

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**REPLY COMMENTS
OF
DUKE ENERGY OHIO, INC.**

On April 22, 2013, the Public Utilities Commission of Ohio (Commission) issued an entry commencing its five-year review of the rules in O.A.C. Chapters 4901:1-36 through 4901:1-38 (1-36 through 1-38), relating to transmission cost recovery riders, corporate separation, and reasonable arrangements. Pursuant to that order, a workshop was held on May 7, 2013. The Commission's entry of December 18, 2013, called for comments on Staff's proposed changes to those chapters, with due dates of January 17, 2014, for initial comments, and January 24, 2014, for reply comments. The reply comment deadline was extended, by examiner entry, until January 31, 2014. In addition to Duke Energy Ohio, Inc. (Duke Energy Ohio), initial comments were filed by the Office of the Ohio Consumers' Counsel (OCC); Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Direct Energy); The Dayton Power and Light Company (DP&L); Ohio Edison Company, The Cleveland Electric Illuminating company, and The Toledo Edison Company (collectively, FirstEnergy); and FirstEnergy

Solutions Corp.¹ (FES). In accordance with the Commission’s schedule, Duke Energy Ohio respectfully submits comments in reply to those initial comments.

Rule 36-02²

Rule 36-02 addresses the purpose and scope of the chapter, stating the purpose is to authorize an electric utility to recover certain transmission costs. Direct Energy first suggests that this purpose rule be amended to limit the recoverable transmission costs. Specifically, Direct Energy is concerned that there might be some supplication of cost recovery, whereby the utility could recover charges that the competitive retail electric services (CRES) provider is also recovering through its contracts. Thus, Direct Energy proposes to exclude from the recoverable costs any cost that is “also assigned” to a CRES provider and has not been assigned to the utility by line-item transfer. This amendment is both unnecessary and unwise.

The rule already specifies, in the same sentence that Direct Energy would amend, that recoverable costs are limited to those “imposed on or charged to **the utility . . .** by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization . . .”³ If a given cost was otherwise assigned to a CRES provider and has not been appropriately transferred to the utility, then it is not imposed on or charged to that utility. It would therefore not be recoverable under this rule. No statement of what is **not** recoverable is needed.

Furthermore, the line-item assignment may be the appropriate methodology for transferring responsibility of a cost item under current procedures. But there is no assurance that

¹ FES only filed comments in Case No. 13-955-EL-ORD.

² For purposes of readability, rule and chapter numbers will be designated without reference to the agency or division number.

³ O.A.C. Rule 36-02(A) (emphasis added).

these procedures will remain unchanged. Duke Energy Ohio submits that it would be ill-advised to add to this rule the level of specificity that Direct Energy recommends.

Rule 36-03

Rule 36-03 sets forth detailed requirements concerning applications for transmission cost recovery riders. FE would modify the language in paragraph (D) to allow the Commission to authorize the filing of an application on a schedule different than “not less than” 75 days prior to the proposed effective date. While Duke Energy Ohio has no objection to this change, it does not appear to be necessary. Rule 36-02 already grants the Commission the authority to waive this timing provision.

DP&L suggests that the appendix to this rule be modified to delete the need to graphically represent the various cost components in the application. Specifically, section B-4 of that appendix currently demands inclusion, for every cost or revenue component, of a bar graph showing quarterly costs for the most recent two-year period, the original projected cost for each quarter, and next-period projections.

Duke Energy Ohio agrees. The graphs described by this section do not provide additional data. Rather, they simply portray the data in a visual format. The cost of preparing these graphs is not worth any benefit they may provide. As noted in the Commission’s initial Entry in these proceedings, rules should have the least possible adverse impact on Ohio businesses. The graph requirement should be deleted.

Rule 36-04

FE and DP&L both propose the amendment of Rule 36-04, to modify the requirement in paragraph (B) that a transmission cost recovery rider be avoidable by shopping customers. In support thereof, DP&L suggests that the Commission’s recent approval of unavoidable transmission riders has necessitated a waiver of the existing rule. DP&L would resolve the

matter by simply deleting paragraph (B). FE would revise paragraph (B) through an attempt to describe the general nature of the approved, unavoidable transmission riders.

Duke Energy Ohio agrees that a revision of this rule is warranted to eliminate doubt as to what transmission and transmission-related costs are to be recovered by an electric utility via an unavoidable rider, as provided for in R.C. 4928.05.⁴ DP&L's approach would allow the Commission sufficient flexibility to approve new types of arrangements, consistent with R.C. 4928.05. However, to the extent that the Commission deems it appropriate to provide the additional specificity of FE's comment, Duke Energy Ohio would suggest a minor change. The FE language would distinguish between avoidable and unavoidable cost recovery on the basis of whether the costs in question are market-based or not. This distinction could result in substantial ambiguity. Instead, Duke Energy Ohio suggests that avoidability be based on whether the cost is or is not one that the utility avoids when a customer shops. In other words, if a customer's decision to shop results in the reduction of a given transmission cost to the utility, then the recovery of that cost should be made through an avoidable rider. On the other hand, if a decision to shop has no impact on the utility's responsibility for a given cost, then recovery should be on an unavoidable basis.

