

## **REQUEST FOR PROPOSAL**

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

**Senate Bill 221 (Excess Earnings Determination)**  
RFP Number 2009-01  
Re-Issued August 7, 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 technical assistance to the OCC in investigating excess earnings of Ohio electric distribution utilities (EDUs) in the upcoming Standard Service Offer (SSO) for generation application under either a market rate option (MRO) and/or an electric security plan (ESP) which all Ohio EDUs are required to file before the Public Utilities Commission of Ohio (PUCO) under the recently signed law (substitute S.B. 221 bill).

**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 7, **2008**

Proposal Due Date/Time: August **15, 2008 @ 5:00p.m.**

### **Estimated Dates**

Work Begins:

If Controlling Board approval is **not** required **August 29, 2008**

If Controlling Board approval is required **September 8, 2008**

Contract End Date: **June 30, 2009**

Contract Award: **August 20, 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 is required to seek approval from the State of Ohio Controlling Board for the use of funds.

**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 Administration 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](mailto: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  
10 W. Broad Street, Suite 1800  
Columbus, Ohio 43215  
614-466-9593  
E-mail: [adams@occ.state.oh.us](mailto:adams@occ.state.oh.us)

**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](mailto:seltzer@occ.state.oh.us). To be considered for award, all proposals must be received no later than **5:00 p.m. on August 15, 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 (SB-221 Excess Earnings Determination)**

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.

The OCC is interested in contracting for consulting services to provide timely technical assistance to effectively investigate excess earnings of Ohio electric distribution utilities (EDUs) in the Standard Service Offer (SSO) for generation applications under either a market rate option (MRO) and/or an electric security plan (ESP) which all Ohio EDUs are required to file before the Public Utilities Commission of Ohio (PUCO) under the recently signed S.B. 221 bill (copy of legislation is attached). Under both options, the PUCO has been charged by law to determine whether any upward or downward adjustment to the most recent standard service offer price is reasonable and does not result in utilities earning excessive returns on common equity. The determination of excessive earnings requires inquiries in the utilities’ filings when a utility files an MRO, and when a utility files an ESP (including the continuation of its current rate stabilization plan).

Specifically, upon request of OCC, the Independent Contractor shall be responsible for reviewing testimony on excess earnings determination filed the Case Nos. 08-917-EL-SSO et al. (AEP), 08-920-EL-SSO et al. (Duke Energy Ohio), 08-935-EL-SSO et al. (FirstEnergy) and the SSO case to be filed by DP&L. The Independent contractor may bid to assist the OCC in a single ESP case or multiple ESP cases.<sup>1</sup>

- Bids should be Separated into hours and costs for each on the four cases (i.e, FE Companies, AEP Companies, Duke, and DP&L)
- If the contractor proposes to provide service for more than one case, the bid should provide total hours and costs, including an explanation of any discounts related to bids for multiple filings

The Independent contractor’s bid shall include the following work elements:  
As part of this RFP, for each case above, OCC requests that interested consultants provide information and price quotes on the following individual menu of services (i.e. I. and II.):

**I. Investigation of Excessive Earnings under the MRO:** Under S.B. 221, for the first MRO application made by an EDU that directly owns generating facilities, the SSO price for generation is a proportionate blend of competitive bid price and of the EDU’s most recent SSO price. (S.B. 221, Sec. 4928.142 (D)) In determining this “blended SSO,” the PUCO is required by S.B. 221, among other things, to adjust upward or downward the utility’s most recent SSO price as the commission determines reasonable. Specifically, S.B. 221, Sec. 4928.142 (D) requires the following:

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<sup>1</sup> <http://dis.puc.state.oh.us/TiffToPdf/A1001001A08G31A84439I41414.pdf>  
<http://dis.puc.state.oh.us/TiffToPdf/A1001001A08G31B73642H73820.pdf>  
<http://dis.puc.state.oh.us/TiffToPdf/A1001001A08G31B73642C74064.pdf>  
<http://dis.puc.state.oh.us/TiffToPdf/A1001001A08G31B70747F93269.pdf> (start at p. 99)

In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility.

Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division.

**Topics to address may include:**

1. The standards the PUCO should follow in the determination of a utility's excess earnings under a MRO.
2. Review and prepare an analysis of the EDU's application to determine whether or not approval of the application will result in an excessive return on common equity.
3. The need and the impact of the PUCO adjustments to the most recent SSO on the utility's return on common equity.
4. What evidence should utilities present to demonstrate that they are not earning significant excess return?

5. What should be considered in the determination of a utility's financial integrity under the MRO?
6. How should excess earnings be returned to utility consumers?

**II. Investigation of Excessive Earnings under the ESP:** S.B. 221 requires the PUCO to determine whether or not the EDUs who file ESPs with terms exceeding three years will be earning excessive returns. Specifically, S.B. 221, **Sec. 4928.143 (E)** requires the following:

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. If the test results are in the negative or the commission finds that continuation of the electric security plan will result in a return on equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that will face comparable business and financial risk, with such adjustments for capital structure as may be appropriate, during the balance of the plan, the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that

occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.

The OCC would like the Independent Contractor to analyze an EDU's initial ESP application in order to determine whether or not the ESP will likely provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate.

**Topics to address may include:**

1. The standards the PUCO should follow in determining whether or not the utility's ESP application will result in excessive return on common equity under an ESP.
2. Review and prepare an analysis of the EDU's ESP application to determine whether or not approval of the application will result in an excessive return on common equity.
3. What evidence should utilities present to demonstrate that they are not earning significant excess return on common equity?
4. How should excess earnings be returned to utility consumers?

For each investigation of excessive earnings under the MRO and the ESP (i.e. I. and II. described above), the Independent Contractor will be expected by the OCC to assist with the following process:

1. Provide technical support on the review of excess return on equity for each utility filing an ESP and/or MRO 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;
  - c. Attend any depositions scheduled 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;
  - e. Review all discovery requests served upon the OCC by other parties and assistance in preparing OCC's responses to such discovery.
2. 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.
3. Provide technical assistance needed for any pre-hearing or settlement conferences.

4. Prepare written, direct and, if needed, rebuttal testimony and presentation of that testimony at hearing. Testimony shall include recommendations of any adjustments to the ESP and/or the MRO necessary to reduce the utility's rate of return on common equity to a level that is comparable to other electric distribution utilities facing similar business and financial risks as the applicants.
5. 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 the proceeding.
6. Provide technical assistance on related 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 issues affecting the return on common equity and related issues in the PUCO's Opinion and Order and, if requested, by OCC's Lead Attorney.

The Independent contractor may bid to assist the OCC in a single ESP or MRO case or multiple ESP or MRO cases. The Independent contractor may bid for all or parts of the RFP and may subcontract parts of this RFP consistent with OCC proposal requirements.

#### **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 detail is generally 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) OCC's thinking on major utility issues.

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.** 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** as set forth in Part Three of this RFP. The prospective contractor's total cost for the entire project **must be itemized for fiscal year 2009**, and the total must be represented as the not-to-exceed cost. 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](http://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 Edwards, 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 receive 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 **August 20, 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.