

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.)

FINDING AND ORDER

The Commission finds:

- (1) Paragraphs (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 noncompetitive 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 Entry dated December 21, 1999, this Commission issued for comment three rules related to market monitoring: proposed rule 4901:1-21-01, definitions; proposed rule 4901:1-21-02, reporting requirements; and proposed rule 4901:1-21-03, electric distribution utility-surveys. As issued there were three appendices attached to proposed rule 4901:1-21-02: appendix A, reporting requirements; appendix B, electric distribution utility billing database parameters; appendix C, electric service provider database parameters.
- (3) Pursuant to the December 21, 1999 Entry, interested stakeholders were to submit comments regarding the market monitoring rules as well as answers to questions by the Commission. The comments were due by January 31, 2000 and reply comments by February 14, 2000.
- (4) The following parties filed comments or reply comments regarding the proposed market monitoring rules:
 - (a) Allegheny Energy Supply Company (AESC)
 - (b) Coalition for Choice in Electricity (CCE)*

- (c) The Cincinnati Gas and Electric Company (CG&E)
- (d) Columbus Southern Power Company and Ohio Power Company (AEP)
- (e) Consolidated Natural Gas Company (CNG)
- (f) CNG Retail Service
- (g) The Dayton Power and Light Company (DP&L)
- (h) FirstEnergy
- (i) Midwest Marketers*
- (j) Ohio Consumers' Counsel (OCC)
- (k) Ohio Citizen Action
- (l) School Pool*
- (m) Shell Energy Services (Shell)
- (n) City of Toledo (Toledo)

*Collectively filed comments on behalf of a coalition of parties

- (5) As a result of the comments, we have redrafted Staff's proposals to ensure consistent definitions among the rules that we are promulgating pursuant to SB3, to eliminate burdensome requirements, and to clarify the responsibilities of those subject to the rules. In this Finding and Order, we are only addressing some of the more salient comments we received regarding the market monitoring rules. It should be noted that there are comments with which we agree that we have incorporated into the proposed rules without discussion. If there were comments made with regard to the proposed market monitoring rules that are neither addressed in this Finding and Order nor incorporated in the market monitoring rules as adopted, those comments have been rejected.

- (6) As proposed, rule 4901:1-21-02 contained subdivisions A through F. Subdivisions A and B as proposed would have required various entities to file information required by appendix A of the rule in the manner and form and at the times set forth in the appendix. Subdivision C of the proposed rule would have required an electric distribution utility to maintain the capability to submit information contained in its customer billing database to the Commission as set forth in appendix B to the proposed rule. Subdivision D of the proposed rule would have required each electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification to maintain the capability to submit information contained in its customer billing database to the Commission as set forth in appendix C to the proposed rule. Section E of the proposed rule would have required each electric distribution utility, electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification to establish a customer identification protocol. Subdivision F, as proposed, would have required each electric distribution utility, electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification that owns or that has an affiliate that owns electric transmission facilities to provide the Commission access to information regarding the transmission system so that the Commission may be able to determine the existence and extent of transmission constraints as well as access to information that will permit the Commission to determine the impact of transmission constraints on the price of competitive retail electric service.
- (7) Proposed rule 4901:1-21-03 provided for surveys to enable the Commission to determine effective competition in the provision of retail electric service.
- (8) As a result of our review of the comments, we have conformed the definitions in proposed rule 4901:1-21-01 to the statutory definitions of the same terms. In those situations where a term appears in other rules being developed as a result of SB3 in addition to the market monitoring rules, but are not defined by statute, we have conformed the definitions of the terms used in all the rules being developed as a result of SB3.
- (9) In redrafting proposed rule 4901:1-21-02, we deleted appendix A to subdivisions A and B, incorporating the requirements of

that appendix into what are now subdivisions (A)(1) through (A)(4) of the proposed rule. As originally proposed, appendix A contained, among other things, the forms by which reporting entities were to have submitted data to the Commission. Instead of making the forms part of the rule, we will issue the forms separately.

