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139 East Fourth Street, R. 25 At II
P.O. Box 960
Cincinnati, Ohio 45201-0960
Tel: 513-287-4489
Fax: 513-287-2996
Tamara.McIntosh@duke-energy.com
Tamara R. Reid McIntosh, Esq.
Regulatory Legal Liaison
Business Standards & Integration

Ms. Renee J. Jenkins
Docketing Department
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, Ohio 43215

Re: Case No. 06-653-EL-ORD: *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24 and 4901:1-25*

Dear Renee:

Attached, please find the original and 17 copies of Duke Energy Ohio's comments in *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24 and 4901:1-25*. Please file the original and date stamp the two extra copies of the memorandum and return them to me in the enclosed overnight envelope.

Should you have any questions, please contact me at 513-287-4489 or Paul Colbert at 614-221-7551.

Kind Regards,

Tamara R. R. McIntosh, Esq.
Regulatory Legal Liaison
Duke Energy Ohio

cc: Paul Colbert, Associate General Counsel, DE-Ohio
Mike Gribler, GM, State Regulatory Affairs, DE-Ohio
Retha Hunsicker, Director, Business Standards & Integration, DE-Ohio

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)	
Chapters 4901:1-9, 4901:1-10, 4901:1-21,)	Case No. 06-653-EL-ORD
4901:1-22; 4901:1-23, 4901:1-24 and 4901:1-25)	
of the Ohio Administrative Code)	

**INITIAL COMMENTS OF
DUKE ENERGY OHIO**

INTRODUCTION:

In its Entry dated April 4, 2007, the Public Utilities Commission of Ohio (Commission) proposed certain changes to its regulations pertaining to the (1) Preservation of Records by Electric, Gas, Water, and Sewage Disposal Utilities at Chapters 4901:1-9 *et seq.* and Appendix A; (2) Electric Service and Safety Standards (ESSS) at Chapters 4901:1-10 *et seq.*; (3) Competitive Retail Electric Service (CRES) Providers at Chapters 4901:1-21 *et seq.*; (4) Electric Reliability, Safety and Customer Service Standards Enforcement at Chapters 4901:1-23 *et seq.*; (5) Certification of CRES Providers at Chapters 4901:1-24 *et seq.*; and (6) Market Monitoring at Chapters 4901:1-25 of the Ohio Administrative Code (O.A.C.).¹ The Commission seeks comments from interested parties on the proposed changes no later than Friday, June 8, 2007.

¹ The Commission proposed no substantive changes to Chapters 4901:1-22 of the O.A.C. in this proceeding; however, the Commission has proposed substantive changes to Chapter 4901:1-22 in Case No. 05-1500-EL-COI. Duke Energy Ohio has filed an Application for Rehearing in that proceeding.

Duke Energy Ohio (DE-Ohio) is an Ohio corporation engaged in the business of supplying electricity and natural gas to consumers in Southwestern Ohio and is a public utility as defined by Sections 4905.02 and 4905.03 of the Ohio Revised Code (O.R.C.). The Commission's proposed changes, if adopted, will directly impact DE-Ohio's provision of electric service to consumers in Southwestern Ohio.

DE-Ohio appreciates the opportunity to offer comments to the Commission Staff's (Staff) proposed modifications. In this instance, Staff has opted to consolidate its review of several rather lengthy, comprehensive provisions instead of reviewing each major provision in a separate proceeding, as has been the case in previous years. To adequately address the modifications proposed by Staff, DE-Ohio's comments are arranged such that general and specific comments focusing on proposed rules are provided collectively under separate headings. Accordingly, DE-Ohio respectfully submits the following comments regarding the Staff's proposed changes to the afore-referenced regulations (Proposed Rules).

GENERAL AND SPECIFIC COMMENTS:

I. 4901:1-9 *et seq.*: Regulations to Govern the Preservation of Records

The Commission Staff proposes numerous changes to this section. Specifically, Staff provides general instructions related to the scope of its record retention requirements as well as proposes changes to the retention periods at Appendix A of O.A.C. 4901:1-09-06. In Section (J) of the General Instruction at O.A.C. 4901:1-09-06,

Staff refers to "records related to plant." Without more, however, this provision is somewhat vague. DE-Ohio recommends that Staff modify Section (J), *Schedule of Records and Periods of Retention*, in order to provide clarity. As all reference to this instruction has been removed from the body of the schedule, DE-Ohio recommends modifying Section (J) to include clarification as to which sections of O.A.C. 4901:1-09 are pertinent to Section (J).

