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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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)
of the Ohio Administrative Code)

Case No. 06-653-EL-ORD

Initial Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

Come Now Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and American Transmission Systems, Incorporated ("Companies"), by counsel, and, in compliance with the April 23, 2007 Commission Entry, respectfully submit their comments to the Commission Staff's proposed changes to Commission rules. The Companies appreciate the opportunity to comment and acknowledge the hard work of the Staff in formulating and presenting the proposed rules.

General comment to PUCO Staff proposed changes to the ESSS rules (OAC Section 4901:1-10)

Throughout the proposed rule changes, the Staff has increased the reporting burden placed on the Company, increased the detail to which operational flexibility is prohibited, and enhanced the authority of the Commission to impose penalties for even unintentional oversights by the Company. The Companies do not believe this is the best approach to maintaining a cooperative relationship with Staff and keeping the focus on improving customer service and reliability for customers.

Specific comments relative to the new rule numbers and/or section numbers are as follows:

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4901:1-10-01 Definitions.

In the proposed rules, the term “Bulk Transmission” is used a number of times, however the proposed rules do not define the term. The Companies recommend that the term be defined and that interested parties be given a reasonable opportunity to comment on the proposed definition.

Section 4901:1-10-01(L)

The Companies recommend that the phrase “of an electric distribution utility designated” be inserted into this definition following the word “contractor.” This insert will serve to clarify the definition.

Section 4901:1-10-01(P)

The definition of “Major Event,” provided in the proposed rules, is significantly different than the definition currently in use. Any change of this significance would require that new performance targets be established. The proposed definition also varies widely from the approach previously discussed with Staff, where Staff indicated a desire to adopt the IEEE 2.5 Beta (b) Method as defined in IEEE’s standard 1366¹. The IEEE standard describes in detail how the 2.5b method is applied. Due to the complexity of this description, and to avoid confusing conflicts in the definition it is recommended the rule refer to IEEE’s standard 1366-2003, IEEE Guide for Electric Power Distribution Reliability Indices for the description of the 2.5b method. If the Commission staff still wishes to further define the scope of outages to be included or excluded in any major event calculations, such as the exclusion of bulk transmission events, that exclusion could be accommodated, while still referencing the IEEE standard as follows:

¹ IEEE Standard 1366-2003, IEEE Guide for Electric Power Distribution Reliability Indices, Institute of Electrical and Electronic Engineers

4901:1-10-01(P) "Major Event" encompasses any calendar day when the electric distribution utility's system average interruption duration index (SAIDI) exceeds the 2.5 beta threshold as defined in IEEE Standard 1366-2003, "IEEE Guide For Electric Power Distribution Reliability Indices" using the utilities most recent five-year period with bulk transmission outages excluded.

It is further recommended that the Rule defer to the IEEE Standard 1366 for the definitions of other reliability terms used in the ESSS rules such as: Major Event, Momentary Interruption, Sustained Interruption, SAIDI, SAIFI, CAIDI, MAIFI, etc., as follows:

4901:1-10-01(V) "Sustained Interruption" as defined in IEEE Standard 1366-2003, "IEEE Guide for Electric Power Distribution Reliability Indices."

4901:1-10-27(C)(3)(e) Reliability indices, including SAIFI, SAIDI, and CAIDI, as defined in IEEE Standard 1366-2003, "IEEE Guide For Electric Power Distribution Reliability Indices."

Section 4901:1-10-01 (X)

The revised definition of voltage excursions, as proposed by the Staff, dropped the text "the electric utility's system operations (e.g., switching operations);" from the scope of causes of a voltage excursion. The Company recommends that this text remain in the rule to recognize the fact that switching operations may well result in voltage conditions that occur outside of the voltage limits set forth in electric utility tariffs, thereby precisely meeting the proposed definition of voltage excursions. The Companies also request that "reasonable response time of automated voltage control equipment" be added to this definition, recognizing that such automated devices do not operate instantaneously, and those time delays may result in voltage excursions. The new proposed definition is as follows:

“Voltage excursions” are those voltage conditions that occur outside of the voltage limits as defined in the electric utility's tariffs that may result from: the operations of customer equipment (e.g. spot welders or motor starting), lightning, storms, winds, accidents, or other factors beyond the control of the electric utility; the electric utility's system operations (e.g., switching operations); reasonable response time of automated voltage control equipment; or by emergency operations.

