

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission's
Review of its Rules for Standard Service
Offers for Electric Utilities Contained in
Chapter 4901:1-35 of the Ohio
Administrative Code**

Case No. 13-2029-EL-ORD

**COMMENTS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY**

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INTRODUCTION

Pursuant to the Commission's Entry of January 29, 2014, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies") respectfully file their comments on the rules contained in Chapter 4901:1-35 of the Ohio Administrative Code ("O.A.C."). Although Staff proposed minimal changes to these rules, the Companies propose a few amendments that will assist in the administrative and regulatory process at the Commission as well as provide consistency with current practice. The Companies appreciate the opportunity to comment and respectfully request the Commission consider their comments and appropriately modify the proposed rules.

FACTORS TO CONSIDER

Pursuant to Section 119.032(C), Ohio Revised Code ("O.R.C."), the Commission must consider the following factors when it reviews the rules and determines whether the rules should be amended, rescinded or continued without change:

- (1) Whether the rules should be continued, without amendment, be amended or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted;
- (2) Whether the rule needs amendment or rescission to give more flexibility at the local level;
- (3) Whether the rule needs amendment to eliminate unnecessary paperwork;
- (4) Whether the rule duplicates, overlaps with, or conflicts with other rules; and
- (5) Whether the rule has an adverse impact on businesses, reviewing the rule as if it were a draft rule being reviewed under sections 107.52 and 107.53 of the Revised Code, and whether any such adverse impact has been eliminated or reduced.

Subsection (D) of Section 119.032, O.R.C. also provides:

In making the review required under division (C) of this section, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

Additionally, pursuant to the Governor's Executive Order 2011-01K, the Commission must:

- (a) Determine the impact that a rule has on small businesses;
- (b) Attempt to balance the critical objections of regulation and the cost of compliance by the regulated parties; and
- (c) Amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

COMMENTS AND MODIFICATIONS TO CHAPTER 4901:1-35

I. Rule 4901:1-35-03: Filing and Contents of Applications

A. Subsection (A)

Subsection (A) of Rule 4901:1-35-03, O.A.C. has been modified to require fifteen copies plus an original of standard service offer ("SSO") applications to be filed. The Companies recommend that the Commission eliminate the requirement of hard copy filing of the SSO applications. Recently, the Commission issued a Finding and Order ("Order") amending certain provisions contained in Chapter 4901-1, O.A.C. relating to the rules of practice and procedure.¹ In that Order, the Commission approved an amendment to Rule 4901-1-02 related to filing of pleadings and other documents. Subsection (D)(2) of that rule allows for the electronic filing of documents *except* for any document for which protective or confidential treatment is requested under rule 4901-1-24 and the service of a notice of appeal of a commission order pursuant to sections

¹ Case No. 11-776-AU-ORD, Finding and Order (January 22, 2014).

4903.13 and 4923.99 of the Revised Code upon the chairman or commissioner.

Moreover, Subsection (D)(3) of that rule provides:

a public utility may electronically file an application to increase rates pursuant to section 4909.18 of the Revised Code except that a public utility filing an application pursuant to chapter II of the standard filing requirements in rule 4901-7-01 of the Administrative Code shall submit one complete paper copy of the application to the commission's docketing division on the same day that an e-filing of the application is made and shall contact the rate case manager of the commission utilities department prior to the e-filing of the application to determine the number of paper copies of the application that will be required by the commission's staff.

The Companies recommend that the Commission allow SSO applications to be electronically filed in the same manner as an application to increase rates. This will make the SSO rules more consistent with the procedural rules contained in Chapter 4901-1, O.A.C. The Companies recommend that the Commission amend Subsection (A) to read in similar fashion to Rule 4901-1-02(D)(3). Therefore, proposed 4901:1-35-03(A) should be amended to read as follows:

(A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). ~~Fifteen copies plus an original of the application shall be filed.~~ Pursuant to Rule 4901-1-02, SSO applications may be electronically filed except that the electric utility filing an SSO application shall submit one complete paper copy of the application to the commission's docketing division on the same day that an e-filing of the application is made and shall contact the rate case manager of the commission utilities department prior to the e-filing of the application, if known, to determine the number of paper copies of the application that will be required by the commission's staff. The application must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.

