

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of Chapter 4901:1-10, Ohio)	Case No. 12-2050-EL-ORD
Administrative Code, Regarding)	
Electric Companies		

**INITIAL COMMENTS OF DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

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I. INTRODUCTION

On July 16, 2012, the Public Utilities Commission of Ohio ("Commission") issued an Entry in the above-captioned docket and ordered a technical conference regarding the rules in this chapter (as well as four (4) other chapters of Ohio Administrative Code 4901:1-29) as part of the Commission's statutorily-required five (5) year review of these rules.

Additionally, on August 1, 2012, the Attorney Examiner scheduled a subsequent technical conference on August 31, 2012 in this docket for the purpose of reviewing implementation of the partial payment priority rule [4901:1-10-33(H)] by the FirstEnergy operating companies with respect to customers on deferred payment plans. This additional technical conference was scheduled to fulfill the Commission's order modifying and approving the stipulation in FirstEnergy's electric security plan ("ESP") case. The Retail Energy Supply Association ("RESA") offered a presentation at the August 31, 2012 technical conference to further explain the partial payment priority issues RESA identified in the FirstEnergy ESP case. RESA advocated at the technical conference for a purchase of receivables ("POR") program as well as for solutions to ease some of the difficulties currently experienced by competitive retail electric supply ("CRES") providers when it comes to partial payments of bills by customers.

On November 7, 2012, the Commission issued an Entry with Staff's proposed changes to the rules and set an initial comment deadline of January 7, 2013 and a reply comment deadline of February 6, 2013. Direct Energy respectfully submits its Initial Comments in this proceeding.

II. INITIAL COMMENTS

Rule 4901:1-10-19 – Delinquent Residential Bills

Rule 4901:1-10-19(A) currently prohibits an electric distribution utility ("EDU") from disconnecting a customer for failure to pay CRES provider charges. This rule should be amended to acknowledge situations where a supplier enters into a supplier consolidated billing agreement with an EDU or an EDU adopts a purchase of receivables ("POR") program. Direct Energy suggests the rule could be amended to accomplish this task through the following language: "In addition to the requirements of Chapter 4901:1-18 of the Administrative Code, no electric utility may disconnect service to a residential customer when: (A) That customer fails to pay any charge for a nontariffed service, including competitive retail electric service (CRES), unless the CRES provider participates in an electric utility's purchase of receivables program or the customer is billed under a supplier consolidated billing arrangement between the CRES provider and the electric utility.

Rule 4901:1-10-28 – Net Metering

As a general matter, Direct Energy wishes to highlight the importance of a defined set of operating rules to automate net metered transactions between EDUs and CRES providers, similar to the rules implemented in Pennsylvania. The importance of net metering customers will continue to increase as renewable energy procurement requirements ramp up in Ohio and the Commission continues to promote net metering to customers. Direct Energy encourages the Commission to continue proactively using the electronic data interface ("EDI") working group to

suggest continuous updates to these rules so as to ensure the rules keep up with the dynamic net metering marketplace.

4901:1-10-28(B)(9)

Rule 4901:1-10-28(B)(9) describes how the measurement of net electricity supplied or generated during a billing period should be calculated. Unfortunately, many electric distribution utility (“EDU”) systems are unable to provide this billing data at the hourly level and only provide summary level data of total load & total generation during the billing period. The Commission should require EDU billing systems possess the capability of communicating hourly load and generation information to the customer and CRES provider within 48 hours of that particular hour’s usage. Direct Energy recognizes that such a change would likely entail programming changes by the EDUs and suggests the Commission grant EDUs one year from the date of the Commission’s original Finding and Order in this proceeding to implement this change. Alternatively, while a less preferred option, the Commission should require that hourly usage data be transmitted with the summary load and generation data at the end of a customer’s billing cycle.

The lack of hourly data from the EDU limits many of the products a CRES provider can offer. Without hourly data a CRES provider cannot offer a time of use product because it cannot reconcile this information for billing purposes. Further, the hourly data would also provide CRES providers an opportunity to offer demand response products to customers. Finally, having this data would also permit CRES providers to provide better customer service, specifically (but not limited to) the ability to spot irregularities in usage patterns for customers and suggest the customer investigate to determine if there are equipment failures or other reasons for

unexplained changes in usage. Thus, this capability would afford CRES providers a much improved ability to offer innovative net metering products to customers.

Rule 4901:1-10-28(B)(10)

Newly proposed Rule 4901:1-10-28(B)(10) states as follows: “The electric utility shall issue a refund to the customer-generator for the amount of the credit remaining in the net excess generation account at the end of the twelve month period of June 1 to May 31, regardless of whether the customer-generator is receiving generation from the electric utility or a competitive retail electric service provider. This refund shall be equivalent to an annual true-up of net excess generation and should be calculated at the rate the customer-generator pays for generation. The refund should be issued to customer-generators by July 1 of each year.”

(a) Customer-Generator Refund Rate

The portion of the proposed rule that requires a refund be calculated at the rate the customer-generator pays for generation suffers from several defects and should not be adopted.

First, the Commission lacks statutory authority to adopt this portion of the rule inasmuch as mandating a particular refund rate is rate regulation. The Commission does not possess the authority to regulate supplier rates and therefore this portion of the proposed rule should not be adopted.

