

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Review of Chapter 4901:1-10, Ohio) Case No. 12-2050-EL-ORD
Administrative Code, Regarding Electric)
Companies.)

**REPLY COMMENTS
OF
DUKE ENERGY RETAIL SALES, LLC**

In July 2012, the Public Utilities Commission of Ohio (Commission) commenced its five-year review of the rules in O.A.C. Chapter 4901:1-10 (1-10), relating to electric utilities. The Commission's entry of November 7, 2012, called for comments on staff's proposed changes to those chapters, with due dates of January 7, 2013, for initial comments, and February 6, 2013, for reply comments.

Although Duke Energy Retail Sales, LLC, (DER) is a competitive retail electric service (CRES) provider, not an electric utility subject to the rules in Chapter 1-10, certain of those rules do impact DER's business. Therefore, in accordance with the Commission's schedule, DER respectfully submits its reply comments.

Rule 1-10-01

Ohio Edison Company, The Cleveland Electric Illuminating company, and The Toledo Edison Company (collectively, FirstEnergy) suggest that "postmark," in subparagraph (W), be defined so as to allow the use of modern bulk mail service.¹ While DER has no objection with this proposal, it is important that the revised rule would clearly require the inclusion of the date the letter was sent, as such information is often critical for triggering the next step in the process. DER also believes that such a change should not lengthen the time for delivery of any notice.

¹ Initial Comments of FirstEnergy, at 2-3.

Since the customer, for example, only has seven days to rescind a new enrollment, delivery of an enrollment notice is time sensitive.

Rule 1-10-19

Subparagraph (E)(2) of this rule establishes what will happen, under consolidated billing, if a customer fails to pay charges of a CRES provider. FirstEnergy Solutions Corp. (FES) suggests that this rule be clarified such that only the CRES provider itself can cancel the CRES contract.² DER agrees with this suggestion.

The proposed modification would allow the CRES provider to determine whether its agreement should end, as opposed to the utility. The utility already has the ability to shut off service if the customer gets behind on bills. The CRES provider does not have this ability but should have control over its agreement with the customer, including having the right to decide whether to return the customer to the utility. As the utility is not a party to the contract with the customer, the utility should not be in a position to determine whether and when to terminate the supplier contract for nonpayment.

Rule 1-10-28

As stated in DER's Initial Comments as well as the Initial Comments filed by other commenters,³ it is vitally important that all electric distribution utilities across the state of Ohio operate under parallel requirements. The situation regarding net metering is no different. DER agrees with other commenters who have addressed the proposed net metering language that it is not enough to require each utility to establish its own procedures. Subparagraph (B)(3) of Rule 4901:1-10-28 requires electric utilities to disclose, on their websites, their individual rules and conditions regarding excessive generation. The proposed language does not, however, establish those rules. The result will be inconsistency and a negative impact on the market.

² FirstEnergy Solutions Initial Comments, at 2-3.

³ See, e.g., Initial Comments of SolarVision, LLC, at 2.

As an example of the likely resultant inconsistency, DER notes the detailed plans set forth in the comments filed by The Dayton Power & Light Company (DP&L). DP&L discusses, at some length, its planned use of a rolling 12-month average, with a 12-month stayout for any customer that exceeds the 120% limit.⁴ GEM Energy suggests the use of forward-looking estimates of new generation requirements.⁵ The OMA Energy Group proposes the use of the peak 12-month consumption over the preceding five years.⁶ DER certainly opposes DP&L's proposed 12-month stayout based on the likely impact on shopping. Most important, however, is the consistency that would result from the Commission's institution of rules that will apply in all utilities' territories.

Again evidencing the need for consistency is the debate over the price to be used for crediting the customer generator. More important than the basis for determining the credit is the consistency from utility to utility. Such consistency is vital to the continued development of the market for CRES, and can only result from the promulgation of detailed rules by the Commission, which rules cannot leave critical issues to the judgment of each utility.

Rule 1-10-29

FE suggests that various required notices to customers be allowed to be delivered by electronic mail.⁷ While DER does not oppose this suggestion, it would also be appropriate to require the use of an electronic read receipt. Many bulk e-mail delivery products provide such receipts as an option, thereby offering proof that the e-mail has indeed been received and read. While regular e-mail programs allow the recipient to control whether a receipt is sent, this is not the case with the bulk mail systems. Furthermore, the Commission should mandate the language

⁴ None of the other Ohio electric utilities propose any similar approach.

⁵ Initial Comments of GEM Energy, at 1.

⁶ Initial Comments of The OMA Energy Group, at 2.

⁷ FE Initial Comments, at 21-22.

that is to appear in the subject line of electronic notices. DER recommends adoption of this process.

Paragraph (B) of this rule requires electric utilities to adopt supplier tariffs, “containing standardized requirements.” But so long as the supplier requirements are in tariffs, they will not be standard. They will differ from utility to utility. Currently, the Commission is trying to standardize the rules between CRES and the comparable natural gas rules, with the goal of trying to make them consistent. DER believes that the Commission should also consider making the supplier tariffs that are required in this paragraph consistent across the state. The variances between the different supplier tariffs make it difficult for CRES suppliers. There should be one set of requirements that each utility and supplier must follow. This would level the playing field across the state.

This paragraph also identifies that the electronic data interchange protocols should be addressed in the utilities’ various tariffs. Again, DER recommends that such protocols be consistent across the state. Currently the Ohio EDI Working Group identifies issues and differences in requirements between the different electric utilities. Instead of having five utilities allowing the process to work one way and one following a different requirement, the group should be given the task of arriving at a consensus to make the requirements the same across all utilities.

