1-21-08

DER has no comments on the changes being proposed by staff. However, DER suggests an additional modification to paragraph (B), relating to the handling of customer complaints. In the event the CRES provider and the customer, in a complaint situation, resolve the issue in a manner that results in a credit to the customer's account, it would be helpful for each EDU to have a process that specifically accomplishes this end. DER would be in favor of a modification that requires each EDU to include in its tariffs a process whereby a CRES supplier can make a payment to a customer account for the purpose of providing a credit. DER also notes that this is another reason to require enrollment by account number only, as EDUs are unable to process a payment by customer number or SDI.

Rule 1-21-09

DER has no comments on this rule.

Rule 1-21-10

DER has no comments on this rule.

Rule 1-21-11

In paragraph (E), it would be helpful to the customer to allow rescission in as many ways as possible. If, for example, the customer calls the CRES provider to question the new contract and, in the course of such conversation the customer determines that he would prefer to rescind, why should he have to make another call? In such a situation, the CRES provider should be able to handle the rescission directly. The rules should be amended to allow rescission by means of a

contact to the CRES provider, which provider would then be required to notify the EDU immediately.

In addition, DER questions whether the Commission's intent, in paragraph (E), was to alter the window for rescission to reflect business days, as is done elsewhere in these chapters.

Clarification of paragraph (F) would also be helpful. In certain circumstances, customer contracts may be designed such that the early termination or cancellation fee varies. For example, a contract might be designed with an early termination fee of fifty dollar in the initial one-year term but with a no such fee at all after automatic renewal for an additional year. From a policy perspective, such contract should fall within the renewal provisions of subparagraph (F)(2), as the customer can freely cancel the automatically renewed contract. Such a change would also be analogous to the similar requirements in the gas industry. In order to clarify the correct application of the rule, DER suggests that subparagraphs (F)(2), (F)(3), and (F)(4) be clarified to reflect that the determination of which requirement applies shall be made on the basis of the contract terms after renewal. The following language would suffice for each such subparagraph: "For contract that, after automatic renewal, will contain an early termination . . ."

Finally, DER recommends that the Commission consider the benefit to customers of allowing CRES providers to unilaterally amend a customer's contract to lower the rate being charged. In today's marketplace, with its volatile prices, circumstances may allow a CRES provider to obtain cheaper supplies that had previously been anticipated and, through such changed circumstances, to lower the prices it charges. Existing customers should be able to get the benefit of lowered market prices without having to incur early termination charges that might be required in order to enter into a new, cheaper contract. DER recognizes that the staff proposes to require disclosure, in contract terms, that a CRES provider may lower the price.

However, this requirement only addresses disclosure and does not clearly grant providers this right. In addition, at best it would only apply to new contracts, entered into after these rule changes become effective. In order to help customers under then-existing contracts, and to ensure clarity, DER proposes that a new paragraph be added to this rule to specifically allow for such contract amendments by the CRES supplier.

Rule 1-21-12

DER concurs with staff's proposal, in subparagraph 21-12(B)(7)(c), to align the requirements for describing variable-rate offers with the analogous requirements in the gas industry. However, DER would note that currently proposed gas changes would delete the words "clear and understandable." The need for clear and understandable contracts is already included in the introductory language in paragraph (B) and is, therefore, repetitive here.

With regard to subparagraph (D)(2), DER repeats its concern regarding the requirement to include an "explanation" of a discount, as well as the "basis" therefor, as previously discussed in comments on Rule 21-03. This requirement is unclear. DER suggests that the new provision be amended as follows: "For percent-off percent-off discounted rates, the amount of the discount and a description of the portion of the EDU's rate to which such discount applies~~an explanation of the discount, and the basis on which any discount is calculated.~~"

Rule 1-21-13

From a consistency standpoint, DER suggests that the Commission consider amending its rules to require all EDUs to identify net-metered accounts in pre-enrollment lists. Although Rule 21-13 allows CRES providers to offer net metering, without a way to obtain information about customers who might be interested in such service, a market for this CRES cannot develop. Ohio policy, as set forth in R.C. 4928.02, describes net metering as a critical issue and plainly

states that it is a goal to ensure the availability of market choices to meet the needs of specific customers. Customers with a need for net metering should have that choice made possible.