Proposed Rule 4901:1-10-02 Purpose and Scope

Section 4901:1-10-02(C)

The number “26” in this rule should be changed to “10”.

Proposed Rule 4901:1-10-03 Retention of Records

Section 4901:1-10-03(B)

Staff proposes to add a sentence to this to create a rebuttable presumption that if the EDU cannot “demonstrate compliance” with the rules of this chapter with records, the EDU will be presumed to be in violation of the rule. The concern is that, first, there is no standard of what is necessary to demonstrate compliance, or what has to be shown to meet such standard. The rule also does not state who will make such a determination, how such determination will be made, or what happens if such determination is made. The Companies recommend that this sentence be deleted from the proposed rule as it will only lead to confusion and a source of frustration due to

its vagueness. Section 4901:1-10-03(C) also needs clarification, as it is not clear what the rule is attempting to require.

Section 4901:1-10-03(D)

This rule should be modified to use the defined term found at 4901:1-10-01(L), as modified as recommended above. Also, language should be added to the rule stating that any information provided to Staff under this rule is required to be held in confidence and may not be disclosed by Staff.

Proposed Rule 4901:1-10-04 Failures to comply with the rules or commission orders.

Section 4901:1-10-4(A)

As the name of this rule implies, the scope should be limited to rules and Commission orders. The proposed modification to this rule attempts equate the legal authority of a properly promulgated rule or commission order with something called a “direction, or requirement officially promulgated”. This phrase has no legal meaning or authority. The Commission acts through orders, entries, and rules. A “direction” or “requirement” has no legal authority outside of such order, entry, or rule, and there is no legal basis for such direction or requirement to be “promulgated thereunder”. This change should be rejected by the Commission as without legal basis and vagueness.

The rule is also proposed to be modified to clarify that failure to comply with “any” rule or order may result in penalties, which are proposed to be increased by 1000% under a proposed change to the rule. The intent of adding the word “any” to the rule is unclear, but the suggestion is that the EDU faces significantly increased penalties and fines for truly insignificant non-compliance with a rule provision, even if such non-compliance was completely inadvertent, temporary in nature, was remedied immediately, and caused no harm. Such a provision will not

lead to improving what is viewed presently as a good working relationship with Staff, or better service for customers. It is one of several proposed rules that seem directed at creating scenarios where EDU's can be found in non-compliance with rules so penalties may be imposed. The Companies believe the focus should be more improving service and reliability for customers, rather than hyper technical compliance with rules 100% of the time. In any event, if an EDU is found to be in non-compliance with a rule, other than possibly repeated significant offenses, it should be given a reasonable opportunity to remedy the situation before any penalties are imposed. It should also be clarified that any such penalties may only be issued by the Commission.

The Companies also oppose the adoption of the significant increase in the amount of the penalty contained in Section 4901:1-10-04(A)(1). No rationale or justification has been suggested to support any increase in this penalty amount, let alone such a significant increase.

Finally, subpart (3) is unnecessary as the Commission's authority to award restitution or damages is set forth in statute.

Proposed Rule 4901:1-10-7 Minimum customer service levels

Section 4901:1-10-07(C)(3)

In the definition rule, 4901:1-10-01, the Staff proposed a definition of major event, that if properly modified will be mathematically based, i.e., not subject to interpretation. In Rule 7(C)(3), they propose a new rule that contemplates that the Staff could disagree whether a major event occurred or not, and seeks yet another new annual report to review major event data. It is unclear how a major event could be subject to disagreement where it is a mathematic calculation. This appears to be another rule designed to cause hearings before the commission. If there is a

hearing, what will the subject or purpose of the hearing be, whether the math used to calculate the major event was proper? The Companies recommend that this rule provision not be adopted by the Commission.

