## BEFORE
## THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Review of Ohio Adm.Code Chapter 4901:1-36, Electric Transmission Cost Recovery Riders. | ) ) ) | Case No. 13-953-EL-ORD |
| In the Matter of the Review of Ohio Adm.Code Chapter 4901:1-37, Corporate Separation for Electric Utilities and Affiliates. | ) ) ) ) | Case No. 13-953-EL-ORD |
| In the Matter of the Review of Ohio Adm.Code Chapter 4901:1-38, Reasonable Arrangements for Electric Utility Customers. | ) ) ) | Case No. 13-955-EL-ORD |

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# INDUSTRIAL ENERGY USERS-OHIO'S REPLY COMMENTS

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# INDUSTRIAL ENERGY USERS-OHIO'S REPLY COMMENTS

Pursuant to the Public Utilities Commission of Ohio's ("Commission") Entry dated December 18, 2013, in the above-captioned proceeding, Industrial Energy Users-Ohio ("IEU-Ohio") submits the following reply comments.

## I. TRANSMISSION COST RECOVERY RIDER RULES (CHAPTER 4901:1-36, O.A.C.) [1]

### A. Staff's Proposed New Rule 4901:1-36-06(B), O.A.C.

The Commission should adopt the Commission Staff's ("Staff") proposed change to Rule 4901:1-36-06(B), O.A.C., as modified by the recommendation of the Office of the Ohio Consumers' Counsel ("OCC"). Staff proposed to add a second provision to Rule 4901:1-36-06(B), O.A.C., which provides:

> On a quarterly basis, each electric utility that seeks recovery of transmission and transmission-related costs shall submit to staff a report listing the cost components and amounts, customer revenue, and the monthly over and under-recovery in a format similar to that used in the application schedules for the reconciliation adjustment.[2]

[1] O.A.C. refers to the Ohio Administrative Code.

[2] Entry at Attachment A-1, page 3 of 3 (Dec. 18, 2013).

OCC supports Staff's proposed Rule 4901:1-36-06(B), O.A.C., but proposed that the quarterly updates be filed with the Commission instead of informally submitting the quarterly updates to Staff.[3] IEU-Ohio agrees with OCC that this information should be publicly docketed with the Commission so that customers are provided more timely updates on the total cost of their transmission charges, including the impact on future rates due to current over- or under-recoveries of the transmission rider.

### B. FirstEnergy's and DP&L's Proposed Revisions to Rule 4901:1-36-04(B), O.A.C.

The Commission should reject FirstEnergy's[4] and The Dayton Power and Light Company's ("DP&L") proposed revision to Rule 4901:1-36-04(B), O.A.C. This rule provides that each electric distribution utility's ("EDU") transmission rider shall be fully avoidable by shopping customers. FirstEnergy argues that the rule should be revised to more accurately reflect the current environment of transmission charges in Ohio (the Commission has authorized the collection of certain transmission costs on a non-bypassable basis).[5] FirstEnergy proposes that this rule be modified as follows:

> (B) <u>Market-based</u> ~~The~~ transmission cost<u>s</u> ~~recovery rider~~ shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and <u>market-based</u> transmission service to the customers. <u>A non-bypassable cost recovery rider may be established to recover from all customers non-market based costs, fees, or charges imposed on or charged to the electric utility by FERC, a regional transmission organization, an independent transmission operator, or similar organization approved by FERC.</u>[6]

[3] OCC Initial Comments at 3 (Jan. 17, 2014).

[4] FirstEnergy collectively refers to Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE").

[5] FirstEnergy Initial Comments at 2-3.

[6] *Id.* at 3 (proposed additions underlined, proposed deletions struck).

DP&L goes further and argues that the Commission should delete Rule 4901:1-36-04(B), O.A.C., since the Commission has waived Rule 4901:1-36-04(B), O.A.C., for three of the four EDUs.[7] The Commission should not accept FirstEnergy's and DP&L's proposals which are contrary to Ohio's policies.

> Section 4928.02, Revised Code, provides that it is the policy of the state to:
>
> (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
>
> (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
>
> (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;
>
> (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;
>
> (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;
>
> (N) Facilitate the state's effectiveness in the global economy.

These policies, as well as the remainder of Chapter 4928, Revised Code, reflect the General Assembly's intent to rely on competition and customer choice to facilitate Ohio competitiveness in the global economy.

[7] DP&L Initial Comments at 1-2.

