BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S REVIEW OF CHAPTER 4901:1-10 OF THE OHIO ADMINISTRATIVE CODE	))))	CASE NO. 17-1842-EL-ORD

JOINT REPLY COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND DIRECT ENERGY BUSINESS, LLC/DIRECT ENERGY SERVICES, LLC

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(will accept service by email)

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INTRODUCTION

The Retail Energy Supply Association (RESA),[1] Direct Energy Business, LLC, and Direct Energy Services, LLC (collectively, Direct) submit these Reply Comments in response to Initial Comments filed on August 16, 2019.

RESA/Direct's Initial Comments focused on proposed rules regarding: (1) account blocking, (2) non-commodity billing and (3) pre-paid service. These Reply Comments will first address other parties' comments on the same rules. RESA will then address certain parties' comments on other rules not addressed in RESA/Direct's Initial Comments.

COMMENTS

A. Reply to comments on rules addressed in RESA/Direct Initial Comments

1. Account Blocking

Rule 4901:1-10-24(H) would require EDUs to accommodate customer requests to "block" their electric account to prevent a change of suppliers without consent. RESA/Direct explained why this proposal is unnecessary, counterproductive, and ultimately unlawful. Most other commenters agree.

FirstEnergy Solutions summed it up best: "This proposed amendment is not warranted by the factual situation in Ohio where there have been virtually no reported instances of slamming.

[1] The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

The proposed amendment also fails to address governmental aggregation, is contrary to Ohio's policy goal to encourage competition, and is not supported by any Ohio statute." (FES at 2.)

Likewise, "IGS urges the Commission reject this addition as it is unnecessary and overly burdensome." (IGS at 9.)

Neither Duke nor DP&L commented on the proposal. While these companies' silence on the proposal cannot necessarily be construed as support or opposition, it is reasonable to infer that whatever their position is, they do not feel strongly about it.

The two EDUs who commented on the proposal take different positions. The FirstEnergy Utilities (Ohio Edison, CEI and Toledo Edison) object. "This additional protection seems unnecessary, since a customer already has to provide his or her account number, which is considered confidential customer information, in order to enroll with a CRES provider. Requiring an additional step for the utility to switch the customer would place additional unnecessary burden on the distribution utility. It would also require the implementation of costly information technology implementations which are also unnecessary." (FE Utilities at 6.) The FE Utilities and RESA/Direct are in the same camp on this issue.

AEP Ohio, on the other hand, "applauds the Staff's suggestion that customers should be able to place a block on their account." (AEP Ohio at 18.) The only reason offered in support is, "[w]e have some customers who do not understand the customer choice process and end up switching suppliers sometimes as often as monthly." (*Id*. at 18-19) Customers who switch "monthly" may be presumed to have a greater understanding of the choice process, not less, since they would receive the consent disclosures repeatedly. Moreover, as RESA Direct previously explained, requiring EDUs to make a blocking feature available would lead to greater confusion, not less. (RESA/Direct Initial Comments at 5-6.)

AEP Ohio is the clear outlier. A majority of commenters oppose the draft rule. The Commission should reject it.

2. Non-commodity billing

RESA/Direct object to proposed Rules 4901:1-10-22(K) and 4901:1-10-33(L) because of their lack of clarity. Other parties echo these concerns. The proposed rules should be rejected.

The Comments reflect wildly-divergent views about how to define "non-commodity goods and services," whether there should be restrictions on including these goods and services on utility bills, and whether the restrictions should apply to both EDUs and CRES providers, one or the other, or neither. (*See* DP&L at 9, FES at 6, Duke at 4-5, AEP Ohio at 15.) This rulemaking may not be the best forum to address these issues. With or without rules, R.C. 4928.17 ultimately sets the standard for whether non-commodity goods and services may or may not be included on the utility bill. It may be best to resolve specific issues applicable to each EDU in each EDU's pending or upcoming corporate separation audit docket. A separate workshop may also be beneficial. The adoption of an undeveloped, undefined rule would not be beneficial.

3. Prepaid service

Staff is proposing an addition to Rule 4901:1-10-22(C) and -33(F) governing pre-paid service. As explained previously, any rule concerning pre-paid services does not alleviate the need for an EDU to seek tariff approval before offering such a service. The proposed standards in the draft rule should be incorporated in any such tariff. Any rules applicable to CRES providers should be addressed in the context of the pending CRES supplier rulemaking (Case No. 17-1843-EL-ORD), not here.

