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**

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

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Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies") hereby file their reply comments to some of the comments proffered by various commentators in this case. For organization purposes, the Companies present their reply comments in numerical rule order. The Companies respectfully request the Commission consider their reply comments in addition to their initial comments and appropriately modify and/or add the proposed rules.[1]

I. RULE 4901:1-10-01: DEFINITIONS

A. Rule 4901:1-10-01(I): Definition of Customer Energy Data

Staff added a new definition of customer energy usage data: "energy usage information and data that is identifiable to a retail customer." Ohio Power Company ("AEP Ohio") suggested the removal of "information and."[2] The Companies agree with AEP Ohio's changes because it is unclear to what "energy usage information" refers that would be in addition to "data." The Companies recommend that the Commission accept AEP Ohio's suggestion.

The Office of Ohio Consumers' Counsel ("OCC") suggested that the Commission replace the definition of "customer energy usage data" with "the granular energy usage information and data collected using advanced meters or smart meters that can identify the specific usage patterns of an individual as a retail customer."[3] The Companies believe that OCC's suggested definition is too specific as the Companies use of smart meters and advanced meters is currently very limited, making a specific carve-out definition unnecessary. For example, the Companies currently have a pilot program involving advanced meters in CEI's territory, but the number of customers is relatively small. While other utilities' may have some

[1] The Companies' decision not to include a reply to all comments filed in this proceeding may not be interpreted as the Companies' agreement with or acquiescence to other parties' comments.
[2] AEP Ohio Comments at 2.
[3] OCC Comments at 3.

smart meters and advanced meters in the State, the Companies believe that the broad definition proposed by Staff is sufficient to protect any information gained from smart or advanced meters. Further, OCC's suggested language for "customer electric usage data" defined as data only from smart meters is far too narrow. This definition should be broad enough to protect specific customer data regardless of meter type. OCC's proposed change would cause most customer specific information to have no protection from disclosure under this rule, because, as modified by OCC, the rule no longer applies to customer specific information that does not come from a smart meter. For those reasons, the Commission should reject OCC's suggestion.

B. Rule 4901:1-10-01(J): Definition of De-Identified Energy Usage Data

Staff added a definition of "de-identified energy usage data:" "aggregated information and data that is not identifiable to an individual retail customer or could not be used to reasonably ascertain a customer's identity." OCC recommends that the Commission change this definition to "Generic Customer Load Pattern Information" defined as "aggregated energy usage information and data that does not identify the usage patterns for an individual retail customer or could not be used to reasonably ascertain a customer's identity."[4] As discussed above, Staff's two suggested definitions "de-identified energy usage data" and "customer energy usage data" are more than adequate to protect customer's confidential information and the Commission should reject OCC's recommendations.

C. New Definition: Momentary Outage

OCC recommends adding a definition of "momentary outage:" "an interruption in electric service with a duration less than five (5) minutes."[5] Later in its Comments,[6] OCC recommends that the Commission adopt standards concerning momentary outages. As discussed

[4] *Id.* at 3-4.
[5] *Id.* at 5.
[6] *Id.* at 11-13.

in Section VI.A. below, the Commission should reject the inclusion of both a definition and standards related to momentary outages. In addition, the definition of momentary outage in OCC's comments is incorrect, and if it is included at all, which it should not, it should read "an interruption in electric service with a duration of five (5) minutes or less" given that the definition of "sustained outage" is "the interruption of service to a customer for *more than* five minutes."[7] The Commission should reject this suggested rule change.

D. New Definition: Critical Human Service Facility

The Ohio Hospital Association ("OHA") recommends that the Commission add a definition of "Critical Human Service Facility:" "any location incorporating a state recognized medical emergency service department, a state recognized labor and delivery department or a state recognized behavioral health department."[8] Later in its Comments, OHA recommends several changes to the rules to "improve the reliability of the electric distribution systems serving critically important acute healthcare facilities"[9]

Although OHA believes that its suggested changes are "modest,"[10] as discussed in Section III.B. and VII.C. below, the ramifications of adding rule-driven reliability standards to a potentially large number of presently undefined facilities, and then having to keep that unwieldy list accurately updated, are severe. The purpose of the "critical customer" designation is to alert utility dispatchers during an outage of certain customers that may have inadequate back-up life support facilities. Clearly hospitals and other health care facilities do not fall into this category because they must have adequate back-up life support facilities. Moreover, if a customer relies on electricity "for its daily survival" then it should take steps to provide for a back up as the

[7] Rule 4901:1-10-01(AA), Ohio Administrative Code.
[8] OHA Comments at 3.
[9] *Id.* at 1.
[10] *Id.* at 3.

electric utility cannot guarantee that service to such a customer will never, under any circumstances, be interrupted. This is especially true give that many outages occur outside the control of the electric utility as a result of storms and accidents. Therefore, adding this definition, in the context that OHA wants it used, is not necessary and would be unduly burdensome.

OHA's definition of "critical human service facility" is incredibly broad and could include an unmanageable, large number of facilities. Moreover, it is vague and ambiguous in that it would be impossible for an electric utility to know what facilities are "state-recognized" and what facilities are included in the definition and how that may change over time. Numerous unanswered questions exist regarding this proposal, for example, whether the terms used are defined and publicly available and how often such terms may change, how such entities can be confirmed, and how many such entities exist and where they are located, and who is responsible to assure that such entities continue to meet the definition, and who will have responsibility to track updated definitions of the terms and compare the updated definitions to the list of entities under the new proposed definition of Critical Human Service Facility. In emergency plans, hospitals are already part of the Companies restoration prioritization process and they are identified. During a storm, the external affairs and customer support employees work with critical facilities, answering questions for them and getting information to the employees who are undertaking restoration efforts. Outage restoration information is already available on the Companies' website. For these reasons, and the reasons discussed in Section III.B. and VII. C. below, the Commission should reject OHA's recommendations related to "critical human service facilities" in their entirety.

II. RULE 4901:1-10-05: METERING

A. Rule 4901:1-10-05(D): Type of Meter

In its Comments, Duke Energy Ohio, Inc. ("Duke") asserts that this rule is missing a word and that it should read as follows "[m]eters that are not direct reading meters such as meters with a multiplier **not** equal to 1.0."[11] Duke is correct as direct reading meters are meters whose multiplier is equal to 1.0. The Companies agree with Duke and recommend that this change be adopted.

B. Rule 4901:1-10-05(F): Overpayment Refunds

In its Comments, OCC recommends that the Commission change subpart (F)(5)(C) of this rule to read:

> Shall, within thirty days, pay or credit, after informing the customer of the option, any overpayment to the customer, in accordance with one of the following billing adjustments.[12]

OCC believes that customers should "make the decision whether they want to receive either a cash refund or a credit to their current account and to be informed about the option."[13] OCC made a similar recommendation in Case No. 06-0653-EL-ORD[14] which was not adopted by the Commission. Whether a refund is a bill credit or check should be left to the utility. Issuing a check is far more expensive, perhaps prohibitively expensive, for small refund amounts. This will increase costs that ultimately passed on to all customers.

The Commission should again reject this change because it is administratively burdensome to issue cash refunds to customers where they are often small refunds in comparison

[11] Duke Comments at 2.
[12] OCC Comments at 5.
[13] *Id.*
[14] In the Matter of the Commission's Review of Chapters 4901:1-0, 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 ("Case No. 06-0653-EL-ORD"), OCC Comments at 36 (August 12, 2008).

to monthly usage. When the Companies rebill accounts to correct overpayments, they inform customers to contact the company with special payment arrangements or questions. For large refunds, customers often contact the Companies to initiate cash refunds. For smaller refunds, the Companies have not experienced customers requesting cash refunds. Therefore, OCC's change to this rule is not necessary and will increase costs for customers and should be rejected by the Commission.

C. Rule 4901:1-10-05(I): Meter Reads

OCC recommends that the Commission change subpart (I)(1) to read:

> The electric utility shall attempt to obtain actual readings of all its in-service customer meters every billing period but must obtain an actual read a minimum of four times a year per customer……the customer and the electric utility can agree to less frequent meter reads provided each meter is read at least once annually……[15]

In making this suggestion, OCC fails to recognize that this standard would increase costs to customers. OCC again cites no basis for the need to make significant changes to this rule that may lead to price increases for customers. Further, it places more pressure on electric utilities to place their employees in unsafe positions attempting to comply with the new proposed rule with no identifiable benefit to customers or the Companies.

As discussed in their comments, 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 O.A.C. 4901:1-13-04 (G)(1). For those reasons, the Commission should reject OCC's recommendation.

[15] OCC Comments at 6.

III. RULE 4901:1-10-07: OUTAGE REPORTS

A. Rule 4901:1-10-07(A): Definition of Outage

Subpart (A) deals with the definition of outage in the context of when it must be reported to the Commission's outage coordinator. In its Comments, OHA recommends that the definition of outage should be amended to include interruptions for service for less than four hours in the event there is smart grid technology.[16] Smart grid technology is still in its infancy in Ohio and therefore this addition is premature. Moreover, adding more reporting requirements, without any demonstrated value, takes away from an electric utility's resources otherwise applied to outage restoration efforts. The Commission should reject this change.

In its Comments, OCC requests that the Commission amend the definition of outage as follows:

> (1) Two thousand five hundred or more customers in an area for a projected or actual period of four hours or more.
>
> (2) One hundred or more customers in an area for a projected or actual period of twenty-four hours or more. [17]

OCC asserts that the rule should be amended because outage reports are triggered by the utilities' own assessment for how long the restoration will take.[18] OCC has not offered a tangible reason as to why this rule should be changed. Certainly if Commission Staff felt that outage reporting was inaccurate or incomplete due to the wording of the rule, as OCC suggests, then they would have proposed a change to the rule to remedy that situation. Staff made no such proposal. The Companies outage reporting has improved in recent years and continues to improve, but adding the OCC suggested language will not support the effort to improve the accuracy of outage

[16] OHA Comments at 3-4.
[17] OCC Comments at 7.
[18] *Id.*

reporting, but serve only as a distraction to continue striving to achieve that goal. The utilities work with Commission Staff on any improvements that should be made after outages. Lastly, adding more reporting requirements will take away from resources the utilities could better use elsewhere. The Commission should reject this change.

