

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio	)	
Adm. Code 4901:1-36, Electric	)	Case No. 13-953-EL-ORD
Transmission Cost Recovery Riders.	)	

In the Matter of the Review of Ohio	)	
Adm. Code 4901:1-37, Corporate	)	Case No. 13-954-EL-ORD
Separation for Electric Utilities and	)	
Affiliates.	)	

In the Matter of the Review of Ohio	)	
Adm. Code 4901:1-38, Reasonable	)	Case No. 13-955-EL-ORD
Arrangements for Electric Utility	)	
Customers.	)	

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**REPLY COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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January 31, 2014

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**I. INTRODUCTION**

Through these rules the Public Utilities Commission of Ohio (“PUCO”) will consider amendments proposed by interested parties to the rules that govern transmission cost collection from consumers,<sup>1</sup> corporate separation of electric utilities and affiliates,<sup>2</sup> and reasonable arrangements for electric customers.<sup>3</sup> These rules are important for residential customers because they impact the rates customers ultimately pay for their electric service. Those rates should be no more than what is just and reasonable under Ohio law.

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<sup>1</sup> Ohio Adm. Code Chapter 4901:1-36.

<sup>2</sup> Ohio Adm. Code Chapter 4901:1-37.

<sup>3</sup> Ohio Adm. Code Chapter 4901:1-38.

Pursuant to a January 22, 2014 Entry parties were directed to file Reply Comments by January 31, 2014. Initial Comments were filed by OCC, Duke Energy Ohio (“Duke”), Direct Energy Services, LLC and Direct Energy Business, LLC (“Direct”), Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “FirstEnergy Utilities”), Dayton Power and Light (“DP&L”) and First Energy Solutions Corp. (“FES”). OCC appreciates the opportunity to submit these Reply Comments to the recommendations submitted by other parties.

## **II. O.A.C. SECTION 4901:1-36 TRANSMISSION COSTS RECOVERY RIDER AND SECTION 4901:1-36-04 LIMITATIONS**

Two commenters recommended changes to the current Ohio Adm. Code 4901:1-36-04(B), which deals with the bypassable nature of the Transmission Costs Recovery Rider (“TCRR”). The current rule states:

(B) The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers

DP&L proposed that Ohio Adm. Code 4901:1-36-04 (B) be eliminated, claiming this rule is no longer pertinent, since the bypassable nature of the rider is subject to the PUCO’s determination on a case-by-case basis.<sup>4</sup>

FirstEnergy Utilities recommended changes and new language to this section in order to reflect the current PUCO-approved treatment for Ohio utilities that allows for

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<sup>4</sup> DP&L Comments at 2.

some transmission-related costs to be avoidable, and some costs to be non-bypassable.

The FirstEnergy Utilities proposed the following for Ohio Adm. Code 4901:1-36-04(B):

(B) Market-based ~~The~~ transmission costs ~~recovery rider~~ shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and market-based transmission service to the customers. A non-bypassable cost recovery rider may be established to recover from all customers non-market based costs, fees, or charges imposed on or charged to the electric utility by FERC, a regional transmission organization, an independent transmission operator, or similar organization approved by FERC.<sup>5</sup>

OCC recommends the PUCO retain the current Ohio Adm. Code 4901:1-36-04(B) and not make the changes proposed by FirstEnergy Utilities. As DP&L notes, the PUCO has approved non-bypassable transmission cost riders through waivers of the current rule.<sup>6</sup> The existing waiver process has effectively allowed the PUCO to determine the appropriate nature of transmission costs and has not precluded the creation of appropriate bypassable and non-bypassable riders. Therefore, continuation of the current rule will allow for the PUCO's future consideration of waivers regarding non-bypassability of transmission riders.

FirstEnergy Utilities proposed changes to provide clarity regarding the bypassable and non-bypassable nature of transmission-related costs that the PUCO has previously

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<sup>5</sup> FirstEnergy Utilities Comments at 2-3.

