BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)

ATTORNEYS FOR OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

76 South Main Street
Akron, OH 44308
Tel: (330) 384-5861
Fax: (330) 384-3875
burkj@firstenergycorp.com
cdunn@firstenergycorp.com

TABLE OF CONTENTS

I. INTRODUCTION

Pursuant to the Commission's Entry of November 7, 2012, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), respectfully file their comments to Staff recommended amendments to rules contained in Chapter 4901:1-10 of the Ohio Administrative Code ("O.A.C."). In addition to comments to those rules, the Companies also propose some additions to the aforementioned Chapter that will assist in the administrative and regulatory process at the Commission. The Companies appreciate the opportunity to comment and acknowledge the hard work of the Staff reflected in the proposed rules. The Companies respectfully request the Commission consider their responses and comments and appropriately modify the proposed rules.

II. FACTORS TO CONSIDER

Pursuant to Section 119.032, Ohio Revised Code, the Commission must consider the following factors when it reviews the rules and determines whether the rules should be amended, rescinded or continued without change:

(a) Whether the rules should be continued, without amendment, be amended or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted;

(b) Whether the rule needs amendment or rescission to give more flexibility at the local level;

(c) Whether the rule needs amendment to eliminate unnecessary paperwork; and

(d) Whether the rule duplicates, overlaps with, or conflicts with other rules.

Additionally, pursuant to the Governor's Executive Order 2011-01K, the Commission must:

(a) Determine the impact that a rule has on small businesses;

(b) Attempt to balance the critical objections of regulation and the cost of compliance by the regulated parties; and

(c) Amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

In presenting their comments to the proposed rules, the Companies will attempt to address those factors when appropriate.

III. COMMENTS AND MODIFICATIONS TO CHAPTER 4901:1-10 REGARDING ELECTIRC COMPANIES

A. Rule 4901:1-10-01(W) Definition of Postmark

The Companies offer a suggested change to the definition of "postmark" contained in Rule 4901:1-10-01(W) so that it conforms to modern bulk mail service and the manner in which businesses, such as electric utilities, mail or electronically mail bills, documents and required notices. Rule 4901:1-10-01(W), O.A.C. currently defines "postmark" as:

> a mark, including a date, stamped or imprinted on a piece of mail which services to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail. For electronic mail, postmark means the date the electronic mail was transmitted.

Currently, the Companies imprint on any document or piece of mail, such as a bill or notice that is sent to a customer the date on which it is actually deposited in the mail. However, due to the volume of the documents sent and by taking advantage of sending such documents in a bulk manner, the Companies can save literally hundreds of thousands of dollars in postage and other discounts as a result of the manner in which the mail is sorted and submitted to the United States Postal Service. But in employing this cost saving measure, an actual postmark is generally not made on the envelope itself in which the document or piece of mail is inserted and sent through the postal system. The

Companies propose amending the definition of "postmark" to more clearly conform to the existing cost-saving practice used when sending mail in bulk. Although the current practice of imprinting the document or piece of mail with the date of mailing conforms to Commission rules, the Companies believe Rule 4901:1-10-01(W) should be amended to read as follows:

> a mark, including a date, stamped or imprinted on a <u>document, bill, notice or</u> piece of mail which services to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail. For electronic mail, postmark means the date the electronic mail was transmitted.

Under Section 119.032, Ohio Revised Code, a rule may be amended taking into consideration the purpose, scope and intent of the statute under which it was adopted. Moreover, under Governor's Executive Order 2011-01K, a rule should be amended if it is contradictory, redundant, or inefficient. The Companies believe that the original intent of the definition of "postmark" and dates that flow from the date of postmark such as bill due dates, rescission deadlines, etc. was to provide a date that was readily available to a customer by which a customer must act. Changing the definition as suggested above neither changes this intent nor changes any of the deadlines contained in the rules; rather, the Companies propose clarifying the rule to be consistent with current practice and to clearly permit the cost savings associated with bulk mailing to continue. For all of those reasons, the Companies believe the Commission should amend the rule as suggested.

B. 4901:1-10-05: Metering

1. 4901:1-10-05(C)

Rule 4901:1-10-05(C) provides that an electric utility shall have access to its metering equipment for purpose of "reading, replacing, repairing, or testing the meter, or determining that the installation of the metering equipment is in compliance with the electric utility's requirements." The Companies have encountered several situations in which access to the meter is needed for the electric utility to perform its authorized functions, but that one may argue do not fall within the strict language of this rule permitting access. The Companies believe that this section should be expanded to allow for other reasons that access to meters may be necessary such as investigating customer complaints and dealing with issues of fraud and tampering. Therefore, the Companies recommend amending Rule 4901:1-10-05(C) as follows:

> Electric utility employees or authorized agents of the electric utility shall have the right of access to the electric utility's metering equipment ~~for the purpose of~~ in order to perform certain tasks, including investigating complaints, investigating allegations of tampering or fraud, engaging in collection activities, reading, replacing, repairing or testing the meter, determining that the installation of the metering equipment is in compliance with the electric utility's requirements, or other similar purposes necessary to permit the electric utility to carry out its authorized functions.

