

REQUEST FOR PROPOSAL

Issued by
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Rate of Return Issues
RFP Number 2009-07
Issued August 27, 2008

**REQUEST FOR PROPOSAL
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PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Proposal (“RFP”) issued by the Office of the Ohio Consumers’ Counsel (“OCC”) to solicit proposals from Independent Contractors to provide assistance to the OCC in addressing the rate of return issues, including analyses related to the capital structure and costs of debt and equity, regarding the Duke Energy Ohio, Inc., rate case filed in Public Utilities Commission of Ohio (“PUCO”) Case Nos. 08- 709-EL-AIR, 08-710-EL-ATA and 08- 711-EL-AAM (“Case Nos. 08-709-EL-AIR et al.”).

Background. The OCC plays an integral part in Ohio's government and economy by fulfilling its role as the advocate agency for residential utility consumers. Established in 1976, the OCC participates in major rate, fuel, rule-making and federal cases affecting the utility service of Ohio’s residential consumers.

The law governing the agency's activities is contained in Chapter 4911 of the Ohio Revised Code.

The Consumers' Counsel is appointed by and remains responsible to a nine-member Governing Board. The representative role of the Governing Board can be viewed as incorporating three broad functions: accountability to the Public, the General Assembly and the Attorney General; policy-making in directing the Consumers' Counsel; and oversight of the Consumers' Counsel Office.

The Consumers' Counsel appoints and administers a staff to carry out her legislative mandates. The office works to protect the interests of residential utility consumers, which is accomplished by formal case interventions, informal negotiation and dispute resolution, complaint and inquiry handling, educational efforts and analytical and legal assistance to legislators and others on public utility issues.

PART TWO: GENERAL INSTRUCTIONS

Calendar of Events. The schedule for this RFP and the work is given below. The OCC reserves the right to change this schedule as needed.

Firm Dates

RFP Issued: August 27, 2008
Proposal Due Date/Time: September 11, 2008 @ 5:00 p.m.

Estimated Dates

Contract Award: September 12, 2008
Work Begins: If Controlling Board approval needed October 06, 2008
If Controlling Board approval is not needed September 19, 2008

If the contractor awarded a contract under this RFP has total contracts during the current state fiscal year totaling \$50,000 or more, the OCC will seek approval from the State of Ohio Controlling Board for the use of funds for the contract under this RFP. The timing of that approval is dependent on the dates for submission to the Board and the scheduled meeting of the Board. The "work begins" dates above reflect OCC's current estimate of the timing of that approval process.

Completed: June 30, 2009

Contacts. The following individual will represent the OCC as the primary contact for matters relating to the non-technical aspects of the RFP and during the contract negotiation/award process and subsequent invoicing.

Mary Seltzer

Operations Administrative Assistant
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, Ohio 43215
614-728-5171
E-mail: seltzer@occ.state.oh.us

The following individuals will represent the OCC as the primary contact for matters relating to technical aspects of the RFP and throughout the performance of the work upon the awarding of the contract.

Aster Adams

Director of Analytical Services
Office of the Ohio Consumers' Counsel
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Proposal Submission. Proposals are to be mailed or delivered to: Mary Seltzer, Office of the Ohio Consumers' Counsel, 10 W. Broad Street, Suite 1800, Columbus, Ohio 43215-3485. Proposals may also be faxed to (614) 728-7498 or submitted via e-mail to seltzer@occ.state.oh.us. To be considered for award, all proposals must be received no later than **5:00 p.m. on September 11, 2008**.

The OCC may reject any proposals or unsolicited proposal amendments that are received after the deadline regardless of the cause for the delay. A prospective contractor that mails its proposal must allow for adequate mailing time to ensure its timely receipt.

Each prospective contractor must carefully review the requirements of this RFP and the contents of its proposal. All prospective contractors are on notice that the OCC will not be liable for any costs incurred by any prospective contractor in responding to this RFP, regardless of whether the OCC awards the contract through this process, decides not to go forward with the work, cancels this RFP for any reason, or contracts for the work through some other process or by issuing another RFP.

