

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 THE RETAIL ENERGY SUPPLY ASSOCIATION

I. Introduction

One the barriers to the development of a robust, retail electric service market is the billing and collection process. Most customers want a single invoice for electric service, though we now have regulated wire service being provided by the electric distribution utility ("EDU") and energy often being supplied by the competitive retail energy service provider ("CRES"). Since the Commission has not determined billing to be a competitive service¹ as of this time, today all consolidated bills are prepared by the EDU. The problem the CRES have experienced with consolidated billing is that retail customers do not always pay their consolidated bills in full. When that occurs the Commission's rules dictate a payment allocation methodology in Rule 4901:1-10-33(H), Ohio Administrative Code.² Many of the members of the Retail Electric Supply Association ("RESA")³ have experienced difficulties with Rule 10-33(H)'s the partial payment regulation and

¹See, Section 4928.03, Revised Code, which indicates that after a hearing the Commission may determine billing to be competitive service.

²In these reply comments, Rules in Chapter 4901:1-10, Ohio Administrative Code, will be referenced by chapter number and rule number only (e.g., "Rule 10-33").

³RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services;

presented evidence of the problems as part of an individual EDU's electric security plan proceeding.

The Commission in response to the evidence presented in that proceeding ordered:

Accordingly, the Commission directs Staff to hold a workshop in the newly-opened five year rule review for Chapter 4901:1-10, O.A.C., specifically for the purpose of reviewing FirstEnergy's implementation of the partial payment priority, including but not limited to, the implementation of the stipulation with respect to customers on deferred payment plans⁴.

RESA did participate in the workshop held on August 31, 2013, presented the difficulties with the partial payment rule and deferred payment plans. That information, in accordance with the Order above, was presented at the Staff's workshop and submitted to the Commission as part of RESA's Initial Comments and these Reply comments.

II. Difficulties with CRES Customer Partial Payments Continue to Exist

As explained in RESA's Initial Comments, the CRES suppliers and their customers struggle from a lack of knowledge and consistency, despite the payment allocation methodology in Rule 10-33(H). As presented in detail in its initial comments, CRES experience five practical problems with the status quo as to consolidated billing:

1. CRES do not know what monies are paid by the customer to the EDU for the consolidated bill and applied to the outstanding balance even though the outstanding balance include the CRES charges.
2. CRES are not part of the payment arrangement discussions and do not know the individual payment arrangements to which their own customers agree, even though the outstanding balance include the CRES charges. Further, the structure of the deferral plans could result in bypassing the payment priorities.

Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

⁴*In Re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012), at 42.

3. CRES do not know when the customer stops paying the consolidated bill, even though the outstanding balance include the CRES charges.
4. The rules does not address any sharing in late fees even though the CRES is also not receiving timely payment.
5. Customers are confused when a CRES (or its collection agent) attempts to collect an outstanding CRES balance because the customer considers it to be part of the utility's invoice.

Other CRES have highlighted these problems as well in comments filed in this proceeding.

Interstate Gas Supply Inc. (“IGS”), Duke Energy Retail Sales LLC (“DER”), and Direct Energy Services LLC and Direct Energy Business LLC (collectively “Direct Energy”) specifically identified the same problems in their initial comments.⁵ These problems are not a recent occurrence and show no sign of going away on their own. This five-year review process is an ideal opportunity for the Commission to recognize these difficulties and to resolve them. Moreover, the Common Sense Initiative (“CSI”) contained in Executive Order 2011-01K requires, among other things, the Commission to: determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth. The CRES who in part are small businesses have suffered due to the shortcomings of Rule 10-33(H).

III. A Purchase of Receivables Program can Resolve These Difficulties in Toto

In the Initial Comments, RESA, IGS, DER, and Direct Energy all stated that the continuing problems with partial payments have hampered CRES’ abilities in the Ohio competitive retail electric market. Additionally, RESA, IGS, DER, and Direct Energy all stated that a purchase of

⁵IGS Initial Comments at 1-12; DER Initial Comments at 3-5, 10; Direct Energy Initial Comments at 2-3, 7-8.

receivables (“POR”) program would resolve those problems across the board. POR can be a means for promoting competition consistent with state policy in Sections 4928.02(A) and (G), Revised Code. The numbers of POR programs in the United States, which are widely successful, and a comparison between choice programs in Ohio with and without PORs programs are set forth in RESA’s and IGS’ Initial Comments. Without repeating all of the facts and arguments, a POR is a direct and effective solution to the continuing problems that occur when customers only pay part of their consolidated bills. Moreover, the lack of a POR program hinders further competition throughout most of Ohio because its absence discourages supplier participation.