B. Rule 4901:1-10-07(B): Outage Reports

Staff added a new provision to this section indicating that an electric utility should submit outage reports "in a format prescribed by the outage coordinator." In its Comments, AEP Ohio supports this provision, but also indicates that it assumes the web-based system on which it has collaboratively worked with Staff is the format contemplated by this rule change.[19] Although not opposed to the new language provided in the rule, the Companies cannot comment on AEP Ohio's proposal because they do not know what this new web-based system entails. They do not know if it will even work with the Companies' system. Before the outage coordinator prescribes a certain format, Staff should work all the electric utilities in order to determine if a new format can be utilized. For those reasons, the Companies cannot at this time support AEP Ohio's suggestion.

OCC seeks to insert itself into the role of the Commission when it comments that electric utilities should be required to submit the outage reports to it.[20] The Commission should reject this change. It is the Commission, not the OCC, who is responsible for regulating electric utilities. If the OCC is curious about the outage report, it can request the reports through a public records request or view the information available on the Companies' website. A rule change is not necessary and the Commission should reject it.

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[19] AEP Ohio Comments at 3-4.

[20] OCC Comments at 8. OCC made a similar comment in Case No. 06-0653-EL-ORD when it requested that the electric utility should immediately report certain outages to the OCC. Case No. 06-0653-EL-ORD, OCC Comments at 39-40 (August 8, 2008). The Commission rejected this recommendation. Case No. 06-0653-EL-ORD, Finding and Order at ¶21 (November 5, 2008).

Last, OHA comments that the rules should require that the electric utilities provide outage event information to hospitals "as close to real-time as is practicable for the utility."[21] OHA does not indicate why this change is necessary as the Companies already have outage information available on their website as well as work with hospitals and other critical facilities in communicating outage information. As the Commission noted in Case No. 06-0653-EL-ORD in response to some commenters' (including OCC) suggestions to add to the list of people contacted about outages: "the Commission's outage coordinator is the appropriate contact fulfilling the Commission's role as a 'responder' in the Ohio Emergency Management Agency's emergency response system."[22] The Commission, thus concluded, that it is "unnecessary to add additional reporting requirements when an outage occurs."[23] For those reasons, the Commission should reject this change.

IV. RULE 4901:1-10-08: EMERGENCY PLAN, ANNUAL EMERGENCY CONTACT REPORTS AND ANNUAL REVIEW OF EMERGENCY PLAN CRITICAL CUSTOMERS; EMERGENCY EXERCISE AND COORDINATION.

A. Rule 4901:1-10-08(A): Emergency Plan Contents

Without any explanation, OCC comments that the emergency plan should include a provision outlining the circumstances under which the emergency plan is implemented.[24] This rule is not necessary and does not reflect how the emergency plan may be implemented by an electric utility. Electric utilities at times implement portions of their emergency plans during various events including non "emergency" events such as long-range equipment failures. Outlining all of those circumstances is neither necessary nor warranted. Therefore, the Commission should reject this suggestion.

[21] OHA Comments at 4.
[22] Case No. 06-0653-EL-ORD, Finding and Order at ¶21 (November 5, 2008).
[23] *Id.*
[24] OCC Comments at 8.

OMA Energy Group ("OMAEG") recommends that the Commission add the following information to electric utilities' emergency plans:

> (A)(18) Policies and procedures which promote lengthening of backup power operating time at critical and business-critical facilities (such as manufacturers, grocers, etc.) specifically, encouraging energy efficient and best available technology (BAT) of critical equipment connected to backup power, and policies encouraging combined heat and power (CHP) at hospitals, manufacturers, and other appropriate facilities. Promotion should be coordinated with the utility's demand-side management programs or as a separate program if demand-side management programs are non-existent.[25]

The Commission should reject this addition. Manufacturers and private businesses have a responsibility to provide their own back-up systems and mitigate the effects of emergencies on their business. If the Commission required electric utilities to give priority to "business-critical facilities," it would take away resources from providing service to critical facilities like hospitals. Moreover, the definition provided by OMAEG is incredibly broad, making it impossible for the electric utilities to determine what facilities are included. For those reasons, the Commission should reject this addition.

B. Rule 4901:1-10-08(B): Copies of Emergency Plans

Subpart (B) requires that the electric utility shall make its emergency plan and amendments available for review by the Commission's outage coordinator. As it did in Case No. 06-0653-EL-ORD, OCC once again seeks to insert itself into the role of the Commission when it recommends that the emergency plans should be made available at the Commission's offices and to the OCC under the guise of "transparency."[26] As contemplated by the rule, the emergency plan contains confidential information. Public transparency of the specific details of an electric utility's emergency plan is neither warranted nor wise. Moreover, it is the Commission, not the OCC, who regulates public utilities. Last, OCC does not explain to the Commission what it

[25] OMAEG Comments at 4.
[26] Case No. 06-0653-EL-ORD, OCC Comments at 40; OCC Comments at 8.

would do with the plan if it had it. For those reasons, the Commission should reject this recommendation.

C. Rule 4901:1-10-08(I): List of Critical Customers

Subpart (I) requires that the electric utility maintain and annually verify a list of critical customers. OCC recommends that the Commission amend this rule to update and verify the list on a quarterly basis and to maintain contact information for persons that provide care for critical customers, inform them during planned and sustained outages, and provide a priority response.[27] In Case No. 06-0653-EL-ORD, OCC made the same recommendation to update and verify the list on a quarterly basis that was rejected by the Commission because it placed an unnecessary burden on customers to verify medical information.[28] Moreover, as the Commission noted in that case, "although the electric utilities do not guarantee priority restoral of service to critical customers, the electric utilities already consider and plan for the restoration of service to those customers during an outage. Additionally, the electric utilities inform such customers of the need for being prepared for outages and to plan for such alternatives in the event of sustained outages."[29] As OCC offers no new basis for this rule change, the Commission should again reject this suggestion for the same reasons.

As for OCC's recommendation that the electric utilities should update contact information, the Commission should likewise reject this suggestion. Electric utilities should focus resources on improving service and adequately responding to emergencies – not monitoring each critical customer's contact information. If a customer is critical and requires electricity for health reasons, the customer can share in the responsibility by updating his or her contact information more often than annually if needed.

[27] OCC Comments at 9-10.
[28] Case No. 06-0653-EL-ORD, Finding and Order at ¶27 (November 5, 2008).
[29] *Id.*

As for OCC's recommendation that the Companies provide specific outage information to critical customers and give them priority status, the Commission should reject this change. All customers, not just critical customers, have access to outage information on the Companies' website and through the Companies' customer contact center. Subpart (I) also requires the Companies to inform critical customers with a written statement of options and responsibilities during outages. Requiring priority status to critical customers is not practical because each outage event requires more flexibility, not more restrictions. The Companies follow their emergency plan in dealing with outages and priority is prescribed according to that plan. The Commission should reject this suggestion.

D. Rule 4901:1-10-08(J) and (K): Emergency Exercises

Subpart (J) and (K) requires an electric utility to conduct an emergency exercise and provide an outage coordinator with reports of the implementation of the emergency plan when a waiver of the exercise is requested. OCC once again seeks to insert itself into the role of the Commission when it suggests that the Commission should amend the rule to require the electric utilities to provide this report to the OCC and any waiver requests. Again, as discussed above, the OCC does not regulate electric utilities and is not entitled to this information and it is not OCC's responsibility to assess the electric utilities' emergency plans. Therefore, this Commission should reject this recommendation.

V. RULE 4901:1-10-09: MINIMUM CUSTOMER SERVICE LEVELS

A. Rule 4901:1-10-09(A) and (B): Measurement of Minimum Customer Service Levels

Subparts (A) and (B) provides that installation of new service or upgrade and answer time for telephonic customer service calls shall be measured "on a calendar monthly basis." AEP Ohio recommends changing "on a calendar monthly basis" to "an annual basis."[30] Pointing to the annual standards employed in Rule 4901:1-10-10, The Dayton Power and Light Company ("DP&L") also support an annual target rather than a monthly target for the average answer time.[31] The Companies support this change. The reasoning AEP Ohio includes in its comments is sound as there are significant seasonal and event driven outage calls on a month to month basis that may tend to distort results. Moving to an annual standard enables electric utilities to better offer customers a more consistent level of service as an annual standard allows for a more consistent resource planning throughout the year. For all of those reasons, the Commission should accept AEP Ohio's suggestion.

B. Rule 4901:1-10-09: New Subpart (D) Regarding Annual Customer Satisfaction Surveys

In its Comments, OCC recommends that the Commission add a new subpart (D) to address annual customer satisfaction surveys.[32] OCC wants the Commission to require that the survey be funded by electric utility shareholders and to be developed in conjunction with Staff and the OCC.[33] As an initial matter, OCC made a similar recommendation in Case No. 06-0653-EL-ORD, which was not adopted. In that case, although the Commission agreed that a set of questions related to customer satisfaction could be added "if practical and feasible," it should be

[30] AEP Ohio Comments at 4-5.
[31] DP&L Comments at 2.
[32] OCC Comments at 11.
[33] *Id.*

done within the context of the customer perceptions survey contemplated by Rule 4901:1-10-10(B)(4)(b).[34] Second, the OCC does not have a role in regulating electric utilities and, even if, a customer survey process were developed, the OCC should not be a part of it. Third, electric utilities are required under Rule 4901:1-10-10(B)(4)(b) to conduct a survey every three years. Fourth, the Companies currently measure customer satisfaction on a regular basis through a proprietary survey whereby a market research firm conducts telephone interviews with a sample of customers on a monthly basis and provides current feedback to the Companies on their own systems. Having a survey specific to their own systems allows the Companies to take relevant action quickly then it would with a statewide survey. Last, the call answer time standards in Rule 4901:1-10-09(B) provides an incentive to ensure customer perceptions are in line with the utility as call volume will increase if utilities are not providing adequate customer service. For all of those reasons, the Commission should reject OCC's recommendation.