DP&L explains why the proposed rules potentially conflict with the terms of the stipulations in Case Nos. 16-395-EL-SSO and 19-860-EL-UNC, and its proposal in Case No. 18-1875-EL-GRD. (DP&L at 9-10.) This is another reason to reject the rules.

AEP Ohio proposes a modification to -33(F) limiting eligibility for pre-paid service to "EDU consolidated rate ready billing." (AEP Ohio at 24.) If the Commission adopts this rule (it should not), the rule should make clear it applies to EDU services, not CRES services. Customers on supplier consolidated billing should still be able to receive pre-paid service from a CRES provider.

B. Reply to additional comments.

Comments have been filed to propose additional changes not addressed in RESA/Direct's Initial Comments. Below is RESA/Direct's reply.

1. AEP Ohio

AEP Ohio offers several proposed revisions or additions to the rules. Those that follow should be rejected.

Rule 4901:1-10-21(H)(3) and (4) – complaints and complaint handling

Staff did not propose changes to the rule requiring an EDU to cooperate with Staff in investigating slamming complaints. AEP Ohio proposes a rule change that would take EDUs out of the complaint handling process. (AEP Ohio 23.) AEP Ohio's proposal would leave it up to Staff and CRES providers to investigate and resolve slamming complaints. This change would make the investigative process less effective. The Commission should reject the proposal.

Both EDUs and CRES suppliers have certain responsibilities to ensure that switching does not occur without customer consent. Slamming investigations require Staff to determine

whether these responsibilities were fulfilled—by both the EDU and the CRES. This determination cannot be made without the EDUs participation in the complaint handling process.

Rule 4901:1-10-22(B) – customer billing and payments

The current rule requires certain disclosures and explanations to be included in an EDU's monthly bills. AEP Ohio proposes to add an additional requirement with paragraph (B)(25): "that all CRES charges should be readily comparable to the price- to-compare." (AEP Ohio at 15). This proposal should be rejected.

First, this proceeding involves rules generally applicable to EDUs. CRES billing and disclosure requirements are contained in separate rules. *See, e.g.,* O.A.C. 4901:1-21-12. A new supplier in the Ohio market should be able to understand their compliance requirements by reviewing the CRES rules. Additional requirements should not be shoe-horned into chapters of the Ohio Administrative Code that do not otherwise apply to CRES suppliers. CRES rules and requirements and EDU rules and requirements should be kept separate.

Second, not all CRES products and services can necessarily be converted into "one price per kWh." (AEP Ohio at 15.) Not all CRES suppliers charge a volumetric rate for all products and services. The rules cannot and should not force CRES suppliers to offer only volumetric products and services.

The proposal to add a new paragraph (B)(25) should be rejected, along with the parallel changes to the other rules discussed at page 24 of AEP Ohio's comments.

Rule 4901:1-10-24(E) - Customer safeguards and information

The current rule prohibits disclosure of certain customer-specific information unless the customer affirmatively consents. AEP Ohio proposes to add "participation in a CRES program"

to the list of information that may not be disclosed without consent. (AEP Ohio at 18). No reason for prohibiting the disclosure of this information is given. Nor does the proposal accomplish what AEP Ohio says it wants to accomplish.

Rule 4901:1-24(E)(1) prohibits disclosure "except for the following purposes" listed in subsections (a) through (c). In other words, disclosure without customer consent is permitted for the purposes listed in (a) through (c). Adding "(d) Participation in a CRES program" to this list would *permit* disclosure of the customer's shopping status. RESA/Direct would have no objection to this change if that is what AEP Ohio is actually proposing. But that is not what AEP Ohio is proposing according to its comments.

AEP Ohio also asks to eliminate the requirement to maintain a list of CRES suppliers in its service territory, as currently mandated in paragraph (G). No other EDU has made this suggestion. The only reason offered for it is, "[t]he PUCO has developed its apples to apples comparisons that lists the offers from suppliers in the EDU service territory." (*Id*. at 18.) The PUCO is certainly one source of information but it should not be the only source. More importantly, the PUCO does not maintain the same list AEP Ohio is required to maintain under current rules. The Commission lists all suppliers licensed in each EDU service territory to serve residential and small commercial customers. Not every licensed supplier is an active supplier; some suppliers never follow-through with the EDU to complete the necessary paperwork or take the necessary actions to begin serving customers. Recognizing this, the current rules require EDUs to keep track of *active* suppliers, not just those licensed to serve not actually serving.