Section 4901:1-10-07(C)(4)

This new requirement states that “No report will be effective until it is either accepted by the director or, in the case of a hearing, approved by the Commission.” The Company would like to see the scope of this section defined; it is unclear if this only applies to a major event report, as required by 4901:1-10-7 (C)(3), or if the scope of this requirement is much broader. It is also unclear what is meant by the report not being effective.

Proposed Rule 4901:1-10-08 Provision of customer rights and obligations

Section 4901:1-10-08(F)(5)

The Companies recommend that this proposed rule be modified to include a requirement that any information provided to the Staff under this rule be held in confidence and not disclosed.

Proposed Rule 4901:1-10-10

Section 4901:1-10-10(A)(3)

The proposed rule creates a requirement that EDU's must make a good faith effort to produce a list of mercantile commercial customers. It is not clear why this is a new requirement, as the Companies are unaware of a desire on the part of marketers to obtain such information. The Companies generally do not categorize information in this manner, and the good faith standard may only lead to litigation. The Companies recommend that this rule change not be adopted by the Commission and that the responsibility for creating this categorization of

customers not be placed on the EDU's. Governmental aggregators and their suppliers are given usage information, and if they desire to identify customers that fit the mercantile commercial customer standard, they can determine for themselves.

Proposed Rule 4901:1-10-14 Delinquent Residential Bills

Section 4901:1-10-14(C)

This rule requires EDU's to not disconnect for an amount that is the subject of a complaint, either at the PUCO call center or a formal complaint. The Companies comply with this rule but believe that an exception should be noted in the rule that the EDU must know about the complaint. For example, if the EDU is already on their to disconnect a service and the customer calls the PUCO call center and disputes the amount owed, the EDU may not know about the complaint in a timeframe that would permit them to stop the disconnect. The same request is made by the Companies related to proposed rule 4901:1-10-16(G).

Proposed Rule 4901:1-10-16 Reasons for denial or disconnection of nonresidential service

Section 4901:1-10-16(D)

The reasons for denial or disconnection of nonresidential service in this section should be modified to read "e.g., voltage excursions," not "e.g. voltage fluctuations," as "voltage fluctuations" is undefined. Also, the phrase "facilities, system integrity, or" should be inserted after "EDU". This would permit the EDU to disconnect a customer where the character of the customer's use of electric service was adversely affecting the EDU's equipment or the operation of the system.

Proposed Rule 4901:1-10-21 Customer complaints and complaint-handling procedures

Section 4901:1-10-21(D)

An exception to the requirement to provide a status report every 5 days, after a customer complaint is not resolved in 10 days, should be provided where the problem requires long term studies and data gathering (e.g., the setting of recording voltmeters). The Staff recommended rules have removed this exception, which is an existing rule provision. The Companies are not aware of any concern that this exception has been misused so as to require the rule change. The Companies recommend that this exception to the five day status report be retained.

Proposed Rule 4901:1-10-22 National Electric Safety Code

Section 4901:1-10-22.

The Companies request that the text "The provisions in "Session Order No. 285," December 1, 1949, referring to the designation of the medium loading district for a part of Ohio remains in effect. Reference for this exception is to rule 250 'General Loading Requirements and Maps' of the 'American National Standard, National Electrical Safety Code.'" remain in this rule as reference to this historic order. The NESC map referenced in the proposed rule separates Ohio into heavy and medium loading zones for design standards. This map is not rendered in the Code referenced in the proposed rule in sufficient detail to determine loading zones on a county by county basis; whereas, this historic Session Order does provide such detail. The Companies have identified no harm in having the reference to the historic Session Order remain in the rule, and they request the language not be deleted.

Proposed Rule 4901:1-10-23 Equipment for voltage measurements and system voltage . . .

Section 4901:1-10-23(E)

Staff has recommended the removal of the requirement for customers to supply voltage regulating apparatus for special equipment requiring voltage regulation. The Companies recommend this language be retained in the rule, (See the existing Section 4901:1-10-4(E)), as it protects the Company and customers in general from unreasonable requests to provide premium voltage regulation to special groups of customers. Some examples of customers who would directly benefit from such premium service would include: medical facilities with x-ray and MRI equipment and data processing centers.