Rebundling transmission service, or a portion of transmission service, is contrary to Section 4928.02(B), Revised Code, and deprives customers of the ability to negotiate with their competitive retail electric service ("CRES") providers on the "price, terms, conditions, and quality options they elect to meet their respective needs." Based upon its individualized need, a shopping customer may elect to receive transmission and generation service at a fixed price. Conversely, a shopping customer may be more willing to take on the risks of variable transmission and capacity charges through managing its peak demand during periods likely to establish PJM Interconnection, L.L.C.'s ("PJM") single coincident peak for transmission charges and PJM's 5 coincident peaks for capacity charges. Once transmission service is rebundled, customers no longer have the ability to negotiate with their CRES providers on the "price, terms, conditions, and quality options they elect to meet their respective needs."

Rebundling transmission service also is contrary to Section 4928.02(D), Revised Code, which encourages cost-effective demand-side management and is contrary to Section 4928.66, Revised Code, which mandates reductions in peak demand usage. Rebundling transmission service removes the economic price signals to customers to reduce their peak demand for transmission service. For unbundled transmission service, a shopping customer can negotiate with their CRES providers and enter into a contract that provides for a straight pass-through of transmission charges. In such cases, the customer can actively manage its load during periods of peak demand thereby reducing or eliminating its contribution to the transmission 1 CP. By managing its load during peak times, the customer would be engaging in cost-effective demand-side management and cost-effective peak demand reduction.

If transmission service is rebundled, however, this same customer no longer has an economic incentive to reduce its transmission peak demand. If this customer was a non-shopping customer or subject to a non-bypassable transmission charge, a reduction in the customer's transmission peak demand would result in a lower overall pea -demand for the aggregated load served by the EDU. This reduction in the overall revenue requirement would reduce the total amount paid by all customers, but it would not proportionally reduce the transmission bill for the customer generating the peak demand reduction. This is because the billing determinants for the EDU's transmission charges are based upon the customer's highest demand during the month (measured in 30-minute intervals). This mismatch removes the economic incentives for customers to manage their contribution to the peak demand of the transmission grid and is contrary to Sections 4928.02(D) and 4928.66, Revised Code.

For these reasons, the Commission should not accept FirstEnergy's proposed revision and DP&L's proposed deletion of Rule 4901:1-36-04(B), O.A.C.

### C. Direct Energy's Proposed Revision to Rule 4901:1-36-02, O.A.C.

The Commission should grant Direct Energy's proposed modification to Rule 4901:1-36-02, O.A.C., which provides:

> This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, <u>excluding any charge or fee also assigned to a competitive retail electric supply provider and not transferred to the utility via line item transfer</u>, by the federal energy regulatory commission or regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.[8]

[8] Direct Energy Initial Comments at 3 (proposed language underlined).

Direct Energy's proposal would ensure that, if and when the Commission authorizes an EDU to implement a non-bypassable transmission rider, the EDUs implement the non-bypassable transmission riders in a way that protects shopping customers from being charged for the same transmission costs by both its CRES provider and its EDU.

## II. CORPORATE SEPARATION RULES (CHAPTER 4901:1-37, O.A.C.)

As discussed in greater detail below, the Commission should reject several of Duke Energy Ohio, Inc.'s ("Duke") proposed revisions to the corporate separation rules located in Chapter 4901:1-37, O.A.C. In general terms, Duke's proposed revisions would remove the applicability of the corporate separation rules to a functionally separated electric utility and would limit the Commission's review of an electric utility's transactions with out-of-state affiliates. Duke's proposed revisions are in direct conflict with Ohio law.

### A. Duke's Proposed Revision to 4901:1-37-01(A), O.A.C.

Duke proposes to modify and narrow the definition of affiliate contained in Rule 4901:1-37-01(A), O.A.C. to provide:

> "Affiliates" are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal ~~merchant function~~ <u>division</u> of an ~~the~~ electric utility<u>,</u> whereby the electric utility provides a ~~competitive service~~ <u>nontariffed, competitive retail electric service, as that term is defined in division (A)(4) of section 4928.01 of the Revised Code.</u>

This modification would remove the applicability of the corporate separation rules to a functionally separated electric utility.

Ohio law, however, holds functionally separated electric utilities to the same standards as legally or structurally separate electric utilities.[9] Additionally, the

[9] Section 4928.17, Revised Code.

