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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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** PUCO

REPLY COMMENTS OF DOMINION RETAIL, INC.

Pursuant to the revised schedule established by the attorney examiner's August 19, 2008 entry in this docket, Dominion Retail, Inc. ("Dominion Retail" or "DR") hereby submits the following reply comments in response to the initial comments filed herein by various participants with respect to the staff-proposed revisions to 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 ("OAC"). These reply comments address the rules in question in the order in which they appear in the attachment to the Commission's July 23, 2008 entry. Dominion Retail prefaces its reply comments with the following general observations.

For the most part, the staff-proposed rules properly recognize the difference between the scope of the Commission's jurisdiction over electric utilities and the scope of its jurisdiction over competitive retail electric service ("CRES") providers. Because the electric utilities provide monopoly services, the Commission must regulate the rates, terms, and conditions under which those services are provided to the public. Simply stated, where choices are not available, regulation is a necessary substitute for competition. On the other hand, no customer is required to purchase the services offered by a CRES provider. Thus, the market, not the regulator, is the

check on the reasonableness of the rates, terms, and conditions under which these competitive services are offered. If a CRES provider offers prices or terms that are not attractive to consumers, it will not attract customers and will not survive. In so stating, Dominion Retail does not intend to suggest that the Commission does not have a legitimate interest in assuring that the terms of CRES provider offers are fully disclosed, that CRES providers do not engage in deceptive marketing practices, and that the procedures for customer enrollment and switching protect both customers and the host electric utility. Of course, it does. However, certain of the staff-proposed rules, and a number of the proposals contained in the initial comments of the Ohio Consumer and Environmental Advocates ("OCEA"), appear to be based on the mistaken notion that the Commission has the same type of jurisdiction over CRES providers that it has over electric utilities. Further, certain of the staff and OCEA proposals are in direct conflict with the state policy of promoting the development of an effective, competitive electricity market in Ohio. *See* Section 4928.02, Revised Code. Although the Commission does have authority over contract offer disclosure, marketing practices, and the relationship between electric utilities and CRES providers, utilizing that authority to impose burdens on CRES providers without a showing of any actual corresponding benefit to customers not only discourages market entry, but drives up the price of CRES provider offers – all to the detriment of Ohio consumers. Dominion Retail asks the Commission to keep these considerations firmly in view in adopting its new rules.

Proposed Rule 4901:1-9-05(A), OAC:

Existing Rule 4901:1-9-05(A), OAC, requires electric light companies to maintain their books and records in accordance with the FERC-prescribed uniform system of accounts ("USOA"). In addition to substituting the term "electric utilities" for "electric light companies" to comport with the new Amended Substitute Senate Bill No. 221 ("SB 221") definitions, staff

has proposed to extend this requirement to providers of competitive retail electric service . Dominion Retail joins with Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Intergrys Energy Services, Inc. (collectively, the "Competitive Suppliers" or "CS") in adamantly objecting to this proposed change. *See* CS Comments, 2-4. As ably argued by the Competitive Suppliers, the staff proposal ignores the fundamental difference between providers of monopoly utility services, whose rates are subject to Commission regulation, and CRES providers, whose rates are based on market considerations, not cost-of-service principles. Indeed, no state in which Dominion Retail operates requires competitive providers to utilize the USOA, nor is Dominion Retail aware of any state that does. This fact, alone, strongly suggests that there is no legitimate regulatory purpose to be served by requiring competitive suppliers to follow an accounting system designed for regulated monopolies. Moreover, the significant burden such a requirement would impose on CRES providers would create an additional barrier to entry into the Ohio market, an outcome that is totally at odds with the policy of this state enunciated in Section 4928.02, Revised Code. Further, the staff proposal is contrary to the spirit of Governor Strickland's February 12, 2008 Executive Order 2008-04S, "Common Sense Business Regulation," which requires regulators to weigh the tangible benefits that rules produce against the burden the rules impose on those that must comply with them. No benefit, tangible or otherwise, would result from forcing CRES providers to jump through this hoop. Accordingly, this staff proposal should be rejected out of hand.

