

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Promulgation of Rules for Market) Case No. 99-1612-EL-ORD
Monitoring Pursuant to Chapter 4928,)
Revised Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) Divisions (B) through (F) of Section 4928.06, Revised Code, enacted as part of Am. Sub. S.B. 3 (SB3) by the 123rd Ohio General Assembly, require the Commission to establish rules to monitor and evaluate the market for retail electric service for the purpose of discerning any currently non-competitive retail electric service that should be available to Ohio utility customers on a competitive basis and for the purpose of discerning any competitive retail electric service available to Ohio utility customers that is no longer subject to effective competition.
- (2) By Finding and Order in this case dated March 30, 2000, the Commission adopted proposed Rules 4901:1-25-01 and 4901:1-25-02¹ to assist it in fulfilling its market monitoring responsibilities under Section 4928.06, Revised Code.
- (3) On April 28, 2000, the Ohio Consumers' Counsel (OCC) filed an application for rehearing regarding some of the issues we addressed in our March 30, 2000 Finding and Order. On May 1, 2000, Columbus Southern Power Company and Ohio Power Company (collectively AEP), the city of Cleveland (Cleveland), and Enron Energy Services, Inc. (Enron) filed similar applications.
- (4) On May 11, 2000, OCC filed a memorandum contra to the applications for rehearing filed by Enron and AEP.
- (5) OCC argues that our March 30, 2000 Finding and Order was unreasonable and unlawful by failing to:

¹ Through inadvertence, the Commission's market monitoring rules as adopted in and appended to our March 30, 2000 Finding and Order were numbered 4901:1-21-01 and 4901:1-21-02.

- (a) Require certified entities to provide specific information as to each product offering, by specific subclass, for each relevant market.
 - (b) Require certified entities to provide cost data for its product offerings.
 - (c) Distinguish between governmental aggregators and other competitive retail electric suppliers.
- (6) With regard to items 5(a) and 5(b), OCC argues that the type of data the Commission seeks to collect, while necessary, is insufficient to adequately monitor the market for electric service. OCC further argues that the rules adopted to track the development of effective competition do not enable either the Commission or other interested stakeholders to determine whether discriminatory or anti-competitive behavior exists. OCC would have the Commission require specific information from every certified entity regarding each product the entity offers, by customer subclass, for each relevant market. With regard to item 5(c), OCC contends that the requirement that governmental aggregators must provide data that will in the normal course of events be collected by competitive retail electric service providers, are both costly and unduly burdensome. It is OCC's fear that requiring such data filings may discourage governmental aggregation and might result in double counting of the information submitted by governmental aggregators.
- (7) The Commission agrees with OCC that it may be useful to collect certain data on a basis less aggregated than our rules currently provide. We do not believe it is feasible to predefine a "relevant market" by rule or to collect information on each product offering given that in many cases products are customer specific. We do believe, however, that it would be helpful to the Commission in furtherance of its market monitoring responsibilities to collect data on a finer level of aggregation. Therefore, we are amending Rules 4901:1-25-02(A)(2)(a) and 4901:1-25-02(A)(3)(b), to require electric distribution utilities (EDU) and competitive retail electric service (CRES) providers to report the number of customers they serve and the number of kWh's sold by the rate schedule of the EDU pursuant to which the customer is taking service or had taken service prior to selecting a competitive

supplier, as well as by customer class and by subclass, if applicable.

- (8) The Commission also shares OCC's concern that the existence of discriminatory and anticompetitive behavior is a detriment to the development of effective competition. We note that anticompetitive behavior may be exhibited not only against customers of all classes: residential, commercial, and industrial, but also against marketers, governmental aggregators, and other suppliers of competitive retail electric services. We are not convinced that collection of product information and cost data alone will provide true indications of such behavior. It has always been our intention to collect all necessary information in order to monitor adequately all aspects of the competitive market. For this reason, it is appropriate to clarify the Commission's rules at this time. Section 4928.06(A), Revised Code, directs the Commission to "ensure that the policy specified in Section 4928.02 of the Revised Code is effectuated to the extent necessary." Division (H) of that section specifically states that it is the policy of the state of Ohio to "ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power." These provisions will require a vigorous, real-time, market monitoring function to assess the development of competitive markets to be responsive to any anticompetitive activities and to protect consumers against unreasonable sales practices. The Commission will need access to actual claims by those who allege to have suffered from discriminatory or anticompetitive acts. For that reason, we direct the staff of the Commission to centrally collect and track all informal complaints, and other necessary information received from customers, governmental aggregators, and other suppliers of competitive retail electric services in a manner and form determined by the staff.
- (9) With regard to item (5)(c), we believe OCC is mistaken in its concern regarding the filing requirements the Commission's rules place upon certified governmental aggregators. The Commission is not requiring governmental aggregators to file data with this Commission that are not in their possession. Governmental aggregators, assuming they arrange for a marketer to provide generation, will not be required to file data other than data regarding the number and type of customers being aggregated by group. In addition, our rules

do not prevent a governmental aggregator (or any aggregator for that matter) from contracting with a CRES provider to file the required information on its behalf.