Additionally, Staff recommends several modifications to Appendix A of 4901:1-9-06. According to the Commission's April 4, 2007 Entry,² these modifications are designed to substantially condense regulations associated with record retention. During its May 3, 2007, technical conference, the Commission Staff also indicated that it made such modifications in order to better align Ohio's regulatory requirements with those of the Federal Energy Regulatory Commission (FERC).

To this end, DE-Ohio recommends that Commission further modify the retention requirements in order to ensure that all retention periods are consistent with those of FERC. DE-Ohio suggests the following additional modifications:

A. Corporate and General

(A) Annual reports or statements to stockholders. DE-Ohio recommends modifying this retention requirement from 50 years or life of corporate which ever comes first to 5 years.

² See Case No. 06-653-EL-ORD, Entry dated April 4, 2007 at page 2.

(C)(1) Minute books of stockholders, directors', and directors' committee meetings. DE-Ohio recommends modifying this retention requirement from 50 years or termination of the corporation's existence, whichever occurs first to 5 years.

(E) Internal audit reports and work papers. DE-Ohio recommends modifying this retention requirement from 7 years after date of report or commission audit, whichever comes last, to 6 years.

B. General Accounting Records

(A)(1) General, subsidiary, and auxiliary ledgers. DE-Ohio recommends modifying this retention requirement from 50 years to 10 years.

(B) General and subsidiary journals. DE-Ohio recommends modifying this retention requirement from 50 years to 10 years.

(C)(1) Journal vouchers and journal entries. DE-Ohio recommends modifying this retention requirement from 50 years to 10 years.

(D) Cash books: General and subsidiary or auxiliary books. DE-Ohio recommends modifying this retention requirement from 10 years to 5 years.

(E) Voucher or similar records when used as a source document. DE-Ohio recommends modifying this retention requirement from 6 years to 5 years.

C. Operations and Maintenance

(A)(1)(b) Generation and output logs with supporting data. DE-Ohio recommends modifying this retention requirement from 6 years to 3 years.

(A)(2)(c) Test of Heating Value at Stations and Outlying Points. DE-Ohio recommends modifying this retention requirement from 6 years to, *"If the measurement data have not been disputed or adjusted destroy after 1 year."*

(E) Maintenance work orders and job orders. DE-Ohio recommends modifying this retention requirement from 6 years to 5 years.

D. Plant and Depreciation

(A)(1) Ledgers of utility plant accounts. DE-Ohio recommends modifying this retention requirement from 50 years to 25 years.

(B)(1) Construction work in progress ledgers. DE-Ohio recommends modifying this retention requirement from 10 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 6 years after the plant is retired, to 5 years.

(B)(2) Authorizations for expenditures for additions to utility plant.... DE-Ohio recommends modifying this retention requirement from 10 years to 5 years.

(C)(1) Work order sheets to which are posted the entries for removal costs... DE-Ohio recommends modifying this retention requirement from 10 years to 5 years.

(C)(2) Authorizations for retirement of utility plant... DE-Ohio recommends modifying this retention requirement from 10 years to 5 years.

(C)(3) Registers of retirement work orders. DE-Ohio recommends modifying this retention requirement from 10 years to 5 years.

(D) Summary sheets, distribution sheets, reports. DE-Ohio recommends modifying this retention requirement from 10 years to 5 years.

E. Revenue Accounting and Collecting

(B) Rate Schedules. DE-Ohio recommends modifying this retention requirement from 50 years or termination of the corporation's existence, whichever occurs first, to 6 years after published rate sheets and rate schedules are superseded or no longer used to charge for utility service.

(G) Revenue Summaries. DE-Ohio recommends modifying this retention requirement from 6 years to 5 years.

F. Tax

(A)(1)(a) Federal income tax returns. DE-Ohio recommends modifying this retention requirement from 7 years after settlement to 2 years after settlement.