Pursuant to Section 119.032, Ohio Revised Code, the Commission should amend this rule accordingly to give more flexibility and authority to the electric utility to access its own metering equipment to clearly permit it to carry out its required functions as set forth in statutes, rules, regulations, and Commission Orders.

2. 4901:1-10-05(F)(3)

In communicating with customers, often customers prefer to receive information either orally or through an email communication rather than through traditional mailed

communications. The Companies propose adding clarifying language to this rule to permit some flexibility in communicating with customers related to meter testing. Further, the Companies suggested change below is expected to result in cost savings through the reduction of traditional mailed communications. The Companies suggest amending Rule 4901:1-10-05(F)(3) to read:

> A written, including electronic mail notification, or oral explanation of the test results shall be provided to the customer within ten business days of the completed test. Upon request of the customer, the electric utility will provide a written explanation of the test results.

Pursuant to Section 119.032, Ohio Revised Code, the Commission should amend a rule to provide more flexibility at the local level and to eliminate unnecessary paperwork. Allowing an electric utility to initially provide an oral notification of the test results, and to clarify that an electronic mail communication is a written notification, to the customer will give the electric utility more flexibility as well as reduce costs and unnecessary paperwork and to provide communications such as these in the format preferred by the customer. In addition, the customer's interests are safe guarded in that written explanations are still required to be provided upon customer request. For those reasons, the Companies request that the Commission amend this rule accordingly.

3. 4901:1-10-05(I)(1)

This rule provision addresses how often an actual read must occur and that the electric utility must attempt to read the meter on a monthly basis. The Companies recommend a change to these rules so that the rule requires that the company make a reasonable attempt to obtain an actual read of its customers meters every other month. This change will provide much needed flexibility to electric utilities to deal with situation arising from severe storms and other significant events impacting the system. Further,

this change will align Rule 4901:1-10-5(I)(1) with a similar rule applicable to natural gas utilities at OAC 4901:1-13-04 (G) (1), which begins with "Each gas or natural gas company shall obtain actual readings of its customer meters at least once every twelve months. At a minimum, each company shall make reasonable attempts to obtain actual readings of its customer meters every other month, except where the customer and the company have agreed to other arrangements." The Companies recommend that the first two sentences of Rule 4901:1-10-5(I)(1) read as follows:

> "Each electric utility shall obtain actual readings of its customer meters at least once every twelve months. At a minimum, each company shall make reasonable attempts to obtain actual readings of its customer meters every other month, except where the customer and the company have agreed to other arrangements."

Adopting this change as part of the rule recognizes the need for additional flexibility on the part of electric utilities and will align the electric rule with the corresponding natural gas rule, which should have the impact of reducing the burden of administering the rules for the Commission.

C. <u>Rule 4901:1-10-09</u>

Subpart (C)(3) of this rule requires utilities to exclude "performance data during major events, consistent with that reported in accordance with paragraph (C)(2) of rule 4901:1-10-10 of the Administrative Code…. from the calculations of actual monthly customer service performance pursuant to paragraphs (A) and (B) of this rule." The Companies propose making this exclusion as to Subpart (B) optional to an electric distribution utility as to whether performance data during major events is included. While for reliability reporting purposes, it makes perfect sense to exclude performance data during major events, excluding such data as to average answer time may actually serve to distort the reporting results. This arises because as the number of outages that

define a major event decline, eventually leading to the event no longer being categorized as major, the length of the phone calls with customers substantially increases. Longer and more detailed explanations are provided to customers immediately following a "major event" than actually occur during the event. Yet, the operation of the rule fails to capture and exclude these extraordinarily long calls immediately following a major event, but does exclude the shorter calls during the event.

Due to this phenomenon and given the purpose of the rule to exclude extraordinary data associated with major events, the Companies request that the exclusion under 4901:1-10-09(B) be made optional to the electric distribution utility, allowing them to either include in their reporting all calls during a major event, or to following the existing rule as written. The Companies believe this will result in more accurate reporting of average answer time and will not punish the electric distribution utility for taking the necessary time with customers in closing days or hours immediately following a major event.

