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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Commission's)
 Promulgation of Rules for Certification of)
 Providers of Competitive Retail Electric) Case No. 99-1609-EL-ORD
 Services Pursuant to Chapter 4928, Revised)
 Code.)

COMMENTS OF AMEREN COPORATION

Ameren Corporation is a registered public utility holding company. Ameren has two operating company subsidiaries, Union Electric Company and Central Illinois Public Service Company, which are electric utilities in the states of Missouri and Illinois. Union Electric Company and Central Illinois Public Service Company provide electric generation, transmission and distribution services in those states.

In 1997, Illinois enacted electric restructuring laws that provide retail choice for electric customers. Under these new laws, Ameren has unbundled its retail electric service and provides retail choice in the state of Illinois. It has significant insight to provide in Ohio. Ameren gained invaluable experience in defining and resolving many of the same issues that will confront Ohio as it transitions to retail competition. In addition, Ameren, as an owner of generation assets, is also a potential supplier of competitive retail electric services in the state of Ohio.

Ameren would like to compliment the PUCO Staff on the efforts it has made in preparing the Ohio electricity market for deregulation. The proposed certification rules are a good first step in preparing the PUCO for the process of approving alternative electricity suppliers to provide generation services in the state of Ohio.

Ameren has four areas of concern with the proposed rules. (1) The Commission should not be able to suspend, rescind or conditionally rescind a certificate for mere "good cause shown." (2) The Commission should not require the submission of contracts with the applicant's application. (3) The Rule should explicitly state the length of time for which the certificate is good and establish a presumption that a certificate shall be renewed unless there is an affirmative showing that the renewal should be rejected. (4) Rule 4901:1-xx-03 should not

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prohibit the marketing or offering of competitive retail electric service prior to being certified by the Commission. These points are discussed more fully below.

(1) The Commission should not suspend, rescind or conditionally rescind a certificate for mere "good cause shown."

The proposed rule allows the PUCO to suspend, rescind or conditionally rescind a certified supplier's certificate for "good cause shown." Rule 4901:1-xx-13(A). Ameren believes that this language is too vague and does not provide adequate guidance as to prohibited conduct. This standard has significant due process problems. But Ameren is primarily concerned with the barrier to entry such a standard creates to the Ohio competitive retail electric marketplace.

As a ground for making procedural decisions in a contested case, "good cause shown" is an acceptable standard. Such a standard gives the decision-maker the flexibility to consider all facts and circumstances in coming to an equitable and appropriate decision in how to proceed. However, for the very reasons it is appropriate for procedural decisions – its flexibility – it is inappropriate as a basis for making determinations on whether to suspend or rescind a certificate to supply competitive services. Once a Supplier obtains a certificate, it will make commitments, enter into contracts to serve customers. As a supplier enters into the Ohio competitive retail electric market, the supplier needs to be certain that the rights it acquires and the benefits it expects after making commitments to serve customers will not be taken away arbitrarily. A risk that it will not reap the benefits of the commitments it makes will be a significant barrier to entry into the marketplace.

Ameren does believe that there are reasonable and specific grounds for revoking a certificate. Ameren believes that those grounds must be related to the grounds for which the certificate was granted. As the legislature stated in section 4928.08 (D), Revised Code, the Commission may suspend, rescind or conditionally rescind a certification if the certified supplier has "failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices." Therefore, if the certified supplier becomes incapable of providing competitive service either from a financial, managerial or a technical standpoint, or because it has shown itself to have conducted itself in a fraudulent manner in the marketplace, the PUCO should have grounds to suspend, rescind or conditionally rescind a certificate.

But those grounds must be specific in nature. The supplier must have specific ground on which to judge its and its competitors' conduct. Ameren has no objection to a specific list of the grounds the PUCO deems to constitute such a failure. As a matter of fact, the more specific the list the better. Such a specific list gives a supplier a basis on which to judge its and its competitors' conduct.

For the same reasons, the suspension or rescission must be based only on material breaches of the specific standard. A supplier should not have its right to receive the benefits of its commitments put at risk for inconsequential breaches of the standard.