<sup>6</sup> DP&L Comments at 2.

approved.<sup>7</sup> However, given the constantly changing regulatory environment for transmission-related charges from RTOs and the FERC, it is possible these proposed rule changes may not appropriately reflect the nature of future transmission charges. OCC recommends the PUCO retain the current rule and determine through the case-by-case waiver process the appropriate bypassable and non-bypassable nature of transmission riders.

In the alternative, if the PUCO determines that Ohio Adm. Code 4901:1-36-04(B) should be amended, then OCC recommends changes to FirstEnergy Utilities proposal. It seems the FirstEnergy Utilities used the terms “market-based” and “non-market based” to distinguish between responsibility for costs that are assessed on the load-serving entity (market) and for costs that are assessed on the distribution utility regardless of who is serving the load (non-market). OCC suggests this distinction would be better made if the following modifications shown in bold and italics were made to FirstEnergy’s proposal in the following manner:

(B) Market-based ~~The~~ transmission costs *(costs that are imposed on or charged to a load serving entity)* ~~recovery rider~~ shall be avoidable by all customers who choose alternative generation suppliers ~~because~~ and the electric utility no longer bears the responsibility of providing generation and market-based transmission service to the customers. A non-bypassable cost recovery rider may be established to recover from all customers non-market based costs, fees, or charges imposed on or charged to

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<sup>7</sup> FirstEnergy Utilities Comments at 2-3.

the electric *distribution* utility by FERC, a regional transmission organization, an independent transmission operator, or similar organization approved by FERC.

### **III. O.A.C. SECTION 4901:1-37 ELECTRIC UTILITY AND AFFILIATES**

#### **A. O.A.C. 4901:1-37-01 Definitions**

Duke limited its Comments to the corporate separation rules contained in Ohio Adm. Code Section 4901:1-37 and proposed a number of specific changes. Perhaps most prominently, Duke proposed the following specific wording changes to the definition of the term “affiliate” defined in Ohio Adm. Code 4901:1-37-01:

(A) “Affiliates” are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal division ~~merchant function~~ of the electric utility, whereby the electric utility provides a nontariffed, competitive retail electric service as that term is defined in division (A)(4) of section 4928.01 of the Revised Code.<sup>8</sup>

Duke considers the current rule’s use of “competitive service” to be “substantially broad,”<sup>9</sup> and thus through its proposed change Duke limits the definition of “affiliates” to only those providing competitive retail electric service (“CRES”).

Duke’s proposal would directly contradict the language of R.C. §4928.17(A), the statute that sets forth why a corporate separation plan for an electric utility is needed. This section of the law provides that an electric utility shall not be “in the business of

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<sup>8</sup> Duke Comments at 2.

<sup>9</sup> Duke Comments at 2.

supplying a noncompetitive retail electric service and in the business of supplying a competitive retail electric service, or in supplying a noncompetitive retail electric service, **or in the business of supplying a product or service other than a retail electric service**, unless the utility implements and operates under a corporate separation plan.” (Emphasis added.) Thus, the Revised Code specifically considers not only the provision of CRES by the utility and its affiliates, but also the provision of a product or service, other than CRES, by the utility and its affiliates. Repeated references to the provision of nonelectric product and service (i.e. non-CRES) by the utility or an affiliate of the utility are contained in the corporate separation provisions of R.C. §4928.17(A)(1) and (3). Thus, affiliates in the corporate separation plan of an electric utility should not be limited to those providing CRES.

In concert with its proposal to change the definition section [Ohio Adm. Code 4901:1-37-01(A)] to limit “affiliates” to those providing CRES, Duke also proposes similar limitations to the Purpose and Scope in Ohio Adm. Code 4901:1-37-02.<sup>10</sup> As discussed above, the PUCO should reject these proposed changes as they conflict with the language of R.C. §4928.17(A), that provides an electric utility shall not be “in the business of supplying a noncompetitive retail electric service and in the business of supplying a competitive retail electric service, or in supplying a noncompetitive retail electric service, or **in the business of supplying a product or service other than a retail electric service**, unless the utility implements and operates under a corporate separation plan” (Emphasis added).