D. Rule 4901:1-10-12: Provision of Customer Rights and Obligations

Rule 4901:1-10-12 provides that an electric utility must provide to new customers a written summary of their rights and obligations under this chapter. As discussed above, customers often times today prefer to receive communications electronically, rather than in hard copy written form. Moving in this direction also can lead to cost reductions in providing required information. To address these concerns, the Companies propose changing this requirement to allow electric utilities to inform new customers of the availability of this information and direct the customers to the Companies' website where the information is located and provide a phone number the customer can call to get a hard

copy of the customer rights and obligations information. From mid 2011 to mid 2012, the Companies sent approximately 86,000 brochures as an insert in all initial bills for new customers. The Companies specifically request that the Commission amend Rule 4901:10-12 as follows:

> [e]ach electric utility shall ~~provide to~~ inform new customers, upon application for service, and existing customers upon request, via bill message or otherwise, of the availability of a written summary of their rights and obligations under this chapter and direct the customer where to locate the information on the electric utility's website. The electric utility shall provide a phone number at the same location on the website that the customer may call to obtain a written copy of the summary. ~~and existing customers upon request, a written summary of their rights and obligations under this chapter~~. The electric utility shall provide a copy upon request of a customer or applicant at no charge to the customer making the request. This written summary shall also be prominently posted on the electric utility's website. The summary shall be in clear and understandable language. Each electric utility shall submit the summary or amendments thereto to the chief of the reliability and service analysis division for review at least sixty calendar days prior to mailing the summary to its customers….

The Companies are aware that in other jurisdictions, an electric utility is allowed to post this information on a public utility's website. *See e.g.*, 52 Pa. Code §56.201. Pursuant to the Governor's Executive Order 2011-011K, this suggested change will balance the critical objectives of regulation and cost of compliance by giving customers access to this information through website access, but also via request, and reduce costs for the Companies. As such, the Companies request that the Commission accept the suggested change.

The Companies also request the Commission to explain what is meant by the new language in Rule 4901:1-10-12(F)(3)(d) relating to the disclosure of proprietary customer information as discussed in the customer rights and obligations pamphlet. One new language permits an electric distribution utility to disclose customer energy usage data for

the purposed of "The operative functions involved in supplying retail electric service". The Companies are unsure about the intended meaning and scope of this language and believe it would be helpful to all parties if a detailed explanation of this language was provided.

E. Rule 4901:1-10-14: Establishment of credit for applicants and customers

1. Rule 4901:1-10-14(D)

The reference subpart (H) in this subsection should be corrected to read subpart (G).

2. Rule 4901:1-10-14(C)(2)

Staff proposed the following change in Subpart (C)(2):

> The applicant had a prior account with ~~the~~ an electric utility for the same class of service within two years before the date of application…..

The Companies believe that the Commission should reject this change and keep this existing rule in place without change. The Companies would not be able to assess an applicant's creditworthiness with any other electric utility across the United States or beyond for that matter, potentially resulting in increased uncollectible amounts and increasing the burden on the electric utility to track down credit histories from other electric utilities, not to mention the administrative burden of determining whether an entity constitutes an electric utility and whether their credit and disconnection standards are equivalent to those imposed in Ohio. On the other hand, as the original rule was drafted, an applicant can establish creditworthiness by utilizing his, her or its account history with the Companies. As such, the Companies recommend that the Commission not adopt the amendment proposed for this rule.

3. Rule 4901:1-10-14(G)(2)

The Companies propose amending Staff's suggested changes to Rule 4901:1-10-14(G)(2). Subpart (G)(2), with Staff's changes should be amended to read:

> (2) A deposit may be required if the customer meets one of the following criteria:
>
> > (a) Taking into consideration ~~After considering~~ the totality of the customer's circumstances, ~~a utility company may require a deposit~~ if the customer has not made full payment or payment arrangements for any given bill containing a previous balance for regulated service provided by that utility company.

Changing the amended to rule to read this way will allow it to fit in better with the introductory sentence of subpart (G)(2).

F. Rule 4901:10-17: Payment schedule and disconnection procedures for nonpayment by nonresidential customers

Subpart (B) and (C) should be revised so as to make them consistent with existing Rule 4901:1-10-16. In subpart (B), the phrase "after at least five days notice" should be deleted. The required minimum notice period for disconnection of a nonresidential customer for nonpayment of a tariffed service is already covered in existing subpart (C). Adding it into subpart (B) is both confusing and inconsistent with Rule 4901:1-10-16, which does not require such advance notice under certain defined circumstances.

Subpart (C) should also be modified to make it consistent with Rule 4901:1-10-16. The specific change that is needed is to delete the phrase "for nonpayment of tariffed service" from the last line and move it to the third line following the word "disconnection". This will clarify that the notice being required by the section relates to nonpayment of a tariffed service. Without this change, the subpart may be read to require a written notice before all disconnections, which is inconsistent with existing Rule 4901:1-10-16(B).