Commission has stated, "functional separation allows greater opportunity for cross-subsidization and other forms of anti-competitive behavior as compared with structural separation. Therefore, more stringent oversight is justified."[10] Because Duke's proposal would provide less oversight and is contrary to Section 4928.17, Revised Code, the Commission should reject Duke's proposed modification to Rule 4901:1-37-01(A), O.A.C.

### B. Duke's Proposed Revision to 4901:1-37-02, O.A.C.

The Commission should reject Duke's proposed revision to Rule 4901:1-37-02, O.A.C., because it is based upon the same flawed argument above that the corporate separation rules need not apply to a functionally separated electric utility. Specifically, Duke proposes that the Commission modify this rule to more clearly state that the purpose of corporate separation is to prevent one CRES provider from gaining an advantage over another CRES provider through their affiliation with an EDU. Specifically, Duke proposes to modify divisions (A) and (B) of this rule 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 this chapter is to create competitive equality among CRES suppliers, to prevent an unfair competitive advantage being obtained by a CRES suppliers [*sic*], and to prohibit the abuse of market power by a CRES supplier."[11]

Again, Duke's argument in support of its proposed modification ignores circumstances where an electric utility is operating under functional corporate

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[10] *In the Matter of the Commission's Promulgation of Rules for Electric Transition Plans and of a Consumer Education Plan, Pursuant to Chapter 4928, Revised Code*, Case No. 99-1141-EL-ORD, Finding and Order at 26 (Nov. 30, 1999) (hereinafter "*ETP Rulemaking Case*"). Additionally, the language Duke proposes to delete was specifically added into the definitional section of affiliate to ensure that the rules applied to functionally separated electric utilities. *Id.* at 22, Attachment I at 41.

[11] Duke Initial Comments at 3.

separation and the functionally separated generation business is supplying a competitive retail electric service. Accordingly, the Commission should reject Duke's proposed modification to Rule 4901:1-37-02, O.A.C.

### C. Duke's Proposed Revision to Rules 4901:1-37-05(B)(3), and 4901:1-37-08(D)(1), O.A.C.

The Commission should reject Duke's proposed revision to Rules 4901:1-37-05(B)(3) and 4901:1-37-08(D)(1), O.A.C. Duke argues that these rules which require an electric utility to list all of its affiliates are overly broad because the Commission does not have jurisdiction over Duke's affiliates that do not operate in Ohio.[12] Accordingly, Duke asks that these rules be revised to require corporate separation applications and the electric utility's Cost Allocation Manual ("CAM") to include a list of only the electric utility's affiliates doing business in Ohio.[13]

Duke's proposal is unreasonable for several reasons. These rules simply require an electric utility to list its affiliates when a corporate separation application is filed and to include an organizational chart listing the electric utility's affiliates in its CAM; these rules do not address any jurisdictional issues. The identification of the electric utility's affiliates can assist the Commission, Staff, and interested parties in reviewing a corporate separation application to ensure that the application is in the public interest (a necessary prerequisite for approving the application) and in assuring that the electric utility is in compliance with its corporate separation requirements.[14]

The Commission also has jurisdiction over Duke and, thus, has jurisdiction over Duke's transactions with affiliates regardless of the state in which Duke's affiliates

[12] *Id.* at 4-5.

[13] *Id.*

[14] Section 4928.17(A)(2), Revised Code.

reside. In fact, in Duke's proceeding relating to its request to recover Hurricane Ike expenses, the Commission reviewed Duke's transactions and cost allocation between various affiliated companies.[15] The Commission concluded that Duke had failed to properly allocate its costs between its affiliates and disallowed the collection of several million dollars.[16] Thus, even if Duke is correct that the Commission lacks jurisdiction over out-of-state affiliates, the Commission can nonetheless review and regulate Duke's transactions with these affiliates.

Additionally, Ohio law requires Duke to follow certain requirements when transacting with its affiliates.[17] Commission rules also require that these transactions with affiliates be documented in Duke's CAM.[18] Thus, because Duke must already follow a certain set of procedures and document its transactions with its affiliates, the requirement to list the electric utility's affiliates in a corporate separation plan and in the CAM is appropriate.

Finally, Section 4928.18, Revised Code, provides the Commission with jurisdiction "to protect customers of retail electric service supplied by an electric utility from any adverse effect of the utility's provision of a product or service other than retail electric service." This section also provides that "[t]he commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility ***or its affiliate*** has violated" any

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[15] *In the Matter of the Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of its Distribution Reliability Rider,* Case No. 09-1946-EL-RDR, Opinion and Order at 14-18 (Jan. 11, 2011).