C. Rule 4901:1-10-09(A)(1)(a) and (c): Advanced Meter Reporting Requirements

Citing concerns with the rule change regarding new reporting requirements around new service installations for AMI meters, AEP Ohio recommends that the Commission provide a carve-out for "Companies who have less than 25% of their customers with meters that are capable of starting and stopping service remotely, do not have to report on these meters separately."[35] The Companies support AEP Ohio's recommendation because electric utilities in Ohio have not fully implemented advanced metering. For example, at this time, the Companies only have a limited number of smart meters in place as part of a pilot program. Therefore, the Commission should adopt AEP Ohio's suggestion, but change "Companies" to "electric utilities."

[34] Case No. 06-0653-EL-ORD, Finding and Order at ¶29 (November 8, 2008).
[35] AEP Ohio at 5-6.

VI. RULE 4901:1-10-10: DISTRIBUTION SYSTEM RELIABILITY

A. Rule 4901:1-10-10(B) and (C): Reliability Indices and Annual Reports

Subpart (B) of the Rule requires electric utilities to file applications with the Commission to establish company-specific minimum reliability standards and defines service reliability indices as "CAIDI" and "SAIFI." In its Comments, OCC claims that more indicators should be used to indicate the number of interruptions customers experience or duration of those interruptions.[36] Citing to the Commission's November 5, 2008 Finding and Order in Case No. 06-0653-EL-ORD, whereby the Commission stated that the time was not ripe to enact Momentary Average Interruption Frequency Index ("MAIFI") standards, OCC simply asserts, without any explanation or basis, that the time is now ripe.[37]

In Case No. 06-0653-EL-ORD, the Commission asked whether MAIFI should be included as a power quality index to be set forth in Rule (10)(B)(1) and what the costs of implementing the standards in light of the fact Staff proposed to eliminated the MAIFI reporting requirement.[38] In that proceeding, the electric utilities agreed with eliminating MAIFI as a reporting requirement because of the lack of uniformly adopted standards, the potentially high cost of implementation, as well as the concern about recovering such costs. The Commission agreed "that there is no basis for determining the cost effectiveness of implementing a specific standard for MAIFI, in the absence of a specific measure and standard."[39] The Commission concluded "given the lack of a method to establish a MAIFI standard and the lack of information to formulate a basis for an appropriate standard, the Commission believes that the time is not ripe

[36] OCC Comments at 11.
[37] *Id.* at 13.
[38] Case No. 06-0653-EL-ORD, Finding and Order at ¶35 (November 5, 2008).
[39] *Id.*

for requiring the implementation of a specific minimum service quality requirement for MAIFI."[40]

As discussed in Case No. 06-0653-EL-ORD, the time is still not ripe to enact MAIFI standards. Although the Commission hypothesized that "as technology is deployed…this information will become more accurate and widely available," the technology is not mature enough to gather MAIFI information.[41] The Companies, as they argued in Case No. 06-0653-EL-ORD, maintain that although MAIFI is calculated by many electric utilities across the United States, there are no metrics to compare performance or methods to determine acceptable levels. The measurement of MAIFI is based on the equipment utilized to perform the measurement. Although MAIFI is calculated by many companies across the United States, there are no metrics to compare performance or methods to determine acceptable levels. To ensure uniform and reliable MAIFI measurements significant infrastructure costs are required in addition to the cost of advanced metering. In addition, due to changes in technology in the design of customer equipment and good MAIFI performance by the utilities, there are currently few complaints about momentary operations. Moreover, current industry practice favors measuring reliability through other indices, such as SAIDI. The Commission, on rehearing, concluded that "it would be imprudent for the electric utilities to make investments to improve MAIFI accuracy without taking the time to consider integrating such improvements with other potential programs such as automated metering infrastructure and/or distribution automation."[42] The Commission's decision in Case No. 06-653-EL-SSO was, and remains, correct; there should not be any new MAIFI reporting requirement.

[40] *Id.*
[41] *Id.*
[42] Case No. 06-0653-EL-ORD, Entry on Rehearing at ¶ 18 (May 6, 2009).

OCC also recommends that the Commission re-initiate the system average interruption duration index ("SAIDI").[43] SAIDI is simply a calculation of SAIFI times CAIDI and is readily available. By utilizing the information in the annual report filed by electric utilities under Rule 4901:1-10-10(C), OCC can calculate SAIDI. The rule change is not necessary. For all of those reasons, the Commission should reject OCC's recommendations to include SAIDI and MAIFI in the electric utilities' annual reports.

B. Rule 4901:1-10-10(D): Action Plan

Subpart (D) requires an electric utility that misses its performance standards to file an action plan. OCC recommends that an electric utility file an action plan with the annual report required by Subpart (C) and update it quarterly.[44] The Commission should reject this suggestion. Staff recommends that if an action plan is warranted, an electric utility must file the action plan on March 31st of the year following the year when the standard was missed. Staff's recommendation will give the electric utility's time to provide a thoughtful and adequate action plan; OCC's recommendation will not. As for a quarterly update, if Staff requests one, then an electric utility will provide it. OCC's recommended rule is not necessary and will only increase the costs and burdens placed on electric utilities, which ultimately are passed on to customers in the form of higher rates.

C. Rule 4901:1-10-10(E): Performance Standards

Staff changed subpart (E) to read "failure to meet the same performance standard" rather than "failure to meet a performance standard." In its Comments, DP&L supports this change because an electric utility should not be penalized for missing different targets two consecutive

[43] OCC Comments at 14.
[44] *Id.* at 15-16.

years.[45] The Companies agree with Staff and DP&L. The Commission should accept this change.

VII. RULE 4901:1-10-11: DISTRIBUTION CIRCUIT PERFORMANCE

A. Rule 4901:1-10-11(C)(1): Reporting

Subpart (C)(1) requires electric utilities to provide a report to the Commission Staff on the eight percent worst performing circuits. In its Comments, reasoning that it is cumbersome to require OCC to make a public records request, OCC requests that the Commission amend the rule to require electric utilities to send the reports to OCC.[46] As discussed many times above, OCC does not regulate public utilities and is not entitled, by rule, to receive these reports. Therefore, the Commission should reject this suggestion.

B. Rule 4901:1-10-11(F): Remedial Action

Staff has recommended a change to subpart (F) to read "electric utilities shall take sufficient remedial action to make sure that no circuit is listed on three consecutive reports." OCC recommends that the Commission amend the rule to require electric utilities to take sufficient "corrective" action to "make sure that no circuit is listed on two consecutive reports."[47] DP&L and AEP Ohio recommend that the Commission add the language "due to the same preventable outage causes" so that Staff considers the causes of the circuit's appearance on the list as well as the utility's mitigation plan.[48] This change is similar to the change to Rule 4901:1-10-10(E) that Staff proposed above. The Companies support DP&L and AEP Ohio's recommended changes and oppose OCC's suggestion. Circuits may appear on the report due to causes beyond the electric utilities' control and for different reasons from year to year. Those

[45] DP&L Comments at 2.
[46] OCC Comments at 16.
[47] *Id.* at 18.
[48] DP&L Comments at 2; AEP Ohio Comments at 7.

reasons should be considered. OCC has not offered any reasons why the rule should be changed from three to two consecutive reports. For all of those reasons, the Commission should accept DP&L and AEP Ohio's changes and reject OCC's suggestion.

C. New Subpart: Worst Performing Circuits to Critical Human Service Facility Circuits

OHA recommends a new subpart to address worst performing circuits to critical human service facility circuits.[49] This new rule is unnecessary as it largely duplicates the existing rule related to worst performing circuits, 4901:1-10-11(C). As discussed above in paragraph IV(C) related to Rule 4901:1-10-08(I), the definition OHA provides for critical human service facility circuits is broad as there is not a quantifiable standard for the determination of which medical facilities would be reportable and in what manner such a list of reportable facilities would be kept up to date. In addition, the Companies object to listing critical customer information on these reports as it may expose private customer information to third parties. Lastly, OHA offers no basis or need for the additional rule. Again, electric utilities should spend their resources improving service and reliability – not on increased and unnecessary reporting requirements. For those reasons, the Commission should reject OHA's recommendations.

VIII. RULE 4901:1-10-12: PROVISION OF CUSTOMER RIGHTS AND OBLIGATIONS

A. Application of Rule 4901:1-10-12: New Customers

As AEP Ohio pointed out in its Comments, Staff has proposed a change whereby a "new customer" means a "customer who opens a new account and has not received the latest version of the customer rights summary" must receive a written summary of their rights and obligations."[50] The Companies share AEP Ohio's concerns that this would require an electric

[49] OHA Comments at 4-5.
[50] AEP Ohio Comments at 7-8.

utility to obtain information as to whether a customer has the latest version of the customer rights summary, which the customer may not know. AEP Ohio, thus, recommends that the rule be change to only require "customers new to the utility," meaning "a customer who opens a new account and has not received such a customer rights summary within the preceding two years."[51] AEP Ohio also recommends changing the word "mailing" to "sending." On the other hand, OCC recommends that the electric utilities provide all customers when they initially apply for service and annually thereafter, the customer rights and obligations.[52]

The Companies support AEP Ohio's changes and oppose OCC's recommendation. As discussed in their Initial Comments, the Companies believe that they should be able to advise customers as to where they can obtain a copy rather than sending a hard copy. In order to save costs, AEP Ohio's changes should be implemented in conjunction with the Companies' recommendations. For those reasons, the Commission should accept the Companies and AEP Ohio's changes and reject OCC's changes.