G. Rule 4901:1-10-18: Reconnection of Nonresidential Service

Subpart A provides for the circumstances under which an electric utility must reconnect nonresidential service. The Companies propose adding additional amounts related to nonpayment of tariffed service that must be paid prior to reconnect service. Specifically, the Companies propose amending subpart (A) to read:

> (A) Unless a nonresidential customer requests otherwise, an electric utility shall reconnect service by the close of the following regular business day after either of the following:
>
> (1) The electric utility receives both of the following:
>
> (a) The full amount in arrears, ~~for which service was disconnected~~, including any amounts for which service was not disconnected, but is now past due at the time of reconnection, or the amount in default on an agreed-upon deferred payment plan.

At times, the amount in arrears that caused the disconnection is not the same as the amount in arrears at the time of reconnection. By requiring a customer to pay all amounts in arrears, regardless of whether it is the amount that caused the service to be disconnected, would allow electric utilities to pursue collection of all amounts and not require electric utilities to make repeat notices of disconnection and/or field visits to disconnect service. The customer would be protected because, subpart (B) of the Rule does not permit an electric utility to require payment of current, but not past due amounts to obtain reconnection. Moreover, requiring payment of these amounts will reduce the amount of uncollectible charges recovered from other customers through the uncollectible rider. Under Section 119.032, Ohio Revised Code, the Commission should amend this rule to give electric utilities more flexibility in pursuing past collection of bills

for electric service. For those reasons, the Commission should amend subpart (A) accordingly.

H. Rule 4901:1-10-20: Fraudulent Act, Tampering and Theft of Service

Subpart (C) of this Rule reads:

> An electric utility may disconnect service, after following the steps set forth in this paragraph, when a customer uses any fraudulent act, as defined by paragraph (O) of rule 4901:1-10-01 of the Administrative Code, to obtain or maintain service.

Currently, paragraph (O) does not define fraudulent act; rather, paragraph (Q) is the correct paragraph. Therefore, the Commission should correct this section accordingly.

I. Rule 4901:1-10-23: Billing Adjustments

Staff has amended subpart (A) of this rule to limit the amount of any undercharge to a nonresidential customer to thirty-six months. Initially, the Companies do not believe it is sound public policy to relieve a nonresidential customer from paying amounts owed for electricity that the customer consumed, as a customer should be responsible for paying any amounts for electric service it consumed regardless of the cause of unbilled usage. Nevertheless, if the Commission decides to impose a limit on the timeframe of billing adjustments, the limitation should be no less than seventy-two months. This time period comports with the statute of limitations for civil actions brought under a contract that is not in writing under Section 2305.07, Ohio Revised Code, so it is a time period that customers are already subject to and which will allow electric utilities to have more flexibility in collecting for unbilled usage to the benefit of other customers. In any event, the electric utility would still have to produce evidence to support the amount owed. Therefore, the Companies request that the Commission amend this rule to limit the

amount of any undercharge to a nonresidential customer to no less than seventy-two months.

J. Rule 4901:1-10-24: Customer Safeguards and Information

Staff has added Subpart (E)(3) to this Rule in order to outline the circumstances under which an electric utility can disclose customer energy usage data. Subpart (E)(3) reads:

> An electric utility shall not disclose customer energy usage data without the customer's written consent, or without a court order, or without the customer's electronic authorization, except for the following purposes.

Subpart (C)(6) also contains similar language. Electric utilities do receive subpoenas for customer energy usage data. Therefore, the Companies suggest modifying Subpart (E)(3) to include "…or without a court order or subpoena" and (E)(6) to include "or court order or subpoena." If the Commission considers a subpoena as being a "court order", then the Companies request that such clarification be included in the rules or in the Commission's Order adopting the rule revisions.

K. Rule 4901:1-10-27: Inspection, Maintenance, Repair and Replacement of Transmission and Distribution Facilities (Circuits and Equipment)

1. Rule 4901:1-10-27(C)

Staff has revised Subpart (C) to require an electric utility and a transmission owner to file a report with the Commission a report setting forth its methodology used to assess the reliability of its transmission circuits. Furthermore, the rule continues to state that the methodology "shall be subject to review and acceptance by the director of the utilities department. In Subpart (E)(2) and (3), however, Staff removed a transmission owner's requirement to file its inspection, maintenance, repair and replacement programs,

which are subject to review by the Commission. For the reasons discussed below, the Companies believe that the Commission should accept Staff's changes to Subpart (E)(2) and (3) but not adopt the proposed changes to Subpart (C).

