

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission's  
Review of Chapter 4901:1-10, Ohio  
Administrative Code, Regarding  
Electric Companies**

**Case No. 12-2050-EL-ORD**

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**COMMENTS OF OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND  
THE TOLEDO EDISON COMPANY TO PROPOSED AMENDMENTS TO  
RULES 4901:1-10-01 AND 4901:1-10-5, O.A.C.**

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## **I. INTRODUCTION**

Pursuant to the Commission's Entry of July 10, 2013, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), respectfully file their comments to Staff recommended amendments to Rules 4901:1-10-01 and 4901:1-10-05, Ohio Administrative Code ("O.A.C."). The proposed additional amendments provide for an advanced meter opt-out and associated definitions. The Companies respectfully request the Commission decline to adopt the proposed amendments. As more fully discussed below, there is no statutory mandate to install advanced metering throughout Ohio and, the Commission has no specific authority to develop rules that assume that there is. The proposed amendments are premature and beyond the scope of the Commission's authority to implement and, accordingly, the proposed amendments should be rejected in their entirety at this time.

## **II. COMMENTS**

The Companies are concerned that the rules mandate that the Companies have an advanced meter program and that the rules may imply or suggest that the Companies either have been or should be mandated to implement an advanced meter program and that the rule amendments proposed by Staff assume that advanced metering is or will be in place in each of the Ohio electric distribution utility's ("EDU's") service territories. For example, proposed subsection (J) of Rule 4901:1-10-05, O.A.C. begins with "[a] customer *shall* have the option to take electric service using a traditional meter.....An electric utility *shall* provide customers with the option to *remove* an installed advanced meter....." (emphasis added.) Moreover, proposed subsection (J)(4)(a) of Rule 4901:1-

10-05, O.A.C. states: “[t]he electric utility *shall* file a proposed tariff for opt-out service.” (emphasis added.) In essence, each of these provisions appears to assume that advanced metering is the norm rather than the exception -- an assumption that is invalid given that: (i) there is no statutory mandate requiring EDUs to install advanced metering; (ii) the Companies currently have no plans to install a significant number of advanced meters; and, (iii) except for Duke Energy Ohio, the Companies are unaware of any significant deployment of advanced metering in any of the other Ohio EDUs’ service territories.<sup>1</sup>

As a creature of statute, the Commission has only the jurisdiction conferred upon it by the General Assembly. *Canton Storage and Transfer Co. v. Pub. Util. Comm.*, (1995) 72 Ohio St. 3d 1, 5. Clearly, there is no specific statutory authority for the Commission to mandate advanced metering on a statewide basis. Similarly, there is no enabling statute for the Commission to develop rules regarding the same. The proposed amendments to the existing rules attempt to circumvent the statutory and administrative processes and, for this reason alone, the proposed amendments should be rejected in their entirety. Moreover, the rules are premature. Because there is no mandate to install smart meters, and, equally important, there are very limited advanced meters in place in the Companies’ service territories, there is currently no need for statewide administrative rules that govern the subject. Last, the Business Impact Analysis describes a workshop and stakeholder process by which the Commission should follow in proposing administrative rules. For the rules proposed herein, no such process was followed.

While it is true that CEI has a pilot program related to advanced metering in Case Nos. 09-1820-EL-ATA, *et al.*, no similar program exists in either Ohio Edison or Toledo

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<sup>1</sup> The Companies’ comments are limited to their concerns with the proposed rules and should not be construed as addressing any issues or concerns of the other Ohio EDUs.

Edison's service territory; and in CEI's service territory, deployment is by no means widespread. Phase I of the pilot program is underway and involves only about 5,000 meters and a customer behavior study. A Phase II of this pilot was recently ordered by the Commission, which will expand the project to include approximately 39,000 more customers.<sup>2</sup> However, this is still only about 5% of CEI's total customer base. Further, customers within this program already have the option to opt out of the program and not have an advanced meter installed. In short, the Companies are in no position to fully implement advanced metering or to offer a tariff for opt-out service.

In addition to that issue, a significant amount of time, expense and research would need to be undertaken over a multiple year period before an advanced meter program could even be considered, therefore full deployment of advanced metering in the Companies' service territories at this time or even in the near future is not realistic, and therefore, rules designed to address that situation, which does not exist, are unnecessary. In any event, statewide any project of this sort would exponentially increase costs for customers because a comprehensive infrastructure must be designed and installed in addition to the costs of the meters themselves.

The amendments most recently proposed in this proceeding are a classic example of putting the proverbial cart before the horse. Statewide deployment of advanced meters, along with the billions in costs, have not been mandated in Ohio, and such deployment has not in fact occurred. Establishing an opt out rule for advanced metering at this time would cause costs to be incurred by the Companies and would cause confusion on the part of customers, since virtually no customer in the Companies' service territories has an advanced meter or is being mandated to have an advanced meter, and

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<sup>2</sup> See Case No. 09-1820-EL-ATA, Finding and Order (May 15, 2013).

therefore, there is nothing to opt out of. As stated above, customers already have the ability to opt out of the CEI Smart Grid Initiative, so no additional rules are necessary at this time.

In light of the foregoing, the Companies believe that the proposed amendments to the rules be rejected in their entirety as being premature. Nevertheless, should the Commission decide to address advanced metering through rules (which the Companies' maintain they lack jurisdiction to do), at a minimum, the proposed amendments should be reworked to reflect that all such requirements are at the option of the EDU.

### **III. CONCLUSION**

The Companies disagree with the Staff's desire to promulgate rules regarding opting out of the use of advanced meters, given that advanced metering is not a state mandate and the fact that most EDUs, including the Companies, do not have voluntary plans in place to fully deploy advanced metering technology. If implemented at this time, the rules would have little applicability or usefulness, but would lead to the incurrence of additional costs and customer confusion. The Companies respectfully request the Commission decline to adopt the proposed rules.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

On August 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.

/s/ Carrie M. Dunn

*One of the Attorneys for Ohio Edison  
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Illuminating Company and The Toledo  
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Summary: Comments to proposed amendments to Rules 4901:1-10-01 and 4901:1-10-05, O. A.C.

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