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ENERGY UPDATE

## **PUCO Finalizes SB 221 Electricity Pricing Rules**

Following up on 2007's announced "Energy, Jobs, and Progress" plan for Ohio, Governor Ted Strickland signed into law Senate Bill 221 (SB 221 or "the Act") on May 1, 2008. Under this new law, the regulatory structure for electric public utility companies is significantly revised and new policies for the development of advanced and renewable energy are put forward. The Act became effective on July 31, 2008. The Public Utilities Commission of Ohio (PUCO) adopted the first set of implementation rules on September 17, 2008. These rules provide the details for Ohio electric public utilities to submit their newly required energy pricing applications.

This bulletin provides an overview of the energy pricing provisions of the Act and a focused look at this first set of implementation rules. Future bulletins will examine the renewable energy and energy efficiency provisions of SB 221, utility responses in Ohio and additional implementation rules as they are adopted by the PUCO.

### **LEGISLATIVE HISTORY**

In 1999, Amended Substitute Senate Bill No. 3 established a starting date for competitive retail generation electric service in Ohio and provided for the establishment of a "Market Development Period" through December 31, 2005. Concerned that not enough progress had been made in developing wholesale and retail competition, the PUCO extended the end date of the Market Development Period by allowing Ohio's investor-owned utilities to implement "Rate Stabilization Plans." Many such Rate Stabilization Plans are scheduled to expire on December 31, 2008. Amid further concern that enough market competition had still not developed and that allowing electric public utilities to go to market rates would lead to rate shock, the Ohio legislature drafted SB 221 to replace Senate Bill 3.

### **OVERVIEW OF SB 221'S ELECTRIC ENERGY PRICING PROVISIONS**

SB 221 changes the regulatory framework of electric public utility companies and provides a different pricing context for implementing the previously established objective of providing "reasonably priced" retail electric service. These changes apply to electric utilities and electric distribution utilities (EDUs).<sup>1</sup> An electric utility is "an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying noncompetitive retail electric service in this state or in the business of supplying both a noncompetitive and a competitive retail electric service in this state." Municipal electric utilities and billing and collection agents are expressly excluded from the definition. An EDU is defined in the Act as "an electric utility that supplies at least retail electric distribution service." According to these definitions, municipal utilities



and electric cooperatives are not affected by SB 221's provisions or implementation rules because they are not "for profit."

Under SB 221, each Ohio EDU is required to develop a standard service offer (SSO) for retail service within its exclusive, certified distribution territory beginning on January 1, 2009.<sup>2</sup> Until an EDU's first SSO under the Act is approved, the Rate Stabilization Plan currently in effect will continue.<sup>3</sup> The Act preserves the prior provision in Senate Bill 3 that each utility's SSO will be the default service for a customer, but changes the statutory nature of that service, as well as the PUCO's approval process. The SSO must be either a market rate offer (MRO) or an electric security plan (ESP). A utility's first SSO must be an ESP application; however, the bill permits a simultaneous filing of a MRO. The PUCO may approve a utility's ESP application if it finds that the ESP is more favorable as compared to the expected results that would otherwise apply under a MRO. Once the PUCO approves a utility's MRO, the utility's SSO must always be an MRO; however, market rates will be phased in the beginning, with a split between the rates under an ESP (90 percent) and MRO (10 percent) for the first year. Each year, more of the rate can reflect the market price.

#### **IMPLEMENTATION RULES**

On September 17, 2008, the PUCO adopted final rules outlining the requirements and procedures for Ohio's electric utilities to submit ESPs and MROs and describing reasonable economic development and energy efficiency arrangements. The rules are still subject to rehearing requests, review by the Joint Commission on Agency Rule Review, and possible appeals to the Ohio Supreme Court. A summary of these recently adopted rules follows:

##### ***Chapter 4901:1-35 Electric Utility Standard Service Offer***

- **Rule 4901:1-35-02(A)** requires each electric utility to provide consumers with an SSO of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.
- **Rules 4901:1-35-03 through 1:35-04** establish requirements for the form and process under which the electric utility must file the ESO or MRO application.
- **Rule 4901:1-35-05** provides that once an SSO application is filed, a technical conference will be scheduled to allow interested persons an opportunity to better understand the application.
- **Rule 4901:1-35-06** provides that a hearing will be scheduled and that the electric utility must bear the burden to establish that the proposals in the application are just and reasonable and consistent with the policy of the state as set forth in the Ohio Revised Code.
- **Rule 4901:1-35-08** requires that an electric utility applying for a MRO must propose a plan for a competitive bidding process (CBP). The electric utility must have an independent third party,



accountable to the PUCO, design an open and transparent bid solicitation and administer the bidding process to ensure that the CBP complies with the CBP plan.