(A)(2) Filings with taxing authority to qualify employee benefit plans. DE-Ohio recommends modifying this retention requirement from 7 years after settlement of federal return or discontinuance of plan, whichever is later, to 5 years after settlement of federal return or discontinuance of plan, whichever is later.

G. Treasury

(B)(2) Check stubs, registers or other records of checks issued. DE-Ohio recommends modifying this retention requirement from 6 years to 3 years.

H. Miscellaneous

(A)(1) Annual financial, operating and statistical reports. DE-Ohio recommends modifying this retention requirement from 10 years after date of report to 5 years after date of report.

(D)(1) Annual financial, operating and statistical reports. DE-Ohio recommends modifying this retention requirement from Life of Corporation to 5 years.

These changes will afford Ohio EDUs the ability to maintain consistency between federal and state regulatory requirements.

II. **4901:1-10 *et seq.*: Electric Service & Safety Standards**

A. 4901:1-10-01: Definitions. The Commission Staff proposes several modifications to this section. These modifications are undoubtedly intended to provide clarity in interpreting subsequent provisions in 4901:1-10. Specifically, Staff provides a definition for, "mercantile commercial customer," in Section (Q) of the rule. DE-Ohio recommends that Staff include the term "small commercial customer," as defined in O.A.C. 4901:1-24-01(Z).³ By including the term in both provisions, any confusion

³ O.A.C. 4901:1-24-01(Z) defines small commercial customer as, "a commercial customer that is not a mercantile commercial customer."

related to the distinction between a mercantile commercial customer and small commercial customer is minimized.

Staff also includes the term, "postmark" at Section (T). As a practical matter, all of DE-Ohio's bills for services have the previous day's date on them. In DE-Ohio's case, the process of billing customers occurs the night before the bill is printed; as such, all bills are processed and mailed the following business day. DE-Ohio also utilizes a permit imprint in place of a postmark. As it relates to electronic bills, all electronic bill (e-bills) images are available for review on line the day after billing occurs. With this in mind, DE-Ohio recommends that the Commission clarify the definition of postmark to include postage options that may not include a postmark or eliminate this definition entirely. Based on the differing postage options, billing procedures, and billing alternatives, this definition is somewhat obsolete.

B. 4901:1-10-02: Purpose and Scope. In 4901:1-10-02(F), Staff proposes to limit the rebuttable presumption afforded Ohio EDUs related to complaints about adequacy of service.⁴ Further, the Staff proposes to preclude Ohio EDUs from limiting or eliminating their liability for consumer losses included in their tariffs. Over the past five years, the Commission Staff has become increasingly stringent related to the manner in which Ohio EDUs build, operate, and maintain their transmission and distribution systems. Further, Staff has become increasingly assertive as it relates to

⁴ See Proposed Rule at page 29.

Ohio EDUs' Asset Management plans and decisions. This comprehensive scrutiny should afford Ohio EDUs latitude as it relates to the presumption of adequate service. Consequently, DE-Ohio suggests that the Commission eliminate the proposed "rebuttable presumption" disclaimer in this section, which restricts the applicability of a rebuttable presumption regarding customer complaints that concern adequacy of service.

Ultimately, Staff's business requirements placed upon Ohio EDUs limit the ability of the EDUs to use their judgment to formulate business practices that properly avoid liability issues and complaints. Further, the inability to include liability protection language in tariffs places Ohio EDUs in an untenable position, as it forces Ohio EDUs to rely on Staff's prescriptive reliability compliance requirements without any ability to avoid liability when/if customers have complaints. If Ohio EDUs are able to determine their own business practices they are likely to be more amenable to assume liability risks. If Ohio EDUs must follow Staff's business practice requirements, compliance with those requirements should be sufficient, as Ohio EDUs and the Commission rely on Staff's judgment.

Further, DE-Ohio suggests that the Commission also strike proposed language included at 4901:1-10-02(G) that requires Ohio EDUs to remove exculpatory language from their tariffs that purports to limit or eliminate liability for customer or consumer losses. Ohio EDUs should be afforded the ability to include language in their tariffs,

which is binding on the Commission in complaint proceedings, and which limits and/or eliminates liability when an EDU has complied with the terms of the Commission Staff's detailed prescription of the manner in which an EDU builds, operates, and maintains its transmission and distribution systems. If the Commission does not eliminate the language included at 4901:1-10-02(F) and (G), DE-Ohio proposes modifying these two provisions to afford deference to Ohio EDUs who are complying with Staff's highly proscriptive business requirements.