B. Rule 4901:1-10-12(B)(7): Customer Energy Usage Data

In its Comments, OCC criticizes Staff's recommended new rule that requires in the customer rights and obligations an explanation "that the electric utility will not be held liable for any security breach, invasion of privacy or unlawful public disclosure resulting from the customer's or a third party developer's disclosure of customer energy usage data." OCC recommends that the Commission change this rule to explain that an electric utility is responsible for breaches by third parties and that "state and/or federal laws will prescribe the electric utility's

[51] *Id.* at 8.
[52] OCC Comments at 18-19.

responsibilities and liability."[53] The Commission should reject this change because the rule is unnecessary to the extent state and/or federal law provides a customer a remedy for a breach.

C. Rule 4901:1-10-12(D)(1): Availability of Rate Information

In its Comments, AEP Ohio recommends that the Commission eliminate that an electric utility's rates and tariffs are available for review at the electric utility's office, but add that a customer may request a copy.[54] While the Companies support the elimination of the availability at the electric utility's office, the Companies do not support adding that a copy can be requested by the customer. Requiring the mailing of all of the utility's rates and tariffs would be costly and not provide much of a benefit when a customer can first be directed to the electric utility's website. For those customers without access to a computer, a copy of the applicable tariff sheets could be sent upon request of the customer. For those reasons, the Commission should accept, as modified above, AEP Ohio's suggestion.

D. Rule 4901:1-10-12(D)(2): Alternative Rate Information

OCC recommends that the Commission amend this rule to require electric utilities to inform customers about alternative rates and/or energy efficiency programs.[55] The rule amendment is unnecessary because an electric utility's information related to energy efficiency programs is available on their websites or on the PUCO's website. Further, energy efficiency programs are not alternative rates. Also, if a customer requests alternative rate information, the electric utility will provide it. Last, as was determined in the *Luntz* case, the obligation of an electric utility is only to advise customers of rate alternatives upon the customer's inquiry.[56]

[53] *Id.* at 19.
[54] AEP Ohio Comments at 8-9.
[55] OCC Comments at 20.
[56] *Luntz Corp. v. Pub. Util. Comm.*, 79 Ohio St. 3d 509 (1997).

Notifying all customers is an unnecessary expense for customers to absorb. Therefore, the Commission should reject this recommendation.

E. Rule 4901:1-10-12(F)(3): Information on Privacy Rights

AEP Ohio, Opower, Inc. ("Opower") and Advanced Energy Economy – Ohio ("AEEO") recommend that the Commission add a provision to allow an exception for contractors and vendors to obtain customer information. As the Companies also share customer data, under confidentiality agreements to contractors and vendors for purposes of energy efficiency, the Companies support this change.

DP&L requests that the Commission amend this rule to allow customers to give verbal authorization to release customer information in order to mitigate the burden that the utility is subjected to in managing written documentation.[57] The Companies support this change.

Without going into detail on how it would work, whether any value for customers exists or who would bear the costs, OCC recommends that the Commission require electric utilities to perform a privacy impact assessments to inform customers about "all" potential privacy risks.[58] The Commission has already begun reviewing privacy of customer information in Case Nos. 11-277-GE-UNC and 11-5474-AU-UNC. In Case No. 11-277-GE-UNC, the Commission noted that "it is evident from the comments and reply comments that there are numerous, complex issues that the various stakeholders believe should ultimately be addressed by the Commission in some fashion, and that coordination with the development of federal standards should be an important consideration as well."[59] The Commission concluded that it was more appropriate for

[57] DP&L Comments at 3.
[58] OCC Comments at 20-21.
[59] *In the Matter of the Review of the Consumer Privacy Protection and Customer Data Access Issues Associated with Distribution Utility Advanced Metering and Smart Grid Programs*, Case No. 11-277-GE-UNC and *In the Matter of the Commission Review of Cyber Security Issues Related to Entities Regulated by the Commission*, Case No. 11-5474-AU-UNC, Finding and Order at ¶38 (May 9, 2012).

Staff to develop next steps including technical working groups rather than a formal proceeding and directed Staff "form a proposal recommending the appropriate next steps for our review of consumer privacy protection and customer data access issues in light of the comments and reply comments and to file its proposal in a new docket."[60] OCC has not justified the reason for its recommendation, the Commission should reject this suggestion and allow Staff to handle privacy issues as it recommended in Case Nos. 11-277-GE-UNC and 11-5474-AU-UNC.

F. Rule 4901:1-10-12(F)(4) and (F)(5): Customer Data

Subpart (F)(4) and (F)(5) requires a statement in the customer rights and obligations that allows a customer to request up to twenty-four months of his, her or its data. In its Comments, OMAEG requests that the Commission increase this to thirty-six months for customers who are not engaged in time-differentiated pricing and sixty months for those that are.[61] This change would be unduly burdensome to electric utilities in that it would require a complete revamp of their processes to provide this information as well as a significant increase in data storage capability. This requirement would also increase costs to customers. The Companies are unaware of customers requesting such a significant amount of historic usage information. For those reasons, the Commission should reject this request.

G. Rule 4901:1-10-12(L): Environmental Characteristics

Proposed subpart (L) requires a utility to provide environmental characteristics in accordance with Rule 4901:1-10-31 in hardcopy if requested. DP&L recommends that the Commission amend this rule to state that the statement "shall include a notification that customers shall be provided a link to the EDU's website containing the information….."[62] The

[60] *Id.*
[61] OMAEG Comments at 3.
[62] DP&L Comments at 3.

Companies support this change as it will give customers an immediate link to the information and limit the amount of requests for hard copies.

H. New Provision: Credits to Customers

Without providing detail as to how the credit should be derived, or the circumstances under which it should apply, OCC recommends that the Commission require the Companies to provide a credit to customers who experience multiple outages.[63] OCC made a similar recommendation in Case No. 06-0653-EL-ORD, which was wholly rejected by the Commission.[64] OCC's proposal is unsubstantiated and would dramatically increase the Companies' cost of service and customer rates. Moreover, this addition to the rules is unnecessary because electric utilities are already held to reliability standards by Staff and a penalty is not necessary to force electric utilities to maintain adequate and reliable service. Commission rules provide a means to monitor, audit and improve the maintenance standards and connection procedures of each electric utility in the state. Penalizing the electric utilities for issues cited by OCC renders these rules moot. In Case No. 06-0653-EL-ORD, the Commission rejected OCC's request because it lacked "support, justification [and] analysis" for the proposed customer credits.[65] On rehearing, the Commission reiterated that it found OCC's recommendation "unworkable" and that most electric utilities are not able to identify the timing or cause of every momentary interruption affecting individual customers."[66] The Commission concluded that an electric utility's compliance with standards "can be achieved through other

[63] OCC Comments at 21-22.
[64] Case No. 06-0653-EL-ORD, Finding and Order at ¶33 (November 5, 2008).
[65] *Id.*
[66] Case No. 06-0653-EL-ORD, Entry on Rehearing at ¶16 (May 6, 2009).

less complicated means."[67] For those same reasons, the Commission should reject OCC's recommendation.

IX. RULE 4901:1-10-14: ESTABLISHMENT OF CREDIT FOR APPLICANTS AND CUSTOMERS

A. Rule 4901:1-10-14(C)(1)(a) and (b): Criteria for Creditworthiness

Staff proposed a new subsection allowing an electric utility to request an applicant's social security number in order to obtain credit information, but also requires that the utility not refuse to provide service if the customer refuses. Staff also proposed a new section that includes verification methods if an applicant refuses to provide a social security number. In its comments, Duke states that the word shall in subpart (C)(1)(b) in the sentence "verification from residential applicants shall include" should be changed to "may" so that the Companies may allow multiple forms of verification and not be required to rely upon unreliable forms of creditworthy verification.[68] The Companies agree with this change and the Commission should accept Duke's change.

In its Comments, OCC recommends that the Commission add a requirement to subpart (C)(1)(a) whereby the electric utility must inform the customer that he/she is not required to provide his/her social security number to obtain service.[69] OCC also recommends that the Commission remove the listing of methods to verify credit and instead refer to (C)(2)-(4).[70] The Commission should reject these recommendations because they are not necessary. First, a customer can always ask an electric utility if they are required to give a social security number. There is no need to inform a customer of that. Second, there is no need to delete the methods in

[67] *Id.*
[68] Duke Comments at 4.
[69] OCC Comments at 24.
[70] *Id.*

the second rule as those methods are already included. For those reasons, the Commission should reject OCC's recommendations.

B. Rule 4901:1-10-14(C)(3): Guarantors

DP&L recommends that language be included to exclude customers that are on PIPP, Graduate PIPP programs or have PIPP arrears from qualifying as guarantors. The Companies support this request because a PIPP customer should not be guaranteeing another customer's account if he or she is not paying full amounts for his or her electric service.

C. Rule 4901:1-10-14(G): Deposit to Reestablish Creditworthiness

In its Comments, OCC recommends that the Commission not adopt the Staff's proposed changes to subpart (G).[71] Likewise, DP&L recommends retaining the original language of Subpart (G)(2)(b).[72] AEP Ohio recommends that subpart (2) only apply to residential customers and that the Commission should add a new subpart (3) to apply to non-residential customers.[73] Duke comments that the terms "totality of the customer's circumstances" and "regulated service provided by that utility company" are unclear.[74] The Companies proposed an amendment to Staff's changes in their Initial Comments. After reviewing all of those comments, the Companies believe that the Commission should maintain the original language of the rule as there is no evidence that the rule was burdensome or unworkable. At a minimum, the Commission should accept the changes proposed in the Companies' Initial Comments to help clarify the rule as well as the changes proposed by AEP Ohio for the reasons stated in AEP Ohio's comments.