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<sup>10</sup> Duke Comments at 2-3.

**B. O.A.C. 4901:1-37-04 General Provisions**

Many of Duke's comments on Ohio Adm. Code 4901:1-37-04 (D) were vague and unclear.<sup>11</sup> Accordingly, the PUCO should deny Duke's requests regarding the aforementioned rules. In the alternative, if the PUCO determines that changes to Ohio Adm. Code 4901:1-37-04(D)(1) should be made, then the OCC would support Duke's specific suggestion of adding two types of customer propriety information, customers' account numbers and social security numbers, in Ohio Adm. Code 4901:1-37-04(D)(1). But OCC does not support an attempt to define an exhaustive list of "proprietary customer information," as Duke does not provide a list and such a list would likely need revision or expansion as new technology and information becomes available.

**C. O.A.C. 4901:1-37-05 Application and O.A.C. 4901:1-37-08 Cost Allocation Manual ("CAM")**

Duke proposed a change to Ohio Adm. Code 4901:1-37-05(B)(3) which requires a utility to provide in its application a "list of all current affiliates identifying each affiliate's product(s) and/or service(s) that it provides." Duke also proposes similar limitation to Ohio Adm. Code 4901:1-37-08(D)(1) for the organizational chart in the Utility's CAM. Duke asks the PUCO to limit this listing to only current affiliates doing business in Ohio, since the PUCO has no jurisdiction over affiliates that do not do business in this state.<sup>12</sup>

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<sup>11</sup> Duke Comments at 3-4. For example, regarding Ohio Adm. Code 4901:1-37-04(D)(1), Duke comments "but there is no complete list," but only highlights two items that should be in such a "complete list." Regarding Ohio Adm. Code 4901:13-04(D)(8), Duke comments "that this subparagraph should be "more specific about what would constitute an unreasonable sales practice, a market deficiency, or market power," but does not provide recommended definitions for these terms. Regarding Ohio Adm. Code 4901:1-37-04(D)(1), Duke comments "appropriate cross-references would be helpful," but does not identify to where such cross-references would be made.

<sup>12</sup> Duke Comments at 4.

The PUCO should reject Duke's proposed limitation. R.C. §4928.17 does limit, for the purposes of a corporate separation plan, the affiliates of a utility to only those doing business in Ohio. It is important that the utility's corporate separation plan application provide an affiliate list in order for the PUCO and interested parties to have full knowledge of the utility's interaction with of its all affiliates, not just those doing business in Ohio. An Ohio utility may conduct transactions with such affiliates or share in costs allocated among such affiliates.

For example, if the costs of a service company's services are allocated among Duke affiliates, both Ohio and non-Ohio, it would be essential for the PUCO to know that such non-Ohio Duke affiliates exist and whether they appropriately share in those costs. The PUCO, its Staff, and other interested parties should be provided full information of who the utility's affiliates are and what products or services they provide. To limit the list of affiliates and organizational chart to those doing business in Ohio provides the PUCO only a partial picture of the utility's corporate structure.

#### **IV. O.A.C. SECTION 4901:1-38**

##### **A. The PUCO Should Consider Changes To These "Arrangements" Rules In Conjunction With Resolving The Pending (Undecided) Economic Development Tariff Template Case, Where The Issues Overlap.**

The PUCO should note that the parties in this case are submitting recommendations that, in certain respects, are ripe for resolution in the PUCO's existing docket investigating the PUCO Staff proposal for an Economic Development Tariff Template (the "Template Case").<sup>13</sup> Given what has become the apparent overlap

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<sup>13</sup> *In the Matter of the Staff Proposal for an Economic Development Tariff Template*, Case No. 11-4304-EL-UNC.

between this case and the case involving the PUCO Staff template, the PUCO should contemporaneously consider and resolve the issues in this case and the Template Case. OCC incorporates by reference and will not repeat here its points in the Template Case. OCC Comments in the Template Case are designed to allow for economic development while minimizing the delta revenue that Ohio customers are asked to pay as a subsidy for it.