Proposed Rule 4901:1-10-02(G) OAC:

Staff has proposed to add a paragraph to Rule 4901:1-10-02, OAC, which, in effect, codifies the Commission's position on the inclusion of exculpatory language in utility tariff's as set out in the "Policy Statement" appended to the Commission's October 6, 1987 finding and

order in *In the Matter of the Investigation into Limitation of Liability Clauses in Utility Tariffs*, Case No. 85-1406-AU-UNC. Dominion Retail supports this proposal, but agrees with the Competitive Suppliers that proposed paragraph (G) should be expanded to cover exculpatory provisions in agreements with CRES providers in addition to those contained in the electric utility's filed tariffs. *See* CS Comments, 4-6. Accordingly, Dominion Retail endorses the revised language proposed by the Competitive Suppliers to clarify that an electric utility cannot include language in a CRES provider agreement that purports to limit its liability for its own negligence, gross negligence, or intentional misconduct or that purports to require a CRES provider to indemnify the electric utility against claims arising from its negligence, gross negligence, or intentional misconduct.

Proposed Rule 4901:1-10-29(A), OAC:

Rule 4901:1-1-10-29(A), OAC, requires electric utilities to coordinate with CRES providers to promote nondiscriminatory access to electric services, to ensure timely enrollment of customers, to maintain customer service, and to assure that customer transfers to another CRES provider are accurate and timely. The Competitive Suppliers propose to add a sentence to paragraph (A) of this rule that would specify that the electric utility's obligation to coordinate with CRES includes the obligation to work with CRES providers to develop mutually acceptable programs to facilitate customer understanding of the availability retail electric supply options and to make it as convenient as possible for customers to choose a CRES provider when contacting the electric utility. *See* CS Comments, 7. Dominion Retail supports this proposal, but suggests that the Competitive Suppliers' proposed language should be revised as follows to parallel the first sentence of paragraph (A) and to correct a grammatical nit:

As part of THE OBLIGATION TO COORDINATE ~~their coordination~~ with CRES providers to promote nondiscriminatory access to electric service, EACH ELECTRIC UTILITY ~~EDUs and CRES providers~~ shall work ~~together~~ WITH CRES PROVIDERS to develop mutually acceptable programs ~~that~~ TO facilitate customers' understanding of ~~their~~ AVAILABLE retail electric supply options and ~~that~~ TO ~~enable customers to conveniently~~ MAKE IT AS CONVENIENT AS POSSIBLE FOR CUSTOMERS TO choose a CRES provider ~~when~~ UPON contacting the ELECTRIC UTILITY ~~EDU~~ for that purpose.

Proposed Rule 4901:1-10-29(B), OAC:

In their initial comments, the Competitive Suppliers point out that some electric utilities restrict customers with multiple meters from electing supply service from more than one provider, even if the accounts are in different rate classes (*i.e.*, the customer must either stay with the electric utility, or enroll all its accounts with one CRES provider). CS Comments, 8. The Competitive Suppliers argue that customers should be afforded the opportunity to elect service from the utility, a CRES provider, or a governmental aggregator on a metered account-by-metered account basis so as to maximize the opportunity for savings. *Id.* Dominion Retail agrees, and would further note that the lack of uniformity among electric utilities in this regard can create confusion on the part of both customers and CRES providers.

Although the Competitive Suppliers did not propose any specific language to provide this flexibility to customers with multiple meters, they raise this issue in the context of their discussion of Rules 4901:1-10-29(E) and 4901:1-1-21-17(D), which deal, respectively, with the electric utility's obligation to provided eligible-customer lists to CRES providers and governmental aggregators. Dominion Retail suggests that it may be more appropriate to address this matter in Rule 4901:1-10-29(B), which governs the content of electric utility supplier tariffs. Accordingly, Dominion Retail proposes that the following sentence be added at the end of Rule 4901:1-10-29(B):

THE SUPPLIER TARIFF SHALL NOT CONTAIN ANY REQUIREMENT THAT WOULD RESTRICT CUSTOMERS WITH MULTIPLE METERS FROM ENROLLING OR SWITCHING ACCOUNTS ON A METERED ACCOUNT-BY-METERED ACCOUNT BASIS.

Proposed Rule 4901:1-21-01(T), OAC:

Staff proposes to add the following definition of the term "Governmental aggregation program" to the definitions applicable to the rules governing competitive electric service contained in Chapter 4901:1-21, OAC.

