

**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 4901:1-35 of the Ohio
Administrative Code**

Case No. 13-2029-EL-ORD

**REPLY COMMENTS OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY**

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INTRODUCTION

Pursuant to the Commission's Entry of January 29, 2014, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies") filed their initial comments on the rules contained in Chapter 4901:1-35 of the Ohio Administrative Code ("O.A.C."). The Companies respectfully file their reply comments to Ohio Power Company ("AEP Ohio"), Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy"), Duke Energy Ohio, Inc. ("Duke") and The Office of the Ohio Consumers' Counsel ("OCC").¹

I. AEP Ohio Comments

In its Comments, AEP Ohio recommends that the Commission should include a definition of "alternative rate retail options."² As the Companies discussed in their initial comments, alternative rate retail options should not be required in any SSO plan.³ As such, the Companies suggested that the Commission delete "alternative rate retail options" from Rule 4901:1-35-03(h). If the Commission adopts the Companies' recommendation regarding this rule, the definition suggested by AEP Ohio is not necessary.

II. Direct Energy Comments

Citing to delay concerns, Direct Energy recommends that the Commission amend Rule 4901:1-35-04(A) to require electric distribution utilities ("EDUs") to file a waiver

¹ The Companies' lack of response to certain comments should not be interpreted with the Companies' agreement therewith or acquiescence thereto.

² AEP Ohio Comments at 1.

³ Companies' Comments at 5.

request at least 60 days prior to the filing of SSO application.⁴ For the reasons enumerated below, the Commission should reject this recommendation. First, Direct Energy does not cite any circumstances where the timing of an EDU's waiver request has caused any delay in the SSO application process or otherwise denied an intervening party due process. Second, Direct Energy's recommendation is unduly burdensome as it will require EDUs to effectively guess on what rule waivers it will need before filing an SSO and preemptively file the request even if, once the SSO application is filed, the EDUs may not really need the waiver. By filing the waiver request at the time of the application, the EDU can be more precise with the waivers that are actually needed, which may result in reducing the number of waiver requests. Third, it is unduly burdensome for the Commission as it will be placed in the position of ruling on waiver requests that may not actually be needed. Fourth, Direct Energy fails to address how the Commission would effectively rule on waiver requests when it will not have the SSO application for support. Fifth, Direct Energy's request will actually cause further delay in that an EDU would not be able to file its SSO application until after the Commission has ruled upon the waiver request. Finally, the Commission typically rules on waiver requests in a reasonable fashion, and in order to adopt Direct Energy's proposal, one would have to first conclude that the ruling on a waiver request will be unduly delayed by the Commission; Direct Energy provided no basis for that conclusion in its comments. For all of those reasons, the Commission should reject Direct Energy's recommendation.

III. Duke Comments

In its Initial Comments, Duke recommends that the term "electric utility's electric market" should be changed to "electric utility's certified territory" in Rule 4901:1-35-

⁴ Direct Energy Comments at 3-4.

03(B)(1)(c).⁵ The Companies agree with this change as the term “electric utility’s electric market” is unclear.

Second, Duke comments that Rule 4901:1-35-04(B) regarding requirements for applications is problematic in that the “rule’s language ... changes such that it refers only to infrastructure modernization plans,” which is “problematic...because the term is undefined and because it is unclear whether the rule’s intention is to address only filing requirements for one of the possible cost items that could be covered by R.C.

4928.143(B)(2)(h).”⁶ The Companies believe that Rule 4901:1-35-04(B)(i)-(v) is clearly written to only apply to infrastructure modernization plans and not to other types of distribution proposals listed in the statute. The Companies do not believe that any further clarification is needed for these rules and Staff has not proposed any changes to that portion of the rule. Therefore, it is not necessary to adopt and the Commission should not accept Duke’s recommendation.

Last, Duke also comments that Rule 4901:1-35-10 should be combined with the substantive filing requirements in Rule 4901:1-35-03(C)(10).⁷ The Companies agree that both of these rules apply only in an ESP and only to the SEET test and that the provisions should be combined under Rule 4901:1-35-10.

IV. OCC Comments

In its Comments, OCC states that Staff’s change to Rule 4901:1-35-03(B)(2)(h) to only include “alternative rate retail options” violates R.C. 4928.02.⁸ As the Companies discussed in their initial comments, alternative rate retail options should not be required

⁵ Duke Comments at 2.

⁶ *Id.* at 4.

⁷ *Id.* at 5.

⁸ OCC Comments at 3.

in any SSO plan. As such, the Companies suggested that the Commission delete “alternative rate retail options” from Rules 4901:1-35-03(h), 4901:1-35-11(B)(8) and (C)(5) and maintain Staff’s deletion of “time differentiated pricing” and “dynamic retail pricing.” While R.C. 4928.02(D) mentions “time differentiated pricing,” there is no suggestion that time differentiated pricing be offered by an EDU at all, let alone in every SSO filing. Further, as determined by the Supreme Court of Ohio, R.C. 4928.02(D) “does not *require* anything. It simply expresses state policy.”⁹

OCC also comments that the Commission should reject Staff’s proposed change to Rule 4901:1-35-08(B)(7) to require a listing of retail rates only if possible.¹⁰ The Commission should accept Staff’s change because it provides EDUs flexibility and recognizes that at the time of filing the SSO application, a listing of retail rates may not be possible.

V. Conclusion

The Companies appreciate the opportunity to provide reply comments on the rules contained in Chapter 4901:1-35.

⁹ *In Re Columbus S. Power*, 128 Ohio St. 3d 512, 525 (Emphasis in original).

¹⁰ OCC Comments at 4-5.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Reply Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company