[71] *Id.* at 25.
[72] DP&L Comments at 5.
[73] AEP Ohio Comments at 11.
[74] Duke Comments at 5.

D. Rule 4901:1-10-14(M)(2)

In Subpart (M)(2), Staff added a requirement that a guarantor sign a written guarantor agreement and maintain the original agreement. DP&L recommends that the Commission delete the requirement to keep and manage a guarantor file such as the original agreement.[75] Often guarantor agreements are faxed and a written original agreement is not received by the utility. Also, an electric utility should be permitted to scan and electronically store a guarantor agreement. Requiring a utility to maintain the original agreement is unduly burdensome. For those reasons, the Companies support DP&L's recommendation and the Commission should reject a requirement to maintain an original guarantor agreement.

X. RULE 4901:1-10-17: PAYMENT SCHEDULE AND DISCONNECTION PROCEDURES FOR NONPAYMENT BY NONRESIDENTIAL CUSTOMERS

Subsection (B) of this rule was added by Staff to eliminate disconnections after 12:30 p.m. on the day preceding a day on which all services necessary for the customer to arrange and the utility company to perform reconnection are not regularly performed. DP&L proposes to change this language to read "no disconnection for nonpayment shall be made after the time set forth by the utility to schedule a same day reconnection….."[76] The Companies agree with DP&L's change because nonresidential customers need not be allotted the same timeframe and considerations as residential customers.

[75] DP&L Comments at 5.
[76] *Id.* at 6. Please note, AEP Ohio recommended the elimination of "12:30 pm" for the same reason. AEP Comments at 12. However, the Companies respectfully disagree with its change as the way AEP Ohio amended the rule could potentially limit the ability of an electric utility to disconnect customers on a Friday.

XI. RULE 4901:1-10-20: FRAUDULENT ACT, TAMPERING AND THEFT OF SERVICE

DP&L recommends that the Commission amend the rule to allow customers to be notified via telephone its decision regarding fraud. The Companies support this change.

XII. RULE 4901:1-10-22: ELECTRIC UTILITY AND CUSTOMER BILLING AND PAYMENTS

A. Rule 4901:1-10-22(B)(8): Interval Meters

Subpart (B)(8) provides what must appear on an electric utility bill. In its Comments, DP&L notes that for those customers billed using an interval meter, parts (a) and (b) of Subpart (B)(8) are not able to be provided because the interval meter provides consumption.[77] DP&L recommends that in the case of a real time pricing rate, the consumption for each respective pricing period should be available to customers via the web or displayed on the bill.

The Companies do not agree with DP&L's comments. In the case of real time pricing rate, the Companies provide the *consumption* for each respective pricing period to customers via the web. The Companies do not believe a change to this process is warranted. For those reasons, the Commission should not accept DP&L's recommendation.

B. Rule 4901:1-10-22(B)(23): Annual Costs

In its Comments, OCC recommends that the Commission amend Subpart (B)(23) to add the total annual costs for electricity to be listed along with the total consumption.[78] The Commission should reject this recommendation. Assuming the total annual costs would apply for distribution and generation, the annual cost would have to be listed separately for each, which would create customer confusion. Moreover, a customer can obtain this information either on the Companies' website or by request as provided for in Rules 4901:1-10-12 and 4901:1-10-24.

[77] DP&L Comments at 7.
[78] OCC Comments at 25.

There is no added value to placing this item on the bills. For those reasons, the Commission should reject this recommendation.

C. Rule 4901:1-10-22(B)(25): Line Items

OCC recommends that the Commission amend this rule to require an itemization of "other cost recovery riders."[79] This information is not necessary as the tariffs are provided on the Companies' website and PUCO website. Additional line items along with a description for that line item in the Explanation of Terms section could potentially increase the bill from 1 to 2 pages thus adding to cost. Because those increased costs outweigh any theoretical value, the Commission should reject this recommendation.

D. Rule 4901:1-10-22(I): Landlord/Tenant

FES recommends that the Commission amend new subpart (I) regarding transfer of bills to include CRES charges as well.[80] Pursuant to a Stipulation in Case No. 02-1944-EL-CSS: "If a CRES provider drops a customer, or a customer drops the CRES provider, the CRES provider's past due amounts shall remain on the customer's bill for at least nine (9) billing cycles or until the customer is disconnected or otherwise terminated by [the Companies], whichever occurs earlier, and payments from the customer during that period shall be subject to the modified payment priority plan set out in paragraph 1."[81] Currently, the Companies maintain CRES charges until a bill is final. Once a bill is final, the CRES charges are removed and transferred to the CRES provider for collection. The stipulation does not contemplate the Companies' transfer of final CRES charges after a bill is put in final status.

[79] *Id.* at 26.
[80] FES Comments at 3
[81] *WPS Energy Services, Inc. and Green Mountain Energy Corp. v. [The Companies]*, Case No. 02-1944-EL-CSS, Stipulation and Recommendation, ¶ 3 (April 24, 2003).

E. Adding Certain Line Items

In its Comments, OMAEG requests that the Commission amend the rules to require the following items on a bill: (i) marginal costs of consumption, demand, and power factor.[82] Adding these items to customers' bills is very complex and requires many assumptions and would be at a very high cost to implement and maintain. Further, this would not be to the benefit to customers in general, but only a small select group of customers. If more detailed information is necessary, a customer may request it. Or the customer could install its own energy management system. In addition, the Companies already provide a price to compare amount on each customer's bill specific to that customer that reflects generation level charges the customer is being charged, which are representative of avoided costs. For those reasons, the Commission should reject OMAEG's recommendation.

F. Charges for Payment

OCC recommends that the Commission survey the electric utilities to determine the options that are available to consumers for paying utility bills without incurring additional charges.[83] OCC believes that no fee should be charged to a customer. The Companies do not believe a rule change is necessary. To the extent third parties charge fees to accept utility payments, that is beyond the control of the Companies. Moreover, there are many ways in which customers may make payments without incurring a fee, such as paying by check, telephone or online. For those reasons, the Commission should reject this recommendation.

G. Due Dates

In its Comments, OCC recommends that the Commission amend Rule 4901:1-10-22 to allow customers to have options for due dates for payments. This proposal should be rejected as

[82] OMAEG Comments at 3.
[83] OCC Comments at 27.

it will increase the electric utilities carrying costs and will potentially increase uncollectible expense thus driving up the cost of electric service. In addition, many system changes would have to be implemented also raising costs to customers. Electric utilities read meters and bill based upon billing cycles. Customers are billed on the cycle that corresponds to their geographic location, which dictates when the bill is sent out. Last, OCC made this same argument in Case No. 06-0653-EL-ORD, which the Commission denied because OCC did not provide any evidence as to why consumers require such option or whether a rule change would even achieve the expected results articulated by OCC.[84] For those same reasons, the Commission should reject OCC's recommendation.

XIII. 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. In its Comments, Duke states that this new requirement is arbitrary, will result in an additional burden on other customers, outside the Commission's statutory jurisdiction and contrary to past Commission decisions.[85] As discussed in their Comments, 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. The Companies urge the Commission to eliminate this restriction. 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, which is more in line with existing statutes of limitation.

[84] Case No. 06-0653-EL-ORD, Finding and Order at ¶44.
[85] Duke Comments at 6.

XIV. RULE 4901:1-10-24: CUSTOMER SAFEGUARDS AND INFORMATION

A. Rule 4901:1-10-24(E)(3): Customer Privacy Data

In their Comments, AEP and Opower recommend adding a similar provision discussed in Section VIII. E. above.[86] The Companies agree.

Also discussed in its Comments, OCC recommends adding a similar provision discussed in Section VIII. E. above.[87] For the same reasons, the Companies disagree.

XV. RULE 4901:1-10-27: INSPECTION, MAINTENANCE, REPAIR AND REPLACEMENT OF TRANSMISSION AND DISTRIBUTION FACILITIES CIRCUITS AND EQUIPMENT

A. Rule 4901:1-10-27(E)(4): Transmission and Distribution Inspection, Maintenance, Repair and Replacement Programs

Similar to the Companies' Initial Comments, AEP Ohio and DP&L share the concern with the deletion of the language "likely to cause an outage" from Subpart (E)(4).[88] As discussed in their Initial Comments, 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 electric utility's maintenance and repair efforts should remain focused on reliability and safety issues.

B. Rule 4901:1-10-27(C)(2) and 4901:1-10-27(D)(4): Transmission Circuit Reports and Inspection Reports

OCC recommends that the Commission amend Subpart (C)(2) and (D)(4) to require electric utilities to submit transmission circuit reports and inspection reports to the OCC in addition to the Commission. As discussed above, this is another instance where the OCC is

[86] AEP Ohio Comments at 12; Opower Comments at 3.
[87] OCC Comments at 28-29.
[88] AEP Ohio Comments at 13; DP&L Comments at 8-9.

trying to insert themselves in the process as the regulator rather than an advocate for a single class of customers. Therefore, the Commission should reject this recommendation.

XVI. RULE 4901:1-10-28: NET METERING

A. 4901:1-10-28(A)(4): Definition of Microturbine

The Companies agree with DP&L's recommendation that the definition of microturbine have a 500 kW size limit.[89] The Commission's current website materials regarding net metering describe a microturbine as "[a] very small combustion turbine engine, individually of the size of a refrigerator, that are often packaged in multiunit systems." The term "micro" simply has no meaning without a size limit. The previous definition specified a size limit of 100 kW. Increasing the limit to 500 kW recognizes developments in the industry while still giving effect to legislative intent.