> (T) 'Governmental aggregation program' means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than three years.

In its initial comments, OCEA argues that the inclusion of the one-to-three year limitation on the aggregation term artificially limits the opportunities for governmental aggregation. OCEA Comments, 126. Dominion Retail agrees. Not only is there no statutory time limit on the term of a governmental aggregation, but, as OCEA correctly points out, the proposed limitation is contrary to Section 4928.20(K), Revised Code, which requires the Commission to "encourage and promote large-scale governmental aggregation in this state." *Id.* The term of a governmental aggregation is a matter that should be left to the contracting parties for those reasons stated by OCEA.

Proposed Rule 4901:1-21-03(D), OAC:

Rule 4901:1-21-03(D), OAC, requires CRES providers to furnish certain information regarding their outstanding standard residential contract offers to the Commission staff. As stated in the rule, staff requires this information for market monitoring purposes and to provide

comparative information to the public regarding retail electric service options. Apart from a housekeeping revision, staff has not proposed any changes to the current rule.

OCEA, on the other hand, contends that the rule should be amended to require CRES providers to supply the identified information to the Office of the Ohio Consumers' Counsel ("OCC") in addition to the Commission staff. OCEA Comments, 127. OCEA claims that OCC should be provided this information because it also provides price comparisons to the public and because it should be permitted to review the information to "ensure customers are protected from unconscionable terms." *Id.* Dominion Retail objects to this proposal.

Although OCC has statutory authority to represent residential customers in certain matters, this Commission is the regulatory agency with jurisdiction over CRES providers. As such, the Commission is – and should be – the repository for information that CRES providers must, by rule, provide. To require CRES providers to provide duplicate information to OCC is not only burdensome, but totally unnecessary, because OCC, like anyone else, can obtain this public information from the Commission. Further, the notion that OCC should be copied with "rate and cost information" supplied to the Commission so that it can police CRES provider offers to protect customers from unconscionable terms reveals a fundamental misunderstanding of both Ohio law and the nature of the information provided to the Commission under the rule in question. Although CRES provider contract offers are subject to certain disclosure requirements, the price of competitive retail electric service is not regulated. Thus, CRES providers are free to charge any price they like for the service they provide. The check on "unconscionable terms" is the competitive market itself, not the Commission, and certainly not OCC. No customer is required to enroll with a CRES provider, and a CRES provider whose contract offer contains terms that potential customers find unacceptable will not succeed in attracting customers,

regardless what OCC thinks of those terms. Moreover, the information that CRES suppliers must furnish to Commission staff pursuant to subparagraphs (D)(1) through (D)(4) of this rule is not "cost" information. For those reasons previously stated, the CRES provider's costs are irrelevant. Consistent with Executive Order 2008-04S, the Commission should reject OCEA's proposed amendment.

Proposed Rule 4901:1-21-05(B), OAC:

Rule 4901:1-21-05(B), OAC, requires that CRES providers furnish copies of promotional and advertising materials targeted to residential and small commercial customers to the Commission or its staff within five calendar days of a request by the Commission or its staff for such materials. OCEA proposes an amendment to this rule to add OCC as an entity entitled to receive such materials upon request. OCEA Comments, 127-128. In support of this proposal, OCEA states only that OCC routinely receives inquiries from customers regarding suppliers and offers that may be available to them and that having this information on hand at OCC is "beneficial in being responsive to questions that consumers may have." OCEA Comments, 128. Dominion Retail opposes this amendment.

At the outset, Dominion Retail wishes to make it clear that it will honor legitimate, reasonable informal requests for copies of promotional and advertising materials, whether made by OCC or any other consumer representative, so long as responding to the request does not impose an undue burden on the company. However, writing this proposed requirement into the rule will not serve the stated objective. One would assume that a customer that contacts OCC regarding offers that may be available to them would expect an immediate answer and would not be favorably disposed to waiting five-plus days for OCC to serve a request on CRES providers and receive a response. Indeed, the only way that OCC could have copies of all the relevant

advertising and promotional materials on hand would be to continually serve requests on CRES providers – and that is not acceptable to Dominion Retail. More to the point, all the comparative information necessary for customers to make an informed choice is already publicly available at the Commission, which is the appropriate repository for such information.