By submitting a proposal, the prospective contractor acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The prospective contractor also agrees that the contract will be the complete and exclusive statement of the agreement between the OCC and the contractor and will supersede all communications between the parties regarding the contract's subject matter.

The OCC may reject any proposal if the prospective contractor takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the prospective contractor's proposal fails to meet any requirement of this RFP. The OCC may reject any proposal that is not in the best interest of the OCC to accept. Further, the OCC may decide not to do business with any of the prospective contractors responding to this RFP.

All proposals and other material submitted will become the property of the OCC and may be returned only at the option of the OCC. Proprietary information should not be included in a proposal or supporting materials because the OCC will have the right to use any materials or ideas submitted in any proposal without compensation to the prospective contractor.

The OCC will retain all proposals, or a copy of them, as part of the contract file for at least sixteen (16) years. After the retention period, the OCC may return, destroy, or otherwise dispose of the proposals or the copies.

Waiver of Defects. The OCC has the right to waive any defects in any proposal or in the submission process followed by a prospective contractor. However, the OCC will only do so if it is in the best interest of the OCC and will not cause any material unfairness to other prospective contractors.

Amendments to Proposals. Amendments or withdrawals of proposals will be allowed if the amendment or withdrawal is received before the proposal due date. No amendment or withdrawals will be permitted after the due date, except as expressly authorized by the OCC.

Amendments to the RFP. If the OCC decides to revise this RFP, amendments will be made available to all prospective contractors. When the OCC makes amendments to the RFP after proposals have been submitted, the OCC will permit prospective contractors to withdraw or modify their proposals.

Contract. If this RFP results in a contract award, the contract will include by reference this RFP, written amendments to this RFP, the prospective contractor's proposal, and written, authorized amendments to the Contractor's proposal. It will also include any purchase orders and change orders issued under the Contract.

PART THREE: SCOPE OF WORK AND DELIVERABLES

This section describes the scope of work and what the selected contractor must deliver as part of the completed work (the "Deliverables") to meet the terms and conditions of the subsequent contract.

History. On July 25, 2008 Duke Energy Ohio ("DE-Ohio or Company") submitted an Application with the Standard Filing Requirements ("SFR") to the Public Utilities Commission of Ohio ("PUCO") to make changes and increases in electric distribution rates that would result in approximately \$86 million in additional annual revenue. On August 8, 2008 DE-Ohio filed direct testimony of its witnesses supporting its Application.¹ DE-Ohio's test year is the twelve months ending December 31, 2008 with a date certain of March 31, 2008.

DE-Ohio serves approximately 690,000 electric distribution customers in southwestern Ohio, including the City of Cincinnati. The utility's current electric distribution rates were effective in January 2006 as approved by the PUCO in Case Nos. 05-59-EL-AIR et al. The PUCO approved a joint stipulation and recommendation in Case Nos. 05-59-EL-AIR et al which included a revenue increase of \$51.5 million, which represented the midpoint of the PUCO staff's updated revenue increase range. All parties, including the OCC, signed this stipulation. In that rate case, the test year was the twelve months ended June 30, 2005 and the date certain was September 30, 2004.

Duke is also proposing to increase its monthly fixed delivery charge from \$4.50 to \$10.00, with an offsetting reduction in the usage-based charge. The Company proposes new Distribution Rider and Development Incentive Rider to recover its investment in Smart Grid modernization project, electric distribution reliability improvement and economic development programs.

Scope of Work. The Independent Contractor will be fully responsible for the review, analysis, and evaluation of all materials filed by Duke and any other parties in the proceedings relative to the company's rate of return ("ROR") used to develop the appropriate revenue requirement for Duke. Such evaluation and analysis should determine the proper regulatory treatment of the Company's costs of debt and equity. The Independent Contractor will also be responsible for the presentation of OCC's recommended rate of return, incorporating information developed by OCC staff and any co-consultants retained by OCC.