For the reasons expressed above, Ameren suggests that Rule 4901:1-xx-13 (A) be modified as follows:

(A) After notice and the opportunity for a hearing, the Commission may, upon its own motion or upon complaint, suspend, rescind, or conditionally rescind a certified competitive retail electric service provider's certificate, in whole or in part, ~~for good cause shown~~ upon a finding that the provider has materially violated one or more of the standards set forth in Subsection (H), below.

(2) An applicant should not be required to submit copies of contracts in order to be certified.

Rule 4901:1-xx-05(D)(5) requires that the applicant file with the PUCO copies of its interconnection agreements and its service agreements with each independent scheduling coordinator and/or control area operator and its service agreements with electric distribution utilities prior to receiving a certificate from the PUCO. Ameren has concerns that these provisions will significantly hinder suppliers in their efforts to become certified, in their efforts to negotiate contracts and in their efforts to register with the electric distribution utilities. Further, Ameren has concerns that these provisions contravene principles of Senate Bill 3.

The requirement for the applicant to submit copies of contracts with its application gets the cart before the horse. Generally, a supplier will seek certification before initiating negotiations with the utility company. Why devote the time and expense of executing contracts if the supplier will not be certified in the state? Similarly, potential customers may be unwilling to commit to a supplier if the supplier does not have a certificate. The proposed rule does anticipate this timing conundrum by allowing the applicant to file an affidavit that it will later file copies of its contracts. Rule 4901:1-xx-04(B)(2). But such an accommodation only highlights the timing problems and creates confusion.

The requirement to submit contracts confuses the relationship between the PUCO certification and the electric distribution utilities' registration processes. The PUCO's certification relates to the financial, managerial and technical capability of the supplier to provide the service. Section 4928.08(B), Revised Code. The electric distribution utilities' registration process relates to the

execution of all things needful to the provision of service once the supplier's capability is determined. The Commission can judge the capability of the supplier by reviewing the supplier's personnel, facilities and equipment. If necessary, the Commission can review the supplier's past experience. But to require the review of contracts enters into the review of the execution of service, something that is not necessary.

Requiring the submission of contracts creates overlapping requirements that unduly complicate both the certification and registration process. As to the registration process, the electric distribution utilities have incorporated the certification process into their own registration processes. For example, Ohio Edison Company's Supplier Tariff provides that coordination services "shall commence within thirty (30) business days after the Commission issues its final certification following the Company's approval of the EGS's registration." [emphasis added] See section 3.9 of Ohio Edison's Supplier Tariff. Part of Ohio Edison Company's approval process is the execution of a Coordination Agreement and the submittal of that Coordination Agreement to the PUCO. Ohio Edison obviously considers this requirement to submit copies of contracts and their own registration processes as delaying the certification process.

As to the certification process, Rule 4901:1-xx-04(B)(2) provides, in part, that, "an applicant may substitute a notarized affidavit that indicates that it will obtain and file such documents with the Commission's Docketing Division, under the same docket number assigned to its initial application, at least twenty business days prior to offering or providing a competitive retail electric service to a customer." How does this apply if a supplier seeks to provide competitive services in more than one electric distribution utility's service area? Does the supplier have to negotiate all agreements with all electric distribution utilities before it may serve any customers in the state?

Senate Bill 3 embodies, among others, three very significant principles. First, the certification process is to be an expedited process. Second, the certification process is intended by the legislature to give the PUCO the opportunity to determine whether a supplier has the financial, managerial, and technical capability to provide competitive services. Third, competitive generation services are not within the jurisdiction of the PUCO. The requirement for the applicant to submit copies of contracts interferes with the spirit, if not the letter of each of these principles.

First, Senate Bill 3 requires that an application for certification must be deemed approved within 30 days of its filing unless suspended by the Commission. Even with a suspension, the application must be approved or rejected within 90 days. Section 4928.08(B), Revised Code. These provisions clearly show the legislature's desire for the application approval process to be expedited. The requirement to file contracts introduces an uncertainty and delay that was not

contemplated by the legislature. The requirement makes it difficult for an application to be finally approved within 30 days.