Proposed Rule 4901:1-21-05(C), OAC:

Rule 4901:1-21-05(C), OAC, prohibit CRES providers from engaging in marketing, solicitation, and sales acts and practices which are unfair, misleading, deceptive, or unconscionable, while the various subparagraphs of the rule identify specific examples of behavior that fall within its ambit. Current subparagraph (C)(3) requires that CRES providers include "a local/toll free telephone number" with any advertising of promotional materials that make an offer for sale that customers may call for additional information. Staff has proposed to replace this language with "a local, toll free telephone numbers *[sic]*." In their initial comments, the Competitive Suppliers express concern that the use of the plural "numbers" might be interpreted to mean that the CRES provider must include both a local number and a toll-free number, even though a single number that can be accessed without incurring a charge is obviously sufficient to satisfy the objective of the rule. *See* CS Comments, 9. Dominion Retail cannot imagine that staff intended to require CRES providers to maintain both a local number and a toll free number – which would mean the provider would have to secure a local number in every community and area in which it operates across the state – and assumes that the substitute language, although grammatically incorrect, was simply intended to clarify the "local/toll free" reference in the current rule. The grammatical fix is to revise the language to read "a local or toll free telephone number." However, if staff did, in fact, intend to require the CRES provider to

maintain both a local number and a toll free number, Dominion Retail joins in the Competitive Suppliers' objection.

Staff has also proposed revisions to subparagraph (C)(4) of the rule, which defines engaging in telephone solicitation without first obtaining the list of Ohio customers that have requested to be placed in the Federal Trade Commission's "do not call" registry and obtaining monthly updates of the "do not call" registry as an unfair, misleading, deceptive or unconscionable practice. Proposed subparagraph (C)(5) of the rule goes on to define the act of engaging in telephone solicitation of customers who have been placed in the "do not call" registry as a prohibited practice. Dominion Retail agrees with the Competitive Suppliers that, as drafted, the language of subparagraph (C)(4) is overly broad and creates what Dominion Retail assumes is the unintended consequence of requiring CRES providers to obtain lists and updates for areas beyond those in which they operate. *Id.* Dominion Retail also agrees with the Competitive Suppliers that proposed subparagraph (C)(5) fails to account for the exemptions to the prohibition against calling individuals listed in the "do not call" registry. Thus, Dominion Retail supports the refinements proposed by the Competitive Suppliers and urges the Commission to adopt the revised versions of subparagraphs (C)(4) and (C)(5) set forth in the Competitive Suppliers' initial comments. *See* CS Comments, 10.

Proposed Rule 4901:1-21-07,OAC:

Rule 4901:1-21-07, OAC, sets out certain creditworthiness standards and security deposit requirements a CRES provider must observe in establishing the conditions of providing service to a prospective customer. The Competitive Suppliers read this rule as improperly limiting a CRES provider's flexibility in a manner that could ultimately stifle the provider's ability to offer varied products and services to customers. *See* CS Comments, 11-12. The Competitive

Suppliers contend that this rule should be eliminated its entirety based on the proposition that the Commission has no authority to dictate the terms of a CRES provider's contract offer. *Id.* OCEA, on the other hand, believes that the rule should be amended to impose the same creditworthiness and deposit standards upon CRES providers to which electric utilities are subject pursuant to Chapter Rule 4901:1-17, OAC. *See* OCEA Comments, 132-133.

As the Competitive Suppliers point out, the considerations that require the Commission to regulate the creditworthiness and deposit standards of electric utilities are not at work with respect to CRES providers, in that no customer is required to accept a CRES provider's contract offer. Moreover, as discussed *infra,* CRES providers, unlike electric utilities, do not have the option of physically disconnecting service to customer that do not pay their bills. Thus, OCEA is simply wrong when it states that there is no reason why the same standards should not apply to both electric utilities and CRES providers. *See* OCEA Comments, 132.

Although Dominion Retail agrees with the Competitive Suppliers that the Commission does not have authority to dictate the terms of CRES provider offers, Dominion Retail questions the Competitive Suppliers' interpretation that the rule's nondiscrimination requirements prevent CRES providers from assessing risks on a customer-by-customer basis and limit a CRES provider's ability to offer varied products and services. In Dominion Retail's view, the nondiscrimination requirements simply mean that the CRES provider must treat similarly situated customers the same, and does not mean that they must treat all customers the same without regard to differences in credit risk they pose. To the extent that the nondiscrimination requirements of Rule 4901:1-21-07, OAC, are simply disclosure requirements – which they appear to be – Dominion Retail does not oppose these provisions of the rule.

