

**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 ) Case No. 13-2029-EL-ORD  
4901:1-35 of the Ohio Administrative )  
Code. )

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

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On October 9, 2013, the Public Utilities Commission of Ohio (Commission) issued an entry commencing its five-year review of the rules in O.A.C. Chapter 4901:1-35 (1-35), relating to standard service offers. Pursuant to that order, a workshop was held on December 10, 2013. The Commission's entry of January 29, 2014, called for comments on changes to that chapter, as proposed by staff of the Commission (Staff), with due dates of February 26, 2014, for initial comments, and March 13, 2014, for reply comments. In accordance with the Commission's schedule, Duke Energy Ohio, Inc., (Duke Energy Ohio) respectfully submits its reply comments.

**Rule 35-04**<sup>1</sup>

The initial comments filed by Direct Energy Services, LLC, and Direct Energy Business, LLC, (Direct) propose a major change to the filing procedure for standard service offer (SSO) applications. Direct suggests that, if an electric distribution utility (EDU) wishes to seek a waiver of any filing requirement, the EDU must file a motion for that waiver at least 60 days prior to filing the application. Direct premises this suggestion on its reading that the current rule

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<sup>1</sup> For purposes of readability, rule and chapter numbers will be designated without reference to the agency or division number. In addition, where Staff's proposed revisions result in numbering changes, the new (proposed) numbering is used for reference purposes.

requires motions for waivers to be filed concurrently with the application to which they relate. Direct then reasons that a 60-day advance filing would allow the Commission to rule on the waivers ahead of the filing date, thereby avoiding any possible delay. But Direct is wrong in its reading of the current rule, and approval of its proposal would amount to an amendment of the legislature's timeline for consideration of SSO applications.

The language of 35-04(A), as it now stands, states that, “[c]oncurrent with the filing of a standard service offer (SSO) application and the filing of any waiver requests, the electric utility shall provide notice of filings to each party in its most recent SSO proceeding . . . .” The rule has to do with service, not timing; without it, an application would only need to be filed with the Commission, not served on anyone. With regard to a waiver request, the rule requires that such a request be treated – for service purposes – just like the application itself. The rule says nothing about the timing of any motion for a waiver. Through its proposed amendment, Direct is thus substantially altering and enlarging the rule.

Furthermore, Direct's suggestion would alter the statutory time requirements applicable to SSO applications. R.C. 4928.143(C)(1) states that the Commission has 275 days to consider an SSO application. That also means that the EDU must have the content of its application determined by 275 days before the new SSO is to go into effect. If, through Direct's amendment, waivers have to be requested 60 days prior to filing the application, then the EDU must actually have the content of its SSO finalized by 345 days before the new effective date. This is not the law that the legislature passed.

As the Commission does not have the power to alter statutory requirements, Direct's suggestion must be rejected.

## **Rule 35-08**

Rule 35-08 sets forth the specific requirements, based on R.C. 4928.142, for a competitive bidding process (CBP) in a market rate offer. Staff proposes to make these same requirements applicable to any CBP, even if proposed in an electric security plan (ESP). In its initial comments, FirstEnergy<sup>2</sup> argues that this amendment is beyond the Commission's power. Duke Energy Ohio agrees. The Ohio General Assembly enacted a law that includes requirements for a CBP in an MRO; the Commission's rules explain and detail those requirements. The General Assembly did not require a CBP to be included within an ESP. Nor did it mandate any minimum requirements for a CBP that might be volunteered in an ESP. Thus, there is no law on this topic for the Commission to expand upon. Staff's proposal must be rejected.

Also with regard to Rule 35-08, the Office of the Ohio Consumers' Counsel (OCC) is concerned about Staff's proposal to add the words "if possible" to the requirement, in paragraph (B)(7), that the independent third party provide a calculation of the retail rates that would result from conversion of the winning bids. OCC argues that this calculation should be mandatory, because it is "imperative that the PUCO understand how the resulting CBP prices are to be converted to retail rates . . ."<sup>3</sup>

The Commission should not adopt OCC's change. As Staff has recognized through its proposal, there may be circumstances in which it is not possible for an independent third party to calculate retail rates, particularly if the term of the plan is lengthy. The OCC attempts to justify the mandatory calculation on the basis that the Commission has to understand how the conversion to retail rates would be made. But OCC has forgotten that the conversion

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<sup>2</sup> Collectively, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

<sup>3</sup> OCC Initial Comments at pg. 4.

methodology is already required to be explained in detail in the EDU's application, pursuant to 35-03(B)(2)(i), which compels description of "the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility . . ." OCC's concern is, thus, misplaced.

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

Respectfully submitted,

DUKE ENERGY OHIO, INC.


  
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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 13<sup>th</sup> day of March, 2014, to the parties listed below.

  
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