The Independent Contractor will also be responsible for the analysis and evaluation of such rate of return, costs of debt and equity, and capital structure background materials as may be provided by OCC, or identified by the Independent Contractor during the course of his or her review. The Independent Contractor will be expected to bring to his or her analysis substantial experience in evaluating all issues related to rate of return for OAW.

¹ The July 25, 2008 , 2008 Application, SFR and other documents filed in Case No. 08-709-EL-AIR et al. are available to the public in the specified docket on the PUCO's website at <http://www.puco.ohio.gov/puco/docketing/> DE-Ohio's press release on this base rate case is available at the Company's website at <http://www.duke-energy.com/news/releases/>

Work Requirements and Deliverables. The Independent Contractor shall undertake the following work and activities as requested and approved by OCC for the identification, analysis and development of all issues related to the rate of return, costs of debt and equity, and capital structure proposed by the Company, the Staff of the PUCO and other parties and the recommendation of an appropriate rate of return for the Company in this proceeding:

1. Review and prepare an analysis and critique of the Company's proposed rate of return including a review of the Company's Application, work papers and supporting testimonies related to proposed rate of return components.
2. Provide technical support on the rate of return issues for the discovery process in the proceeding, including:
 - a. Prepare discovery (interrogatories and requests for production of documents);
 - b. Review responses to OCC's discovery; such review may require travel (i.e. Duke may make documents available in Cincinnati, Ohio);
 - c. Attend any depositions of Company personnel and/or other parties' personnel, as required by OCC's Lead Attorney; such depositions may require travel;
 - d. As required by OCC, attendance at any depositions of the Independent Contractor conducted by the Company or other parties, as required by OCC's Lead Attorney;
 - e. Review all discovery requests served upon the OCC by other parties and assistance in preparing OCC's responses to such discovery.
3. Review and prepare an analysis and critique of the Staff of the PUCO's proposed rate of return in its Staff Report of Investigation ("Staff Report"), work papers and supporting testimony, including preparation of objections to the Staff Report on the same or related issues. It is estimated that a Staff Report will be issued approximately five months after the Company files its Standard Filing Requirements (SFR). Company, OCC and other parties' objections to the Staff Report, along with testimony, are due thirty days from the date the Staff Report is issued.
4. Provide technical support, as identified by OCC's Lead Attorney, for the legal preparation involved in the proceeding including an analysis of written and oral testimony of other witnesses (the Company, PUCO Staff and other parties) to assist with cross-examination. Such testimony will include the Company's initial direct testimony, all parties' testimony supporting objections to the Staff Report, PUCO Staff testimony responding to parties' objections and any party's subsequent update and/or rebuttal testimony.
5. Provide technical assistance needed for any pre-hearing or settlement conferences.
6. Recommend an appropriate rate of return for Duke:
 - a. Prepare written, direct and, if needed, rebuttal testimony and presentation of that testimony at hearing.
 - b. Testimony shall include the appropriate regulatory treatment for cost of equity, cost of debt, the capital structure for the Company, and any other relevant rate of return issues.

7. Review the information developed by and the testimony of any co-consultants retained by OCC in order to coordinate the OCC's development of issues in this proceeding.
8. Provide technical assistance on rate of return issues subsequent to the hearing in order to prepare post-hearing briefs and evaluate issues for possible rehearing and/or appeals including, but not limited to, evaluation of those and related issues in the PUCO's Opinion and Order and, if requested, by OCC's Lead Attorney.

PART FOUR: PROPOSAL REQUIREMENTS

Proposal Format. Each proposal must include sufficient data to allow the OCC to verify the total cost for the work and all of the prospective contractor's claims of meeting the RFP's requirements. These instructions describe the required format for a responsive proposal. The prospective contractor may include any additional information it believes is relevant.