B. Subpart (B)(2)(b)

Subpart (B)(2)(b) requires electric utilities to include "projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the

duration of the CBP plan” as part of each CBP plan that is to be used to establish an MRO. This rule provisions raises at least two concerns, and therefore should be modified as part of this proceeding. First, an electric distribution utility (“EDU”) cannot know, prior to an auction occurring, what the price outcome will result from the CBP or any projected bid clearing price. Therefore, the EDU cannot provide any meaningful “projected generation” rate impacts at the time it files for approval of an MRO with the Commission. Subpart (B)(2)(b) should be deleted from the rules and the remaining subparts in the rule be re-lettered accordingly.

C. Subpart (B)(2)(d)

Subpart (B)(2)(d), in the last sentence, states “Any fixed load provides to be served by winning bidder(s) shall be described.” The Companies believe that the word “provides” is an error and that it should be changed to “proposed.”

D. Subpart (B)(2)(h)

Subpart (B)(2)(h) provides that a CBP plan should include a discussion of alternative rate retail options. Alternative rate retail options should not be required in any SSO plan. Generally, EDUs should not be providing alternative rates as those are more appropriately offered by competitive retail electric service providers. The retail market, not SSO, exists to provide customers various pricing options. As such, the Commission should modify this provision to read as follows:

The CBP plan shall include a discussion of time differentiated pricing, dynamic retail pricing, and other alternative retail rate options alternative rate retail options that were considered in the development of the CBP plan. A clear description of the rate structure ultimately chosen by the electric utility, the electric utility's rationale for selection of the chosen rate structure, and the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility shall be included in the CBP plan.

E. Subpart(C)(2)

In its proposed amendments to Chapter 4901:1-35, O.A.C., Staff proposed deletion of Subpart (B)(2)(b), relating to applications for a market rate offer (“MRO”) which required “pro forma financial projections of the effect of the CBP plan’s implementation....” A similar requirement exists in Subpart (C)(2) relating to an application for an electric security plan (“ESP”). To maintain consistency, the Companies recommend that the Commission likewise delete this requirement from the rules.

II. Rule 4901:1-35-08: Competitive Bidding Process Requirements and Use of Independent Third Party.

Staff is proposing to add a requirement to Subsection A that

[a]ny utility proposing a market-rate offer in its standard service offer application pursuant to section 4928.142 of the Revised Code or an ESP pursuant to section 4928.143 of the Revised Code, shall propose a plan for a competitive bidding process (“CBP”)...

This new addition to Rule 4901:1-35-08 should not be accepted because it is contrary to Section 4928.143, O.R.C. which outlines the requirements for an application for an ESP. While there is a requirement for a CBP in Section 4928.142, O.R.C. which outlines the requirements for an application for an MRO, there is no similar requirement in Section 4928.143, O.R.C. for ESP applications. The Commission does not have statutory authority to require EDUs to provide for a CBP that meets all of the requirements of Section 4928.142, O.R.C. in an application for an ESP. While many EDUs have proposed a CBP as part of their ESP applications, it should not be mandated. Section 4928.143, O.R.C. requires only that an electric security plan include provisions relating to the supply and pricing of electric generation service; it does not specify the precise

nature of any such provisions, but leaves that discretion to the EDU. EDUs should be able to craft appropriate provisions relating to the supply and pricing of generation, which may include a CBP, in their ESP applications, subject to Commission approval. For those reasons, the Companies recommend that the Commission delete the requirement for a CBP requirement in Rule 4901:1-35-08.

CONCLUSION

The Companies appreciate the opportunity to comment on the rules contained in Chapter 4901:1-35. The Companies urge the Commission to adopt the recommendations of the Companies set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On February 26, 2014, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System and is available for viewing by any interested party.

/s/ Carrie M. Dunn
*One of the Attorneys for Ohio Edison
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Summary: Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company