Proposed Rule 4901:1-10-24 Metering

Section 4901:1-10-24(E)

The requirement, as re-written in section (E) would allow for a licensed electrician to “certify” the installation of metering and associated equipment as in compliance with applicable standards, circumventing the authority of state and local building inspection officials in areas for which such officials exist. At the current time it is those local officials that certify an installation as inspected and ready for service.

The requirement for certification by an electrician in areas for which local inspection officials do not exist places an unnecessary additional burden on customers with no demonstration of benefit for this burden. In portions of the state (i.e., Marion County) there is no requirement for licensed electricians to perform residential work, as such, the number of licensed electricians available to certify an installation as ready for service is very small, posing an undue burden on the home owner/builder.

Proposed Rule 4901:1-10-26 Distribution system reliability.

In a number of sections of this rule the undefined term “bulk transmission” is used. The Company recommends that the Staff propose a definition of this term and then provide a reasonable opportunity for interested parties to comment.

Section 4901:1-10-26(B)(1)

The definitions for CAIDI and SAIFI should be modified to indicate that the calculation of these indices is based on sustained interruptions. The Company believes this is the intent of the Staff and is the manner in which these indices are defined in the IEEE Standard 1366, “IEEE Guide For Electric Power Distribution Reliability Indices.” The Company recommends that the ESSS Rules point to the IEEE standard for reliability definitions to avoid any such confusion.

Section 4901:1-10-26(B)(2)

The Company believes it is the Staff’s intent that reliability performance targets are exclusive of the impact of outages during major events and caused by bulk transmission outages. It should be clarified that the performance targets are exclusive of such outage events.

Section 4901:1-10-26(B)(2)(a)

In this new section, Staff prescribes that “performance targets should reflect historical system performance, system design, technological advancements, service area geography, customer perception survey results ... and other relevant factors.” This new section does not put forth any proposal on how these factors are to be combined into a set of performance targets for the EDU, to which the EDU will be measured against for compliance with these Rules.

Section 4901:1-10-26 (B)(2)(c)

In this new section, it is prescribed that the EDU's shall conduct customer perception surveys on a three-year cycle, or less, and in Section 4901:1-10-26(B)(2)(a) it was noted that performance targets should be based on a number of factors, including the results of these surveys. The Companies would like clarification that the intention of this proposed rule is that these surveys are just one component to be considered in the reassessment of reliability performance targets on a three-year cycle (or less)?

Section 4901:1-10-26(B)(2)(e)

The Director of Service Monitoring and Enforcement is given the authority to recommend revisions to the EDU's reliability performance targets, however there is no mention of the Director's need to provide an adequate basis for any recommendations at the time they are given. Should the Director elect to recommend revisions to reliability targets for an EDU, the Director should be required to substantiate those recommendations with relevant supporting arguments and documentation.

Section 4901:1-10-26(D)

The Staff proposes a new rule that states failure to meet the performance targets for two consecutive years is a violation of the rule. The new rule has the effect of converting the performance targets into required minimum standards. As discussed earlier, the Staff has also recommended that any violation of a rule can result in penalties, and then recommended that the penalties be increased by 1000%. Therefore, the changing the nature of this rule from a "performance target" to a required minimum standard would dictate that all of the performance targets be reestablished before this rule could be applied as this type of standard was not in place when the performance targets were established. The Companies recommend that this proposed

rule not be adopted by the Commission, and if it is that language be included clearly specifying that the rule cannot be applied until the report following the calendar year after new performance targets have been established.

Proposed Rule 4901:1-10-27 Distribution circuit performance

Section 4901:1-10-27(B)(1)

The undefined term "bulk transmission" is used. As previously mentioned, the Company recommends that the Staff propose a definition of this term and provide interested parties a reasonable opportunity for comment.

