

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE)	
COMMISSION’S REVIEW OF THE)	CASE NO. 22-862-EL-ORD
RULES IN OHIO ADM. CODE)	
CHAPTER 4901:1-35.)	

COMMENTS OF CALPINE RETAIL HOLDINGS, LLC

I. Introduction

In an Entry issued on October 19, 2022, the Public Utilities Commission of Ohio (the “Commission”) published proposed rule changes to Ohio Adm.Code Chapter 4901:1-35. The changes are described as being offered in order to comply with R.C. 121.951(A)(1), which requires state agencies to reduce their total number of regulatory restrictions. The Entry invited all interested persons or entities to file comments no later than November 9, 2022.

These comments are filed on behalf of Calpine Retail Holdings, LLC (together with its operating subsidiaries, “Calpine”). Calpine subsidiaries include independent, national providers of retail electric service across 20 states. Calpine is actively serving and soliciting competitive retail electric services to all classes of Ohio customers, and is also a Load Serving Entity (“LSE”) and member of PJM Interconnection LLC. Calpine currently offers a wide variety of efficiency and energy-related products and services beyond simple energy procurement, transmission, load and risk management, and sustainability and green energy solutions to even the smallest of business customers– all designed to meet the individualized needs and demands of Calpine’s customers and capture the benefits of the existing competitive wholesale energy environment to bring those benefits forward into Ohio’s competitive retail electric market.

In order for Calpine to compete successfully, it needs a level playing field with well-defined rules that prohibit cross-subsidies from monopoly into the competitive retail and wholesale markets. It needs a regulatory overseer that is ready, willing and able to establish clear rules and enforce them as needed. And, it needs transparency in regulatory proceedings so that it can participate meaningfully if and when circumstances so require. Accordingly, Calpine advances its advocacy both before this Commission and at the Legislature to ensure that Ohio ratepayers enjoy the benefits of competition described above.

Calpine is concerned that some of the regulatory changes proposed by Commission Staff would be inconsistent with the provisions of Ohio statutory law, create ambiguities, or eliminate valuable information for the applications that would be filed pursuant to Ohio Adm.Code Chapter 4901:1-35. Below, Calpine proposes alternative approaches for revising certain rules and, in some cases, proposes that no revision be made.

II. Comments

A. Proposed Ohio Adm.Code 4901:1-35-02(A)

In this rule, Commission Staff proposes the following:

(A) Pursuant to division (A) of section 4928.141 of the Revised Code, ~~beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to this chapter, an electric utility shall~~ may file an application for commission approval of ~~an a standard service offer (SSO). Such application shall be~~ in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. ~~The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.~~

There are two concerns with these proposed revisions. First, changing “shall” to “may” suggests that a standard service offer application is an option under R.C. 4928.141 and the rule.

R.C. 4928.141(A), which has been on the books since 2008 as a result of the enactment of Senate Bill 221, provides unambiguously as follows:

(A) Beginning January 1, 2009, an electric distribution utility **shall** provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility **shall apply** to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections * *

*. [Emphasis added]

Ohio Adm.Code 4901:1-35-02 currently repeats this language. But, Commission Staff has proposed to strike this language and say instead that an electric utility **may** file an application for Commission approval of a standard service offer. The clear implication is that such an application is no longer required, but rather is committed to the discretion of the electric utility. This flies in the face of the second sentence of R.C. 4928.141(A), which states the electric distribution utility **shall** apply to the Commission to establish its standard service offer.

The decision to eliminate the requirement of a standard service offer application is for the Ohio Legislature and Governor to make, not this Commission. So long as R.C. 4928.141(A) is on the books, it is the duty of this Commission to enforce this law. Ohio Adm.Code 4901:1-35-02(A) should be consistent with that statute.

Second, a further ambiguity is raised by Commission Staff's proposal to delete the last sentence from Ohio Adm.Code 4901:1-35-02(A), which describes the purpose of the rules in the chapter:

The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.