Federal law gives FERC exclusive jurisdiction over unbundled transmission service, and under the Supremacy Clause, preempts state attempts to regulate in this area, which the Commission previously recognized in the *New PJM Companies'* case.[1] . Therefore, the Commission should avoid any action that raises the prospect of a state/federal conflict that could be resolved in favor of federal law. Indeed, Staff recognized this in removing a transmission owner's requirement to file its inspection, maintenance, repair and replacement programs with the Commission. Likewise, the Commission should remove the requirement for the filing of the methodology used to assess the reliability of transmission circuits, which is already being reviewed by both PJM and NERC. While the Companies will provide information to the Commission on the reliability of transmission circuits, the Commission respectfully does not have jurisdiction to approve the methodology of assessing reliability. For those reasons the Companies request that the Commission amend this Rule accordingly.

2. Rule 4901:1-10-27(E)(4)

Staff has proposed some changes to Subpart (E)(4). Those changes read:

> (4) Each electric utility and transmission owner shall maintain records sufficient to demonstrate compliance with its transmission and distribution facilities inspection, maintenance, repair, and replacement programs as required by this rule. Each electric utility and transmission owner shall record all deficiencies revealed by inspections or tests and all actions taken to correct those deficiencies. Lines and equipment with recorded

[1] *See* FERC Docket No. ER03-262, *New PJM Companies*, Motion of the Pennsylvania Public Utility Commission for Leave to Intervene Out-of-Time, and Joint Comments and Motion for Relief of the Michigan Service Commission, the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission, ¶ 44 (Mar. 14, 2003) (State Commissions' Joint Comments).

> defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected, or isolated. All remaining deficiencies ~~likely to cause an outage~~ shall be corrected ~~within one~~ by the end of the year ~~of~~ following the completion of the inspection or testing that originally revealed such deficiencies. The electric utility shall document all deficiencies that are not corrected within the designated time, including the reason for not taking corrective action.

Staff has amended this section to remove the "likely to cause an outage language." However, the Companies believe this is a necessary part of the rule and recommend that it remain intact as there are some minor deficiencies recorded during an inspection where there is no reliability need to repair them as quickly as the following calendar year. An example of this is priority poles. While a minor deficiency may have been identified on these poles, the deficiencies on those poles pose no immediate reliability concern to the Companies or their customers. Such a requirement may in fact move those minor deficiencies ahead of other deficiencies that may potentially have a reliability need in order to comply with this rule change. In addition, the Companies recommend adding the wording "for the deficiencies likely to cause an outage" to the proposed last sentence of the rule. This will mean that while all deficiencies are recorded during an inspection only deficiencies likely to cause an outage that are not repaired within the following calendar year will be documented with a reason for not taking corrective action by such time. Thus, the Companies propose amending Staff's suggested language to read:

> (4) Each electric utility and transmission owner shall maintain records sufficient to demonstrate compliance with its transmission and distribution facilities inspection, maintenance, repair, and replacement programs as required by this rule. Each electric utility and transmission owner shall record all deficiencies revealed by inspections or tests and all actions taken to correct those deficiencies. Lines and equipment with recorded defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected, or isolated. All remaining

> deficiencies likely to cause an outage shall be corrected ~~within one~~ by the end of the year ~~of~~ following the completion of the inspection or testing that originally revealed such deficiencies. The electric utility shall document all deficiencies that are not corrected within the designated time, including the reason for not taking corrective action for the deficiencies likely to cause an outage.

Because amending this rule as the Companies suggest will eliminate unnecessary paperwork, provide greater flexibility to electric utilities, and allow the Companies to stay focused on undertaking work related to reliability, the Companies request that the Commission accept their suggestion and amend the rule accordingly.

L. Rule 4901:1-10-28: Net Metering

As an initial matter, in its Order, the Commission requested comments on whether virtual net metering and aggregate net metering could be implemented in Ohio without violating Section 4928.01 or Section 4928.67 of the Revised Code and whether virtual net metering and aggregate net metering would promote the public policy of the state. [2] The Companies believe that virtual net metering and aggregate net metering would violate the Revised Code and other regulatory principles. First, Section 4928.01 Ohio Revised Code references the definition of "electric load center" which is located in Section 4933.81(E) Ohio Revised Code, which defines an "electric load center" as:

> all the electric-consuming facilities of any type or character owned, occupied, controlled, or used by a person at *a single location* which facilities have been, are, or will be connected to and served at a metered point of delivery and to which electric service has been, is, or will be rendered." (emphasis added). Electric utilities have the exclusive right to furnish electric service to all electric load centers within their certified territories. Section 4933.83 Ohio Revised Code.

Permitting a customer-generator to net excess generation at one electric load center with any other electric load center within the certified territory violates the exclusive right granted by the statute.

[2] Order at ¶10(g).