Rule 36-06

OCC comments on Staff's proposed amendment to require the utilities to submit, to Staff, a quarterly report of cost components and amounts, customer revenue, and the monthly over- and under-recovery. OCC suggests that the report proposed by Staff be formally filed, rather than just submitted to Staff, in order that the information is available to interested parties.

⁴ R.C. 4928.05(A)(2) authorizes an electric distribution utility to recover, through its distribution rates, all transmission and transmission-related costs imposed upon or charged to it by the Federal Energy Regulatory Commission (FERC), or a regional transmission organization, independent transmission operator, or similar organization approved by the FERC.

Duke Energy Ohio disagrees. While it is willing to provide Staff with the information that is requested, such quarterly reports should not be seen as an invitation to other entities to initiate litigation. If Staff finds questionable items in a quarterly report, it would be up to the Commission to initiate an inquiry into the situation and thereby open a docket up to the public. The annual filing provides sufficient opportunity for OCC or other interested parties to review the material at issue, particularly as any over- or under-recovery also accrues a carrying charge to ensure that no one is harmed.

Rule 37-04

Direct Energy seeks to have this rule modified to mandate disclosure, by a CRES provider, of any affiliate relationship with an Ohio electric utility. This would be an inappropriate revision, on two grounds. First, Chapter 37 regulates the behavior of utilities, not CRES providers. Looking back at Rule 37-02, paragraph (A) states that the chapter's purpose is "to require all of the state's electric utilities to meet the same standards . . ." It does not require CRES providers to do anything. Furthermore, paragraph (E) puts the burden of proof on "the electric utility." It says nothing about CRES providers. Therefore, this chapter is not an appropriate location for a requirement that a CRES provider must follow. Second, as Direct Energy states, the affiliate relationship disclosure is already mandated by Rule 4901:1-21-05(C)(8)(g). It does not need to be repeated in order to be effective.

Rule 37-08

Direct Energy would also modify Rule 37-08, relating to the cost allocation manual (CAM). That rule, in paragraph (D)(6), currently requires that the CAM include a "copy of all transferred employees' . . . previous and new job descriptions." Direct Energy argues that this provision (as well as the log of actions that do not comply with the purpose of the chapter, under Rule 37-04) should be expanded to require an indication of any role that the employee had in the

filing of an electric security plan (ESP) or market rate offer (MRO), “when [the] employee is transferred to an affiliate or broker that had worked on” such a filing or on a tariff filing. Direct Energy would also require that information to be included in any ESP, MRO, or tariff filing.

Duke Energy Ohio opposes such a requirement. The Commission’s rules already prohibit the sharing of information between affiliated entities. Any transferred employee would be strictly prohibited from divulging information about the former employer. In addition, the CAM is already subject to review by the Staff. This modification is unnecessary and overly burdensome.

Chapter 38

Direct Energy, FE, and FES all propose modifications of various rules in Chapter 38, or the addition of a new rule, relating to the ability of shopping customers to negotiate a reasonable arrangement. Direct Energy suggests a revision to Rules 38-03 and 38-05, to clarify that this option is open to customers and utilities, regardless of the customer’s shopping status. FE proposes the modification of the definition of “delta revenue” in Rule 38-01 and the addition of a new rule indicating that customers with reasonable arrangements may shop for a CRES provider. FES suggests a new rule, similar to that proposed by FE.

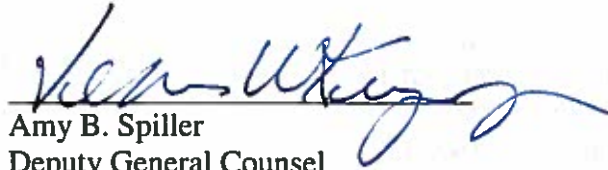
While Duke Energy Ohio does not disagree that it may be appropriate for shopping customers to be parties to reasonable arrangements with an electric utility, such an outcome first requires additional directive from the General Assembly, as this issue is controlled by statute. Duke Energy Ohio would not amend any of the rules in this chapter on this basis. In addition, Duke Energy Ohio notes that the proposed revisions leave numerous questions unanswered, such as which services (*e.g.*, only those provided by the electric utility) would be eligible for a discount, whether the CRES provider would still receive its full price, and what risks and obligations would be borne by the utility and competitive supplier, respectively.

With regard to the process to implement the provisions of R.C. 4905.31, Duke Energy Ohio agrees with DP&L's suggested changes.

Duke Energy Ohio appreciates the opportunity to provide its initial comments to the Commission and respectfully requests that the Commission revise the proposed rules in accordance with the suggestions herein.

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 31st day of January, 2014, to the following parties.


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