If this deletion is implemented, then the entire industry will be left to wonder what the purpose of the remainder of the chapter is. This deletion would also mean that Chapter 4901:1-

35 will differ from other rule chapters that contain their purposes. Notably, there are multiple pending proposals to reduce regulatory restrictions in which the purposes of various rule chapters are proposed to be remain. See e.g. *In the Matter of the Commission’s Review of Its Rules for Electric Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 22-872-EL-ORD, Entry at Attachment A, page 4 (November 2, 2022); *In the Matter of the Review of the Minimum Gas Service Standards in Ohio Adm.Code Chapter 4901:1-13*, Case No. 22-809-GA-ORD, Entry at Attachment A, page 3 (October 24, 2022); *In the Matter of the Review of the Rules in Ohio Adm.Code Chapter 4901:1-6 Regarding Retail Telecommunications Services*, Case No. 22-829-TP-ORD, Entry at Attachment A, page 5 (October 19, 2022); and *In the Matter of the Review of the Rules in Ohio Adm.Code Chapter 4901:1-3 Regarding Access to Poles, Ducts, Conduits and Rights-of-Way*, Case No. 22-827-AU-ORD, Entry at Attachment A, page 3 (September 21, 2022).

If regulatory reform is to mean anything, it should mean that the regulated community should understand the purpose of the rules it is subject to. If the target of the change was simply the word “shall,” the Commission can easily revise the sentence, as it did with certain definitions, to have it read as follows:

The purpose of this chapter is to establish rules for the form and process ~~for under which~~ an electric utility ~~to shall~~ file an application for an SSO and the commission’s review of that application.

B. Proposed Ohio Adm.Code 4901:1-35-03

Calpine responds to multiple proposed revisions in this rule. First, the proposed change to the opening paragraph of Ohio Adm.Code 4901:1-35-03 creates another ambiguity. It is proposed to be changed as follows:

Each electric utility in this state filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, ~~shall comply~~complies with the requirements set forth in this rule.

Does this mean the Commission is approving, sight unseen, any filing that an electric utility chooses to make? That it is automatically held to comply? Surely that cannot be the Commission's intent. An alternative for this paragraph, which again would remove the objectionable "shall" as applied to the electric utility, could read as follows:

The Commission will only approve ~~Each electric utility in this state~~ filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, which complies with the requirements set forth in this rule.

Second, Commission Staff also proposes to delete existing paragraph (A) from Ohio Adm.Code 4901:1-35-03, which contains the minimum format for an application.¹ But providing clear guidance to the regulated community is a plus, not a negative. In addition, having direct testimony presented at the time of the application's filing is beneficial for Staff and all interested stakeholders to understand the details associated with the proposals in the application. The paragraph could be rewritten in the following way, again without any "shalls" directed to the companies that file applications:

Unless waived pursuant to the provision of rule 4901:1-35-02(B), the Commission will only approve an application that is supported by direct testimony of the electric utility personnel or other expert witnesses, including as appropriate supporting schedules and appendices.

Third, paragraph (B)(1)(a) of Ohio Adm.Code 4901:1-35-03 is now proposed to read as follows:

(a) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the federal energy regulatory commission **in compliance with section 4928.12 of the Revised Code**; ~~or if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system,~~

¹ Calpine has no objection to the removal of requirements for hard copies, nor to the requirement that the testimony be in question and answer format.

~~which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.~~

Calpine has no objection if the Commission wishes to remove the alternative means of compliance set forth in the existing regulation, but then the rule should be streamlined even further:

(a) ~~It is the responsibility of t~~The electric utility **to show shall establish one of the following:-** that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the federal energy regulatory commission, in compliance with section 4928.12 of the Revised Code.

The phrase “one of the following” confuses matters when there is only one alternative.