**B. The PUCO, in Considering Proposed Changes to the “Arrangements” Rule (O.A.C. Section 4901:1-38), Should Be Guided By An Objective to Minimize the Delta Revenues That are Charged to Other Customers (Including Residential Customers) to Subsidize the Arrangement.**

It is a challenge to know from the Parties’ comments if the proposals would increase delta revenues that customers pay to subsidize arrangements. In connection with any proposed rule change (and in any event), the PUCO should correspondingly require that arrangements, when and if allowed, be designed with an overall objective to minimize the delta revenue that customers pay to subsidize the arrangement. The PUCO should adopt mechanisms such as caps, baseline eligibility requirements, and a marginal cost price floor for the discount received through an economic development arrangement. (Please see above where OCC notes that these issues are being considered by the PUCO in the Tariff Template Case.) Additionally, one or more proposals in this case, would seem to create benefits for the supplier of the electricity for the arrangement. When a supplier seeking an arrangement would benefit, the PUCO should order a fair offset to reduce the subsidy that Ohio customers are asked to pay for the arrangement

FirstEnergy Utilities, Direct and FES suggested substantive changes to the arrangement rules contained in Ohio Adm. Code 4901:1-38. The FirstEnergy Utilities support one proposed change by asserting that their proposed rule change will reduce the

“delta revenue” for other customers. The FirstEnergy Utilities’ proposed change is a new provision for Ohio Adm. Code 4901:1-38 to allow customers with arrangements to obtain generation from CRES providers. “A customer approved for an arrangement under this chapter shall be permitted to select a certified retail electric service provider to supply its generation service.”<sup>14</sup>

FirstEnergy Utilities also noted that additional changes may be needed to Ohio Adm. Code 4901:1-38 to fully integrate this new provision. FirstEnergy Utilities stated that allowing arrangement customers to shop for generation will support the competitive markets and reduce the “delta revenue” burden on other customers.

As OCC will address below, there are substantial concerns on the subject of allowing arrangement customers to shop for electricity. In this (or in any) event, the delta revenues that other customers are asked to subsidize should never be calculated using a rate that is higher than what the arrangement customer would actually pay using the least expensive rate (whether that rate is a standard offer or supplier offer).

In addition to the new section, FirstEnergy Utilities also proposed a corresponding revision to the definition of delta revenues in Ohio Adm. Code 4901:1-38-01(C):

(C) “Delta revenue” means the deviation resulting from the difference ~~in rate levels~~ between the otherwise applicable ~~rate schedule~~ charges for electric service and the result of any reasonable arrangement approved by the commission.<sup>15</sup>

Directs’ proposed changes that would allow an application for an Economic Development Arrangement with an electric utility to be filed, “regardless of whether the

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<sup>14</sup> FirstEnergy Utilities Comments at 3.

<sup>15</sup> FirstEnergy Utilities Comments at 3-4.

mercantile customer or group of mercantile customers is taking generation from a CRES provider.”<sup>16</sup> Similarly, Direct proposed that Ohio Adm. Code 4901:1-38-05(5)A be modified to allow a mercantile customer to file an application for a Unique Arrangement regardless of whether the customer is taking generation service from a CRES provider.<sup>17</sup>

Having recommended in the May 17, 2013 Workshop in this case that any customer taking advantage of arrangements under the rule should be allowed to shop for generation service, FES proposed in its comments the following new section:

A customer taking advantage of an arrangement under this chapter shall not be precluded from selecting a certified retail electric service provider for generation service.<sup>18</sup>

FES notes that, in response to FES’ Workshop recommendation, the PUCO “Staff believes generation options for a customer in a special arrangement should be determined on a case-by-case basis.”<sup>19</sup>

The OCC recommends the PUCO not make the changes to the arrangements rules proposed by Direct, FirstEnergy Utilities and FES. While the overall intent of each commenter seems to be to support competitive generation options for mercantile customers, the proposed changes are unclear, overly broad and could have unintended consequences. Examples of such concerns and questions raised include:

- Direct’s comments refer to customers entering into arrangements “related to the customer’s distribution service.”<sup>20</sup> However, Directs’ proposed rule

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<sup>16</sup> Direct Comments at 5-6

<sup>17</sup> Direct Comments at 6.