Further, the rule is also so prescriptive it pigeonholes customers and CRES providers into narrow contract terms and precludes the ability of customers and CRES providers to enter into creative contract terms related to net metering. The fact that a customer is a net metering customer demonstrates that the customer is probably much more sophisticated about their energy usage than an ordinary customer and therefore does not need the type of protection that this draft rule appears to try to provide. The Commission should reject this section of the proposed rule

and preserve the freedom of customers and net metered customers to contract as they mutually see fit. However, if the Commission denies Direct Energy's request to reject this portion of the proposed rule, Direct Energy alternatively requests the Commission make the proposed rule only applicable to residential customer contracts. As noted above, net metered customers have already demonstrated their sophistication and non-residential customers are much better situated than residential customers to negotiate their own contract terms as they enter into bilateral contracts.

Finally, requiring a CRES provider to refund the customer at the same rate as the customer pays the CRES provider ignores the fact that a CRES provider will have administrative and other up front and on-going costs to service the net metered account. As an alternative, if the Commission denies Direct Energy's request to reject the portion of the proposed rule dictating a refund rate, Direct Energy suggests the Commission permit contract terms that include a reduction in the refund rate of up to ten (10) percent as a fee for administering the customer's net metering contract.

(b) Requested Additional Clarifications

The proposed rule would also benefit from additional guidance for customers, EDUs, and CRES providers. For example, how is it the EDU's responsibility to issue a refund to the customer if the customer is served by a CRES provider? Is the EDU supposed to recoup the refund from a CRES provider? Additionally, the rule should explicitly state that earned net-metered credits must remain the property of the customer no matter if they remain on a standard service offer or CRES service. Currently EDUs have a significant competitive advantage over CRES providers because they void out a customer's generation credit bank upon switching, thereby losing a significant financial benefit of installing distributed generation projects. Very

often forfeiting this generation credit bank is significantly higher than the savings provided by enrolling on a CRES provider offering. Finally, the credit the utility got for the power when the customer was with the EDU is not somehow withdrawn or canceled if the customer switches so the customer should keep their credits when switching.

Rule 4901:1-10-29 – Coordination with competitive retail electric service providers

Among other things, Rule 4901:1-10-29 requires EDUs to offer supplier tariffs standardizing interactions between an EDU and CRES providers as well as mandates that EDUs offer consolidated billing to CRES providers. Staff proposed no substantive changes to this rule. Direct Energy understands that RESA intends to file Initial Comments in this docket to present RESA's position advocating for amendment of this rule to mandate purchase of receivables ("POR") programs for Ohio EDUs who do not currently have a POR program as well as for additional EDI transactions to help CRES providers reconcile payment issues with partial payments from customers. Direct Energy supports these positions and Direct Energy also provides some supplemental rationale below related to the EDI transactions.

The design and implementation of POR programs will require some time to put into place and a possible short-term solution to help suppliers verify partial payment application and to help stabilize supplier balance sheets exists with requiring one additional EDI transaction.¹ The Commission could require EDUs to provide EDI transactions that communicate not only the amount paid by the customer attributable to CRES provider charges (which EDUs already provide) but also an EDI transaction that shows the total amount applied to that month's total

¹ These changes are also detailed in the Direct Testimony of Teresa Ringenbach in the most recent FirstEnergy ESP case. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, PUCO Case No. 12-1230-EL-SSO, Direct Testimony of Teresa Ringenbach on behalf of the Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business, LLC at 11-12 (May 21, 2012).

bill. Likewise, Direct Energy is filing comments in the Commission's 12-1924-EL-ORD docket suggesting that, in the context of supplier consolidated billing, a CRES provider would supply EDI transactions showing both the total amount paid on the bill and the amount applied to the EDU's charges.

Without this data point, the CRES provider is at the mercy of the information the EDU provides unless the CRES provider is willing to contact individual customers every month to gather information regarding amounts billed and amounts paid. Second, while a CRES provider is made aware of which customers are placed on a deferred payment plan, a CRES provider has no say in the payment amount which could result in little to no funds being paid to the CRES provider.

Therefore, requiring the utility to also provide an EDI transaction that shows the total amount paid on the bill would grant CRES providers the ability to accurately check and verify the amount being paid by the EDU to the CRES provider is correct. Allowing CRES providers to check and verify these amounts is important because it will provide CRES providers with the tools to accurately track payments on the account as well as conduct collection efforts. Further, RESA witness Ringenbach described in her testimony in the FirstEnergy ESP case how customers can be confused by the collections process.² Providing as much information to CRES providers as possible will help CRES providers understand exactly how the payments have been allocated before talking to a customer, thereby lowering customer confusion as CRES providers would have all the information necessary (without having to procure any information from the customer) to fully explain what is happening and why during the collection process.

² *Id.* at 11. Customers are often confused because they are now dealing with two (2) entities for collection even though they were paying a single bill. When the CRES comes to collect, the customer is confused on how they can still be receiving power, be up to date on their utility payments, and yet still owe the CRES money and be receiving collection notices.

III. CONCLUSION

Direct Energy requests the Commission accept its proposed changes to the proposed rules contained in the Commission's November 7, 2012 Order. Direct Energy also reserves the right to file reply comments in this docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document will be served via electronic mail on all parties who submit initial comments in Case No. 12-2050-EL-ORD this 7th day of January, 2012, when the identities of such commenters are known, as well as upon Mr. David Blair, GEM Energy, 5505 Valley Belt Road, Suite F, Independence, Ohio 44131.

/s/ Joseph M. Clark

Joseph M. Clark

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Summary: Comments of Direct Energy Services, LLC and Direct Energy Business, LLC electronically filed by Mr. Joseph Clark on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC