

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Review of Chapter 4901:1-10, Ohio)
Administrative Code, Regarding Electric) Case No. 12-2050-EL-ORD
Companies.)
)

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

In July 2012, the Public Utilities Commission of Ohio (Commission) commenced its five-year review of the rules in O.A.C. Chapter 4901:1-10 (1-10), relating to electric utilities. 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.

Although Duke Energy Retail Sales, LLC, (DER) is a competitive retail electric service (CRES) provider, not an electric utility subject to the rules in Chapter 1-10, certain of those rules do impact DER's business. Therefore, in accordance with the Commission's schedule, 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 CERS 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 support 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 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 their payments being automatically applied to one balance or another – and not consistently as between gas and electric charges. 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 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. The following sections address DER's comments on specific rules.

Rule 1-10-24

The proposed modification of this rule includes the adoption of subparagraph (F)(3), relating to disclosure of customer usage data. The proposed changes specifically reference the use of a universal, user-friendly format. DER believes that the methodology for creating such load profiles should be standardized. Currently, the four EDUs do not use the same methodology to develop their load profiles. While different approaches may have made sense in the prior transitional periods, today DER believes that consistent, transparent, and statistically robust load profiling is in the best interest of the consumer, as load profiles are a critical input into determining a consumer's price. Less uncertainty in the load profiles will lower the risk premiums embedded in CRES providers' cost-to-serve calculations.

DER believes that the FirstEnergy EDUs and Duke Energy Ohio have the best methodologies in the state. They could serve as a template for a statewide methodology. DER finds that Ohio Power's approach to load profiles lacks transparency in that it does not actually provide a weather response function. Rather, Ohio Power provides 5 years of historical data. It is up to the CRES provider to develop its own weather response function for each load profile. With regard to DP&L load profiles, DER does not find them statistically robust because DP&L only uses one year of historical data to develop its weather response functions. DER believes that this is the reason that several of its small commercial and residential load profiles are not weather sensitive. While DER does not argue with the mathematics DP&L used to determine that weather was not statistically significant, DER finds it unlikely that any residential customer's load profile is not sensitive to weather. DER believes three years of historical data would yield a more realistic result for DP&L load profiles.

Subparagraph (F)(5) of rule 1-10-24 addresses the ability of customers to object to their inclusion on lists of eligible customers. The rule requires each EDU to provide notice of that ability, at least four times per year. However, some EDUs interpret this rule such that the customers are only given small windows of opportunity to opt in or out of the lists, and only four times per year. As DER reads this rule, the requirement only relates to how often notice is to be provided to the customers; it does not allow the EDUs to limit the customers' right to certain small windows of time. The rule should be modified to clarify this point.

Rule 1-10-28

It is extremely important that the handling of net metering is consistent across the state. DER, and likely other competitive providers, is willing to provide services to customers who are net metered. However, they need to be identified in order for CRES services to be appropriately marketed to them. Unfortunately, while some EDUs do identify such customers on pre-enrollment listings, most do not. This should be required. Further, the monthly usage data files provided to the CRES suppliers by the EDUs should be consistent, including calculation and display of distributive usage and generated usage. Finally, there should be consistency with regard to the provision of credit for the generated portion of the net metered value. Currently, only some of the EDUs provide the credit. In order to encourage the development of distributed generation and CRES services to support these customers, consistency is critical.

Rule 1-10-29

Paragraph (B) requires the utilities' tariffs to include requirements for various matters, including load profiles. As previously discussed with regard to Rule 1-10-24, load profile requirements should include standardization of the information being provided. The paragraph also requires metering to be addressed in the tariffs. DER believes that the mandate should go further, particularly with regard to interval metering. Most, but not all, EDUs require an interval

meter to be installed at a minimum demand level of 200 kW. This threshold should be consistent among the EDUs. In addition, the cost to install an interval meter should be standardized; costs now vary by as much as 100% (\$460 versus \$905). High and inconsistent costs are barriers for some customers.