C. 4901:1-10-03: Retention of Records. The Commission Staff proposes language that clarifies the need for access to Ohio EDUs' records and business activities. Essentially, Staff affirms its need to monitor Ohio EDUs' call centers or third party vendors' customer service calls. DE-Ohio has no issue with the Staff's assertion related to the need to monitor customer service calls; however, DE-Ohio requests that, where an EDU is subject to regulatory control in other states, the Commission Staff commits to maintaining EDU customers' personal privacy data, especially where EDUs lack technological means to segment customer conversations specific to Ohio. As such, DE-Ohio recommends that the Commission include the following language at the end of O.A.C. 4901:1-10-03(D):

EDUs shall provide access to monitor customer calls without the customer service representative's knowledge of the monitoring. *To the extent that monitoring impacts customers outside the PUCO's Ohio jurisdiction, the PUCO will attempt to work with Ohio EDUs and other regulatory commissions to*

secure the personal privacy data of customers beyond the PUCO's jurisdictional reach.

D. 4901:1-10-05: Establishment of Credit for Nonresidential Customers.

Although proposed changes were minimal in this section, DE-Ohio proposes an increase in the security deposit limit for nonresidential customers from 130% to 150% of the estimated annual average monthly bill for the customer's tariffed service for the ensuing twelve months.

Nonresidential customers are generally larger than residential customers. Whether for profit or not, these customers are oftentimes involved in business, industry, or corporate endeavors. These customers have a larger usage pattern than the typical residential customer. Nonresidential customers also are far more capable of gaining and maintaining a positive credit rating. Along the same lines, nonresidential customers are far more likely to be indebted to Ohio EDUs for sizeable dollar amounts upon default. A nonresidential customer could be indebted to an Ohio EDU tens of thousands of dollars before termination of services is achieved, as a result of the amount of indebtedness at the time of default and the amount of time that elapses while the nonresidential customer proceeds on the disconnection timeline.

As such, Ohio EDUs should be afforded the ability to collect a deposit that is more congruent with the default dollars associated with nonresidential customer default. An increase of 20% does not fully insulate Ohio EDUs from financial risk

related to default where nonresidential customers are concerned; however, it shifts in the right direction toward giving Ohio EDUs the means to provide better financial insulation from the increasing number of nonresidential customer defaults occurring in Ohio.

Further, DE-Ohio proposes that the language detailing the determination of creditworthiness of new nonresidential applicants be expanded to apply to existing nonresidential customers. DE-Ohio suggests modifying Section (D)(1) in order to state, *"The EDU verifies that the applicant is a creditworthy property owner and/or verifies the applicant's creditworthiness in accordance with legally accepted practices to verify credit."* As it often becomes necessary to verify and/or reverify a customer's creditworthiness, DE-Ohio feels that this language provides needed clarity. As this language is consistent with the language included in O.A.C. 4901:1-10-19(A)(1)(b), modification of this provision will eliminate any ambiguity concerning whether Ohio EDUs can reverify credit, if it becomes necessary to do so.

E. 4901:1-10-12: Customer Billing and Payments. Under Section (D), the Commission proposes to afford Ohio EDUs the ability to charge customers two dollars (\$2.00) for processing their payments by cash, check, or money order at authorized pay agents. This change seemingly results from the Commission's recognition of the rising cost of convenience in offering a myriad of payment alternatives. Although DE-Ohio does not presently charge its customers for this service, DE-Ohio suggests that the

Commission increase this amount to three dollars (\$3.00). In DE-Ohio's experience, three dollars (\$3.00) more accurately reflects the costs of affording customers these payment conveniences. In assessing its ability to increase payment alternatives during early 2006, DE-Ohio experienced first hand the rising costs of convenience fees, as the negotiated costs were in the proximity of three dollars (\$3.00) per transaction.