Virtual net metering and aggregate net metering further violate the important regulatory principles of cost causation. Excess generation at an electric load center necessarily utilizes the Companies' distribution system as the energy is put onto the system to flow elsewhere. Other electric load centers owned by the customer-generator are also utilizing the Companies' distribution system to receive energy. Virtual net metering and aggregate net metering would allow both the customer-generator who is generating in excess of its requirements for electricity as well as its other aggregated electric load centers to utilize the Companies' distribution system without paying for the use of the distribution system. The costs not paid by these customers will be borne by other customers of the Companies without any clear benefits to offset the additional cost burden. The shifting of distribution cost recovery from such aggregation would result in these customers to be subsidized by non-customer-generators. For those reasons, the Commission should not implement virtual net metering or aggregate net metering.

The Companies further offer discussion on several items contained in Rule 4901:1-10-28.

1. 4901:1-10-28(A)(4)

In the proposed rule, Staff defines "microturbine" as "a combustion-turbine used by a customer-generator on the customer-generator's premises." The Companies believe that the proposed definition of "microturbine" to include any combustion turbine of any size is inappropriately broad, such that it would include any fossil fueled unit such as a large diesel powered generator. Moreover, the proposed definition runs contrary to Section 4928.01(31)(b), Ohio Revised Code, which specifies that a microturbine qualifies for service under the net energy metering tariff. In that section, the legislature's intent

clearly was to limit the size of such generators by specifying "*micro*turbine." Had its intent been to include any combustion turbine, it would have simply specified "combustion turbine" without making the size distinction inherent in their carefully selected term "microturbine." The Commission should not adopt the proposed definition without specifying an appropriate upper limit on the size, such as 500 kW (size range from California Energy Commission Distributed Energy Resource Guide, http://www.energy.ca.gov/distgen/equipment/microturbines/microturbines.html).

2. 4901:1-10-28(B)(4)

Subpart(B)(4) outlines what must be included in an electric utility's tariff for net metering. The Companies suggest adding the below language to clarify that other entities have rules and procedures that control in the case of interconnection/net metering applications intended to provide generation to the grid which then fall under Regional Transmission Organization rules:

> (4) Except as may be required pursuant to Regional Transmission Operator tariffs and/or federal jurisdiction, no electric utility's tariff for net metering shall require customer-generators to…

3. 4901:1-10-28(B)(5)

Subpart(B)(5) provides that "a net metering system must be located on the customer-generator's premises." Staff defines a customer generator's premises to include areas "owned, operated, leased, or otherwise controlled by the customer-generator, including contiguous lots or areas that are owned, operated, leased or otherwise controlled by the customer-generator." The Companies suggest adding the following sentence for clarification to the end of that section, "Non-contiguous areas are not eligible for inclusion under this definition of 'premises.'" Allowing non-contiguous areas to be

included within a customer-generator's premises definition would allow customers to avoid paying distribution charges that the customer should be paying, leaving the Companies with stranded costs in violation of regulatory principles as discussed above.

4. 4901:1-10-28(B)(6)

In Subpart (B)(6) Staff proposes that a customer-generator who annually generates less than 120 percent of its requirements for electricity be *presumed* to intend primarily to offset part or all of a customer-generator's requirements for electricity. The Companies suggest that the Commission not adopt this proposal because it would effectively constitute by design a purchase of energy by the electric utility, in a manner requiring the Companies to be in violation of their approved Electric Security Plan ("ESP") in Case Nos. 10-388-EL-SSO and 12-1230-EL-SSO. Specifically, the Companies' ESP Plans state "In the [Competitive Bid Process], the Companies will seek to procure, on a slice of system basis, *100 percent* of the aggregate wholesale full requirements SSO supply."[3] (emphasis added)

Furthermore, an arbitrary ceiling of 120 percent is unnecessary, as the Companies presently work with customers individually to assess their intent to offset all or part of their need for electricity. If the Companies find that such customers generate more energy on an annual basis than their need for electricity, the Companies reassess the customer's intent and counsel them with a goal to offset all or part of their annual need for electricity going forward without excessive generation, and discuss the option of selling power through PJM in lieu of service under the Net Energy Metering rider. This

[3] Case No. 10-0388-EL-SSO, p. 8, (B)(1) and Case No. 12-1230-EL-SSO, p. 7, (B)(1).

approach has worked well and the Companies are not aware of any complaints to the Commission regarding the status quo.

5. 4901:1-10-28(B)(9)(c)

In this Subpart, Staff proposes that an account in the customer-generator's name be set up to track credits for excess generation. The Companies oppose establishing such an account based upon name instead of the account for the customer-generator's premises. The Companies presently have no billing function whereby said account would attach to a customer-generator's *name*. Therefore, the Companies propose this paragraph read as follows:

> (c) If the customer-generator has excess generation during a monthly billing period, the electric utility shall issue a credit in the amount of the excess generation to the customer-generator for the next monthly billing period. If the full amount of the credit is not used in the next monthly billing period, the remaining credit amount shall be credited to an account for net excess generation ~~in the customer-generator's name~~ associated with the customer-generator's electric service account. The amount in the net excess generation account shall be credited to a customer-generator in months where the credit from the previous month is insufficient to cover the cost of the customer-generator's requirements for electricity.

