

**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.)

**INITIAL 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. In accordance with the Commission's schedule, Duke Energy Ohio, Inc., (Duke Energy Ohio) respectfully submits its comments.

Rule 37-01¹

As Chapter 37 relates entirely to the topic of the separation between a utility and its affiliates, it is critical that the definition of an “affiliate” be clear and accurate. This definition is the basis for the remainder of the rules in the chapter.

Duke Energy Ohio has no concerns with the first sentence in the existing definition. However, the second sentence is unclear as it currently stands. The sentence says that the term also includes “internal merchant function[s]” that provide a “competitive service.” There is no definition or explanation of what might comprise an internal merchant function. Is this intended to be a limitation, such that some internal activities would not count as having been performed by affiliates? Additionally, the reference to a “competitive service” appears to be substantially broader than should be encompassed by this chapter – a chapter that addresses retail electric services.

Duke Energy Ohio suggests that the definition should more closely track the applicable statutory language. Thus, the second sentence of the definition of “affiliates” should be modified to read as follows: “The affiliate standards shall also apply to any internal division of an electric utility, whereby the electric utility provides a nontariffed, competitive retail electric service, as that term is defined in division (A)(4) of section 4928.01 of the Revised Code.”

Rule 37-02

The language explaining the purpose of Chapter 37 needs to be clarified with regard to competition. Chapter 4928 of the Revised Code was intended, at least in part, to allow for competition in the retail electric market. As noted above, even the utilities themselves were divided into noncompetitive and competitive aspects. The legislature made it clear that a part of

¹ For purposes of readability, rule and chapter numbers will be designated without reference to the agency or division number.

the electric industry was to be competitive, while another part was not. For example, the state policy, as set forth in R.C. 4928.02(E), is to ensure competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric services to a competitive retail electric service . . . and vice versa.” The competition is between one supplier of competitive retail electric services (CRES) and another. On the other hand, paragraphs (A) and (B) of this rule are somewhat vague as to the identification of the potential competitors. These paragraphs should be amended to more clearly identify that (a) one CRES supplier should not gain a competitive advantage over another CRES supplier, solely because of corporate affiliation with an electric utility, and (b) the intent of the chapter is to create competitive equality among CRES suppliers, to prevent an unfair competitive advantage being obtained by a CRES suppliers, and to prohibit the abuse of market power by a CRES supplier.

Rule 37-04

This rule, in paragraph (D), lists the matters that must be addressed by a utility’s code of conduct. As this is the heart of the specifically mandated relationship between a utility and its competitive affiliates, clarity is critical. Duke Energy Ohio notes the following areas that could be made more clear:

- In subparagraph (1), the utility is prohibited from releasing any “proprietary customer information” to an affiliate, without customer authorization. Examples of such information are provided, but there is no complete list. As account numbers and social security numbers are addressed elsewhere, those are certainly items that should be included in this grouping. Appropriate cross-references would be helpful. But the utility should not have to guess what else might be deemed included.
- Subparagraph (2) could be rewritten in a more straight-forward manner. Currently, the provision starts by mandating the release of certain customer information. It then turns

around and says that the mandate does not apply in limited circumstances. Duke Energy Ohio suggests that, instead, the provision should simply indicate what information is not to be passed to affiliates. In addition, it is important that the requirement to make customer lists available should be included in Chapter 10 of the Commission's rules, together with other mandates on utility behavior. Similarly, the limitation on the CRES providers' use of the customer information should be moved to Chapter 21, as that does not actually relate to corporate separation.

- Subparagraph (3) should be made internally consistent with regard to which affiliates are intended to be covered. As the provision terminates with the clear reference to “nonaffiliated competitors providing retail electric service,” it should begin in a parallel fashion: “Employees of the electric utility’s affiliates providing competitive retail electric service shall not have access...”
- Subparagraph (8) should be more specific about what would constitute an unreasonable sales practice, a market deficiency, or market power. Especially because the utility’s compliance officer is required to promptly report such items, these terms should not be left open to interpretation.

Paragraph (E) of Rule 37-04 should be clarified as to the type of “declared emergency” that is covered. This language could refer to a governor’s declaration of a state of emergency, such as often occurs after severe weather. Alternatively, it could be intended as a reference to an energy emergency declared under R.C. 4935.03.

Rule 37-05

Subparagraph (B)(3) should be limited to listing all current affiliates doing business in Ohio. As the Commission has no jurisdiction over affiliates that do no business in this state, their inclusion in such a list is irrelevant.

Subparagraph (B)(6) should be clarified. This provision requires a description of joint advertising and joint marketing. The rule should specifically state that a CRES provider's inclusion, in its marketing materials, of the required disclosure of the relationship between the provider and the affiliated utility shall not be deemed joint advertising or joint marketing.

Rule 37-08

This rule includes, in subparagraph (D), a listing of those items that must be included in a utility's cost allocation manual (CAM).

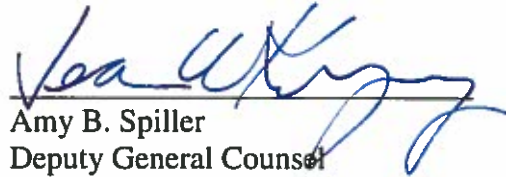
- Item (D)(1) requires an organization chart, including all affiliates and their businesses. As the Commission's jurisdiction does not reach outside Ohio, this should be limited to affiliates doing business in Ohio.
- Item (D)(3) seeks information concerning "how costs are allocated between affiliates." Duke Energy Ohio respectfully suggests that the issue of concern here should be the allocation of costs between the utility and its affiliates, not among the affiliates. This should be clarified.
- Item (D)(6) relates to the transfer of employees, and addresses both transfers from a utility to an affiliate and the reverse. It is unquestionable that corporate separation concerns relate to the transfer of an employee from the regulated utility to the competitive affiliate, as that employee could have confidential utility information that might give the competitive affiliate an unfair advantage in the market if improperly disclosed. However, the transfer of a competitive affiliate's employee to the regulated utility should be of no consequence, as the regulated utility is not a participant in the competitive retail electric service market. That employee can give the noncompetitive utility no undue advantage, as there is, by definition, no competition among utilities.

- Item (D)(7), requiring a log of the exercise of discretion in the application of tariff provisions, should include an exception of the negotiated resolution of customer complaints.

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 17th day of January, 2014, to the following parties.


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