

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of its Rules for Standard Service Offers) Case No. 13-2029-EL-ORD
for Electric Utilities Contained in Chapter)
4901:1-35 of the Ohio Administrative)
Code.)

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

I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) is conducting its five-year review of the rules (Ohio Adm. Code 4901-1-35) applicable to the Standard Service Offer that Ohioans can choose for electric generation service from Electric Utilities.¹ The stated purpose of these rules is to establish the form and process under which an electric utility shall file an application for a standard service offer (“SSO”) and the PUCO’s review of that application.² The electric utility’s SSO provides the price customers may choose to pay for “all competitive retail electric services necessary to maintain essential electric service, including a firm supply of electric generation service.”³ By Entry the PUCO established February 26, 2014 and March 13, 2014 as the deadline for interested persons to file Comments and Reply Comments, respectively.⁴

¹ R.C. 119.032.

² Entry at 2 (January 29, 2014).

³ 4901-1-35-02(A).

⁴ Entry at 3 (January 29, 2014).

On February 26, 2014, the Office of the Ohio Consumers' Counsel ("OCC"), Direct Energy Services, LLC ("Direct Energy"), FirstEnergy Companies ("FirstEnergy")⁵ Ohio Power Company ("Ohio Power") and Duke Energy Ohio, Inc. ("Duke") filed Comments to address the changes to these PUCO rules proposed by the PUCO Staff.⁶

OCC hereby files Reply Comments in response to the other Comments filed on February 26, 2014.

II. REPLY COMMENTS

A. Direct Energy

Direct Energy included a Comment applicable to Rule 4901:1-35-04 regarding service of application intended to improve the timeliness for the PUCO to review utility company waiver requests.⁷ Direct Energy's Comment states:

Currently Rule 4901:1-35-04(A) requires the filing of a waiver request concurrent with the filing of a SSO application. Direct Energy recommends that this be amended to require all waiver requests to be filed at least 60 days prior to the filing of the SSO application.⁸

OCC agrees with Direct Energy's Comment inasmuch as SSO cases before the PUCO are often conducted within procedural schedules that have tight timelines associated with them.⁹ For example, in the FirstEnergy ESP 3 Case, the Attorney Examiner provided a brief extension for non-signatory parties' testimony to be filed (38 days after the

⁵ The FirstEnergy Companies are: Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.

⁶ The PUCO Staff's proposed changes to the PUCO's SSO Rules, see Entry at Attachment A (January 29, 2014).

⁷ Direct Energy Comment at 3 (February 26, 2014).

⁸ Direct Energy Comment at 3 (February 26, 2014).

⁹ See *In re FirstEnergy SSO Case*, Case No. 12-1230-EL-SSO ("FirstEnergy ESP 3").

Application was filed), and commencement of the evidentiary hearing was briefly continued to a date that was only 52 days after the Application was filed.¹⁰

As Direct Energy appropriately points out, if the waiver request is not granted in full,¹¹ then the time lag to receive such information would not be as significant of an issue if there were not statutory constraints on the Commission's time to review the Application. However, since the Commission only has 275 days to review and make a decision on an electric security plan ("ESP"), and the PUCO has 90 days to initiate a proceeding under a Market Rate Offer ("MRO") Case,¹² this lag in receiving information hampers efforts by parties to fully evaluate the ESP package offered by the utility in what is already a time-constrained proceeding.¹³

B. FirstEnergy

FirstEnergy included a Comment with regard to Rule 4901:1-35-03(B)(2)(h) that misinterprets the requirements the PUCO Staff proposes to the Rule.¹⁴ FirstEnergy stated:

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.¹⁵

¹⁰ Entry at 5 (May 2, 2012).

¹¹ See First Energy ESP 3 Case, Case No. 12-1230-EL-SSO, Entry at 5-6 (April 25, 2012).

¹² R.C. 4928.142 (B)(3).

¹³ Direct Energy Comments at 3 (February 26, 2014).

¹⁴ FirstEnergy Comment at 5 (February 26, 2014).

¹⁵ FirstEnergy Comment at 5 (February 26, 2014).

FirstEnergy is interpreting the PUCO Staff's proposal as if the PUCO wants electric utilities to offer alternative rate options. But the PUCO rule speaks to merely electric utilities discussing the options as information for customers. The PUCO should not adopt changes to the Rule based on the above position that FirstEnergy included in its Comments.

First, FirstEnergy's position is inconsistent with state policy, R.C. 4928.02 (D), as explained in OCC's Comments.¹⁶ Second, FirstEnergy is mistaken by what the Rule requires. The Rule requires the electric distribution utility("EDU") to provide a "discussion" of time differentiated pricing, dynamic retail pricing, and other alternative retail rate options to be implemented under the competitive bid process.¹⁷ FirstEnergy seems to believe that the Rule requires the EDUs to provide alternative rate options, and clearly that is not what the Rule requires. There is a significant difference between a discussion of alternative rate options and actually having to provide the alternative rate options. Requiring a discussion of the alternative rate options simply provides the PUCO with additional information to help the PUCO make a fully informed decision.