[16] *Id.*

[17] *See* Section 4928.17, Revised Code; Chapter 4901:1-37, O.A.C.

[18] Rule 4901:1-37-08, O.A.C.

corporate separation requirement.[19] This statute does not limit the Commission's review to only an electric utility's interactions with in-state affiliates.

Accordingly, the Commission should reject Duke's proposed modification to Rules 4901:1-37-05(B)(3) and 4901:1-37-08(D)(1), O.A.C.

## III. REASONABLE ARRANGEMENT RULES (CHAPTER 4901:1-38, O.A.C.)

The Commission should adopt Direct Energy's and FirstEnergy's proposed revisions to Chapter 4901:1-38, O.A.C., which clarify that customers with a reasonable arrangement approved under this Chapter shall be permitted to elect to receive retail electric generation service from a CRES provider.[20]

Section 4905.31, Revised Code, gives the Commission authority to approve an electric "reasonable arrangement" between a utility and a customer at the request of the utility, a mercantile customer or a group of mercantile customers. Reasonable arrangements are generally customer-specific arrangements where the price, terms and conditions are customized to meet the needs of the customer. For decades, these arrangements have been used for economic development and retention purposes and particularly for large manufacturers that often have specialized service and price needs. Unless the Commission approves a reasonable arrangement, customers are subject to the standard rate schedules generally available to the public. As discussed below, there are standard electric rate schedules for shopping and non-shopping electric customers.

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[19] Section 4928.18(B)(, Revised Code (emphasis added).

[20] The Commission has also recently approved a stipulation (Case No. 12-1494-EL-AEC), which provides the same result that FirstEnergy and Direct Energy request be codified into the Commission's rules.

The reasonable arrangement statute permits the Commission to provide an EDU participating in a reasonable arrangement with the ability to recover a shortfall in revenue that occurs because of the reasonable arrangement. In such circumstances, the Commission allows the EDU to collect this shortfall (delta revenue) from other customers, generally through a non-bypassable charge. Delta revenue is essentially the revenue difference between the revenue produced by the reasonable arrangement and the "otherwise applicable rate schedule." Thus, the delta revenue measurement question becomes: What is the otherwise applicable rate schedule?

The Commission's measurement of delta revenue has generally been based on the difference between the reasonable arrangement revenue and the EDU's otherwise applicable standard service offer ("SSO") rate schedule. Where the Commission has authorized above-market compensation for an EDU (such as in the case of AEP-Ohio, Duke and DP&L), the use of the otherwise applicable SSO rate schedule provides the incumbent EDU with an unfair advantage because it unreasonably inflates the amount of "delta revenue."

There is no good reason why the otherwise applicable SSO default service rate schedule must be used for purposes of defining the delta revenue amount. Each EDU has two sets of standard rate schedules. One set is for shopping customers and the other set of standard rate schedules is for non-shopping customers. The rate schedules applicable to shopping customers are generally for just the distribution or distribution and transmission service provided by the incumbent EDU. A shopping customer obtains generation supply from a CRES provider — not the incumbent EDU.

The existence of two different standard rate schedules (one for shopping and one for non-shopping customers) gives the Commission the opportunity to measure delta revenue based on a shopping customer reference point. And, in present circumstances, the use of the standard **shopping** customer rate schedule to define delta revenue will almost certainly produce a lower amount of "delta revenue." Since the shopping customer standard rate schedule allows the customer to obtain generation supply from the market and since market prices for electricity are presently at relatively low levels, the Commission can (and should) use the shopping customer standard rate schedule to measure delta revenue to both get the best outcome for the reasonable arrangement customer and to reduce the amount of the shortfall that may get passed on to other customers in the form of delta revenue charges.

Accordingly, IEU-Ohio encourages the Commission to adopt FirstEnergy's and Direct Energy's proposed modification to Chapter 4901:1-38, O.A.C.

## IV. CONCLUSION

IEU-Ohio appreciates the opportunity to present these reply comments and encourages the Commission to adopt IEU-Ohio's recommendations as set forth herein.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Reply Comments* was served upon the following parties of record this 31st day of January 2014 via electronic transmission, hand-delivery or first class mail, U.S. postage prepaid.

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