Fourth, Commission Staff also proposes to delete paragraph (B)(1)(c), which relates to demonstrating the availability of independent and reliable sources of electricity pricing information. Since this provision seems to relate only to a competitive bidding process (“CBP”), it would make sense to move this provision into the subparagraphs of (B)(2), which contain a list of components that “will” be included in a CBP.

Next, the proposed revisions to paragraph (B)(2) create the same ambiguity as noted above about the opening paragraph of Ohio Adm.Code 4901:1-35-03. Specifically, Commission Staff proposes to revise paragraph (B)(2) in part as follows:

* * * An electric utility that files an MRO or an application containing a CBP ~~shall~~ provides justification of its proposed CBP plan, considering alternative possible methods of procurement. Each CBP ~~shall will~~ include the following **components**: * * *.

Even if the Commission is determined to avoid the word “shall,” it needs to link these two sentences, along the lines as the following, in order to avoid the implication that whatever is filed is automatically acceptable:

* * * An electric utility that files an MRO or an application containing a CBP provides justification of its proposed CBP plan, considering alternative possible methods of procurement, **so long it establishes :** ~~Each CBP will include~~ the following components: * * *.

Sixth, for paragraph (B)(2)(d), Commission Staff proposes to delete the following sentence:

If customers will be served pursuant to time differentiated or dynamic pricing, the descriptions shall include a summary of available data regarding the price elasticity of the load.

This proposal is puzzling to Calpine. Would not the Commission want to have this information? Could it not accomplish its overall goal simply by changing “shall” to “will,” as Commission Staff proposes to do throughout this multi-part enumeration of CBP components? Calpine recommends that the above sentence remain and the “shall” be revised to “will.”

Seventh, in paragraph (C) (which should be changed to paragraph (B) if the Commission indeed deletes (A), as has been proposed), subparagraph (10) is proposed to be stripped of requirements for the FERC Form 1 and 10-K. As with the provisions relating to supporting testimony, Calpine has no objection to the removal of the requirement for a hard copy, but providing an internet link is surely not a burdensome requirement for an applicant or one that would run counter to what the Legislature had in mind when enacting R.C. 121.951(A)(1). Neither the Commission nor interested parties should be sent on a deep dive into the internet if the filing company has that information readily available, which it should.

Finally, Commission Staff proposes to delete paragraphs (F) and (G), which contain requirements for providing workpapers, as well as requirements for the formatting of electronic files. In the interest of transparency, and to assist Staff and all interested stakeholders to understand the details associated with the proposals from the time of filing, these requirements should be retained. If it makes a difference, a phrase such as “must be filed” can be changed to “is filed” to make it consistent with the remainder of this section.

C. Proposed Ohio Adm.Code 4901:1-35-08 and 4901:1-35-11

Commission Staff proposes extensive revisions and deletions to the CBP processes in Ohio Adm.Code 4901:1-35-08 and 4901:1-35-11. These requirements are derived largely from R.C. 4928.142, which remains binding law in Ohio. The Commission should not simply walk away from these requirements under the guise of regulatory reform. These rules have served Ohio well and should be retained.

III. Conclusion

The Commission should retain those rules that are needed to maintain transparency in the marketplace and ensure robust wholesale and retail competition among providers. It should resist any call to return to a traditional monopoly approach under the guise of regulatory reform. A competitive market may require rules to keep the playing field level, but such rules are a small price to pay for the substantial benefits of competition.

If the Commission Staff has any questions or would like to further discuss this matter with Calpine, please contact the undersigned or Becky Merola, Director Regulatory & Government Affairs, Calpine Retail Holdings LLC, at (614) 558-2581 or becky.merola@calpinesolutions.com.

Respectfully submitted,

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Dated: November 9, 2022

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 9th day of November 2022 upon the persons listed below.

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

Staff of the Public Utilities Commission of Ohio

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**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

11/9/2022 3:21:59 PM

in

Case No(s). 22-0862-EL-ORD

Summary: Comments - Comments electronically filed by Mrs. Gretchen L. Petrucci
on behalf of Calpine Retail Holdings, LLC