BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24	**Case No. 12-1924-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 commenters 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 4901:1-21-01: DEFINITIONS

A. Definition of "Customer Energy Usage Data"

In Case No. 12-2050-EL-ORD, Staff added a new definition of customer energy usage data: "energy usage information and data that is identifiable to a retail customer." The Office of the Ohio Consumers' Counsel ("OCC") recommends that the Commission adopt the same definition of "customer energy usage data" in Chapter 4901:1-21, Ohio Administrative Code that OCC suggests in its Comments to Chapter 4901:1-10, Ohio Administrative Code, Case No. 12-2050-EL-ORD.[2] Specifically, OCC suggests 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 and a

[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] *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 ("Case No. 12-2050-EL-ORD"), OCC Comments at 3 (January 7, 2013).
[3] OCC Comments at 3.

specific carve-out definition is 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 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. 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. Definition of "Small Commercial Customer"

The Retail Energy Supply Association and Interstate Gas Supply, Inc. (collectively, "RESA") recommend that the Commission add the definition of "small commercial customer:" "a commercial customer that has a demand of 25 kilowatts or less."[4] While the Companies may not be opposed to adding a definition for "small commercial customers", RESA's recommendation to use a measurement of 25 kW will be difficult for the Companies since their system is not designed to recognize customers at this particular demand level and will be problematic if a customer's demand level hovers above and below 25 kW from month to month. If the Commission decides to include a definition of "small commercial customer", a better definition would be those

[4] RESA Comments at 5

customers taking service under an electric utility's nonresidential rate designed for the smallest nonresidential customers.

II. RULE 4901:1-21-03: GENERAL PROVISIONS

A. Rule 4901:1-21-03(B): Disconnection of Distribution Service

Direct Energy Business Services, LLC and Direct Energy Business, LLC ("Direct Energy") suggest that the Commission amend Subpart (B) to not allow for disconnection "unless the CRES participates in an electric utility's purchase of receivables program or the customer is billed under a supplier consolidated billing arrangement between the CRES provider and the electric utility."[5] Direct Energy's comments contradict the prohibition on disconnecting a customer for nonpayment of a CRES charge set out in other rules and statutes, for example, R.C. 4928.10(D)(3). Further, as discussed in their Comments to Rule 4901:1-10-29 in Case No. 12-2050-EL-ORD, the Companies oppose a purchase of receivables ("POR") program. Therefore, the exception to disconnection for a purchase of receivables program is not necessary and the Commission should reject it.

III. RULE 4901:1-21-06: CUSTOMER ENROLLMENT

A. Rule 4901:1-21-06(D)(2)(b)(i): Generation Resource Mix

FirstEnergy Solutions Corp. ("FES") recommends that CRES suppliers be permitted to have generation resource mix information available on line.[6] This recommendation is substantially similar to the Companies' Comments and Reply Comments in Case No. 12-2050-EL-ORD. Specifically, the Companies support allowing electronic transmission of information to customers whenever practicable. The Companies believe providing links to information on a website rather than hard copies is

[5] Direct Energy Comments at 2.
[6] FES Comments at 5.

an economically and environmentally friendly practice. The Companies also support this change as it will give customers an immediate ongoing link to the information, thereby meeting the requirement of R.C. 4928.10(F), and it will limit the amount of requests for hard copies, reducing costs for all customers. The Commission should adopt this change.

B. Enrollment with Account Numbers

Duke Energy Retail Sales, LLC ("DER") recommends that the Commission amend the rules to require electric utilities to allow enrollment of customers on the basis of account numbers.[7] The Companies are opposed to any rule changes that dictate how functionally enrollments are performed. The original policy behind not having account numbers included on pre-enrollment lists was to help prevent slamming. Indeed, Rule 4901:1-10-12 prohibits electric utilities from disclosing account numbers without customer consent. Any change in practice should be carefully considered by the Commission outside a rulemaking proceeding.

C. Rescission Requests

DER recommends that a CRES Supplier be able to rescind an enrollment request, on behalf of a customer, up to four days before the date on which the supplier would otherwise start supplying service to a given customer.[8] The Companies oppose this recommendation because it would require a needless change in their process systems. Moreover, customers already have a seven day rescission period so this rule is not necessary. For those reasons, the Commission should reject this recommendation.

[7] DER Comments at 10.
[8] DER Comments at 10.