As the Final Rules adopted in this proceeding are effective for a period of five (5) years, DE-Ohio suggests that the Commission take a proactive approach by affording Ohio EDUs the ability to recover the increases in costs associated with added conveniences as they occur. Arguably, in five years, these offerings will likely exceed three dollars (\$3.00). Therefore, the Commission should afford Ohio EDUs the ability to recover an amount that is more closely aligned with the amounts that EDUs are likely being charged to offer a variety of payment conveniences.

F. 4901:1-10-13: Consolidated Billing Requirements. The Commission Staff again recommends modifying the partial payment priority associated with consolidated billing. In Case No. 02-564-EL-ORD,⁵ DE-Ohio, then the Cincinnati Gas & Electric Company (CG&E), was granted a waiver from compliance with the partial payment priority proposed by the Commission Staff during the Commission's 2002 ESSS rule review proceeding. In that proceeding, the Commission recognized that CG&E may

⁵ See Case No. 02-564-EL-ORD, In the Matter of the Commission's Review of its Electric Service and Safety Standards, Electric Interconnection Standards, Electric Reliability, Safety and Consumer Services Enforcement at Chapters 4901:1-10, 4901:1-22 and 4901:1-23 of the Ohio Administrative Code.

need to deviate from the standards set forth for payment priority. In its Entry on Rehearing, dated March 18, 2003, the Commission acknowledged this fact on page 25: "As previously stated, the Commission and the Staff recognize that there are some issues unique to CG&E, as the only combination gas and electric utility in Ohio, and will make every effort to work with the company to efficiently and fairly address those issues and concerns." In that proceeding, the Commission directed Staff and CG&E to work together to resolve issues related to payment priority for a combination gas and electric utility. Consequently, CG&E was afforded a waiver from compliance with the partial payment priority requirements associated with Section 4901:1-10-13(H)(1), formerly Section 4901:1-10-33(H)(1).

Notwithstanding Cinergy's merger with Duke Energy in April 2006, DE-Ohio's policies and procedures related to partial payment priority have gone unchanged. Specifically, DE-Ohio's position related the costly effect that the Staff's proposed partial payment priority will produce is unchanged. The exorbitant cost associated with DE-Ohio's compliance with this rule far outweighs any benefit received by customers affected by the rule. Additionally, DE-Ohio's purchase of receivables from competitive retail electric service (CRES) providers in its territory ensures that CRES providers receive payment in a timely manner. In light of these facts, DE-Ohio requests assurance from the Commission that waivers granted related to this provision will continue in

spite of the Commission Staff's proposed modification to the payment priority at 4901:1-10-13(H)(1).⁶

G. 4901:1-10-18: Payment Schedule and Disconnection Procedures for Nonpayment by Nonresidential Customers. The Commission Staff proposes changes to this section that appear to be for the purpose of clarification. As such, the regulatory requirements resulting from the Proposed Rule are substantively consistent with previously adopted rules on this topic. In Case No. 06-689-GE-ATA,⁷ DE-Ohio obtained a waiver regarding disconnection for the unpaid supplier charges that DE-Ohio purchases. Specifically, DE-Ohio was granted a waiver to allow the disconnection of a customer's service for failure to pay a competitive retail supplier's gas commodity charges and/or electric generation or transmission charges, as well as DE-Ohio's distribution charges, when DE-Ohio purchases the accounts receivable of the competitive retail natural gas supplier (CRNGS) or competitive retail electric service (CRES) provider. In light of DE-Ohio's particular circumstances, DE-Ohio requests assurance from the Commission that waivers granted related to this provision will continue upon the adoption of the Proposed Rule. The circumstances addressed in the Proposed Rule will not always apply to DE-Ohio's procedures related to non-tariffed

⁶ See Proposed Rule at 55-56

⁷ See Case No. 06-689-GE-ATA, In the Matter of the Application of Duke Energy Ohio, Inc. for Waiver of Rules 4901:1-10-19, 4901:1-18-03, 4901:1-18-05(A), and 4901:1-29-12(K), Ohio Administrative Code, and Approval of Applicable Tariff Revisions.

and CRES charges; therefore, DE-Ohio should continue to be afforded deference in light of the waiver granted in the aforementioned proceeding.