- **Rule 4901:1-35-09** sets forth the requirements for filing an ESP that includes automatic adjustments, as allowed under Section 4928.143 of the Ohio Revised Code.
- **Rule 4901:1-35-11** requires that an electric utility's initial MRO include a blended price for electric generation services.

#### ***Chapter 4901:1-36 Transmission Cost Recovery***

This chapter authorizes and sets forth the process by which an electric utility may recover, through a reconcilable rider on the electric utility's rates, all transmission and transmission-related costs imposed on the utility by the Federal Energy Regulatory Commission (FERC) or a regional transmission organization, independent transmission operator, or similar organization approved by the FERC.

- **Rule 4901:1-36-04** includes a requirement that electric utilities include offsetting benefits in the calculation of the rider.

#### ***Chapter 4901:1-37 Corporate Separation***

This chapter replaces rule 4901:1-20-16 and requires every electric utility to meet certain standards to ensure that a competitive advantage is not gained due to corporate affiliation.

- **Rule 4901:1-37-04** lists the structural safeguards, accounting guidelines, restrictions on financial arrangements and a code of conduct with which electric utilities must comply.
- **Rule 4901:1-37-05** requires each electric utility to file an application for approval of a proposed corporate separation plan with the PUCO. The application must describe how the plan ensures competitive equality, prevents unfair competitive advantage, prohibits the abuse of market power and effectuates the policy of the state of Ohio.
- **Rules 4901:1-37-05 and 1-37-06** set forth the required provisions of the proposed corporate separation plans and the process for revising and amending the electric utility's approved corporate separation plan.
- **Rule 4901:1-37-08** requires electric utilities that provide or receive products and/or services to/from an affiliate to maintain information in a Cost Allocation Manual that documents the cost allocation procedure between the electric utility and affiliates and its regulated and non-regulated operations.
- **Rule 4901:1-37-09** prohibits an electric utility from selling or transferring any generating asset it owns, either in whole or in part, without prior PUCO approval.



### ***Chapter 4901:1-38 Reasonable Arrangements***

This chapter promotes SB 221's<sup>4</sup> policy to facilitate Ohio's effectiveness in the global economy, promote job growth and retention in the state, ensure the availability of reasonably priced electric service, promote energy efficiency and provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates.

- **Rule 4901:1-38-03** allows an electric utility, mercantile customer or group of mercantile customers of an electric utility to file the following applications for the PUCO's approval:
  - 1) an economic development arrangement between the electric utility and a new or expanding customer or group of customers;
  - 2) an economic development arrangement between the electric utility and its customer or group of customers for the retention of existing customers likely to cease or reduce operations, or relocate out of Ohio; and
  - 3) an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities.
- **Rule 4901:1-38-08** allows electric utilities to apply for a rider for the recovery of certain costs associated with the difference in rate levels between the otherwise applicable rate schedule and the result of any economic development schedule, energy efficiency schedule or unique arrangement ("delta revenue").

### **CURRENTLY FILED SSOs**

On July 31, 2008, the following electric utilities filed ESPs because their SSOs are to commence on January 1, 2009, following expiration of their Rate Stabilization Plans: Columbus Southern Power Company and Ohio Power Company (collectively AEP-Ohio); Duke Energy Ohio, Inc. (Duke); and Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively FirstEnergy). In addition to filing an ESP, FirstEnergy also filed an application for a MRO. The Dayton Power and Light Company's (DP&L) Rate Stabilization Plan does not expire until December 31, 2010, so DP&L has not filed a SSO at this time. All of the filed SSOs request an increase in rates above the current Rate Stabilization Plans.

The PUCO has set procedural schedules for the SSO applications filed by AEP-Ohio, Duke and FirstEnergy. Local public hearings will be held in the companies' service areas to provide consumers an opportunity to express their opinions and concerns about the plans. The schedule of public hearings is available on the PUCO's website.<sup>5</sup>



## **ADDITIONAL IMPLEMENTATION RULES**

Two additional sets of implementation rules were released by the PUCO for public comment on July 23, 2008 and August 20, 2008, respectively. The first additional set of rules modifies existing rules dealing with the minimum service and safety standards for service provided by electric utilities. The second additional set of rules deals with alternative energy resources, renewable energy credits, clean coal technology and federal environmental regulations. Public comments have been submitted and the additional sets of rules are expected to be adopted by the PUCO in October 2008.

## **FOR MORE INFORMATION**

We will continue to monitor the implementation of SB 221 and keep clients informed of new developments affecting electric service and rates in Ohio. If you have questions or would like more information, please contact:

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<sup>1</sup> The Act as enacted applies to EDUs; however, the PUCO rules as written apply to “electric utilities”

<sup>2</sup> Section 4928.141 (A)

<sup>3</sup> Section 4928.141(A)

<sup>4</sup> Section 4901.02

<sup>5</sup> <http://www.puco.ohio.gov/PUCO/Consumer/Information.cfm?id=8496>