Finally, the Comment filed by FirstEnergy is in conflict with the Staff Market Development Work Plan ("Staff Work Plan") filed in the 12-3151-EL-COI Case. The Staff Work Plan stated:

The installations of AMI provide an opportunity to develop time-differentiated rates that could provide systemic benefits to all ratepayers. Assuming these rates are developed to reflect wholesale market pricing in on- and off-peak periods, the size and shape of load can be managed so as to reduce energy prices and capacity costs. Staff recommends that while the data access issues

¹⁶ See OCC Comments at 2-4 (February 26, 2014).

¹⁷ The PUCO Staff's proposed changes to the PUCO's SSO Rules, Entry at Attachment A pages 5, 22, 23 (January 29, 2014).

are being addressed, and until there are systemically beneficial time-differentiated rates offered by CRES providers, EDUs with all or a significant number of AMI deployed and certified should offer pilot time-differentiated rates. Once there are sufficient time-differentiated rates offered in the competitive market, the pilots could be terminated.¹⁸

The information that the PUCO Staff would no longer require utilities to provide should continue to be provided because the information helps with attaining consumer benefits. Therefore, FirstEnergy's Comment to further eliminate the requirements for the EDUs' discussion of time-differentiated pricing and dynamic retail pricing in the PUCO's SSO rules should be rejected.

FirstEnergy also included a Comment with regard to 4901:1-35-03(C)(2), addressing the filing requirements of a market rate offer. FirstEnergy stated:

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.¹⁹

There is a statutory test that the PUCO must employ in deciding whether to approve an ESP. R.C. 4928.143 states:

The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed

¹⁸ *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service*, Case No. 12-3151-EL-COI, Staff Market Development Work Plan At 25 (January 16, 2014).

¹⁹ FirstEnergy Comment at 6 (February 26, 2014).

under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. (Emphasis added).

In making the required “more favorable in the aggregate” determination, the PUCO, if available, may review the “pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, * * *,²⁰ in the overall evaluation of an ESP. FirstEnergy suggests this deletion from the rules be made for consistency purposes.²¹ Arguably, the PUCO Staff recognized and distinguished the value the pro forma financials could provide in determining if the ESP is more favorable in the aggregate compared to an expected result from an MRO, and for that reason had not made the recommended deletion because consistency, in this circumstance, was not appropriate. In any event, the more-favorable-in-the-aggregate test should be based upon quantifiable factors.

C. Ohio Power

Ohio Power included a Comment with regard to Rule 4901:1-35-03(B)(2)(h) to clarify the PUCO Staff's proposed Rule change by adding a definition to the Rule.²²

Ohio Power stated:

In this section, the “time differentiated pricing, dynamic retail pricing, and other alternative retail rate options” language was removed and replaced with “alternative rate retail options”. The company suggests that a clarifying definition for an “alternative

²⁰ The PUCO Staff's proposed changes to the PUCO's SSO Rules, Entry at Attachment A page 7 (January 29, 2014).

²¹ FirstEnergy Comment at 6 (February 26, 2014).

²² FirstEnergy Comment at 5 (February 26, 2014).

rate retail option” should be added in the Rate Definition section (4901:1-35-01).²³

OCC opposes Ohio Power’s above comment because that comment is in conflict with the position that OCC included in its Comments,²⁴ and Ohio Power provided no definition; therefore, no substantive response is possible.

D. Duke

Duke included comments with regard to Rule 4901:1-35-03(B)(1)(c), and Rule 4901:1-35-03(C)(8) that suggest SSO Case proposals need not be consistent with State policy under R.C. 4928.02. Duke stated:

The Court has ruled that the Commission is to use the statements in R.C. 4928.02 in its evaluation of proposals, “to **further** state policy goals . . .” The Court did not say that proposals should “be consistent with and advance” such goals, just that the Commission should consider whether the proposals “further” those goals. Also in paragraph (C), subsection (8) should be revised as discussed above with regard to the analogous MRO requirement.²⁵

Duke’s comment should be disregarded. Duke’s argument is inherently flawed. R.C. 4928.02 requires that the utility’s SSO proposal must be consistent with and further state policy. Any attempt to suggest otherwise would be unlawful.

III. CONCLUSION

The PUCO should adopt OCC’s recommendations including by adopting the Direct Energy recommendation. The PUCO should disregard the proposals of FirstEnergy, Ohio Power and Duke discussed herein.

²³ Ohio Power Comments at 1 (February 26, 2014).

²⁴ See OCC Comments at 2-4 (February 26, 2014).

²⁵ Duke Comments at 2 (February 26, 2014).

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record

Joseph P. Serio

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (Sauer) (614) 466-1312

Telephone: (Serio) (614) 466-9565

Larry.sauer@occ.ohio.gov

Joseph.serio@occ.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Reply Comments* have been served on the persons stated below via electronic transmission to the persons listed below, this 13th day of March 2014.

/s/ Larry S. Sauer

Larry S. Sauer
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

Joseph M. Clark
Direct Energy
Fifth Third Building
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com

Amy B. Spiller
Jeanne W. Kingery
Duke Energy Business Services LLC
139 East Fourth Street, 1303 Main
Cincinnati, Ohio 45202
Amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com

James W. Burk
Carrie M. Dunn
FirstEnergy Corporation
76 South Main Street
Akron, Ohio 44308
burkj@firstenergycorp.com
cdunn@firstenergycorp.com

Bryce.mckenney@puc.state.oh.us
James.lynn@puc.state.oh.us

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