There is no good reason for exempting EDUs from maintaining a list of active suppliers on their websites and disclosing this list upon customer request. The Commission should reject AEP Ohio's proposal.

Rule 4901:1-10-33 Consolidated billing requirements

AEP Ohio proposes a set of changes to convert the consolidated billing requirements applicable to EDUs to also apply to CRES suppliers. "We believe the same consolidated billing requirements should apply regardless of who the billing entity is." (AEP Ohio 22.) The objection to this change is not philosophical but practical. As noted earlier, EDU and CRES requirements should be addressed in separate rules. AEP Ohio's suggestion should be rejected here to maintain this separation.

2. DP&L

DP&L proposes a number of changes related to seamless moves. None of these changes should be accepted.

First, DP&L proposes adding a definition of "seamless moves" in Rule 4901:10-01. (DP&L at 1-2.) The term is commonly understood; no definition is needed.

Next, DP&L proposes to add seamless moves transfers to the list of purposes in Rule 4901:1-10-for which account information may be disclosed without customer consent. (*Id.* at 4-5.) This is not necessary. The customer will have already consented to a seamless moves transfer by entering a seamless moves agreement. There is no need for an exception to the consent requirement when consent has already been given. The additional consent requirement proposed in Rule 4901:1-10-29(F) is redundant for the same reason and should also be rejected. (*See* DP&L at 13-14).

As DP&L acknowledges, the requirements for a seamless move have already been established by an order in Case No. 14-2027-EL-EDI. (DP&L at 2.) Any technical implementation issues should be addressed in a workshop, not in this rulemaking. If the working group determines that any new rules (or waivers of existing rules) are necessary, the group may

present a proposal to the Commission. Any final proposal should be based on consensus, not DP&L's unilateral decision.

3. OCC

OCC advocates a "shadow billing" proposal similar to the concept agreed to and adopted in a Columbia Gas of Ohio EXM proceeding (Case No. 08-1344-GA-EXM). If a company wishes to engage in "shadow billing" by agreement that is one thing. But this practice should not be mandated for an entire industry by rule. The proposal should be rejected.

OCC's proposed Rule 4901:1-10-22 (J) would require:

> For each electric utility customer shopping with a competitive retail electric service provider, the electric utility shall create a bill as if that customer were on the electric utility's standard service offer. Each electric utility shall annually file a report with the commission detailing the total customer savings or spending by shopping with competitive retail electric service providers. (OCC at 15.)

This proposal does not square with OCC's alleged privacy concerns. As noted elsewhere in its comments, "[w]ith AMI and grid-modernization efforts, electric utilities can have access to customer's usage patterns with a level of granularity that has never been available before. Combining this granular usage information with personal identity information (which utilities collect about their customers) creates the potential for privacy violations." (OCC at 17.) OCC wants the Commission to require EDUs to conduct "privacy assessments to safeguard protection of customer privacy." (*Id*. at 18.) Requiring EDUs to secretly compile data about customer usage and billing and—and turn this information over to a government agency (every year, no less)—seems more like an invasion of privacy than the protection of private information.

Maintaining a secret cache of information about "customer savings or spending by shopping" would not necessarily tell anyone anything useful. CRES supplier goods and services

include more than just plain-vanilla energy. Some customers want 100% renewable products. Some customers want long-term price stability. Some customers want to pay a market rate, realizing a variable rate may be higher than the SSO in some months and lower in others. There are many reasons why a shopping customer may pay a higher or lower rate relative to the SSO at any snapshot in time. The question is not the rate paid, but the value received. Customers are willing to pay more to get more.

Whether shopping customers pay more or less than those who remain on SSO service is not a valid measure of the success or failure of competition. The market has responded to customer demand for products and services that offer benefits not available with SSO service. Sometimes these products and services cost more. It is not necessary to compile and maintain fake "shadow bills" to understand that which is already known.

CONCLUSION

RESA/Direct respectfully request that any revisions to OAC Chapter 4901:1-10 reflect the comments contained here and in their Initial Comments.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was electronically filed this 30th day of August, 2019. Parties subscribed to DIS will receive automatic notification of this filing.

/s/ Mark A. Whitt

Summary: Comments Joint Reply Comments of Retail Energy Supply Association and Direct Energy Business, LLC/Direct Energy Services, LLC electronically filed by Shelli T Clark on behalf of Retail Energy Supply Association and Direct Energy Business, LLC and Direct Energy Services, LLC