Paragraph (E) requires pre-enrollment lists to be updated quarterly. While some EDUs already go beyond that minimum requirement, not all do. Unfortunately, old lists can have deleterious effects on customers. For example, if the pre-enrollment list is used for an aggregation and is already almost three months old when the list is requested, it may be four months old when aggregation letters are mailed. Some customers will almost certainly be missed. DER suggests that the rule require updates on a monthly basis. Further, that pre-enrollment list should also contain data relating to net metering, peak load contribution, and network service peak load.

Paragraph (F) addresses enrollment requirements. DER has experienced occasions where a customer has contacted DER to seek rescission, even after the 7-day rescission period has expired. In order to assure that customers get the service that they desire, it makes sense to allow a CRES supplier to contact the EDU with regard to rescission, at the customer's request. This action should be possible as late as four days prior to the start date of the enrollment. DER suggests adding this provision as an additional subparagraph.

Subparagraph (G)(2) requires consolidated billing to include an option for budget billing. This sentence is not interpreted consistently by all of the EDUs, as some allow CRES charges as part of their budget billing and some do not. DER has no opinion as to which approach is correct, but believes strongly that all EDUs should treat CRES charges in the same manner. Further, if CRES charges are included in the budget billing calculation, then the payments

received should be apportioned similarly as between the EDU and the CRES provider, and should be trued up every 12 months.

DER proposes that the Commission add a new subparagraph to this rule, requiring each EDU to create and provide a “sync list” to suppliers on a least a monthly basis. At the present time, all EDUs create this listing, but some are created weekly and others are only created upon request. DER recommends that the sync listings be required to contain at least the following information: account number, customer number, or service delivery indicator number; customer name; supply start date; termination or end date; bill type; governmental aggregation indicator; summary or detail indicator; rate code; network service peak load start date; network service peak load end date; network service peak load value; peak load contribution start date; peak load contribution end date; and peak load contribution value. The supply start date should indicate when the supplier began serving the account, not when the last change request started. In some instances, the start date will reflect the date of the latest rate change instead of the date the supplier began serving the customer.

If the EDU has a separate billing system, the EDU should be required to sync its supplier system and its billing system. The CRES supplier should be responsible with making sure that its system syncs with whatever is reported on the sync listing from the EDU’s supplier system.

Rule 1-10-32

Paragraph (A) of this rule requires EDUs to provide a list of customers for aggregations. That list is to include the EDU’s identification of mercantile customers, on a “best efforts basis.” Unfortunately, the EDUs’ best efforts sometimes result in errors, ending up with automatic aggregation of mercantile customers who should not have been included on an opt-out basis. The more clarity the Commission can provide with regard to efforts that should be made by the EDUs, the better the outcome will be. The Commission should also consider providing clarity

with regard to responsibility for economic impacts of any mistakes that are made in identifying customers incorrectly – whether missing those customers that are mercantile or incorrectly identifying customers as mercantile when they are not.

DER would also appreciate clarification of the requirement intended by paragraph (B). The language of the rule appears to prohibit EDUs from charging for the provision of customer pre-enrollment lists for governmental aggregations. However, EDUs do charge for such lists. The relationship between paragraph (B) and paragraph (C) also could cause confusion, as (B) prohibits a charge and (C) allows charges to be included in tariffs. The rule should be clarified.

Rule 1-10-33

The final area where DER proposes to increase the consistency among EDUs relates to payment arrangements when a customer returns to default service following nonpayment. In such circumstances, some EDUs include CRES charges in the payment arrangements, but others do not. DER recommends that all EDUs provide programs to purchase accounts receivable. This would result in the EDU setting up payment arrangements that address the totality of the charges incurred. If such programs are not mandated, then this rule should be amended to require all payment arrangements to be consistent with regard to CRES charges. Further, the EDUs should be consistent with regard to whether customers can simply be returned to default service when an account is in arrears. Because the EDUs have the right to disconnect service due to nonpayment, it is inappropriate to allow them to simply terminate the CRES provider's contract.

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 suggestion 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.