Having said this, Dominion Retail would emphasize that the real solution to this entire issue is to require electric utilities that provide consolidated billing services to CRES providers to purchase the providers' receivables as recommended in Dominion Retail's initial comments. *See* DR Comments, 4-6.[1] Adoption of this requirement would get CRES providers out of the deposit business, while, at the same time, providing customers with all the options to establish creditworthiness that are available under Chapter 4901:1-17, OAC, which is the very result advocated by OCEA.[2]

Proposed Rule 4901:1-29-09(D), OAC:

Rule 4901:1-29-09, OAC, sets out the requirements for the format of the environmental disclosure that CRES providers are required to make available to their customers. OCEA proposes to add an additional level of technical detail to the information that must be provided under subparagraph (D)(2)(b) regarding various fuel resources. OCEA Comments, 134. Although Dominion Retail understands that the purpose of the environmental disclosure requirement is to provide information to customers, the fact is that Dominion Retail receives very few customer inquiries regarding its environmental disclosures. Dominion Retail believes

[1] In its initial comments, Dominion Retail proposed to effectuate this requirement through an amendment to the consolidated billing requirements set forth in Rule 4901:1-21-18, OAC. It has come to Dominion Retail's attention that, although "consolidated billing" typically refers to the situation in which the host electric utility provides billing service to the CRES provider, the consolidated billing requirements contained in Rule 4901:1-21-18, OAC, specifically relate to the scenario in which a CRES provider performs billing services for the host electric utility. Although such a requirement may also be appropriate in this setting, Dominion Retail's recommendation was obviously intended to address the situation where the utility provides the billing service. Thus, Dominion Retail's recommended language should be made a part of Rule 4901:1-10-33, OAC.

[2] As a housekeeping matter, Dominion Retail notes that Rule 4901:1-21-07, OAC, has a paragraph (A), but no other paragraphs. If this rule is to be retained, as a matter of form, the (A) designation before the first paragraph should be eliminated and what are now subparagraphs (A)(1) through (A)(7) should be redesignated as paragraphs (A) through (G).

that adding more technical detail to its disclosures will only serve to discourage customers from reviewing this information, and that the current format requirements are more than sufficient to satisfy the intended objective. Thus, Dominion Retail opposes this OCEA proposal.

OCEA also proposes to insert, as new subparagraph (D)(2)(f), a requirement that CRES providers report "the annual and cumulative environmental benefits and percentage of load reduction from the energy efficiency kwh savings resultant *[sic]* from programs developed under the requirements of S.B. 221" as well as "the annual and cumulative environmental benefits and percentage of load generated from the renewables energy provisions developed under the requirements of S.B. 221." OCEA Comments, 146. First, as Dominion Retail discussed in detail in its initial comments, compliance with the SB 221 benchmarks should be addressed in the context of the formal annual Commission review contemplated by Sections 4928.64(C)(1) and (C)(2), Revised Code, not in the rule governing the environmental disclosure made to customers for informational purposes. *See* DR Comments, 2-4. Second, although OCEA claims that these reporting requirements "will provide an understanding of the benefits of efficiency and renewable provisions in S.B. 221" (OCEA Comments, 135), these requirements go well beyond the objective of the environmental disclosure set out in Rule 4901:1-21-09(A), which is merely to keep customers apprised of "the approximate retail electric generation resource mix and environmental characteristics associated with electrical power offered in Ohio's competitive marketplace." Third, as discussed in more detail *infra*, this OCEA proposal reveals a fundamental misunderstanding of CRES providers' obligations in connection with the applicable SB 221 benchmarks. Finally, under Executive Order 2008-04S, the Commission must weigh the benefits to be derived under its rules with the burden the rules impose on regulated entities. These additional reporting requirements come up woefully short when placed on that scale.

