

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
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COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

The November 7, 2012 Commission Entry in the above-captioned case established deadlines to file comments and reply comments to the Commission Staff's ("Staff") proposed changes to the Electric Company rules in Ohio Administrative Code ("OAC") Chapter 4901:1-10. FirstEnergy Solutions Corp. ("FES") is a certified Competitive Retail Electric Service ("CRES") provider in Ohio and respectfully submits the following comments in response to the November 7th Entry as an interested party.

As a general matter, FES finds that the proposed rules require clarification to resolve inconsistent practical application and urges the Commission to make several changes.

II. COMMENTS TO STAFF'S PROPOSED RULES

- 1. Rule 4901:1-10-24 "Customer safeguards and information" and Rule 4901:1-10-12 "Provision of customer rights and obligations"**

OAC 4901:1-10-24(E)(3): Section (E)(3) reads:

- (3) An electric utility shall not disclose customer energy usage without the customer's written consent, or without a court order, or without

the customer's electronic authorization, except for the following purposes:

- (a) The electric utility's collection and/or credit reporting.
- (b) Participation in the home energy assistance program, the emergency home energy assistance program, and programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.
- (c) Governmental aggregation.
- (d) The operative functions involved in supplying retail energy service.
- (e) The reasonable sharing of de-identified energy usage data.

The meaning of "The operative functions involved in supplying retail energy service" is vague and does not clearly allow for the disclosure of eligible customer lists. Eligible customer lists are a vital and necessary part of providing retail electric service and OAC 4901:1-10-29(E) requires electric utilities to provide these customer lists. Exceptions (a)-(e) are also listed in OAC 4901:1-10-12 (F)(3).

In order to clarify the confusion and possible conflict in the above-mentioned sections, FES suggests that an additional exception be included in 1-10-24(E) and 1-10-12 (F) that specifically mentions the need for eligible customer lists in 1:-10-29. The exception should read:

"The information contained in rule 4901:1-10-29(E) of the Administrative Code."

In the alternative, there should be an explanation that specifies eligible customer lists as part of the operative functions involved in supplying retail electric service.

2. Rule 4901:1-10-19 "Delinquent residential bills"

Section (E)(2): This section states that "Failure to pay charges for CRES may result in cancellation of the customer's contract with the CRES provider, and return to the electric utility's standard-offer generation service. This provision is applicable only on

accounts issued a consolidated bill for electric services.” In practice, electric utilities that own generation and provide standard-offer generation service use this rule for their own financial benefit in an anti-competitive manner as a basis to terminate a CRES customer contract. The abuse of this rule unnecessarily stifles the competitive market.

For this and other reasons, this rule should be modified as follows:

Failure to pay charges for CRES may result in cancellation of the customer’s CRES contract with by the CRES provider, and return to the electric utility’s standard-offer generation service. This provision is applicable only on accounts issued a consolidated bill for electric services.

This modification allows the actual entity to which the debt is owed to choose whether the CRES contract is cancelled, instead of an electric utility. Without this protection, utilities, which may have a financial interest, control the relationship between the customer and CRES provider and CRES providers are needlessly prevented from managing the payment relationship with the customer.

3. Rule 4901:1-10-22 “Electric utility customer billing and payments”

Section (I): The language of this section should be clarified so that the utility transfer of unpaid balances includes CRES charges. Currently the language reads:

The utility may transfer the unpaid balances of a customer’s previously rendered final bills to a subsequent bill for a like service account in the name of that same customer. The transfer of bills is limited to like service, for example, residential to residential, commercial to commercial, gas to gas, and electric to electric. Such transferred final bills, if unpaid will be part of the past due balance of the transferee account and subject to the Company’s collection and disconnection procedures which are governed by Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code. Any transfer of accounts shall not affect the residential customer’s right to elect and maintain an extended payment plan for service under Rule 4901:1-18-10 of the Ohio Administrative Code.