As an example of this problem, DER notes that, currently, some utilities are making changes in customer information such as customer names, read cycle, etc., by utilizing the EDI invoice transaction. But this is not uniformly true. DER recommends that changes to customer account information be sent to suppliers as their own EDI change transactions. Consistency, again, would ease the path for new suppliers entering the market. The EDI requirements would be the same for any area.

Two commenters propose additional information that should be included in the eligible-customer list, pursuant to subparagraph (E) of this rule. FES suggests including a PIPP indicator, a CRES service indicator, and phone number.⁸ DER agrees with FES's comments and would also suggest that the full customer or business name, for nonresidential customers, should be included on the eligible-customer list. Most business contacts are made through the business name, as opposed to the proprietor's name. In order to assist with appropriate contacts, the business name should be included in the listing.

Interstate Gas Supply, Inc., (IGS) suggests adding the account number to the eligible-customer list.⁹ DER recommends that the Commission should not make this change. There is a reason why the rules have provided that account numbers are to be kept confidential; easy access to account numbers (or other identifying numbers that are used by EDUs for enrollment purposes) will, in DER's opinion, lead to higher rates of slamming. In DER's experience, the most common way of changing a customer's supplier without consent is by tricking the customer to divulge that critical piece of information. The rules should, therefore, not be changed to include critical enrollment information in the customer list. In the alternative, if the Commission determines that it should require the inclusion of account numbers, the anti-spamming rules should be strengthened such that it would be more possible for the Commission to identify spammers and punish them for the behavior.

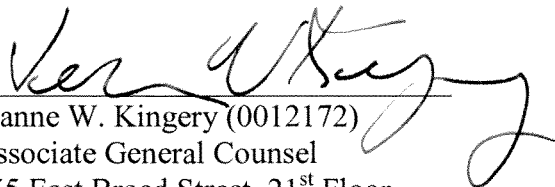
⁸ Initial Comments of FES, at 5-6.

⁹ IGS Initial Comments, at 3.

DER appreciates the opportunity to provide its reply comments to the Commission. DER respectfully requests that the Commission revise the proposed rules in accordance with DER's suggestion herein.

Respectfully submitted,

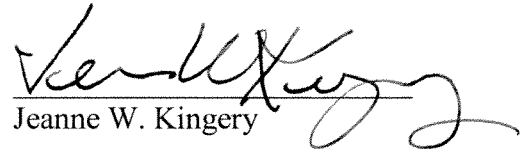
DUKE ENERGY RETAIL SALES, LLC



Jeanne W. Kingery (0012172)
Associate General Counsel
155 East Broad Street, 21st Floor
Columbus, Ohio 43215
(614) 222-1334 (telephone)
(614) 222-1337 (facsimile)
Jeanne.Kingery@duke-energy.com

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 6th day of February, 2013, to the following parties.


Jeanne W. Kingery

Jason B. Keyes
Keyes, Fox & Wiedman LLP
436 14th Street, Suite 1305
Oakland, CA 94612
jkeyes@kfwlaw.com

Christopher J. Allwein
Williams Allwein & Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
callwein@wamenergylaw.com

Bill Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad St., 6th Fl.
Columbus, OH 43215
william.wright@puc.state.oh.us

David R. Blair,
Senior Vice President
GEM Energy
5505 Valley Belt Road, Suite F
Independence, OH 44131
dblair@rlcos.com

Nicholas McDaniel
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
NMcDaniel@elpc.org

Nolan Moser
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
Nolan@theoec.org

Annie C. Lappé
The Vote Solar Initiative
1120 Pearl Street, Suite 200
Boulder, Colorado 80302
annie@votesolar.org

Carrie Cullen Hitt
Solar Energy Industries Association
505 9th Street NW #800
Washington DC 20004
chitt@seia.org

Dan Sawmiller
Ohio and Kentucky Sierra Club
131 North High St, #605
Columbus, OH 43215
Daniel.sawmiller@sierraclub.org

Emma L Berndt
Opower
1515 N. Courthouse Rd. 8th Floor
Arlington VA 22201
emma.berndt@opower.com

Teresa Orahood
Bricker & Eckler LLP
100 South Third Street
Columbus OH 43215-4291
torahood@bricker.com

Joseph M. Clark
Direct Energy
6641 North High Street, Suite 200
Worthington, OH 43085
joseph.clark@directenergy.com

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 North High St, Ste 1300
Columbus, OH 43215
bojko@carpenterlipps.com

Elizabeth H. Watts
Duke Energy Ohio
155 East Broad St, 21st Floor
Columbus, OH 43215
Elizabeth.Watts@duke-energy.com

Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Ave. Suite 201
Columbus, OH 43212
TDougherty@theOEC.org

Scott Elliott
Metro CD Engineering, LLC
7003 Post Road, Suite 204
Dublin, Ohio 43016
selliott@metrocdengineering.com

Matthew White
IGS Energy
6100 Emerald Parkway
Dublin OH 43016
mwhite@igsenergy.com

Matthew J. Satterwhite
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215-2373
mjsatterwhite@aep.com

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

Judi L. Sobecki
Dayton Power and Light, Inc.
1065 Woodman Drive
Dayton, OH 45432
Judi.sobecki@dplinc.com

Nathan G. Johnson
1200 W. Fifth Ave., Ste 103
Columbus, OH 43212
nathan@buckeyeforestcouncil.org

Mark A. Hayden
Scott J. Casto
FirstEnergy Service Company
76 South Main St
Akron, OH 44308
haydenm@firstenergycorp.com
scasto@firstenergycorp.com

Melissa R. Yost
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
yost@occ.state.oh.us

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com