Section 4901:1-10-27(C)(3)(f)

This proposed rule is a new requirement for Worst Performing Circuits ("WPC"), requiring an EDU to list the number of safety and reliability complaints for the circuit. The Company recommends that the Staff's proposed definition of a safety and reliability complaint intended to be applied to this rule, i.e., should such complaints include those coming directly from the customer to the Company, or those coming through the Commission?

Section 4901:1-10-27(E)

While the Companies remain willing to work with the Staff on the format of reports, there needs to be some requirement that the format to be used has to be finalized by the end of the calendar year for which the report is being prepared, and that some effort be made to use universally available electronic format for the reports. An inordinate amount of resources is spent each year just trying to get the information into the preferred format.

Section 4901:1-10-27(F)

This new rule states: "The inclusion of a given circuit in the WPC report for three consecutive reporting periods shall constitute a violation of this rule" – is another rule that appears, when combined with the proposed changes to 4901:1-10-04, designed to impose significant penalties on EDU's in a situation where the underlying reporting requirement has historically carried no penalty. No matter how good an EDU's reliability is, or how much it improves, there will always be worst performing circuits, even if the service on those circuits is acceptable. This rule ultimately may cause expenditures on circuits that are performing satisfactorily to the detriment of other more pressing work on other parts of the system. The Company identifies WPC's through a SAIDI_D analysis. This type of analysis will tend to move circuits up the WPC ranking due to their higher quantity of customers on the circuit. This approach was accepted by the Staff, and the ranking concept even in part recommended by Staff, when it was stated that

*"Staff believes that in order to sufficiently improve performance to meet the SAIFI target, OE needs to go beyond worst circuits to include others across the system, select circuits with a high customer density, focus on major controllable outage causes, and increase the volume of work orders."*²

The Companies do not believe they should be placed in a position of possibly violating this new rule provision by following the methodology that has been tacitly suggested and accepted by the Staff. The Companies recommend that a method for the identification of violations be developed

² Peter K. Baker (Peter.Baker@puc.state.oh.us), "Response Letter," e-mail message to Steven E. Ouellette (Steven E. Ouellette@FirstEnergy@FirstEnergy), June 30, 2006.

based upon circuits where the individual circuit reliability indices (SAIFI, CAIDI) exceed the EDU's overall reliability targets by a certain percentage for three-years running, not simply because a circuit remains on the WPC list for three consecutive years. Such an occurrence, notwithstanding any reasonable explanation, should not be deemed an automatic violation of the rules.

Proposed Rule 4901: 1-10-29 Inspection, maintenance, and repair of transmission ...

Section 4901:1-10-29(E)(1)

New text in this section notes that “failure to comply with the requirements of the electric utilities programs, policies, procedures and schedules shall be considered a violation of this rule” is overly burdensome as the scope of the programs and schedules included under the scope of this requirement is undefined. The Company has any number of programs or schedules that have been suspended or extended from time to time. The strong requirements of this section would drive a trend away from formalizing programs in an effort to avoid future violations. Further, if company practices or policies exceed a legal requirement, a company should not be penalized for not meeting its own internal higher standard. Consistent with previous comments, the Companies recommend against adopting a rule that provides nothing more than a declaration of a rule violation.

Section 4901:1-10-29(E)(2)(d)

In this new text, Staff is proposing that the Director of Service Monitoring and Enforcement be given explicit authority to request EDUs adopt new or revise existing maintenance programs, without a need for the Director to supply supporting arguments and documentation for such changes or additions. This could lead to significant expenditure of

resources defending existing maintenance programs, or making cases against new programs. The new authority given to the Director should come with an obligation to provide justification and documentation for such recommendations.

Section 4901:1-10-29(F)

The requirement that “all remaining deficiencies shall be corrected within one-year” imposes an unreasonable burden on the Company. Many deficiencies, identified through inspection programs are put into a “monitor” or “hold for future outage” status as they are not reasonably expected to endanger life or property, or pose significant reliability risks. For example, one bell insulator in a transmission insulator string may be flashed or chipped and placed on a monitor list without any significant risk to reliability or the public, or a station transformer maybe placed on a list of equipment to monitor based on the results of dielectric oil tests. The Companies should not be placed in the position of paying significant penalties or fines because of the failure to repair a single chipped transmission insulator.