The additional language indicating CRES charges also transfer will keep the entire unpaid balance of a customer to a single location – on the utility bill – where

customers are currently accustomed to seeing CRES charges. Additional language will also afford CRES providers the same rightful opportunities for payment of past due amounts as the utility.

Without this clarification, CRES providers are forced to send a separate bill for an unpaid balance, leading to lower collection rates, customer confusion, increased CRES provider costs and – ultimately – reduced customer savings.

4. Rule 4901:1-10-24 “Customer safeguards and information”

Section (F)(5): The quoted second paragraph of section (F)(5) provides details of the notice sent to utility customers to allow a customer to object to inclusion on an eligible-customer list given to CRES providers. The section currently reads:

We are required to include your name, address and usage information on a list of eligible customers that is made available to other competitive retail electric service providers. If you do not wish to be included on this list, please call (electric utility telephone number) or write (electric utility address). If you have previously made a similar election, your name will continue to be excluded from the list without any additional action on your part. If you previously decided not to be included on the list and would like to reverse that decision, please call or write us at the same telephone number and address. An election not to be included on this list will not prevent (electric utility name) from providing your information to governmental aggregators.

FES supports the rule, but encourages the Staff to include an informative sentence in the notice outlining the potential negative impacts of not being included in the eligible customer list. Specifically, FES requests the following change:

We are required to include your name, address and usage information on a list of eligible customers that is made available to other competitive retail electric service providers. If you do not wish to be included on this list, please call (electric utility phone number) or write (electric utility address). This could exclude you from receiving savings offers from competitive electric service providers. If you have previously made a similar election ...

It is in the customer's best interest to be completely informed of the negative impacts of removing themselves from an eligible customer list, including the potential of not receiving savings offers from CRES providers.

5. Rule 4901:1-10-29 "Coordination with competitive retail electric service (CRES) providers"

Section (E): FES appreciates Section E dealing with eligible-customer lists, but offers suggestions for three additional pieces of information that will assist CRES providers in the provision of retail electric service to customers.

First, FES requests the addition of a mandatory "shopping flag" or means of differentiating customers currently on CRES from those on standard offer service. CRES providers spend considerable time and resources mailing offers to customers who have already selected a CRES provider. This leads to customer confusion and – ultimately – increased costs to CRES providers and reduced customer savings. The ability to target offers to customers on standard offer service will reduce CRES costs, diminish customer confusion and bring savings to a group of customers who have yet to experience the benefits of the competitive marketplace. While very helpful to CRES providers, the addition of the shopping indicator will be of little to no cost to utilities in terms of time or expense.

Secondly, FES requests that there is a mandatory flag denoting customers enrolled in the Percentage of Income Payment Plan. Per OAC 4901:1-10-29(I), CRES providers are not allowed to serve PIPP customers. Adding this flag to the eligible-customer list will allow CRES providers to target their mailings to eligible customers only.

Finally, FES requests that customer phone numbers be included on the eligibility file. Customers will continue to be protected from unwanted marketing calls via the National Do Not Call Registry, which a CRES provider must abide by. CRES providers occasionally need to contact customers regarding their enrollment status, and if the customer provides an illegible account number on the return form, CRES providers may have to resort to contact/clarification via U.S. Mail, which will delay customer enrollment and savings to the customer. In addition, having the phone numbers on the eligibility file – in combination with the flags mentioned above – will further streamline the enrollment process and allow CRES providers to reduce their costs leading to greater customer savings.

For the reasons listed above, FES requests that these three items be added to 4901:1-10-29(E) as mandatory information on all eligible customer files provided to CRES. FES requests that the fourth sentence now read,

The eligible customer list shall, at a minimum, contain customer name, service and mailing address, rate schedule (class and sub-class), phone number, applicable riders, load profile reference category, meter type, interval meter data indicator, budget bill indicator, PIPP indicator, CRES service indicator, meter read date or schedule, and historical consumption data (actual energy usage plus any applicable demand) for each of the most recent twelve months.