6. 4901:1-10-28(B)(10)

Staff proposes a refund of any credit remaining in the net excess generation account at the end of the twelve-month period of June 1 to May 31, to be calculated at the rate the customer-generator pays for generation. The Companies suggest this would not be possible for customer-generators whose competitive retail electric service ("CRES") provider directly bills the customer for generation costs. The Companies also foresee a potential to game the system if a unit cost provided to the Company for billing and/or refund purposes does not represent the full agreement between a CRES provider and the customer-generator; for example, if a higher unit cost of generation is accompanied by a

payment from the customer-generator to the CRES provider when excess generation occurs. Moreover, a service offering from a CRES provider may not be conducive to ready calculation of the "rate the customer-generator pays for generation." The Companies therefore respectfully propose that any refund be calculated at the electric utility's Standard Service Offer cost of generation.

7. 4901:1-10-28(B)(14)

Staff proposes a new report to be submitted annually. The Companies recommend that the Commission reject this proposed reporting requirement. The Companies note that the information requested in (a) and (b) of this section already are provided in the report required under OAC 4901:1-25-02(A)(2). With respect to part (c), the estimated total kilowatt hours supplied to customer-generators by the electric utility, the Companies have no ready means to extract this information other than manually, which would be time-consuming and a cost ultimately passed on to customers.

With respect to part (d), the total number of customer-generators deemed by the electric utility to be excessive generators, the Companies' experience has been that such determination is a dynamic situation that changes as the Companies and the customer address the situation. Final determinations of "excessive-generator" status can be a lengthy process which may not be fully realized unless or until a customer chooses to cease generation (for other reasons), or chooses to move to become a PJM generation resource.

M. Rule 4901:1-10-29: Coordination with Competitive Retail Electric Service (CRES) Providers

Subpart (F)(1) requires that electric utilities mail confirmation notices to a customer who has enrolled in CRES service. Subpart (F)(5) requires that electric utilities

mail rescission confirmation notices to a customer who has rescinded CRES service. Moreover, Subpart (H)(2) requires that electric utilities mail notices relating to a customer-drop request. Due to cost of sending these various notices, the Companies believe that electronic mail should be added as an option to these subparts. Electronic mail notice should be permitted to be provided to customers who have enrolled in electronic billing or that have provided an email address to the Companies. Given that customers often utilize electronic mail to receive various notices, adding this option to Rule 4901:1-10-29 is a viable way to minimize unnecessary paperwork and reduce costs as provided in Section 119.032, Ohio Revised Code.

N. 4901:1-10-34: Compliance with PURPA

Staff has drafted a new rule, Rule 4901:1-10-34 designed to implement provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Policy Act of 2005 (the "EPACT 2005") relating to purchases of electricity by electric utilities from qualifying cogeneration facilities and qualifying small power production facilities (collectively, "QFs"). Section 210(b) of PURPA required the Federal Energy Regulatory Commission (the "FERC") to enact rules to encourage development of QFs, *inter alia*, by requiring electric utilities to offer to purchase electric energy available from QFs at rates that:

1. are just and reasonable to the electric consumers of the electric utility and in the public interest, and
2. do not discriminate against QFs.

Rules requiring electric utilities to offer to purchase electricity from QFs and providing guidance on determination of rates to be paid for such electricity were adopted by the FERC in *Small Power Production and Cogeneration Facilities; Regulations*

Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, (Order No. 69), FERC Stats. & Regs., Regulations Preambles ¶ 30,128 (1980). Such rules have been codified in 18 CFR § 292.303, *et seq*. The FERC determined in such rules that the rate paid by each electric utility for electricity supplied by QFs should be based on the purchasing electric utility's avoided costs, as determined by responsible state regulatory authorities (18 CFR § 292.304; see also, Order No. 69 at 30,878).

The prices for capacity and energy procured by the Companies from QFs that are larger than 20 MW are determined by prevailing prices of capacity and energy under competitive market conditions. The rules proposed by the Commission in this proceeding are intended in part to establish a similar process to determine rates to be paid by the Companies for electricity they may be required to purchase from QFs with capacity of 20 MW or less.[4] Such proposed rules are also designed to ensure that QFs will comply with interconnection procedures of the regional transmission organization in which they are located, and with interconnection and operation requirements of the electric utility with which they are interconnected.

While the Companies appreciate Staff's desire to ensure that the rates the Companies pay to purchase electricity from QFs are reasonable, the Companies are concerned that some of the rules proposed for determining rates at which electric utilities may be required to purchase electricity from QFs may be considered to be inconsistent with the FERC's rules. The Companies therefore recommend that the rules proposed by be modified as discussed further below to minimize the possibility that they might be determined to be in conflict with the FERC's rules.