H. 4901:1-10-21: Customer Complaint and Complaint Handling Procedures.

The Commission Staff proposes changes to Section (H)(8)(a), which addresses switching practices when an EDU switches a customer served by a CRES provider to the EDU's standard offer service without customer authorization, CRES provider authorization, or Commission order. The Proposed Rule states:

Not charge, or shall credit the customer, any switching fees and shall return the customer to the previous CRES provider, making the corrective switch in accordance with the EDU's procedure for switching customers, following receipt of the enrollment request from the previous CRES provider.

As a practical matter, enrollment requests received by an EDU from a CRES Provider twelve or more calendar days prior to the next regularly scheduled meter reading date are effective on the next regularly scheduled meter reading date. Enrollment requests received eleven calendar days or less prior to the next regularly scheduled meter reading date will be effective on the second regularly scheduled meter reading date following receipt of the enrollment request. The suggested language provides for the "11 days or less" scenario, where the enrollment does not become effective until the second regularly scheduled meter reading date following receipt of the enrollment request. Yet, it does not make allowances for any timeframe beyond eleven days.

Under the "Enrollment and Drops" Heading of the Ohio Electric Choice Electronic Data Interchange (EDI) Guidelines,⁸ as developed by the Operational Support Plan of Ohio (OSPO) Data Exchange Working Group, Paragraph 3 outlines the twelve (12) calendar day enrollment (switching) policy. These guidelines were developed in order to standardize electronic transactions with electric suppliers throughout the State of Ohio. As such, DE-Ohio's Certified Supplier Tariff also reflects a twelve (12) calendar day switching procedure. In order to maintain consistency with EDI Guidelines, DE-Ohio recommends changing the language included at Section (H)(8)(a) to state: *"at the next regularly scheduled meter reading date" gets replaced with "in accordance with the EDU's procedure for switching customers."* By making this modification to the Proposed Rule, the Commission will ensure that Ohio EDUs are in compliance with state switching requirements as well as EDI requirements.

I. 4901:1-10-26: Distribution System Reliability. Under Section (B)(3), the Commission Staff proposes that, *"Performance data during major events and...bulk transmission outages shall be excluded from the calculation of the indices, proposed targets, and any revised performance targets, as set forth in paragraph (B) of this rule."* DE-Ohio requests Commission clarification related to this provision. Previously, transmission service was defined as any service taken at 69 kV or above. Based on the Proposed Rule, the definition of transmission will now encompass a non-radial line supplying a

⁸ See the Electronic Data Interchange (EDI) Guidelines at page 15, paragraph 3.

distribution substation. As such, DE-Ohio requests clarification concerning whether this modification will result in the exclusion of certain distribution source to substation outages in its Rule 26 Annual Reporting, especially if the source line is not a radial tap. If this is the result intended by this modification, DE-Ohio suggests that the Commission provide specific language to that effect within this section of the Rules.

Under Section (C)(3), the Commission Staff proposes including additional reporting requirements in its Rule 26 Annual Report. Specifically, Staff proposes including the following:

The total number of service interruptions, customer interrupted, and customer minutes interrupted for each outage cause code, all of which shall be reported in the following versions:

- (a) excluding major events and bulk transmission outages....*
- (c) excluding bulk transmission outages only.*

DE-Ohio suggests eliminating the reliability exclusion for "bulk transmission system outages." DE-Ohio has found that customers in its service territory are indifferent to whether an outage resulted from an issue related to distribution, sub transmission, bulk transmission, or any other cause. Customers may be more tolerant when outages are a result of major storms; however, they are still unable to distinguish whether the major storm caused issues related to distribution, sub transmission, or a substation. DE-Ohio, as well as other Ohio EDUs, has encountered difficulty clarifying and/or reconciling for customers the concept of "bulk transmission system" separate from sub transmission. Therefore, DE-Ohio suggests that the Commission eliminate the inclusion of exclusions

associated with bulk transmission outages, as such inclusion introduces an additional level of confusion for customers.

J. 4901:1-10-27: Distribution Circuit Performance. Under Section (C)(2), Staff proposes a reporting period beginning on January 1 of each year and ending on December 31 of each year. Presently, DE-Ohio's 12-month reporting period for this rule extends from September 1 of each year to August 31 of each year. DE-Ohio has found that this period works better, as it aligns reporting with peak labor periods associated with transmission and distribution reliability as well as vegetation management programs. DE-Ohio requests clarification concerning whether the Commission's intention is to move all Ohio EDUs to a calendar year reporting cycle. If this is the case, DE-Ohio requests assurance from the Commission that waivers previously granted concerning this requirement will continue to be effective upon approval of the Final Rule.