<sup>18</sup> FES Comments at 1.

<sup>19</sup> Case No. 13-0955-EL-ORD, Entry at paragraph (4) (December 8, 2013).

change does not specify that the arrangement would be only for distribution service. If Directs' intent was to allow a customer with a CRES provider to enter into an arrangement with a utility only as it relates to the customer's non-generation service (i.e. distribution), then this could minimize the delta revenue that customers pay to subsidize the arrangement. However, since Directs' proposed rule change does not seem to reconcile with Directs' Comments, the potential impact of the change on the delta revenue other customers pay, is unknown.

- Direct's proposed rule change refers to a customer who "is taking" generation from CRES provider, but does not specify if the customer may be a Standard Service Offer ("SSO") at the time of the application, and then subsequently may shop during the term of the arrangement.
- FirstEnergy Utilities comment that their proposed rule change will reduce the "delta revenue" for other customers, but the proposed rule change does not specify how the PUCO will be require, or determine, that an arrangement customer's selection of a CRES provider will reduce delta revenue. Many questions arise from this proposed rule change: Is the intent to limit the discounts under an arrangement to only non-generation service (as Direct has commented)? Or would the generation price of a CRES provider also be subject to discounts under an arrangement? If so, how can an arrangement between a customer and a utility result in discounts for generation that is being provided by a CRES provider?

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<sup>20</sup> Direct Comments at 5.

- FirstEnergy Utilities' proposed rule change to the definition of delta revenues leaves open the question of what "the otherwise applicable charges for electric service" means. While the term "rate schedule" has been treated in past PUCO cases as referring to the utility's rates for an SSO customer, it is not clear how the term applicable "charges" would be treated.
- Neither Direct nor FES addresses in their comments how the determination of delta revenue will be impacted by their proposed rule changes.

While OCC is supportive of ways to minimize the amount of an arrangement's delta revenue (that is paid for by other customers), the proposed rule changes in this case leave many un-answered questions. Similar questions about arrangements, competitive options and delta revenue have been raised by parties and the PUCO, in another docket, Case No. 11-4304-EL-UNC.<sup>21</sup>

As stated in OCC's Reply Comments in that case, OCC supports the objective that arrangements should be provided "at the lowest cost which can reduce or possibly eliminate the subsidy for all other customers."<sup>22</sup> However, it is not clear that the proposed rule changes in the current case will achieve that objective. Therefore, OCC supports the PUCO Staff's recommendation that generation options be determined by the PUCO on a case-by-case basis.<sup>23</sup> And OCC asks the PUCO to not make the changes to Ohio Adm. Code 4901:1-38 proposed in this proceeding, except OCC's proposal at the

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<sup>21</sup> *In the Matter of the Staff Proposal for an Economic Development Tariff Template*, Case No. 11-4304-EL-UNC.

<sup>22</sup> Case No. 11-4304-EL-UNC, OCC Reply Comments at 10-11 (August 15, 2011).

<sup>23</sup> Case No. 13-0955-EL-ORD, Entry at paragraph (4) (December 8, 2013).

beginning of this section should be adopted for a rule that requires minimizing delta revenues that other customers pay to subsidize arrangements.

## **V. CONCLUSION**

OCC appreciates this opportunity for Reply Comments that allows parties to make recommendations to the PUCO on issues that affect 4.5 million Ohio residential electric consumers.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments were served on the persons stated below via electronic service this 31st day of January 2014.

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/31/2014 3:22:39 PM**

**in**

**Case No(s). 13-0953-EL-ORD, 13-0954-EL-ORD, 13-0955-EL-ORD**

Summary: Comments Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.