The Companies oppose the recommendations Interstate Gas Supply/Hull & Associates[90] to include reciprocating engines in the definition of "microturbines" because the legislature did not include reciprocating engines in its list of eligible technologies/fuels for net metering. Similarly, a requirement that microturbines be fueled by renewable fuels as proposed by the Interstate Renewable Energy Council ("IREC") must be done through a statutory amendment, not administrative rulemaking. The Commission should reject calls to legislate via redefinition of terms as part of a rulemaking proceeding.

B. 4901:1-10-28(B)(5): Definition of Premises

The Companies reiterate that the definition of premises should specifically exclude non-contiguous property or areas from being considered part of the premises of a customer-generator.

[89] DP&L Comments at 14.
[90] IGS/Hull Comments at 2.

The Companies generally agree with DP&L's recommendation[91] that the definition of premises should make reference to a single meter point where there is load contracting for service. Definitions contained in the Commission's rules should effectuate the statutory limitation restricting net metering to customers intending only to offset part or all of their on-site requirements for electricity, and allow no vagueness that could be interpreted to allow a producer (intentional net-generator) to qualify for net metering. As with other proposed definition changes, the Commission's rules should not be changed to be at odds with the Ohio Revised Code.

C. 4901:1-10-28(B)(6): Presumptive Intent Threshold

The Companies agree with AEP Ohio that consistent or designed excess generation alters the customer-generator's status from that of a customer to that of a producer.[92] Net metering by law is specifically restricted to customers and not available to producers. In its Comments, Metro CD Engineering addresses the intent issue: "if it is possible to be eligible for net metering without regard to the condition of implied intent then this should be stated in the rules."[93] The Companies submit that O.R.C. § 4928.01(A)(31)(d) clearly requires the condition of intent to limit generation to offset no more than on-site requirements. The Commission may not adopt changes that weaken or eliminate the specific legislative requirement that this intent is a condition of eligibility for net metering.

The Companies further agree with and share AEP Ohio's observation that "[C]ustomers have expressed their intentions for such systems were for creating an on-going revenue stream and/or as a means to expedite the payback period for their investment."[94] This attitude is clearly

[91] DP&L at 13.
[92] AEP Ohio Comments at 14.
[93] Metro CD Engineering Comments at 4.
[94] AEP Ohio Comments at 15.

stated by the OCC in its Comments: "requiring the utility to perform the percentage calculation annually would submit existing and future customer-generators to unreasonable risks of not getting remunerated for their excess electricity production (and increasing their investment paybacks.")[95] (emphasis added). The Companies submit that it is unreasonable for customer-generators to *expect* remuneration for excess generation by design to contribute to investment payback. Excess generation should occur only incidentally to offsetting part or all of a customer-generator's requirements for electricity—not routinely by express intent to procure investment payback and certainly not with a rule guaranteeing that no compliance checks occur.

The OCC gives two possible "problematic examples" where energy usage would decline from an historic level: heavy investment in energy efficiency and discontinued use of a Nissan Leaf electric vehicle.[96] However, the OCC's analysis demonstrates that energy usage can be calculated very precisely for specific events such as discontinued use of an electric vehicle or investment in energy efficiency. When a "problematic" change in energy requirements occurs from a specific event, the better approach is for the electric utility to work with the customer as the Companies currently do--not to give every current and prospective customer-generator in Ohio *carte blanche* to generate up to 120% of their annual baseline requirements for electricity.

Metro CD Engineering also discusses the "need" for net-zero energy buildings to intentionally over-generate their electricity requirements to cover their natural gas and other fuels energy use.[97] There simply is no language in the statute which allows net metering for customers intending to off-set non-electricity energy usage through planned excess generation of electricity. Moreover, this concept is tantamount to cross-fuel/cross-utility subsidization as the EDU loses distribution revenues from the customer-generator while the natural gas utility (or other non-

[95] OCC Comments at 32.
[96] *Id.* at 33.
[97] Metro CD Engineering Comments at 4.

regulated fuel company) enjoys a full payment for usage of their products and services. Such an approach should be rejected.

Changing the rule to presume that exceeding requirements for electricity by up to 20% does not violate the statutory intent condition would be inappropriate and will signal potential customer-generators and developers to deliberately over-size systems at any given electric load center in order to maximize payments as a net producer of electricity. Such an outcome is at odds with the legislative intent.

D. 4901:1-10-28(B)(9)(c) Determination of Baseline Requirements for Electricity

The diversity of comments suggests that prescribing a methodology for establishing the baseline "requirements for electricity" may not be so easy. DP&L, for example, correctly points out that customers require both energy and demand components of service, and so a rule setting a specific methodology for baseline determinations may need to provide for both components as appropriate.[98] While residential customers' usage typically varies more with weather, OMAEG notes that manufacturing customers may have production-related variation in energy use.[99] However, this proposal ignores the fact that production-related energy use can decrease permanently by designed choice within the proposed 5-year historic window, such as moving production elsewhere, discontinued product lines, or past installed energy efficiency, all of which would make the highest 12-month consumption in 5 years a distorted indicator of baseline requirements for electricity going forward.

The Companies suggest that if anything needs to be changed from Staff's proposal, the standard approach should be the proposed 3-year average with the opportunity for the customer-generator to demonstrate that another measure such as proposed by OMAEG is more

[98] DP&L Comments at 12.
[99] OMAEG Comments at 1.

appropriate. Again, the Companies are not aware of any complaints that it has unfairly or discriminatorily established any customer's baseline requirement for electricity. Absent any evidence that a problem exists, the OMAEG's proposed change to require the highest 12-month consumption in five years is unnecessary.

E. 4901:1-10-28(B)(10): Calculation of excess generation credit

The Companies emphatically reject calls by IREC, ELPC and AEEO for excess generation credits to be recorded as a kWh credit instead of monetized because energy crediting is contrary to the statute and the controlling Ohio Supreme Court case. Banking *energy* instead of the value of *generation* gives customer-generators payment for excess generation at full retail costs (generation, transmission, and distribution components along with all applicable riders) even though the customer-generator is only providing generation to the utility's system.

Moreover, kWh-crediting essentially ignores that electricity has been delivered using the utility's transmission and distribution system. Full kWh-crediting would force Ohio's electric utilities to act as net metering customers' virtual batteries: storing excess generation in one month for consumption by the customer-generator in subsequent months potentially with no compensation for the use of the transmission and distribution system.

IREC comments that "it is also true that net metering customers bring tangible benefits to the grid that approximate or exceed the actual costs they are avoiding through net metering credits."[100] IREC cites studies from the early- and mid-1990s to support this assertion. However, these particular studies were engaged under the premise of distributed generation resources specifically targeted to relieve congested circuits and/or substations, fully integrated into the electric utility's system planning in a setting which bears no resemblance to the current environment in Ohio. At best, IREC can hypothesize that customer-generator exports *might*

[100] IREC Comments at 10.

provide some degree of benefit to the utilities' distribution and transmission systems under the right conditions. It would be wrong to accept as fact without inquiry that the value of the potential benefits "approximates or exceeds" the actual costs avoided through net metering credits. Other customers ultimately must absorb the burden of costs avoided by net metering customers, and the Commission should refrain from effectively mandating distribution rate increases to some customers in exchange for the *theory* that net benefits are provided by net-generators.

IREC also argues that the controlling authority does not prohibit customer-generators from receiving payment beyond the cost of generation, claiming the court's observation "appears to be mere dictum as the court never articulated that it would be unreasonable or illegal for customer-generators to avoid paying or to receive a credit against this type of rate component."[101] This argument mischaracterizes the ruling in the case and the court's analysis. The Commission had ordered the Companies to credit net generators for rate components beyond the generation and supply of electricity, which the court found was "unlawful and unreasonable under R.C. 4903.13."[102] The court clearly stated, "A net-generator customer of FirstEnergy only generates and supplies electricity; it does not provide transmission, distribution, or ancillary services."[103] The court explained unequivocally that ordering FirstEnergy to pay or credit net generators for additional charges beyond generation of electricity is "in conflict with several provisions of the Revised Code in addition to R.C. 4928.67(B)(2)."[104] The court goes on to state with respect to transmission, distribution, and ancillary services, "[T]he customer-generator provides no facilities or equipment to support the utility distribution or transmission system.

[101] IREC Comments at 10.
[102] *FirstEnergy Corp. v. Pub. Util. Comm'n*, 95 Ohio St. 401, 406 (2002).
[103] *Id.* at 405.
[104] *Id.* (This provision is now 4928.67(B)(3)(b), effective July 31, 2008.)

Instead, it relies on the utility's facilities to feed back the electricity produced."[105] The prohibition against crediting net-generators for the additional cost components inherent to full kWh-crediting is a central theme of the court's carefully reasoned analysis and not mere dictum as argued by IREC. IREC's suggestion should be rejected by the Commission.

F. Paragraph (10)(g) Virtual Net Metering and Aggregate Net Metering

AEEO states: "[C]urrently, separate tenants with a shared generation investment on a shared property, or businesses with multiple buildings within a service territory, have to have expensive wiring to physically connect to the system to receive net metering credit on separate utility meters; this increases costs and complicates logistics. Virtual net metering resolves these barriers and allows one generation resource to virtually serve several facilities."[106] This statement disingenuously ignores the fundamental fact that such multiple buildings located on separate premises are already physically connected with wiring: the utility's distribution system. Moreover, the so-called "resolution" of these barriers would require other customers to pick up the cost recovery burden that would be avoided by the virtual netting of multiple electric load centers thereby creating a subsidy from non-net metering customers to net metering customers. These gains sought by proponents of virtual net metering would come at the expense of non-net metering customers, thereby negatively impacting the vast majority of residential customers, making the OCC's support of such a subsidy perplexing.[107]

The so-called "tangible benefits" IREC describes simply do not exist in the case of virtual net metering.[108] Nothing about excess generation at one customer load center reduces the use of the distribution system at its other load center locations, eliminating any theoretical benefit to the

[105] *Id*. at 406.
[106] AEEO Comments at 10.
[107] OCC Comments at 37-38.
[108] IREC Comments at 10.

other customers from increased reliability or reduced utility costs. The more separate load centers are "netted" together, the more costs other customers would be required to pay for the avoided distribution charges with little or no off-setting benefits. Virtual net metering is a zero-sum game that proponents argue will further develop distributed generation, but in reality is a subsidy paid for by customers not affluent enough to play.[109]

Further exacerbating the burden on non-net metering customers, if customer-generators were allowed to include multiple buildings within a utility's service territory in determining baseline requirements for electricity, and allowed to install larger generation equipment at a single site accordingly, the interconnection impact on the local distribution circuit could preclude other nearby potential new customer-generators from participation in net metering pursuant to limits in the interconnection rules. That is, if circuit capacities get "used up" because virtually netting electric load centers leads to larger installations in any given location, new applicants could lose the ability to economically install their own facilities. And given that utilities must plan to serve the peak load needs of net metering customers irrespective of their generation capabilities, larger and larger installations of net metering generation may merely lead to a greater reliability exposure when such a net metering system does not generate electricity.