IV. Reply by RESA To The Alternative Proposals Suggested in This Proceeding

Direct Energy recommended, if a POR program is not required, the Commission should require additional EDI transactions to help CRES providers to reconcile partial payment issues, including an EDI transaction that shows the total amount applied to that month’s total bill, in addition to the existing EDI transaction that communicates the amount paid by the customer that is attributable to CRES charges.⁶ In its Initial Comments, DER recommended, if a POR program is not required by the Commission, that: (a) all EDU-consolidated billing include separate outstanding balances that remain on the bill until resolved; (b) the Commission establish consistent payment processing for the entire state and mandate that the information be included on the bill; (c) the EDUs not be allowed to negotiate payment plans for CRES balances or to return customers to default service after nonpayment; and (d) the CRES outstanding balances be factored into disconnection and switch decisions in the future.⁷

⁶Direct Energy Initial Comments at 7-8.

⁷DER Initial Comments at 5.

RESA concurs with these recommendations, although a POR program is the preferable resolution. To address issue 1 and 3 above, RESA believes that additional EDI data will give the CRES information so that they can understand exactly how payments have been allocated. In other words, CRES for the first time would enjoy timely collection information to track customer partial payments. This would help internal management of the CRES business accounts and also permit the CRES to ensure compliance with Rule 10-33(H)'s allocation methodology. Currently, the CRES has no means of auditing the partial payments it eventually receives from the EDU. Finally, it would assist in better collection efforts for those customers who later cease payments.

Issue 5 above, concerning the customers' lack of information of its outstanding debt to the CRES, would be addressed by DER in its first and second points. DER proposes identification of the different outstanding balances on the customer bill. Thus, the retail customer would know what amounts have been allocated to whom and what monies are still owed to whom. Regarding the CRES' lack of information about its outstanding debts, the problem is simple: the CRES need to know the amounts of CRES customer payments and any outstanding balances in order to attempt collection appropriately. RESA believes that the same information that is added to the customer's bill should be sent by EDI to the CRES.

To address issue 2, the Commission must mandate strict adherence to the allocation methodology in Rule 10-33(H), and not allow the EDUs to: (a) allocate monies under their own methodologies, (b) bypass the rule by negotiating secret payment plans for outstanding CRES charges, or (c) unilaterally return the nonresidential⁸ customer to the EDU's own default service

⁸Per Rule 10-19(A), Ohio Administrative Code, the EDU may not disconnect a residential customer for failing to pay CRES charges. However, an EDU can disconnect a nonresidential customer for nonpayment of the EDU *bill* and any tariff charges, per Rule 10-15(G), Ohio Administrative Code.

following nonpayment. RESA believes that these alternatives may resolve some of the existing problems.

For these alternatives, RESA recommends the following revised language for Rule 10-33:

(C) * * * All consolidated customer bills issued by or on behalf of an electric utility and a CRES provider must include at least the following information:

* * *

(11) Total payments, late payment charges or gross/net charges, and total credits applied during the billing period. Any partial payments received during the billing period shall be identified as such, and the amounts applied to utility charges and applied to CRES charges shall be identified separately. In addition, the separate outstanding balances shall remain on the bill until paid. The CRES provider by EDI must receive a timely account of all payments received by the electric utility, including the date, amount and how the funds were posted per paragraph (K) of this rule.

* * *

(H) Partial payment priority. All electric utilities that issue customers a consolidated electric bill that includes both electric utility and CRES provider charges for electric services shall follow this partial payment priority allocation.

(1) A customer's partial payment shall be credited by the electric utility in the following order: * * *

Additionally, the Commission should implement an addition to Rule 10-33 as follows:

(H)(3) All payments, whether partial or full, received from customers to settle a consolidated bill, regardless of whether it is part of a payment plan to avoid shut-off by deferral or other special arrangements, shall be allocated between electric utilities and the CRES provider in accordance with the method in paragraph (H)(1) of this rule.

As reflected in our Initial Comments, another new provision should be added to Rule 10-33 as provision (K). However, RESA's proposed language as set forth on page 13 of our Initial Comments included the terms "CRES payments" and "electric utility payments," when RESA

should have stated "CRES charges" and "electric utility charges." To avoid any confusion, RESA recommends that the following should be adopted as provision (K):

(K) Within one business day of the receipt of any payment from a CRES customer account for whom the electric utility is conducting consolidated billing, an EDI data response shall be transmitted detailing the amount billed for the CRES-supplied competitive services, the amount billed for non-competitive electric utility supplied services, the amount paid, and if an allocation of the customer payment has taken place pursuant to Rule 4901:1-10-33(H), O.A.C., how much of the payment allocated to past due CRES charges, past due electric utility charges, current electric utility charges and current CRES charges. The electric utility shall also notify the CRES provider within three business days if a customer to whom it is supplying service has entered into an arrangement for the payment of past due amounts, and, if so, the terms and conditions of such an arrangement.

V. Conclusion

RESA appreciates the opportunity to respond to the initial comments filed by several commentators in this proceeding.

Respectfully submitted,



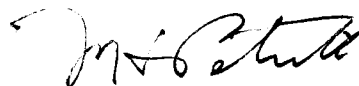
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments were served this 6th day of February 2013, via email or regular US mails (as reflected), on the parties listed below.

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2/6/2013 5:10:09 PM

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

Summary: Reply Reply Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association