Rule 1-21-14

Paragraph (A) should be amended to more clearly cross-reference rules applicable to consolidated billing. The paragraph should be revised as follows: “This rule applies to competitive retail electric service (CRES) bills that do not include any electric utility charges. Requirements for consolidated billing by CRES providers appear in rule 4901:1-21-18 of the Administrative Code. Requirements for consolidated billing by electric utilities appear in rule 4901:1-10-33.”

DER also notes that the Commission’s rules should require EDUs that are providing consolidated billing services to allow the customer’s CRES provider to request and receive a copy of the customer’s bill, for so long as the provider is the provider of record or the bill contains any amount due to the CRES provider. This requirement might well be included in O.A.C. 4901:1-10-29(G) or 4901:1-10-33. However, it would be helpful if it were also referenced in paragraph (A) of Rule 4901:1-21-14.

Rule 1-21-15

DER has no comments on this rule.

Rule 1-21-16

DER has no comments on this rule.

Rule 1-21-17

This rule includes a number of provisions that address the creation of an appropriate listing of customers who are eligible for automatic aggregation. Subparagraph (D)(1) requires the aggregator to request that the EDU provide a list of customers in the aggregator’s boundaries,

identifying those customers who are in contract with a supplier and those in a special arrangement with the EDU. Subparagraph (D)(3) then requires the aggregator to remove those customers who have asked not to be aggregated. Paragraph (E) then identifies various categories of customers who must not be included in the aggregation and what remedies are to be taken if they were inappropriately included. Those remedies include circumstances that would require the aggregator to incur a monetary obligation to the affected customers. Unfortunately, mistakes sometimes occur in the listing originally obtained from the EDU. What entity should be liable for any monetary impact of including customers who were not actually located within the aggregator's boundaries, if the EDU's list included them? What efforts should the EDU be expected to make in this regard? And, similarly, what "best efforts" are expected of the EDU in identifying mercantile customers and what liability would the aggregator or the CRES provider have for errors by the EDU? These issues should be clarified. The EDU should be required to provide reliable information concerning all customers located in the aggregator's boundaries, even if the boundaries cross county lines, and to properly identify customers' eligibility. If the EDU fails to provide accurate lists, it should be held responsible for any monetary harm that results, just as is currently proposed for gas utilities, in proposed Rule 4901:1-28-04(E).

Rule 1-21-18

DER has no comments on this rule.

Rule 1-24-01

DER has no comments on this rule.

Rule 1-24-02

DER has no comments on this rule.

Rule 1-24-03

DER has no comments on this rule.

Rule 1-24-04

If new case numbers will be assigned to each renewal application, DER would suggest that the Commission's renewal forms be modified to identify the preceding case number. Such disclosure will make it easier to locate the prior cases in which certification was considered, particularly when a provider's name has changed over time.

Rule 1-24-05

DER has no comments on this rule.

Rule 1-24-06

DER has no comments on this rule.

Rule 1-24-07

DER has no comments on this rule.

Rule 1-24-08

DER suggests that paragraph (A) of this rule be modified. The Commission should clarify that no motion for a protective order needs to be filed in order to file Exhibits C-3, C-4, and/or C-5 under seal. It appears from the proposed language that such treatment will be automatically afforded, but clarity is important for such a change from standard practice.

Rule 1-24-09

DER has no comments on this rule.

Rule 1-24-10

DER has no comments on this rule.

Rule 1-24-11

DER notes that subparagraphs (A)(1) and (B)(3) include references to gas suppliers.

Rule 1-24-12

DER has no comments on this rule.

Rule 1-24-13

DER has no comments on this rule.

Rule 1-24-14

DER has no comments on this rule.

Rule 1-24-15

DER has no comments on this rule.

Rule 1-24-16

DER has no comments on this rule.

DER appreciates the opportunity to provide its initial comments to the Commission. DER respectfully requests that the Commission revise the proposed rules in accordance with DER's suggestions herein and clarify each of the provisions identified as ambiguous.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 7th day of January, 2013, to the following parties.



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Summary: Comments Initial Comments of Duke Energy Retail Sales, LLC electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.