Second, the certification process is intended by the legislature to give the PUCO the opportunity to determine whether a supplier has the financial, managerial, and technical capability to provide competitive services. Section 4928.08(B), Revised Code. Ameren previously made this point, but it bears repeating. The execution of contracts does not relate to the financial, managerial, or technical capability of a supplier to provide competitive services. The execution of contracts is the operational result of that capability. The PUCO's responsibility is to determine whether the supplier has the technical capability to negotiate such contracts. If a supplier has the technical capability to provide generation services, it will execute a reasonable contract with the utility company. The utility company will certainly assure that all contracts are executed and in place before it provides delivery services to a supplier.

Third, the PUCO is authorized to determine whether a supplier has the financial, managerial and technical capability to supply competitive service but not to regulate the supply of that service. Section 4928.05(A)(1), Revised Code. A requirement for the supplier to submit copies of its contracts prior to the certification appears to be a move toward regulating competitive services. It sends the wrong signal to the supplier. The requirement suggests that the terms and conditions of the contracts will be a consideration in the PUCO's approval of the certification.

Ameren does not contend that these contracts are beyond the purview of the PUCO. These contracts are subject to the PUCO review, but they are appropriately reviewed in the context of its regulation of noncompetitive retail electric service. The legislature gave the PUCO explicit authority to supervise and regulate such service in section 4928.05(A)(2). The PUCO does have authority to review such agreements in its capacity to supervise noncompetitive services.

(3) The Rule should explicitly state the length of time for which the certificate is in effect and establish a presumption that a certificate shall be renewed unless there is an affirmative showing that the renewal should be rejected.

Section 4928.08(C) of the Revised Code states that, "the rules shall include procedures for biennially renewing certification." Ameren interprets the statute as stating that a certification expires two years after its issuance. Ameren recommends that the Rule explicitly state when the certification expires.

Ameren does not believe, as stated in proposed Rule 4901:1-xx-10(C), however, that the certified supplier should have to follow the same process for a renewal

as it followed in obtaining the initial certificate. Ameren suggests that a certified supplier be presumed to be in compliance with the standards for a renewal subject to an affirmative showing that the renewal should be rejected. Ameren also suggests that the renewal filing should be an abbreviated form.

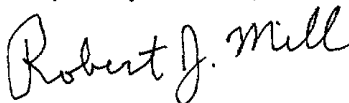
For many of the same reasons a supplier's certificate should not be suspended or rescinded by the PUCO arbitrarily (see Ameren's discussion in (1) above), the supplier's certificate rights should be given the utmost respect in the renewal process and should not be denied lightly. Assuming the certified supplier entered into the market in Ohio and provided competitive service, the best indication of its competency to provide competitive services would be inherent in the actual service over the prior two years. Such service should create a presumption that the certified supplier is capable of continuing to provide the competitive service.

If the Commission accepts this premise the renewal filing by the supplier should be in an abbreviated form. A duplication of the same documentation provided two years earlier would not add to the Commission's ability to determine if the certified supplier can continue to supply the competitive service.

(4) Rule 4901:1-xx-03 should not prohibit the marketing or offering of competitive retail electric service prior to being certified by the Commission.

Section 4928.08(B) of the Revised Code provides that "no [entity] shall provide a competitive retail electric service . . . without first being certified . . ." [emphasis added] Proposed Rule 4901:1-xx-03 goes further and prohibits a person from marketing or offering competitive retail electric service prior to being certified. Ameren suggests that the Commission adopt a Rule that more closely conforms to the wording of section 4928.08(B). Ameren can foresee a situation in which a supplier may want to conduct market surveys in order to assess its ability to serve in the Ohio market. And it may want to conduct such survey prior to a public filing with the Commission. In such a situation, its market surveys may be construed as offers or marketing. A supplier should be able to conduct such investigations without first seeking a certification.

Respectfully submitted,



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