- (10) In its first allegation of error, AEP argues that electric distribution utilities (EDU's) should not be required to pay for market monitoring surveys. AEP argues that, though EDU customers may benefit from the surveys, it is not because they are customers of the EDU but because they are actual or potential purchasers of competitive retail electric services. AEP believes the EDU, itself, is the one group that does not benefit from the survey. According to AEP, the proper assignment of responsibility for survey costs is to all participants in the competitive retail electric service markets and their customers. Further, AEP argues, the Commission has failed to provide a method for the EDU to recover the costs it expends with regard to these surveys. Hence, according to AEP, it is not the customers of the EDU that are bearing the costs of the surveys, but the EDU itself. Thus, AEP argues, if the Commission is to impose the costs of these surveys on the customers of the EDU, the Commission must provide a mechanism by which an EDU can recover these costs from its customers.
- (11) The Commission is not going to engage in a philosophical debate whether the EDU's customers benefit from the surveys because they are customers of the EDU or, as AEP argues, because they are actual or potential purchasers of competitive retail electric services. The fact remains that each customer for electric utility service, regardless where the customer purchases his/her generation, is a customer of the EDU for his/her distribution services. Therefore, we believe the only practicable way of recovering the costs of the surveys is through the EDU.
- (12) In its allegations of error two through four, AEP would have the Commission alter the definitions of various terms used in the market monitoring rules; specifically, the definitions of the terms "Residential Customers", "Special Contract Customer", and "Street Lighting And Other Customers". AEP suggests the Commission insert the words "that are individually metered" after the words "housing units" in the first sentence of the definition of the term "residential customers" and insert the word "only" before the words "for personal use" in the same sentence.

AEP contends that the first change would make clear that multifamily housing units where individual premises are not separately metered is commercial as opposed to residential service. The second change in the term “Residential Customers” clarifies that a person can be a residential customer only if all the consumption at the premises is for personal as opposed to commercial use. AEP notes that the reference to Section 4905.30 in the definition of “Special Contract Customer” is an error and should be changed to Section 4905.31, as this is the provision of the Ohio Revised Code which governs special contracts and the requirement of Commission approval of such contracts. AEP also recommends that the Commission delete the words “or a public authority” after the words “and highway lighting” in the definition of “Street Lighting And Other Customers”. AEP believes that this change would clarify that the definition of “Street Lighting and Other Customers” does not include governmental operations such as water and sewer treatment operations that are commercial in nature.

- (13) AEP’s recommendations that the Commission alter the definitions of the terms “Residential Customers”, “Special Contract Customer”, and “Street Lighting And Other Customers” as set forth in Finding 8 are well made and are adopted.
- (14) Finally, in its allegation of error number five, AEP objects to those provisions of proposed Rule 4901:01-25-02(B), which requires affected parties to:
 - (a) Make available to the Commission or its staff “cost effective and efficient information regarding the operation of the transmission or distribution systems of electric utilities” so that the Commission can determine the existence and extent of the transmission constrained areas, and make available to the Commission or its staff information that would assist the Commission in determining the impact of such constraints on the price of competitive retail electric service.
 - (b) Provide quarterly reports of any denials of either transmission or distribution service due to constraints in either system, the amount of

energy curtailed or denied, the duration of the curtailment or denials, and the reason for the denial.

As to requirement (a), AEP suggests that the Open Access Same Time Information System (OASIS)² already provides the Commission information regarding the operation of transmission systems on a cost-effective and efficient basis. According to AEP, this information includes information regarding the existence of transmission constrained areas. AEP finds it to be unclear that information could be provided that would enable the Commission to determine the impact of transmission constraints on the price of electric power. AEP goes further to argue that, if it were possible to determine the effect of transmission constraints on market price, the information would be so commercially sensitive that it should not be provided to the Commission.³

With regard to requirement (b), AEP argues that it is unduly burdensome to provide the Commission with information regarding all denials of transmission service.⁴ AEP states that it handles 30,000 requests for transmission service a year. Information regarding the denial of any of these requests, according to AEP, is available to the Commission on OASIS. AEP states that this information includes all transmission service denials with the reasons for these denials. According to AEP, the Commission can determine the size of each denied request from the data posted on the OASIS. AEP indicates that transmission loading relief (TLR's) are also posted on OASIS. From these postings, according to AEP, the Commission can determine the duration of TLR-related denials.