- 1. Contractor Profile.** Each proposal must include a general profile of the prospective contractor's relevant experience working on projects similar to this work. In the **Contractor Profile**, or in **Personnel Profile Summaries** (see below), details on prior and current similar and/or relevant work projects should be provided, including the scope of such work, clients, utility names and case numbers. While generally detail is preferred on a contractor's most recent work, due to the considerable length of time since many Ohio utilities have sought distribution rate increases, contractors are encouraged to provide detail on all relevant work in Ohio.

The profile must also include the prospective contractor's legal name, address, and telephone number; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); total number of employees nationwide and in Ohio; the percentage of women employees nationwide and in Ohio; the percentage of minorities nationwide and in Ohio; number of employees to be engaged in tasks directly related to the work; and any other background information the prospective contractor believes would be useful during the proposal evaluation process. For any subcontractors included in your proposal, indicate whether they operate as an individual, partnership or corporation; if as a corporation, include the state in which they are incorporated. State whether they are licensed to operate in the State of Ohio. State the same employee information as noted above for the primary contractor.

- 2. Work Plan.** The prospective contractor must fully describe its approach, methods, and specific work steps for doing the work and producing the **Work Requirements and Deliverables set forth in Part Three of this RFP**. The OCC encourages responses that demonstrate a thorough understanding of the nature of the work and what the Contractor must do to get the work done well. The prospective contractor must also provide a complete and detailed description of the way it will do the work that addresses the areas of concern identified below.

The OCC seeks insightful responses that describe proven, state-of-the-art methods. Recommended solutions should demonstrate the prospective contractor's ability to quickly undertake and successfully complete the required tasks.

In describing its work plan the prospective contractor should provide detail sufficient to demonstrate its understanding of (1) potential and new ratemaking issues, (2) the current national and Ohio regulatory environment and (3) the policies of the OCC.

The prospective contractor's work plan must clearly and specifically identify key personnel assignments and the number of hours by individual for each of the Work Requirements and Deliverables set forth in Part Three of this RFP.

3. **Personnel Profile Summaries.** Each prospective contractor must identify a project team that demonstrates a thorough understanding of the project and possesses the education and experience to support the successful completion of the project. Each proposal must include a profile and/or resume for each key member of the proposed work team to demonstrate the competency of the project team personnel and include the following information:

- **Team Member Names**
- **Experience and Qualifications.** For each team member identify experience and qualifications relevant to this project, including testimonies previously presented. Identify which team members are expected to present testimony on this project.
- **Dates of Employment.** The length of time the team member performed relevant work requiring the necessary technical expertise.
- **Project Experience.** The work of the team member on projects of similar or greater size and scope, including projects in Ohio and/or for the OCC.

4. **References.** The prospective contractor must include three references for which the prospective contractor has successfully provided services on projects that were similar in their nature, size, and scope to the work. These references must relate to work that was completed within the past five (5) years.

Note: Each reference must be willing to discuss the prospective contractor's performance with an OCC representative.

5. **Cost Summary.** The OCC budget for this RFP is \$25,000. Each prospective contractor must provide a cost summary table showing: (1) project team members, (2) estimated hours, (3) hourly rates and (4) total estimated project costs for each of the Work Requirements and Deliverables set forth in Part Three of this RFP. Contractors may cost and subsequently invoice as follows:

1. The OCC requires the inclusion of all expenses associated with this project within the hourly rates and hours used to determine the costs for the deliverables, thereby eliminating the need for expense billings. Items to be taken into consideration in determining the cost of each deliverable should include supplies and materials, transportation and per diems, copying and overnight mail charges, etc. The successful bidder will be responsible for direct payment to vendors for any requirements for overnight mail (including OCC to Contractor) and any "on-site" photocopying charges.