OCEA also proposes to add, as new subparagraph (D)(2)(i), a requirement that CRES providers "include on the customer bill insert or alternative mailing a web page link which contains all the data required for the current environmental disclosure plus an archive of previous disclosure statements" to ensure "that customers and interested parties will be able to evaluate progress over time." OCEA Comments, 135-136. This is yet another instance where a proposed regulation would place a burden upon CRES providers that far outweighs any conceivable customer benefit. First, subparagraph (D)(3) of Rule 4901:1-21-09 already requires quarterly environmental disclosure to customers. To add a requirement that CRES providers also furnish monthly reminders to their customers that this same information can be accessed through their website is simply overkill. More importantly, OCEA's proposal ignores the reality that many CRES providers rely on the host electric utility for billing service and do not issue their own bills. It cannot be seriously argued that such providers should incur the expense of preparing and mailing a separate monthly notice to all their customers to continually remind their customers that they can access the same environmental disclosure information through the provider's website that they have already received. Bear in mind that the cost of complying with this requirement would ultimately have to be reflected in the CRES suppliers contract offers, adding yet another barrier to competition in the Ohio market. Consistent with Executive Order 2008-04S and plain common sense, the Commission should reject this proposal.

Proposed Rule 4901:1-21-11, OAC:

Under Rule 4901:1-21-11(D)(1)(a), OAC, a CRES provider cannot assign a residential or small commercial customer contract without providing at least fourteen days written notice to Commission staff and any affected electric utility. OCEA proposes a revision to this rule to add OCC as an entity entitled to receive advance written notice of contract assignments "to prepare

for questions and concerns from the public." OCEA Comments, 138. This Commission is the regulator, not OCC. As previously discussed, Dominion Retail objects to any Commission rule requiring it to provide information or notices to OCC, especially when the information sought is publicly available through the Commission. This is yet another instance where an OCEA-proposed requirement places a burden upon CRES providers without any corresponding benefit.

OCEA has also proposed significant revisions to staff-proposed Rule 4901:1-21-11(F), the rule governing contract renewals. *See* OCEA Comments, 139-141. OCEA complains that the existing rule allows "the imposition of a new contract with new terms, referred to as a renewal, based on a consumer's failure to respond to two mailings," arguing that this provision "violates common law and contract principles and fails to protect consumers from significant changes in rates or terms." OCEA Comments, 139. OCEA's proposed fix is to include language providing that contract will renew under the new terms on a month-to-month basis unless customer cancels the contract or agrees to a new contract under the enrollment procedures set out in Rule 4901:1-21-06, OAC. For reasons that are less than clear, OCEA also proposes to eliminate all the notice requirements in subparagraphs (F)(2)(a) through (F)(2)(c) and to strike subparagraph (F)(4) and paragraph (G) in their entirety, as well as the portion of (F)(3) that describes the requirements for the second notice under that subparagraph, notwithstanding that the portion of (F)(3) that remains refers two separate notices and applies only to contracts which impose a cancellation fee of twenty-five dollars or less. *See* OCEA Comments, 139-141. The upshot of all this appears to be an end to the distinctions between the renewal procedures for contracts with no early termination fees, those with early termination fees of twenty-five dollars or less, and those with early termination fees greater than twenty-five dollars, and the elimination

of the specific requirements relating to the notice to be given to residential and small commercial customers of the expiration of their contracts and the consequences thereof.

Dominion Retail believes that the renewal and expiration notice scheme in proposed Rule 4901:1-21-11(F) is, for the most part, reasonable and appropriate, and will leave the task of sorting out the implications of OCEA's proposed deletions to the Commission. However, Dominion Retail must address OCEA's suggestion that automatic renewals triggered by the customer's failure to respond to notices are unlawful and do not afford customers adequate protection. Indeed, automatic renewal provisions are commonplace in business settings. For example, banks automatically renew certificates of deposit at new interest rates when customers fail to respond expiration notices. This automatic renewal actually protects the bank's customer, because, otherwise, the customer's funds would earn no interest at all if the customer failed to act. Similarly, the automatic renewal of a CRES provider's contract prevents the customer from being tossed to the electric utility's standard service offer in instances where the customer, by his or her silence, may well have been affirmatively indicating the desire to remain with the CRES provider without having to jump through additional hoops. In this scenario, switching a customer back and forth imposes burdens upon the customer, the CRES provider, and the electric utility that are avoided by the automatic renewal process.