Under Section (F), Staff proposes the following language:

The inclusion of a given circuit in the report under paragraph (C) of this rule for three consecutive reporting periods shall constitute a violation of this rule.

DE-Ohio proposes that the Commission eliminate this proposed language. Throughout the past several years, DE-Ohio has continuously met with Staff to address, among other things, reliability, maintenance, and reporting issues concerning its transmission and distribution systems. Staff has suggested that it is in favor of affording Ohio EDUs

some degree of flexibility to suggest alternatives related to improving overall transmission and distribution reliability. Inclusion of this language will frustrate the flexibility that Staff seems to favor. As the language seems to be a straight-forward, "three-strikes-and-you-are-out," approach to compliance to 4901:1-10-27(C), it precludes Ohio EDUs from providing clarification and/or explanation related to performance of circuit(s) in a given location or region. This is especially the case when such clarification and/or explanation is related to overall efforts to improve system reliability. If the Commission is unwilling to strike the language as written, then it should at a minimum be revised to provide:

The inclusion of a given circuit in the report under paragraph (C) of this rule for three consecutive reporting periods shall automatically trigger a more aggressive system improvement plan, subject to review and approval by Commission Staff.

This modification strikes a fair balance by ensuring that Ohio EDUs that are not in compliance with 4901:1-10-27(C) are forced to become more aggressive concerning system improvements without automatically becoming subject to penalties resulting from noncompliance.

III. 4901:1-21 et seq.: Competitive Retail Electric Service Providers

A. 4901:1-21-05: Marketing and Solicitation. In recent years, DE-Ohio has experienced a high volume of requests for clarification from customers who have been misunderstood DE-Ohio's relationship with CRES providers operating within its service territory. Customers have been under the misapprehension that CRES

providers are marketing and/or soliciting on behalf of, or as agents of DE-Ohio. To address this issue, DE-Ohio proposes that the Commission include in its marketing and solicitation requirements an additional requirement at O.A.C. 4901:1-21-05(C)(8)(h), which states:

No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following: Advertising or marketing offers that *"lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of an Ohio EDU when no such relationship exists."*

Likewise, DE-Ohio suggests that the Commission include an additional requirement at O.A.C. 4901:1-21-05(C)(10), which states: "

Engaging in telephone solicitation that lead customers to believe that the CRES provider is soliciting on behalf of or is an agent of the Ohio EDU when no such relationship exists."

DE-Ohio is not opposed to CRES providers soliciting customers; however, it is opposed to the use of marketing, solicitation, or sales techniques that misrepresent the relationship that exists between the EDU and the CRES provider. DE-Ohio believes inclusion of this language will ensure that CRES providers clarify the nature of their relationships with Ohio EDUs.

IV. 4901:1-23 et seq.: Electric Reliability, Safety and Customer Service Standards Enforcement.

DE-Ohio has no comments at this time, but reserves the right to provide Reply Comments.

V. 4901:1-24 *et seq.*: Certification of CRES Providers.

DE-Ohio has no comments at this time, but reserves the right to provide Reply Comments.

VI. 4901:1-25 *et seq.*: Market Monitoring.

DE-Ohio has no comments at this time, but reserves the right to provide Reply Comments.

CONCLUSION:

Again, DE-Ohio appreciates the opportunity to provide Initial Comments in this proceeding. DE-Ohio respectfully requests that the Commission revise the Rules in accordance with DE-Ohio's suggestions herein and clarify each of the provisions identified by DE-Ohio as ambiguous or arbitrary.

Respectfully Submitted,



Paul A. Colbert (0058582),

Associate General Counsel

Tamara R. Reid-McIntosh (0077499),

Regulatory Legal Liaison

Duke Energy Ohio, Inc.

139 E. Fourth Street

P.O. Box 960

Cincinnati, Ohio 45201-0960

Phone: 513-287-2633

Fax: 513-287-3810