Section (G)(2) The current rule does not specify that consolidated billing includes budget billing from a utility and CRES provider. This section should be clarified to include both utility and CRES charges. The modified rule should read,

Consolidated billing shall include budget billing of utility and CRES charges as a customer-elected option.

This modification will remove another barrier by making budget billing a mandatory offering. Many customers who use the budget billing option offered by utilities need the fixed monthly payments to better manage their annual electricity expenses. These customers are often discouraged from shopping when it is made clear that the CRES portion of their utility bill will not be similarly budgeted. By requiring utilities to provide this option, the many customers on fixed incomes will be more able to enjoy the beneficial savings offered by CRES providers while maintaining their fixed monthly charges for *all* of the charges on their bill.

Section (G)(3) Charging a switching fee directly to a customer is an unnecessary deterrent to customer choice and competition.¹ Moreover, requiring customers to pay a switching fee can result in a rate *increase* in the first month of shopping instead of savings. To eliminate this problem, FES requests new language added as Section (G)(3) stating:

Any customer switching fees associated with switching to a CRES provider shall be charged to the CRES provider and not the customer.

Charging this fee instead to the CRES provider allows the CRES provider to manage the costs over the life of the contract, allowing the customer to see savings in their first bill and reducing this unnecessary cost directly to the customer.

Section (H) Minimum stays make it more difficult for customers to switch, and thereby hinders effective competition and favors utility-owned generation service. To the extent utilities believe these rules are necessary to mitigate shopping risks, this

¹ The only two utilities that insist on maintaining this practice also have the lowest residential switching levels in the state. Source: PUCO "Summary of Switch Rates from EDUs to CRES Providers in Terms of Customers For the Month Ending June 30, 2012". The report shows switching levels of 14.02% for AEP Ohio, 16.42% for Dayton Power & Light, 33.72% for Duke Energy Ohio 67-75% for the FirstEnergy Ohio utilities.

represents anti-competitive behavior that would be unnecessary if a CBP was used to secure SSO service.

Duke Energy Ohio and the FirstEnergy utilities have instituted wholesale auction processes to supply service to SSO customers. AEP will move to wholesale SSO supply auctions in the near future, and DP&L has proposed to do the same in its most recent ESP filing. In each of the auction processes, SSO customer migration risk is shifted from the utility onto the winning bidders in the auctions, including the risk that a customer drops back to SSO for a time before returning to a CRES provider. These auctions remove any such risk from the utilities and all the prior reasons used to justify minimum stays. The negative impact on competition when a customer returning to SSO service is prevented from shopping for a set period is all that is left, and therefore the Commission should incorporate FES's suggested change in its final rules. The rule should be modified to eliminate minimum stays as follows:

There shall be no minimum stay period for customers returning to the standard offer.

6. Rule 4901:1-10-31 "Environmental disclosure"

Section (D)(2)(f): FES takes no position on the content of the section but simply brings to the Commissions attention a typographical error where the number "3" appears in the word "resources".

7. Rule 4901:1-10-33 "Consolidated billing requirements"

Section (I): Section I currently reads, "Upon the customer's switch from a CRES provider, the billing party shall identify for the customer and state on the bill the date after which the billing party will no longer remit payments to the previous CRES provider and include any outstanding balance due to the previous CRES provider."

Some utilities have interpreted this section as giving them the authority to remove past due CRES provider charges from a customer's bill entirely. When past due CRES charges are removed from customer bills, it allows a customer to leave a supplier, and once the balance disappears from their utility bill, enroll with a new supplier. This practice essentially "wipes the slate clean" from the utility bill, but it leaves CRES provider with increased "uncollectible" costs.

Due to the ambiguity of this rule, FES requests that the Commission eliminate section 4901:1-10-33(I) in its entirety to ensure that past due CRES provider charges remain on customer bills. This modification will help eliminate unnecessary collection issues for CRES providers and allow for the rightful collection of outstanding balances.

III. CONCLUSION

For the reasons stated above, FES urges the Commission to adopt the changes proposed above.

Respectfully Submitted,

/s/ Scott J. Casto

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Summary: Comments Comments electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.