Dominion Retail recognizes that OCEA's proposal does not totally preclude automatic contract renewals, but would limit renewals to a month-to-month basis. However, had OCEA not proposed to eliminate the distinction between contracts that contain early termination fees and those that do not by striking the first sentence of subparagraph (F)(1), customers not subject to cancellation fees would wind up in exactly the same place under the staff's proposed rule (*i.e.*, the customer could cancel at any time without penalty under either scerario). In addition,

OCEA's proposal that automatic renewals be limited to a month-to-month basis fails to recognize that the price a CRES provider is willing to offer in connection with a more extended renewal term could well be different from the price the provider would offer for a month-to-month renewal. Thus, forcing providers to anticipate that customers that do not respond to notices will go month-to-month could well result in higher prices in renewal offers. OCEA is again attempting to fix something that is not broken. This proposal should be rejected.

The Competitive Suppliers have also recommended certain changes to the renewal requirements in staff-proposed Rule 4901:1-21-11(F). *See* CS Comments, 12-13. Because its focus is the residential market, Dominion Retail takes no position on the Competitive Suppliers suggestion that the renewal rules should not apply to mercantile customers. However, Dominion Retail endorses the Competitive Suppliers' proposal that the subparagraph (F)(3) notice requirement for non-mercantile customers be reduced from 35 days to 20 days. As the Competitive Suppliers correctly point out, this would align the CRES rules with those applicable to competitive natural gas provider contract renewals for residential and small commercial customers. *See* CS Comments, 13. Like the Competitive Suppliers, Dominion Retail has not experienced any complaints on the gas side in connection with the use of this 20-day notice provision.

Proposed Rule 4901:1-21-12, OAC:

Rule 4901:1-21-12, OAC, establishes the disclosure requirements associated with CRES provider contracts. OCEA has proposed a revision to subparagraph (A)(2) of this rule that would eliminate the "twice within a twelve-month period" restriction on the number of times a customer can request their 24-month billing history without charge. Dominion Retail finds this proposal acceptable, so long as the electric utility will provide the information to the CRES

provider without charge. Thus, this condition should be written into the rule if OCEA's proposal is adopted.

The Competitive Suppliers have correctly identified a problem with the subparagraph (B)(5) requirement that CRES provider contracts include a notification that the contract may be terminated with at least fourteen days' notice if the customer fails to pay the bill or satisfy any agreed upon payment arrangements. *See* CS Comments, 14. Obviously, this notice requirement will not work where the electric utility is performing the billing service. Dominion Retail endorses the Competitive Suppliers' proposal to address this problem in the same manner that Commission has done in its competitive natural gas service rules, and urges the Commission to adopt the language proposed by the Competitive Suppliers to accomplish this result. *Id.*

Although proposing no specific new language change, OCEA criticizes staff-proposed Rule 4901:1-21-12(B)(17), which requires that a statement be included in CRES provider contracts that the provider will not disclose a customers social security and/or account numbers except when necessary for certain identified purposes, including the CRES providers own collection and credit reporting activities. *See* OCEA Comments, 142. In the context of this discussion, OCEA states that a "demonstrated satisfactory credit standing with the electric utility should constitute satisfactory credit with a CRES provider." *Id.* It is not clear to Dominion Retail where OCEA is going with this statement, but if it means that CRES providers should be willing to serve any customer whose credit standing is acceptable to the electric utility, such a notion can be quickly laid to rest. Because CRES providers, unlike electric utilities, cannot physically terminate service to customers for nonpayment, they bear additional risk. Thus, a customer credit standing acceptable to the electric utility may not be sufficient for a CRES provider. However, this is another problem that goes away if the Commission adopts Dominion

Retail's proposal that electric utilities that offer consolidated billing be required to purchase the CRES providers receivables.

Proposed Rule 4901:1-21-13, OAC:

Current Rule 4901:1-21-13, OAC, requires CRES providers that supply electric generation service to develop a standard net-metering contract that must be offered upon the request of a qualifying customer generator on a first-come, first-served basis. Staff has proposed substantial revisions to this rule, the most significant of which is to change "shall" to "may," which converts the offering of net metering from a mandatory requirement to a matter within the discretion of the electric services company. Both OCEA and Ohio Advanced Energy ("OAE") take issue with this change, and urge the Commission to restore the word "shall," thereby making the offering a net-metering contract a mandatory obligation. *See* OCEA Comments, 144; OAE Comments, 8. Dominion Retail supports the staff's proposed change and opposes the OCEA and OAE recommendations.