- (15) Pursuant to Section 4928.06(E)(2), Revised Code, the Commission is given the authority to take such action in a transmission constrained area in a utility's certified territory as is necessary to ensure that retail electric generation

² See FERC Order 889.

³ At page 6, footnote 4 of its memorandum in support of its application for rehearing, AEP argues that the Commission should minimize its collection of commercially sensitive information in light of public record requests recently submitted to the Commission in other contexts.

⁴ At page 6, footnote 5 of its memorandum in support of its application for rehearing, AEP states that curtailments or denials of service of distribution service are rare. According to AEP, there does not appear to be a compelling reason to supply this information on a quarterly basis. AEP notes that if distribution service is curtailed, the Commission will hear of it much sooner than quarterly.

service is provided at reasonable rates within that area. The Commission may exercise this authority only upon findings that an electric utility is or has engaged in the abuse of market power and that that abuse is not adequately mitigated by rules and practices of any independent transmission entity controlling the transmission facilities. The requirements complained of by AEP are an effort by this Commission to carry out our responsibilities under Section 4928.06(E)(2), Revised Code. Referring the Commission to OASIS is, in itself, an insufficient response to these requirements. The Commission has only a limited access to OASIS. Much of the information contained on OASIS is not available to the Commission. Each transmission-owning entity posts information to OASIS. It is not efficient for the Commission to compile on a real-time basis the data it requires from OASIS. The Commission finds the arguments raised by AEP with regard to this issue to be unpersuasive.

- (16) Enron states that the Commission erred in requiring competitive suppliers to provide data on billed revenues by customer class. Enron argues that the Commission can reasonably require competitive suppliers to provide the number of customers and amount of sales. According to Enron, the amount of revenues received is not relevant to determining if a competitive market exists. In addition, Enron contends that the provision of revenues by customer class will allow for the extrapolation of highly confidential and proprietary information as to price. In its memorandum contra, OCC argues that, contrary to Enron's assertions, the amount of billed revenues for a service does provide information as to whether the service is competitive. Moreover, according to OCC, the submission of the total number of customers, the total amount of sales in MWh, and the total amount of billed revenues by customer class for generation service will not result in the disclosure of confidential and proprietary data.
- (17) We recognize the sensitive nature of this information, including the fact that its disclosure, as argued by Enron, might disclose some pricing information. Therefore, we will amend the rule to delete the requirement that billed revenue data be submitted by customer class and, instead, require that CRES providers need provide only total billed revenues across all classes. Upon request, prices shall be provided to staff on a confidential basis.

- (18) In its application for rehearing, the city of Cleveland argues that the Commission erred and that its actions are unlawful:
- (a) When it determined that governmental aggregators must necessarily be providers of competitive retail electric service and therefore must be certified by the Commission in order to be a governmental aggregator.
 - (b) To the extent that its rules concerning market monitoring extend the Commission's supervision to the operations of municipal electric systems that provide service using their own transmission and/or distribution facilities.

In its first exception, the city of Cleveland expresses the concern that the Commission will apply its rules to municipalities that merely contract with an electric services company for that company to provide services to customers. It is the fear of the city of Cleveland that the city will become subject to Commission rules and certain supplier tariffs just by engaging in an activity for which municipalities are apparently permitted to engage without limitation pursuant to the home rule provisions of the Ohio Constitution. In its second exception to our rules, the city of Cleveland expresses the concern that the Commission is extending its reporting requirements to the operations of a municipal utility in violation of the Ohio Constitution.

- (19) It should be noted that the reporting requirements complained of by the city of Cleveland do not apply to municipal systems. Proposed Rules 4901:1-25-02(A)(3) and 4901:1-25-02(A)(4) apply to, among others, certified governmental aggregators, i.e., governmental aggregators certified pursuant to Section 4928.08(B), Revised Code. This provision prohibits governmental aggregators from providing a competitive retail electric service to a consumer in this state without being first certified by this Commission. Proposed Rules 4901:1-25-02(A)(3) and 4901:1-25-02(A)(4) do not require large amounts of data and what data is provided is deemed by the Commission to be confidential. To the

extent that a governmental aggregator opts to provide competitive retail electric service to consumers in this state, it has entered the competitive arena and comes within the ambit of the Commission's market monitoring responsibility. If the city of Cleveland is requesting more than a clarification of the Commission's intent in promulgating the particular provisions of which it complains, the application of the city of Cleveland for rehearing should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed in this case be granted or denied as discussed in this Entry on Rehearing. It is, further,

ORDERED, That the rules as adopted in our Finding and Order of March 30, 2000, in this case, (a copy of which is attached to this Entry on Rehearing), be amended and filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State as required by Section 111.15, Revised Code, to become effective on the earliest date possible after filing pursuant to that statute. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon each person or entity appearing on the service list in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer

Judith A. Jones

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