- (10) In redrafting proposed rule 4901:1-21-02, we also deleted subdivisions C and D as well as appendices B and C accompanying those subdivisions. Staff proposed those subdivisions so that the reporting entities would have compatible databases for whatever reports Staff would require in the future and to assure that the reporting entities are at all times in possession of the types of data required by Staff in any potential investigation. In general the Commission agrees with commenters such as AESC (Appendix B), CG&E (Appendices B and C), CCE (Appendix C) which argue that these appendices may constitute a barrier to entry or require more data than is necessary for Staff to perform its statutory duties. In deleting these subdivisions and appendices, we do not mean to indicate that Staff's concerns are unimportant. In pursuing our mission to monitor competition in the retail electricity market in Ohio, we are going to require the types of data about which Staff has expressed a concern. Entities responsible for filing reports pursuant to these market monitoring rules will be expected to be able to respond to Commission and Staff data requests in a timely fashion. We have deleted subdivisions C and D of proposed rule 4901:1-21-02 as well as accompanying appendices B and C because we feel that mandating an entity's database parameters is too intrusive given the nature of our mission, i.e., to monitor rather than to regulate.
- (11) Subdivisions (A)(1) through (A)(4) of proposed rule 4901:1-21-02, as the proposed rule is now constituted, require electric utilities, electric services corporations, aggregators, electric cooperatives, governmental aggregators, and electric distribution utilities to submit to the commission various monthly data on a quarterly basis.
- (12) Pursuant to subdivision (A)(1) of proposed rule 4901:1-21-02, electric distribution utilities, electric utilities, competitive retail service (CRES) providers, and certified electric cooperatives and governmental aggregators are to file contact information such as name, address, type of entity, telephone

number, fax number, E-mail address, and authorized signature. The reporting entity shall submit the information electronically to Commission Staff using instructions set forth on the Commission's internet website and file a hard copy of the same information with the Docketing Division of the Commission in a repository case set up by the Commission for this purpose. Subdivision (A)(1) of proposed rule 4901:1-21-02 also requires that those reporting entities that file FERC Quarterly Transaction Reports submit a copy of its current FERC Quarterly Transaction Report to this Commission in the same form as it filed the report with the FERC as a part of the reporting entity's quarterly market monitoring report. Each of the reporting entities will also be required to submit with the first quarterly report for each calendar year, the latest copy of its or its controlling owner's annual report to its shareholders and its Security and Exchange Commission Form 10K or the Form 10-K of its controlling owner. The reporting entity shall submit the information electronically to Commission Staff using instructions set forth on the Commission's internet website and file a hard copy of the same information with the Docketing Division of the Commission in a repository case set up by the Commission for this purpose. The Commission will treat this information as public information.

- (13) Pursuant to subdivision (A)(2) of proposed rule 4901:1-21-02, electric distribution utilities will be required to file a quarterly report containing monthly data related to noncompetitive electric generation services. These quarterly reports shall include data related to the number of customers by class (residential, commercial, industrial, and street lighting/other) for those customers who are standard offer customers and by class for those customers taking service pursuant to a special contract. These quarterly reports shall also include information by class regarding billed sales (MWH) and billed revenues for standard offer customers and for those customers taking service pursuant to a special contract. The reporting entity shall submit the information electronically to Commission Staff using instructions set forth on the Commission's internet website and file a hard copy of the same information with the Docketing Division of the Commission in a repository case set up by the Commission for this purpose. The Commission will also treat this information as public information.

- (14) Subdivision (A)(3) of proposed rule 4901:1-21-02, requires those entities such as CRES providers, certified competitive electric cooperatives, and certified governmental aggregators to provide monthly data related to competitive electric generation services on a quarterly basis. This report is similar in content to the information filed by electric distribution utilities except that the electric generation services reported upon are competitive rather than noncompetitive services. The reporting entity is to submit this information electronically to Commission Staff using the instructions set forth on the Commission's internet website. Because it is inconsistent with the purpose of Chapter 4928, Revised Code, i.e., to foster competitive electricity markets, to make this information public information, the Commission will treat this information as confidential. The fact that the information is confidential, however, does not preclude the Commission or Commission Staff from publishing these data in an aggregated form. Upon request by a CRES provider, the electric distribution utility in whose territory it is operating shall submit the information required pursuant to subdivision (A)(3) of proposed rule 4901:1-21-02 on behalf of the CRES provider. An electric distribution utility may charge a CRES provider to submit reports on behalf of the CRES provider so long as the electric distribution utility's supplier tariff permits such a charge.
- (15) Finally, subdivision (A)(4) of proposed rule 4901:1-21-02 requires aggregators and certified governmental aggregators to submit on a quarterly basis monthly data related to the number of customers by class for each aggregated group served by the aggregator. The reporting entity is to submit this information electronically to Commission Staff using the instructions set forth on the Commission's internet website. The Commission considers information relating to aggregation activity of nongovernmental aggregators to be confidential information. The fact that the information is confidential, however, does not preclude the Commission or Staff from publishing these data in an aggregated form.
- (16) In line with the comments of the electric distribution utilities, the Commission will rely on the Ohio Department of Development for data related to PIPP customers.
- (17) Consistent with the comments, we will not require a "wet" signature on any information transmitted electronically.