D. Customer Enrollment

Direct Energy recommends a new provision "each electric utility shall provide in its tariff the ability for a CRES provider to enroll a customer by providing a secure pin known to the account holder, such as a social security number, driver's license registration number or other unique identifier."[9] 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 that must first be vetted with the EDI working group to appreciate any and all unintended consequences, before implementation through a rulemaking procedure. 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."[10] Further, all of the current systems are designed and in place to switch customers based off an account number or similar number. Millions of customers have switched without issue using this process. Using a number not generated by the electric utilities would make it easier for customers to be slammed. For these reasons, the Commission should reject Direct Energy's recommendation.

[9] Direct Energy Comments at 5.
[10] *In the Matter of the [Companies] Application for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO ("Case No. 12-1230-EL-SSO"), Second Entry on Rehearing at ¶ 48 (January 30, 2013).

IV. RULE 4901:1-21-08: CUSTOMER ACCESS, SLAMMING COMPLAINTS AND COMPLAINT HANDLING PROCEDURES

A. Rule 4901(B)(1) and (B)(2): Complaint Investigation

FES recommends that CRES suppliers be permitted ten business days to investigate complaints of slamming.[11] The Companies support this request because it is consistent with the practice of responding to informal Commission complaints within ten calendar days. The Commission should amend the rule accordingly.

B. Customer Credits

DER recommends that the Commission require electric utilities in their tariffs to allow a CRES supplier to make a payment to a customer account for the purpose of providing a credit.[12] This type of transaction is consummated through EDI. As discussed in above, there is an EDI working group in Ohio that discusses and determines how this information is transferred. DER's recommendation is a topic for the EDI working group, not this rulemaking procedure. Therefore, the Commission should reject DER's recommendation.

V. RULE 4901:1-21-09: ENVIRONMENTAL DISCLOSURE

FES, Dominion Retail, Inc. ("Dominion") Direct Energy and RESA recommend that the environmental disclosure be provided via a link to a website.[13] The Companies support this change as it will give customers an immediate ongoing link to the information, thereby meeting the requirement of R.C. 4928.10(F), and it will limit the amount of requests for hard copies, reducing costs for all customers.

[11] FES Comments at 8.
[12] DER Comments at 12.
[13] FES Comments at 8, Dominion Comments at 3; Direct Energy Comments at 12; RESA Comments at 14.

VI. RULE 4901:1-21-10: CUSTOMER INFORMATION

A. Privacy Impact Assessment

OCC recommends that a CRES provider or governmental aggregator conduct a privacy impact assessment.[14] 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."[15] The Commission concluded that it was more appropriate for 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."[16] 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.

[14] OCC Comments at 15.
[15] *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).
[16] *Id.*

VII. RULE 4901:1-21-14: CUSTOMER BILLING AND PAYMENTS

A. Copies of Bills

DER recommends that the Commission implement a rule that requires electric utilities that provided consolidated billing services to allow the customer's CRES provider to request and receive a copy of the customer's bill for so long as the provider is the provider of record or the bill contains any amount due to the CRES provider.[17] Currently, customers can request up to twenty-four months of usage and billing information. Allowing a customer or CRES supplier to receive an indefinite amount of bills is unnecessary and would increase costs to customers. Further, tracking and sending additional bills would increase costs for all customers. For those reasons, the Commission should reject this recommendation.

B. Purchase of Receivables

In its Comments, DER also encourages the Commission to adopt a Purchase of Receivables ("POR") Program.[18] As discussed in the extensive briefing in Case No. 12-1230-EL-SSO, and in the Companies' Comments in Case No. 12-2050-EL-ORD, which are incorporated by reference into these comments at this point, the Commission should reject this recommendation.

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-

[17] DER Comments at 15.
[18] *Id.* at 4-5.

EL-CSS.[19] 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.[20] The Commission adopted this approach by amending Rule 4901:1-10-33(H).

The Companies have demonstrated in Case No. 12-1230 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.[21] Even Direct Energy and RESA's witness, Teresa Ringenbach in Case No. 12-1230 admitted that CRES providers are not suffering a competitive disadvantage from the lack of a POR program.[22] IGS witness Vincent Parisi similarly admitted that "we're on equal footing with respect to other CRES providers, with or without [a POR program]."[23]

In comparison, a POR program essentially provides a subsidy to CRES providers that undermines the market and sends the wrong price signals to customers.[24] 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.[25] As a result, non-shopping customers of the Companies would bear the uncollectible expenses generated from customers of the CRES providers.[26] These are expenses that the customers of the Companies would not otherwise bear.[27] In fact, R.C. §

