

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of The Commission's)	Case No. 22-865-EL-ORD
Review of the Rules in Ohio Adm. Code)	
Chapter 4901:1-36)	
)	
)	

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

November 2, 2022

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I. INTRODUCTION

Industrial Energy Users-Ohio ("IEU-Ohio") is an association of commercial and industrial customers served by Ohio's electric distribution utilities which has promoted fair, reasonable and transparent energy charges for more than 25 years. Collectively, IEU-Ohio's members annually purchase more than \$3 billion in energy and related services, and are major contributors to Ohio's economy and employment sector. IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices.

IEU-Ohio hereby submits comments in opposition to the proposed revisions to the Transmission Cost Recovery Rider rules in Ohio Adm. Code Chapter 4901:1-36 pursuant to the Commission's October 19, 2022 Entry in the above-referenced proceeding. Ohio Adm. Code Chapter 4901:1-36 establishes the process for an electric distribution utility to file an application for recovery of transmission and transmission-related costs through a transmission cost recovery rider ("TCRR"). If the TCRR is approved, the utility must update the rider annually. The utility may file an interim application to adjust the TCRR if the costs differ substantially from what was previously authorized.

The Commission's October 19, 2022 Entry proposes deleting Ohio Adm. Code § 4901:1-36-04(B) in its entirety, which currently states that the TCRR "shall be avoidable by all customers

who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers.”

The Commission’s Business Impact Analysis states that the only adverse impact is to an electric utility filing an application for approval of a TCRR. IEU-Ohio respectfully disagrees. The current Ohio Adm. Code § 4901:1-36-04(B) provides a regulatory mechanism by which shopping customers may have an opportunity to avoid the TCRR by obtaining generation and transmission service from competitive suppliers. Removing this provision unnecessarily restricts the options that may be available in the market for customers in Ohio to manage their energy costs by shopping for generation and transmission service. Thus, IEU-Ohio opposes the proposed deletion of Ohio Adm. Code § 4901:1-36-04(B).

II. COMMENTS

A. Opposition to Deletion of Rule 4901:1-36-04(B)

IEU-Ohio opposes the proposed revisions to Ohio Adm. Code § 4901:1-36-04(B) that eliminates shopping customers’ right to avoid the TCRR. For over thirteen years, subsection (B) has allowed customers who shop for electric service from competitive suppliers to avoid the TCRR from electric utilities and instead pay for transmission service through their contracts with the competitive suppliers. This mechanism encourages customers to shop for their generation and transmission service from a competitive supplier, and therefore increases competition in the market.

The proposed revisions to Ohio Adm. Code § 4901:1-36-04 that strike subsection (B) in full are harmful to shopping customers, anticompetitive, and contrary to public policy. By eliminating subsection (B), customers shopping for transmission services will not be able to avoid TCRR charges, which creates a disincentive in the marketplace for competitive transmission services and forces shopping customers to pay transmission costs to the utility irrespective of

whether shopping customers are able to secure such services in Ohio's competitive marketplace for energy services. There is no good reason why shopping customers should bear transmission costs twice, nor is there a good reason to permit electric utilities to recoup the costs of such services from customers purchasing transmission services from a competitive supplier.

The proposed revisions limit customer options for managing costs. Customers will be discouraged from shopping for competitive services, since such customers will be forced to pay for transmission costs to the utility on a nonbypassable basis, which will decrease competition in the market. Such a result is contrary to several provisions of R.C. § 4928.02, which articulates Ohio's policy of fostering competitive electric service. For example, R.C. § 4928.02(H) states that it is the policy of the state to:

(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;

Critically, the removal of Ohio Adm. Code § 4901:1-36-04(B) creates an anti-competitive subsidy. *In re Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer*, Pub. Util. Comm. No. 10-2586-EL-SSO (Feb. 23, 2011) is instructive on this point. There, Duke Energy sought to make Rider SCR unavoidable "under any circumstances." See Opinion and Order at 63. The Commission had concerns that Duke Energy's argument would create an anti-competitive subsidy: "If Duke were permitted to recover the costs included in Rider SCR from shopping customers, under any circumstances, we believe that it would create an anticompetitive subsidy." *Id.* (emphasis added). The proposed revision to remove Ohio Adm. Code § 4901:1-36-04(B) would eliminate the ability of a shopping customer to avoid the TCRR in all circumstances, which is exactly the type of anticompetitive subsidy the Commission sought to avoid.

The proposed revisions also fail to advance the other public policy goals, including to: (a) “[e]nsure 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,” R.C. § 4928.02(C); (b) “encourage innovation and market access for cost-effective supply- and demand-side retail electric service,” R.C. § 4928.02(D); (c) “[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment,” R.C. § 4928.02(G); and (d) “[e]nsure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power,” R.C. § 4928.02(I).

Shopping customers should have the ability to obtain generation and transmission services from a competitive supplier. Ohio Adm. Code § 4901:1-36-04(B) fosters that competition. Eliminating a shopping customer’s right to avoid the TCRR, however, discourages competition, and is contrary to the General Assembly’s express policy of fostering competitive electric service in Ohio. R.C. § 4928.02. The Commission should reject the proposed revisions to Ohio Adm. Code § 4901:1-36-04 and allow the TCCR to continue to be avoidable by customers who pay transmission costs to competitive suppliers.

By eliminating Ohio Adm. Code § 4901:1-36-04(B), shopping customers will be forced to subsidize non-shopping customers for transmission charges, thereby eroding Ohio’s competitive landscape and discouraging innovative and market-based mechanisms for managing energy costs in Ohio.

B. Proposed revisions to Rule 4901:1-36-05

IEU-Ohio also opposes the proposed revisions to Ohio Adm. Code § 4901:1-36-05. Those revisions provide:

4901:1-36-05 Hearings.

Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission ~~shall~~ approve~~s~~ the application or set~~s~~ the matter for hearing within seventy-five days after the filing of a complete application under this chapter. Proposed rates will become effective on the seventh-fifth day subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing.

As currently drafted, the proposed revisions remove the modal verb “shall” from Ohio Adm. Code § 4901:1-36-05 without offering a replacement verb (*i.e.*, must, may, etc.). The proposed revision renders the impacted sentence incomplete, and makes this code provision unclear and ambiguous.

III. CONCLUSION

For the reasons set forth above, IEU-Ohio respectfully requests that the Commission reject the proposed revisions to Ohio Adm. Code § 4901:1-36-04 and Ohio Adm. Code § 4901:1-36-05.

November 2, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify on this 2nd day of November, 2022, that the foregoing document was filed using the Commission's Docketing Information System and was served by electronic mail on all parties who have appeared in this proceeding.

/s/ David F. Proaño

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Summary: Comments Industrial Energy Users-Ohio's Comments in Opposition to the Proposed Rule Amendments to Ohio Admin Code 4901:1-36 electronically filed by Mr. David F. Proano on behalf of Industrial Energy Users-Ohio