Moreover, virtual net metering and aggregate net metering violate Ohio law in the same manner as the court held in *FirstEnergy Corp*., because it explicitly credits a net-generator with the full rate components including transmission, distribution, and ancillary services instead of being restricted to the generation cost component only. Given the statutory implications that arise from paying net-generators credits for services they have not provided, as well as avoiding

[109] *See*, for example, a recent publication by NERA Economic Consultants, *Impacts of Renewable Energy Subsidies/Incentives on Costs of Achieving Renewables Goals*, January 15, 2013, http://www.nera.com/nera-files/PUB_Renewable_Energy_Subsidies_Incentives_1212.pdf, which concludes its discussion of Net Metering on page 10 by stating: "Therefore, lower income ratepayers could be subsidizing higher income ratepayers under some systems that incentivize the installation of DG systems."

cost responsibility for their actual use of the utility's distribution system, the Commission should reject any change to allow virtual or aggregated net metering.

G. General Remarks

The Companies agree with the comments of Duke that the proposed changes to net metering in this competitive environment are more complex and deserve more careful consideration than can be achieved in this forum. The Companies support Duke's call for more technical workshops where data can be presented and discussed among stakeholders before making the changes proposed by Staff, especially with respect to granting a presumption of intent for generation up to 120% of electricity requirements, and any form of virtual or aggregate net metering.[110] In paragraph (3) of its Order in this cause, the Commission identifies that a purpose of Executive Order 2011-01K, in part, is to review its rules and determine and amend or rescind rules that have had negative unintended consequences. The Companies submit that the proposed changes should be viewed with a forward-looking perspective regarding negative unintended consequences as well. It is far better to spend more time today looking forward than to return in five years to look back and lament about what went wrong.

Toward a prospective view, while the Companies still oppose the new Net Metering annual reporting requirement as proposed by Staff, the Companies suggest that if such information is of any value to Staff in the discharge of their duties, it is certainly worth being examined in workshops before making these proposed changes to the Net Metering rules.

XVII. RULE 4901:1-10-29: COORDINATION WITH CRES PROVIDERS

A. Purchase of Receivables

Rule 4901:1-10-29 relates to the relationship with a CRES provider and electric utility. Similar to their arguments in the Companies' Electric Security Plan Case ("ESP 3"), Case No.

[110] Duke Comments at 7.

12-1230-EL-SSO, Direct Energy Services LLC ("Direct Energy"), IGS Energy ("IGS"), and Retail Energy Supply Association ("RESA") contend that the Commission mandate a purchase of receivables program ("POR") in this proceeding. They also recommend that the Commission amend Rule 4901:1-10-29 to require electric utilities to implement a purchase of receivables ("POR") program.[111] As discussed in the extensive briefing in Case No. 12-1230-EL-SSO, which the Companies will not repeat in entirety here, and recently confirmed by the Commission in that case, Direct Energy, IGS and RESA have failed to demonstrate that a POR program is appropriate. Indeed, the Commission found that neither the Suppliers (as defined in that case) nor IGS "have demonstrated that the absence of a POR program is a barrier to competition which precludes the 'availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions and quality options they elect to meet their respective needs.'"[112] In addition, the Commission found "no evidence in the record of any study which systematically compares any measure of competition between electric utilities which offer POR programs and those that do not, in Ohio or otherwise." [113]

Likewise, in Case No. 06-0653-EL-ORD, Northeast Ohio Public Energy Council ("NOPEC") claimed that a POR program should be mandated. It also cited to testimony from Theresa Ringenbach who testified for RESA in Case No. 08-0935-EL-SSO. The Commission rejected this request.[114]

Since 2003, the Companies have applied partial payments received from shopping customers pursuant to a priority that first arose from a stipulation in Case No. 02-1944-EL-

[111] Direct Energy Comments at 7; IGS Comments at 1; RESA Comments at 1-3.
[112] Case No. 12-1230-EL-SSO, Second Entry on Rehearing at ¶ 52 (January 30, 2013).
[113] *Id.*
[114] Case No. 06-0653-EL-ORD, Entry on Rehearing at ¶25 (May 6, 2009).

CSS.[115] This Partial Payment Posting Priority applies partial payments generally in the following order: (1) CRES arrears; (2) utility service arrears; (3) utility service current bill; and (4) CRES current bill.[116] The Commission adopted this approach by amending Rule 4901:1-10-33(H).

Contrary to RESA and IGS's contention that a lack of POR program is a barrier to competition[117], the Companies have demonstrated in Case No. 12-1230-EL-SSO that over the past decade, shopping levels have increased in the Companies' territories. Today, the Companies have the highest level of shopping in the state.[118] Even Direct Energy and RESA's witness, Teresa Ringenbach in Case No. 12-1230-EL-SSO admitted that CRES providers are not suffering a competitive disadvantage from the lack of a POR program.[119] IGS witness Vincent Parisi similarly admitted that "we're on equal footing with respect to other CRES providers, with or without [a POR program]."[120]

In comparison, a POR program essentially provides a subsidy to CRES providers that undermines the market and sends the wrong price signals to customers.[121] IGS, Direct Energy and RESA witnesses each testified in Case No. 12-1230-EL-SSO that a POR program would shift uncollectible expenses that a CRES provider incurs and place them on the Companies.[122] As a result, non-shopping customers of the Companies would bear the uncollectible expenses generated from customers of the CRES providers.[123] These are expenses that the customers of

[115] Case No. 02-1944-EL-CSS, Opinion and Order at 3 (Entry date: Aug. 6, 2003).
[116] *Id.*
[117] RESA Comments at 6; IGS Comments at 8.
[118] Case No. 12-1230-EL-SSO, Tr. Vol. II, p. 19; Tr. Vol. III, pp. 29-30.
[119] *Id.* at Tr. Vol. III, p. 64.
[120] *Id.* at Tr. Vol. II, p. 210.
[121] *Id.* at Tr. Vol. I, p. 267.
[122] *Id.* at Tr. Vol. II, pp. 187-188; Tr. Vol. III, p. 66.
[123] *Id.* at Tr. Vol. III, p. 68.

the Companies would not otherwise bear.[124] In fact, R.C. § 4928.02(H), specifically sets forth state policy as one of avoiding anticompetitive subsidies flowing from noncompetitive retail electric service to competitive retail electric service and vice versa. Therefore, Direct Energy, IGS and RESA's proposal to be subsidized by nonshopping customers for their uncollectible expense is directly at odds with this state policy.

A POR program also may lead to higher amounts of uncollectible expenses for customers.[125] CRES providers currently have higher uncollectible expenses compared to utilities.[126] Under a POR program, CRES providers would be relieved of any risk of non-collection.[127] The parties advocating a POR program seek a rule compelling the electric utilities to cover the cost of uncollectible expenses for CRES providers *but have provided no information regarding the extent of these costs*. Nor have the parties advocating for a POR program demonstrated there is a need for such a program.

Given the high level of shopping in the Companies' certified territories and the number of suppliers available to serve those customers,[128] a POR program is not needed to "jump start" competition as was needed in other states. Further, adopting a POR program would cause unnecessary expenditures by the EDUs, which is unneeded in Ohio's highly-developed competitive market for retail generation.[129]

For all of the foregoing reasons, including the creation of anticompetitive subsidies that contradict state policy, the creation of unneeded costs that would be imposed upon the Companies and its customers, and given the highly competitive market already existing in Ohio,

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[124] *Id.*, pp. 69-70, 90.
[125] Case No. 12-1230-EL-SSO, Tr. Vol. I, pp. 247-248; Tr. Vol. II, pp. 189-190.
[126] *Id.* at Tr. Vol. II, p. 189.
[127] *Id.*, p. 194.
[128] Mr. Ridmann noted that there are 30 to 35 CRES providers currently registered to provide services in the Companies' territories. *Id.* at Tr. Vol. I, pp. 38-39.
[129] *Id.* at Parisi Testimony, Exhibit 3.

the Commission should reject the proposal to amend the rules to mandate a purchase of receivables program. In this proceeding, Direct Energy, IGS and RESA have not added anything different than in the Companies' ESP 3 Proceeding.

B. Do Not Switch Provision

In its Comments, DP&L requests that the Commission add a new subpart (F) that states "Residential customers can request that the EDU put a block on their account that would prohibit their account from switching to a CRES provider."[130] This rule is not necessary and would create an additional administrative burden for the electric utility. Currently, the customers can remove their names from CRES marketing lists under Rule 4901:1-10-12. For those reasons, the Commission should reject this recommendation.