When information is transmitted electronically, a scanned signature will suffice.

- (18) In addition to streamlining the reporting requirements of subdivisions A and B of proposed rule 4901:1-21-02, eliminating subdivisions B and C, and all of the appendices to the rule, we have also eliminated proposed subdivision E of the rule. Pursuant to proposed subdivision E, each electric distribution utility, electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification would have been required to establish a customer identification protocol so that data contained in the billing database of each entity pertaining to a particular customer could be identified as pertaining to that particular customer regardless of whose database contained the data. The requirement for a customer identification protocol was related to the filing requirements in proposed appendices B and C accompanying subdivisions C and D. Having eliminated subdivisions C, D, and E, and accompanying appendices B and C, we will not require entities serving a common customer to use an identical account number or to use geographical coordinates to identify a customer. Because the Commission may need information from time to time related to certain sets of customers, each electric distribution utility, electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification will be required to sort their customer databases by the customer's street address, i.e., the address where the service is actually provided, not just a billing address. The customer's street address should include the five-digit zip code.
- (19) The Commission is retaining the requirement of what had been labeled as subdivision F in proposed rule 4901:1-21-02, but what is now subdivision B. This subdivision requires each electric distribution utility, electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification that owns, or has an affiliate that owns, electric transmission facilities to provide the Commission access to information regarding the transmission system so that the Commission can determine the existence and extent of transmission constraints as well as have access to information that will permit the Commission to determine the impact of transmission constraints on the price of competitive retail electric service. CCE commented in this regard that the Commission could require the report-

ing of transmission constraints that resulted in the curtailment of scheduled transactions, identifying the amount of energy (MW) and the duration and frequency of such curtailments (Comments at 52). We believe that as originally drafted what is now subdivision B was broad enough for our Staff to get access to the information mentioned by CCE in its comments. However, we see benefit to being more specific as suggested by CCE and we have amended the language of subdivision B accordingly.

- (20) Finally, we have eliminated proposed rule 4901:1-21-03, the rule related to the use of annual surveys of the customers of the electric distribution utilities. The fact that we have eliminated the rule, however, does not mean that we will forgo the use of surveys in our conduct of monitoring the retail market for electricity in Ohio. We do not believe it to be necessary or desirable to have a rule requiring that surveys be conducted on an annual basis. First, it is not necessary to order surveys by rule. The Commission has continuing authority to monitor the market and may use surveys at any time it chooses. Second, the rule as proposed would have required the Commission to conduct annual surveys of the customers of the electric distribution utilities. The Commission requires the flexibility to conduct surveys more or less often depending on the circumstances. The Commission also may not want to limit the surveys to the customers of electric distribution utilities. For example, as suggested by the commenters, the Commission may find it desirable to survey CRES providers to determine the state of the retail electric service market in Ohio. Electric distribution utilities will pay for any market monitoring surveys since surveys conducted for the purpose of market monitoring are conducted for the benefit of those who are customers of electric distribution utilities.

It is, therefore:

ORDERED, That the proposed rules, as amended, be adopted and filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State's Office 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 upon the request of the CRES provider, the electric distribution utility in whose territory the CRES provider is operating shall submit the information required by subdivision (A)(3) of Rule 4901:1-21-02, O.A.C. It is, further,

ORDERED, That those entities identified in Finding 18, maintain the capability to sort data in a manner described in that finding. It is, further,

ORDERED, That the review date for these rules is September 30, 2002. It is, further,

ORDERED, That a copy of this Finding and Order 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

Donald L. Mason

SJD/vrh