Proposed Rule 4901:1-10-30 Outage Reports.

Section 4901:1-10-30(A)(3) and (4)

This existing requirement, for the notification of the Commission’s Outage Coordinator, should be amended to reduce the scope of notification required as the number of service points which could be included is significant and the notification burden immense. This section, if strictly interpreted, would require notification to the commission each time any service is interrupted to any telephone, electric, natural gas, waterworks, or sewage company facility, and would pose a significant burden to the Commission Staff in processing these notifications. Notification should

only be required for facilities registered by the customer, with the Company, as a critical facility, similar to manner in which life support registration is currently managed.

Proposed Rule 4901:1-10-31 Emergency Plan

The Company does not take issue with the requirements the Commission proposes on the content of an Emergency Plan, nor does the Company take issue with making such a plan available for Commission review. However, such a plan, by its very nature does contain significant amounts of confidential and sensitive information, including: employee information; site information; strategic faculties; confidential phone numbers; and strategic action plans, throughout its text, which would be difficult if not impossible to redact. As such, the Company recommends that it is clearly stated that the Company's Emergency Plan shall be made available for inspection and review by the Commission's Outage Coordinator, at a Company facility within the state of Ohio, and any information provided to the Staff under this rule be held in confidence and not disclosed.

Section 4901:1-10-31(B)(13)

In the subject section, "Major Event" is used as an example of when an emergency procedure is put into effect. The Commission has now defined a "Major Event" as a statistical day that can only be accurately determined after the event is over – a new example of when these emergency procedures are activated should be used.

Section 4901:1-10-31(B)(16)

The development of a continuity assurance plan (i.e., pandemic plan) is a significant undertaking, and a project that is currently underway at the Companies. The Company does recommend that the Commission consider not stating its own set of requirements for such a plan, as detailed in Section (16), but rather refer to the NERC Standard for such a plan. If Staff feels

there are State of Ohio specific requirements, such a communication process between the Commission and the Company during the activation of such a plan, that requirement should be clearly stated, including the identification of the Commission contact to be used.

Section 4901:1-10-31(B)(17)

There are many parts to the Company's Emergency Plan that are activated on a regular basis, such as employee notifications of predicted storms, or early stage storm escalations. The preparation of an after-action report, following the activation of any portion of the emergency plan would be unduly burdensome.

Section 4901:1-10-31(J)(2).

"Major event" should be removed from this section as major event is defined by the Commission as a statistical day. A report to the Commission every time the Company implements any element of its emergency plan is an unrealistic burden as elements of this plan are often implemented for less than "major events" as was noted above.

Proposed Rule 4901:1-17 Establishment of Credit for Residential Service

As part of this rulemaking proceeding, the Staff proposed to amend 4901:1-17-01(A) to include electric distribution utilities in the definition of utility or public utility in that section, thereby subjecting electric distribution utilities to the entirety of 4901:1-17. Chapter 4901:1-17, however, is not part of this rulemaking proceeding, at least as it was noticed by the Commission through the caption of the case.

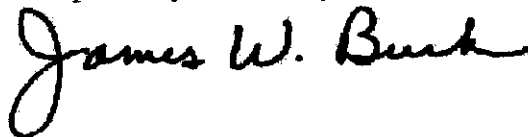
Proposed Rule 4901:1-25 Market Monitoring

The Companies request that the requirement for quarterly reporting of information in this rule be changed to semi-annual reporting. Semi-annual reporting will keep the Commission reasonably advised of matters related to generation services, distributed generation, and interconnections while reducing the administrative burden on the electric utilities by half. Also, Section 4901:1-25-02(A)(3)(b) needs revised as it appears that the reference to both MWH and megawatt hours may have been deleted.

Conclusion

The Companies thank the Commission for the opportunity to present comments and respectfully request the Commission to incorporate the Companies' recommendations as set forth above in the rules adopted in this proceeding.

Respectfully submitted,



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