C. Standardization of Information

In its Comments, Duke Energy Retail is requesting a number of rule changes to require standardization among information provided by electric utilities to CRES providers.[131] The Companies are opposed to any rule changes that dictate how information is exchanged between CRES suppliers and electric utilities because each utility has different tariffs and different systems. Enrollments and other information transfers are consummated between electric utilities and CRES suppliers via electronic data interchange ("EDI"). There is an EDI working group in Ohio that discusses and determines how this information is transferred. How an enrollment is conducted is a topic for the EDI working group, not a rulemaking procedure.

In the Companies' recent electric security plan case, Case No. 12-1230-EL-SSO, the Companies agreed to provide more information to CRES suppliers, which resulted in more

[130] DP&L Comments at 9.
[131] Duke Energy Retail at 7-9.

standardization.[132] Specifically, the Companies committed to provide or have already provided the following data and information enhancements for CRES providers:

- Segments to the PTD*FG loop of the 867HU, L REFLF=Loss Factor, REFLO=Load Profile, REFNH=LDC Rate Class, REFBF=LDC Bill Cycle, REFSV=Service Voltage;
- REFKY=Special Meter Configuration;
- Auto cancel Supplier 810 when the Companies cancel customer usage in Ohio;
- By July 1, 2013, Adoption of PA EDEWG EDI Change Control *85/90* - adds notification (REFKY) to Supplier a net meter is present or added to a customer account;
- By December 31, 2013, the Companies will cease sending negative KWH consumption in the PTD*SU (summary) loop of the EDI 867 Monthly/Interval Usage when customer generation is greater than consumption. The KWH in the SU (summary) loop should be zero when this situation occurs the Companies should pass the net customer generation consumption as a positive number with the applicable QTY qualifier to denote the excess customer generation (87 or 9H);
- The Companies support supplier bill messaging on EDU consolidated billing via the NTE segment (minimum two lines of 60 characters each) in the bill ready 810 guidelines in Ohio;
- By December 31, 2013, support supplier drop rescission request via supplier initiated EDI 814 Reinstatement.

As demonstrated by those above commitments, the Companies support a collaborative process in streamlining EDI information. Moreover, as the Commission noted in its recent Second Entry on Rehearing in the Companies' electric security plan case, Case No. 12-1230-EL-SSO, "the Commission notes that a working group has been reconvened to consider issues related to EDI, and we urge the Suppliers to pursue their recommendations through that collaborative forum rather than through litigation."[133] A rulemaking procedure is not the appropriate forum for EDI changes. For those reasons, the Commission should reject Duke Energy Retail's recommendation.

[132] Case No. 12-1230-EL-SSO, Testimony of David Fein (June 4, 2012).
[133] *Id.* at Second Entry on Rehearing at ¶ 48 (January 30, 2013).

D. Budget Billing

In its Comments, Duke Energy Retail requests that electric utilities should be required to treat CRES charges in the same manner.[134] FES also requests a modification of Subpart (G)(2) to include that consolidated billing shall "include budget billing of utility and CRES charges as a customer-elected option."[135] Currently, the Companies can implement budget billing that includes CRES charges if a CRES Supplier enters into a "bill ready" relationship with the Companies, which is a function whereby the CRES Supplier provides the bill amounts to the Companies. The Companies do not have the capability to implement budget billing with CRES charges in another manner. However, if the Commission requires the Companies to explore budget billing of CRES charges, the Companies will require ample time to implement such changes along with cost recovery of any costs of implementing those changes.

XVIII. RULE 4901:1-10-31: ENVIRONMENTAL DISCLOSURE

A. Rule 4901:1-10-31(D)(3)(a) and (b): Annual Projections

As discussed in Section VIII. F. above, AEP Ohio similarly is requesting that customers be given to a link to the annual projections on its website. The Companies agree with this recommendation.

XVIX. RULE 4901:1-10-33: CONSOLIDATED BILLING REQUIREMENTS

A. Rule 4901:1-10-33(I): CRES Balances

FES recommends that the Commission eliminate subpart (I) of this rule to ensure that past due CRES provider charges remain on customer bills.[136] Pursuant to a Stipulation in Case No. 02-1944-EL-CSS: "If a CRES provider drops a customer, or a customer drops the CRES provider, the CRES provider's past due amounts shall remain on the customer's bill for at least

[134] Duke Energy Retail at 8.
[135] FES Comments at 6.
[136] *Id.* at 9.

nine (9) billing cycles or until the customer is disconnected or otherwise terminated by [the Companies], whichever occurs earlier, and payments from the customer during that period shall be subject to the modified payment priority plan set out in paragraph 1."[137] Currently, the Companies maintain CRES charges until a bill is final. Once a bill is final, the CRES charges are removed and transferred to the CRES provider for collection. The stipulation does not contemplate the Companies' transfer of final CRES charges after a bill is put in final status.

B. Rule 4901:1-10-33(K)

Direct Energy and RESA recommend that the Commission enact a new subpart (K) to require that an electric utility send within one business day enhanced electronic data interchange ("EDI") information to a CRES supplier.[138] As discussed in Section XVII. C. above, during Case No. 12-1230-EL-SSO, the Companies reached an agreement with Constellation and Exelon to provide enhanced EDI information to CRES Suppliers. This rulemaking proceeding is not the appropriate forum to discuss the proposed provision of enhanced EDI information. To the extent Direct Energy and RESA require further information, it should be discussed in the EDI working group.

XX. RULE 4901:1-10-34 PURPA

A. REC Ownership

In its Comments, AEEO recommended that the rules specify that qualifying facilities under PURPA ("QFs") retain ownership of renewable energy credits ("RECs") in order to promote the development of more distributed generation resources.[139] The Companies do not dispute that in the future, it may be appropriate for new QFs to own the RECs associated with

[137] Case No. 02-1944-EL-CSS, Stipulation and Recommendation at ¶ 3 (April 24, 2003).
[138] Direct Energy Comments at 7; RESA Comments at 13.
[139] AEEO Comments at 14.

generation from their facilities and to retain or sell them, either to the utility energy purchaser or a third party, if such is provided for in the contract between the parties.

However, the AEEO comments do not reflect consideration of REC ownership in the context of existing power purchase agreements between QFs and utilities – in these instances, a presumption of QF ownership of RECs would be inappropriate. Where a PURPA power purchase agreement was negotiated and approved prior to the advent of REC statutes and thus does not address REC ownership, the question of REC ownership is to be decided by the states based on state law, not PURPA.[140] A number of regulators and courts have determined that for pre-REC PURPA contracts that are silent on REC ownership, public policy concerns are among the state law considerations that favor a determination of utility ownership of RECs later associated with QF energy the utility was required sold to the utility.

For example, the Supreme Court of Appeals of West Virginia recently identified the state's interest in determining just and reasonable rates, in the context of the utility's statutory obligation under PURPA to purchase QF energy and capacity, as an appropriate consideration in its decision to affirm a regulatory order granting ownership of RECs to the utility. The court cited with approval the Public Service Commission of West Virginia's finding that because the utility has purchased and will continue to purchase QF energy from the QF under a pre-REC agreement, "it would be wrong to require the utility to now purchase [RECs] to 'verify' those purchases for the purpose of demonstrating compliance" with West Virginia's REC statute.[141] To do so would require the utility, and by extension, the utility's customers, to pay twice: once for the QF energy, and a second time for the RECs statutorily required to document its purchase

[140] *See City of New Martinsville v. PSC*, 729 S.E.2d 188, 194 (W. Va. 2012) (discussing *American Ref-Fuel Co.*, 105 FERC ¶ 61004 (Oct. 1, 2003)).
[141] *New Martinsville*, 729 S.E.2d at ___ (quoting *Monongahela Power Company and The Potomac Edison Company*, WVPSC Case No. 11-0249-E-P (Commission Order dated November 22, 2011) at __.

of the very same energy.[142] For these reasons, the Companies oppose AEEO's recommendation on REC ownership in the rules.

B. Avoided Costs

AEEO properly recognized in its comments that each QF has the option under the FERC regulations to enter into a long-term power sales agreement in which the price of electricity over the term of the agreement is based on projections of the purchasing utility's avoided costs as calculated at the time the obligation is incurred.[143] As noted by AEEO, this kind of arrangement provides the kind of price certainty needed for QFs to make long-term investments.[144]

However, the fix proposed by AEEO is for the Commission to establish the long-term price of electricity for this purpose on the basis of "the long-term ownership, operating, and fixed-price fuel costs for a new 500 MW natural gas-fired combined cycle gas turbine"[145] The avoided costs of purchasing electricity for utilities in Ohio are based on market conditions at any time, and are not necessarily correlated to the costs of electricity from any particular type of generating facility. For that reason, the Commission should reject AEEO's recommendation.

[142] Other courts have reached similar conclusions. *See, e.g., ARIPPA v. Pennsylvania Pub. Util. Comm'n*, 966 A.2d 1204, 1214 (Pa. Commw. Ct. 2009) (unless REC ownership were vested in the utilities, the utilities would be forced to purchase RECs separately and "pass that additional charge along to the consuming public"); *In re Ownership of RECs*, 913 A.2d 825, 830 (N.J. Super. Ct. App. Div. 2007) (QF ownership of RECs in this situation would be "unfair to retail customers"); *Wheelabrator Lisbon, Inc. v. Dep't of Pub. Util. Control*, 283 Conn. 672, 931 A.2d 159, 176 (2007) (QF ownership of RECs would contradict public policy to protect ratepayers).
[143] AEEO Comments at 13-14; *See, e.g.*, 18 CFR § 292.304(d)(2)).
[144] *Id.*; *See also*, FERC Order No. 69, FERC Stats. & Regs., Regulations Preambles ¶ 30,128 at 30,880 (1980).
[145] AEEO Comments at 14.

CONCLUSION

The Companies again appreciate the opportunity to comment on the proposed rules. The Companies urge the Commission to adopt the recommendations of the Companies set forth in both their initial and reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On February 6, 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. The Companies are also sending a courtesy copy to commenters in this case.

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

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