[4] Proposed Rule 4901:1-10-34(B), OAC states that the purpose of the rule "is to implement a standard market-based rate for electricity and capacity transactions between EDUs and qualifying facilities as provided for PURPA, specifically for small power production facilities and cogeneration facilities."

1. Rule 4901:1-10-34(A)(1)

The Companies recommend that the definition of "day-ahead energy market" in proposed Section 4901: 1-10-34 (A)(1) of the Ohio Administrative Code be revised as follows:

> "Day-ahead energy market" means ~~the~~ any independently administered, auction-based day-ahead and real time forward wholesale market for the sale of electric energy.

The provisions in the FERC regulations permitting rates for purchases of electricity by electric utilities from QFs to be established by competitive market conditions when such QFs have non-discriminatory access to day-ahead energy markets that are "independently administered" and "auction-based" ensure that rates paid by regulated utilities for energy supplied by QFs will be consistent with prices that prevail in efficient energy markets. Such requirements also protect the ability of QFs to receive the full competitive market price of energy that they supply. It would be reasonable, and consistent with the FERC's regulations, to include similar qualifications in the PUCO's definition of "day-ahead energy market" used to calculate prices paid for electricity supplied to EDUs by QFs with capacity of 20 MW or less. As such, the Companies request that the Commission amend the definition accordingly.

2. Rule 4901:1-10-34(C)

As discussed above, the regulatory regime adopted by the FERC does not purport to regulate rates at which electricity may be sold by QFs. Instead, it contemplates that state regulatory authorities will establish the maximum "avoided cost" rate at which utilities located within their respective states must purchase the output of generation facilities that are owned and operated by QFs. The Companies believe that the purpose of the rules proposed by the PUCO is to protect electricity consumers in Ohio from being

required to pay excessive charges for electricity that they may be required to purchase from QFs whose capacity is 20 MW or less. In order to attain this objective while protecting the right of QFs to choose from potential alternative purchasers, the Companies propose that Section 4901:1-10-34(C) of the Ohio Administrative Code be revised to read as follows:

> (C) ~~All qualifying facilities that have a net capacity of 20 megawatts or less shall provide their electrical output to the EDU. Purchase payments to the qualifying facility for the supply of electricity to the EDU shall be based on the contractual design set forth in this rule.~~ The rates paid by each EDU in Ohio to purchase energy from qualifying facilities that have a net capacity of 20 megawatts or less shall not exceed the maximum price permissible under Section 4901: 1-10-34(J) of the Ohio Administrative Code.

3. Rule 4901:10-34(J)

The Companies propose that Section 4901: 1-10-34(J) of the Ohio Administrative Code be revised to read as follows:

> Each Qualifying Facility with capacity of 20 MW or less that sells electricity to an EDU shall have the option either:
>
> (1) To provide energy as the Qualifying Facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on either of the following:
>
> a. The day-ahead energy market as cleared at the applicable locational marginal price at a liquid trading hub.
>
> b. The monthly simple swap price; or
>
> (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the Qualifying Facility exercised prior to the beginning of the specified term, be based on either:
>
> a. The avoided costs calculated at the time of delivery, as determined in the manner specified in (1) above; or

b. The avoided costs calculated at the time the obligation is incurred, in which case the rates for such purchases shall be based on either of the following:

(i) The results of a competitive long-term power procurement auction of the purchasing electric utility in which the Qualifying Facility has participated; or

(ii) The long-term avoided cost of electricity to the purchasing electric utility as projected by the PUCO based on expected competitive wholesale electricity market conditions over the term of the power purchase agreement or obligation.

Modification of the method of determining the rates to be paid by electric utilities in Ohio to purchase electricity from QFs with capacity of 20 MW or less in this manner would help to achieve the goal of the PUCO of implementing standard market-based rates for electricity capacity and energy transactions between EDUs and such QFs while protecting the ability of such QFs (a) to have rates determined at the time a legally enforceable obligation is established and (b) to have capacity costs considered in calculation of avoided cost rates to be paid by the purchasing utility.

IV. CONCLUSION

The Companies applaud the Commission Staff's diligent efforts to improve the Commission's rules. The Companies urge the Commission to adopt the recommendations of the Companies set forth above.

Respectfully submitted,

/s/ *Carrie M. Dunn*
James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
burkj@firstenergycorp.com
cdunn@firstenergycorp.com

Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

CERTIFICATE OF SERVICE

On January 7, 2013, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System and is available for viewing by any interested party.

/s/ *Carrie M. Dunn*
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/7/2013 4:50:47 PM

in

Case No(s). 12-2050-EL-ORD

Summary: Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company