2. Contractor may invoice only for actual work performed and documented.
6. **Subcontractors.** Acceptance by the Consumers' Counsel of a primary bidder's proposal does not necessarily require the Consumers' Counsel to accept the subcontractor(s) proposal proposed by the bidder. The Consumers' Counsel reserves the right to evaluate the qualifications of all sub-contractors proposed by the primary bidder.
7. All firms submitting proposals on projects with 15 or more employees, who have less than 15% minorities in their employ, will be asked to subcontract with a MBE/EDGE provider for not less than 20% of the contract award. Refer to the following website for information on the MBE/EDGE program www.das.ohio.gov/Eod/Edge/Index.htm.
8. The OCC will not be liable for any costs the prospective contractor does not identify in its proposal.
9. Submit a list of all Ohio public utilities for which you or your staff performed work in a professional capacity during the past three years.
10. Submit an original W9 form along with your response to this bid letter so that, if a contract is awarded, the OCC can process any invoices submitted by your company. The Internet link to the form is: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. The form must be signed and dated.
11. Submit a statement to Mary Seltzer, along with your response to this bid letter, affirming that you or members of your staff do not currently owe any money to the state of Ohio or have an unresolved finding for recovery from the Auditor of State.
12. **Declaration of Material Assistance/Non-Assistance**
If you will or have received in the aggregate an amount greater than \$100,000 from the state of Ohio, you must complete a certification. You can complete the pre-certification process electronically by going to <http://www.obg.ohio.gov>.
13. **Campaign Contribution**
House Bill 694 requires that every contract for goods or services of more than \$500 must contain a certification signed by the contract recipient certifying that the recipient is in compliance with Ohio Revised Code 3517.13. If awarded a contract, contractor will certify the following:

"Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13."

For more information please refer to <http://www.obm.ohio.gov>.

PART FIVE: EVALUATION OF PROPOSALS

Evaluation of Proposals. Generally, the evaluation process may consist of up to four distinct phases:

1. The Initial Review of all proposals for defects
2. The Evaluation of the proposals by the Evaluation Committee
3. Request for More Information (Interviews, Presentations, and Demonstrations)
4. Negotiations

It is within the purview of the OCC Evaluation Committee ("Committee") to decide whether phases three and four are necessary.

Rejection of Proposals. The OCC may reject any proposal that is not in the required format, does not address all the requirements of this RFP, or that the OCC believes is excessive in price or otherwise not in the best interest of the OCC to consider or to accept. In addition, the OCC may cancel this RFP, reject all the proposals, and seek to do the work through a new RFP or other means.

Clarifications: During the evaluation process, clarifications may be requested from any prospective contractor under active consideration and the clarification may give any prospective contractor the opportunity to correct defects in its proposal. This may be done in cases where doing so would not result in an unfair advantage for the prospective contractor and the clarification is in the best interest of the OCC.

1. **Initial Review:** The proposals will be reviewed for their timeliness, format, and completeness. Any late, incomplete, or incorrectly formatted proposals may be rejected. Likewise, any defects may be waived or a prospective contractor may be allowed to submit a correction.

If a late proposal is rejected, it will not be opened or evaluated for format or completeness.

All timely, complete, and properly formatted proposals will be forwarded to the Evaluation Committee.

2. **Committee Review of the Proposals:** The Committee will evaluate each proposal forwarded to it. The Committee may also have the proposals or portions of them reviewed and evaluated by independent third parties or other OCC personnel with technical or professional experience that relates to the work or to the criteria used in the evaluation process. The Committee may adopt or reject any recommendations it receives from such reviews and evaluations. At any time during this phase, the Committee may ask a prospective contractor to correct, revise, or clarify any portions of its proposal.

Contract Award. The OCC plans to award the Contract for the work on September 12, 2008. The OCC reserves the right to change the contract award date if it becomes necessary. The contract will be awarded to the contractor that demonstrates a clear understanding of OCC's expectations and can complete the scope of work and deliverables at the lowest cost.