The staff's proposed change recognizes that this Commission has no authority to dictate the terms of CRES provider offers. If a CRES provider elects not to compete for customer generators by offering net-metering contracts, the customer generators will take their business to the electric utility or to a CRES provider that does.[3] Moreover, although OCEA and OAE both cite SB 221 as a basis for their recommendations, there is nothing in SB 221 that requires CRES providers to offer net metering arrangements. Although the net-metering requirement of the previous version of Section 4928.67, Revised Code, applied to retail electric service providers, after SB 221, Section 4928.67, Revised Code, applies only to electric utilities. Yes, SB 221 does

[3] Indeed, without this change, the rule would require CRES providers that target only residential customers to offer net metering to mercantile customers. Obviously, the Commission has no authority to alter CRES providers' business plans in this fashion.

subject CRES providers to energy reduction benchmarks, but it is silent as to how those benchmarks are to be achieved. Thus, any reliance on SB 221 as the authority for a mandatory requirement that CRES providers offer net metering arrangements is totally misplaced. Simply stated, the staff got this right, and its proposed language should be adopted.

Proposed Rule 4901:1-12-14, OAC:

Rule 4901:1-12-14, OAC, establishes the requirements relating to bills issued by CRES providers for the service they supply, but also makes those requirements applicable where the electric utility bills on behalf of the CRES provider. *See* Rules 4901:1-12-14(B) and (C), OAC. The current version of paragraph C of this rule specifies that residential and small commercial customer bills shall be rendered "at intervals consistent with those of the customer's electric utility." Staff has proposed to insert "monthly" before the word "intervals," presumably because this is consistent with the billing requirements applicable to electric utilities. However, OCEA proposes to replace the reference to the host electric utility's billing interval with "for service in the proceeding *[sic]* 28-32 days." OCEA Comments, 145. Dominion Retail has no idea what evil OCEA is attempting to address through its proposed language, but believes that the link to the electric utilities billing interval must be preserved to reflect the CRES providers' dependence on the electric utility to perform in a timely manner, whether in supplying the CRES provider with the data necessary to render its own bills or in issuing bills on its behalf.

Proposed Rule 4901:1-21-18, OAC:

Rule 4901:1-21-18, OAC, contains the requirements relating to bills rendered by CRES providers that provide billing service on behalf of the host electric utility. Although OCEA suggests that the language of paragraph C of this rule should parallel its proposed language for

Rule 4901:1-21-14(C) discussed above (*see* OCEA Comments, 149), the changes shown in its redline of the rule are not identical to the changes proposed to paragraph (C). *Compare* OCEA Comments, 145 *with* OCEA Comments, 149. Be that as it may, Dominion Retail questions why the term "regular intervals" is not sufficient in this context, or if more is required, why "monthly intervals" would not do the job.

Dominion Retail notes that the Competitive Suppliers, in commenting on the revised payment priority in the staff-proposed version of Rule 4901:1-21-18(H), echo Dominion Retail's comments regarding the desirability of establishing a requirement that electric utilities that provide billing services for CRES providers purchase the CRES providers' receivables. *See* CS Comments, 16. If the Commission believes that further study is required before implementing such a requirement, Dominion Retail joins the Competitive Suppliers' in their request that a collaborative or workshop process be initiated to develop appropriate rules governing this subject.

Proposed Rule 4901:1-25-02, OAC:

Staff has proposed an amendment to Rule 4901:1-25-02(A)(1)(g) that would permit reporting entities to satisfy the requirement that they provide their most recent SEC form 10-K by providing an internet link to the form. The Competitive Suppliers suggest a similar revision to subparagraph (A)(1)(f) of this rule, so as to permit subject entities to satisfy the requirement that they provide copies of their quarterly FERC transaction reports to the Commission in a similar manner. *See* CS Comments, 16-17. Dominion Retail supports this proposal.

Dominion Retail again thanks the Commission for the opportunity to comment on the proposed revisions to these rules, and urges the Commission to adopt these comments in formulating the final version of the rules.

Respectfully submitted,

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