[19] *In the Matter of the Complaint of WPS Energy Services, Inc. and Green Mountain Energy Company v. FirstEnergy, Cleveland Electric Illuminating Company, and Ohio Edison Company*, Case No. 02-1944-EL-CSS, Opinion and Order, p. 3 (Entry date: Aug. 6, 2003).
[20] *Id.*
[21] Case No. 12-1230-EL-SSO, Tr. Vol. II, p. 19; Tr. Vol. III, pp. 29-30.
[22] *Id.* at Tr. Vol. III, p. 64.
[23] *Id.* at Tr. Vol. II, p. 210.
[24] *Id.* at Tr. Vol. I, p. 267.
[25] *Id.* at Tr. Vol. II, pp. 187-188; Tr. Vol. III, p. 66.
[26] *Id.* at Tr. Vol. III, p. 68.
[27] *Id.*, pp. 69-70, 90.

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.[28] CRES providers currently have higher uncollectible expenses compared to utilities.[29] Under a POR program, CRES providers would be relieved of any risk of non-collection.[30] 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,[31] 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.[32]

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

[28] *Id.* at Tr. Vol. I, pp. 247-248; Tr. Vol. II, pp. 189-190.
[29] *Id.* at Tr. Vol. II, p. 189.
[30] *Id.*, p. 194.
[31] 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.
[32] *Id.* at Parisi Testimony, Exhibit 3.

already existing in Ohio, the Commission should reject the proposal to amend the rules to mandate a purchase of receivables program.

VIII. RULE 4901:1-21-17: OPT-OUT DISCLOSURE REQUIREMENTS

DER recommends the addition of rule requiring electric utilities to "provide reliable information concerning all customers located in the aggregator's boundaries."[33]DER also asserts that if the EDU fails to provide accurate lists it should be held responsible for any monetary harm that results similar to gas in Rule 4901:1-28-04(E).[34] DER's citation to that rule is misplaced. Rule 4901:1-28-04(E) merely provides:

> Each governmental aggregator shall use its best efforts to ensure that only eligible customer accounts within its governmental boundaries and customers who have not opted out are included in its aggregation. If ineligible accounts, accounts from outside of the governmental aggregator's governmental boundaries, or accounts for customers who opted out of the aggregation are switched to the governmental aggregation, the governmental aggregator shall promptly contact the natural gas company to have the customer switched back to the customer's former supplier. The governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer for any switching fees that were paid by the customer as a result of the improper switch. In addition, if the customer's former rate was less than the rate charged by the governmental aggregator and the higher rate was paid by the customer, then the governmental aggregator or the natural gas company, whichever is at fault for an improper switch, shall reimburse the customer the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was served by the governmental aggregator.

The above-referenced rule does not mandate that a natural gas company must pay, and the discussion of payment is limited to a very strict set of circumstances, not for "any" monetary harm as DER asserts. Further, the responsibility of appropriately switching customers must lie with the entity doing the switching, not the electric utility. Moreover,

[33] DER Comments at 16.
[34] *Id.*

Rule 4901:1-10-32 governs an electric utility's duty to governmental aggregators and Chapter 4901:1-21 is not the appropriate rule chapter to address this issue. Lastly, this rule is unnecessary because electric utility is not permitted to charge switching fees to customer accounts that switch to or from a governmental aggregation. For all of those reasons, the Commission should reject DER's recommendation.

IX. RULE 4901:1-21-18: CONSOLIDATED BILLING REQUIREMENTS

A. Rule 4901:1-21-18(H)

FES recommends a new rule requiring CRES charges to remain on a customer bill until fully paid[35]. FES recommends that the Commission eliminate subpart (I) of this rule to ensure that past due CRES provider charges remain on customer bills.[36] 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."[37] 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.

[35] FES Comments at 10.
[36] FES Comments at 9.
[37] Case No. 02-1944-EL-CSS, Stipulation and Recommendation, ¶ 3 (April 24, 2003).

B. Total Annual Costs

OCC recommends that twenty four months of usage and total annual costs be added to bill.[38] 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 adds to 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. There is no added value to placing this item on the bills. For those reasons, the Commission should reject this recommendation.

C. Disclaimer

Eagle Energy recommends that the Commission require an electric utility to add a disclaimer added to bills in the case of retail rate structure that may not result in a uniform PTC. The Companies oppose this recommendation as it will add costs to the production of bills, particularly if the added language causes an additional page to be added to bills, and will cause customer confusion as it will not apply to most customers. Further, no support is provided for why this change should be made.

[38] OCC Comments at 18.

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 Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company