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

SECOND ENTRY ON REHEARING

The Commission finds:

(1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. At this time, the Commission is reviewing the electric service and safety (ESS) rules contained in Ohio Adm.Code Chapter 4901:1-10, as required by R.C. 119.032.

(2) On January 15, 2014, the Commission issued its Finding and Order (Order), adopting the rules in Ohio Adm.Code Chapter 4901:1-10. Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the Order upon the Commission's journal.

(3) On February 14, 2014, Direct Energy Services, LLC (Direct Energy), the Ohio Hospital Association (OHA), The Dayton Power and Light Company (DP&L), Duke Energy Ohio, Inc. (Duke), the Ohio Power Company (Ohio Power), Ohio Edison Company, Toledo Edison Company, and the Cleveland Electric Illuminating Company (collectively, FirstEnergy), and IGS Energy (IGS) filed Applications for Rehearing. Memoranda contra the Applications for Rehearing were filed by the Interstate Renewable Energy Council, Inc. (IREC), Direct Energy, IGS, FirstEnergy, and the Ohio Consumers' Counsel (OCC).

Ohio Adm.Code 4901:1-10-07

(4) General. OHA asserts that Ohio Adm.Code 4901:1-10-07 is unjust and unreasonable. OHA asserts that the amount of time that must elapse before an interruption of service is elevated to the status of an outage should be reduced. According to OHA, the advents of major investments in smart grid technologies makes it feasible to reduce the amount of time that must elapse before an interruption in service is elevated to the status of outage. Further, OHA contends that these technologies now make it capable for information about interruptions to be readily reported to hospitals.

FirstEnergy opposes rehearing on the assignment of error raised by OHA. FirstEnergy asserts that while new technologies may exist that make it capable for information about interruptions to be readily reported to hospitals, those technologies have not been universally deployed. FirstEnergy contends that OHA's proposal to require the utilities to provide more data closer in time to an event is premature. Additionally, FirstEnergy avers that hospitals and other critical facilities are already required to receive outage information as part of the utilities' emergency plans.

(5) The Commission finds that OHA's assignment of error should be denied. The Commission considered OHA's argument before it adopted the rules but determined that provisions for reporting outages to affected essential facilities already exist. Additionally, the Commission finds again that OHA's proposal to decrease the amount of time that must elapse before an interruption of service is elevated to the status of outage should be denied. While the Commission recognizes that smart grid technologies may provide improved reporting capabilities, smart grid technologies have not been universally implemented in the state of Ohio. After further smart grid deployment, the Commission will reconsider lowering the threshold before an interruption is determined to be an outage.

Ohio Adm.Code 4901:1-10-11

(6) General. OHA argues that the Commission's Order is unjust and unreasonable because it denied OHA's proposal to address the worst-performing critical human service facility circuits. OHA argues that the Commission unreasonably denied OHA's proposal, which would have helped to identify fragile circuits that may serve hospitals and would have improved the channels of communication during disruptions in electric distribution service. OHA contends that the Commission's reasoning for denying its recommendations was incorrect, as its proposal is for preventative measures, which are not included in Ohio Adm.Code 4901:1-10-08.

FirstEnergy opposes rehearing on the assignment of error raised by OHA. FirstEnergy asserts that the Commission's decision not to address the worst-performing critical human service facility circuits was reasonable. First, FirstEnergy avers that Ohio Adm.Code 4901:1-10-08 requires the electric distribution utilities (EDUs) to have an emergency plan, which prioritizes restoration in the event of an outage to a critical human service facility. FirstEnergy contends that critical human service facilities already receive priority during outages. Further, FirstEnergy argues that OHA's proposal is redundant with the existing rule in Ohio Adm.Code 4901:1-10-11(C), which requires the utilities to report all of the worst performing eight percent of the utilities distribution circuits during the twelve-month reporting period. Therefore, there is no benefit to adopt a new reporting standard specifically for critical human service facility circuits.

FirstEnergy also opposes OHA's proposal to adopt a definition for critical human service facility because OHA's proposed definition is overbroad and vague. FirstEnergy argues that it would be difficult for the utility to determine which facilities qualify as critical human service facilities and to then manage those facilities that meet the definition. FirstEnergy asserts that there could be severe consequences for adding reliability standards to a potentially large number of facilities. FirstEnergy then contends that 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, but that does not include hospitals and other healthcare facilities because they are already required to have adequate on-site generation.

(7) The Commission finds that rehearing on the assignment of error raised by OHA should be denied. The Commission again notes that it considered OHA's proposal before it adopted the rules and denied it. The Commission finds that the rules adequately address reliability and provide for appropriate measures during an outage. Additionally, the Commission notes that the purpose of the rules is to maintain the reliability of the entire distribution system, not just those critical facilities that offer human and health services. While the Commission supports those facilities, the definition for critical human service facility proposed by OHA is too vague and overbroad to be adopted.

(8) Paragraph (F). FirstEnergy asserts that Ohio Adm.Code 4901:1-10-11(F) is unjust and unreasonable because it does not clarify that circuits should not be listed on three consecutive reports due to the same preventable outage cause. FirstEnergy argues that the rule should take into account that circuits may appear on consecutive outage reports due to causes beyond the EDU's control and for different reasons from year to year.

OCC opposes the assignment of error raised by FirstEnergy. OCC asserts that the amended rule meets the Commission's requirement to provide for high quality, safe, and reliable electric service. Additionally, OCC believes that the Commission's adopted amendment to the rule is reasonable, as it permits the utility to demonstrate to the Commission that a poorly performing circuit was listed on three consecutive reports for reasons that could not have been prevented by the utility. OCC avers that three years is sufficient time for the utility to repair the worst performing circuits.

(9) The Commission finds that rehearing on this assignment of error should be denied. Under FirstEnergy's proposal, a circuit could be listed on two consecutive reports, and then a

third report for a different cause, and the EDU would not be required to take remedial action to ensure the circuit is not listed on subsequent reports. The Commission finds that this would be unacceptable. Further, the Commission notes that in such a situation where a circuit is listed on three consecutive reports, the EDU may demonstrate to the Commission that the outage causes were not preventable. This showing would effectively rebut the presumption that the EDU violated the rule.

Ohio Adm.Code 4901:1-10-14

(10) Paragraph (C). DP&L and FirstEnergy contend that Ohio Adm.Code 4901:1-10-14(C)(2) is unjust and unreasonable because it places the burden of proof of establishing creditworthiness on the utility. DP&L proposes that the rule be revised to require the applicant to provide proof of a prior account with an electric utility if it declines to provide a social security or tax identification number.

(11) The Commission finds that rehearing on this assignment of error should be granted. The Commission believes that if a customer chooses not to provide a social security or tax identification number to establish creditworthiness, then it would be unduly burdensome for the electric utility to determine the customer's previous electric utility and then contact that utility to determine the customer's creditworthiness. Accordingly, if the customer does not provide a social security or tax identification number, and the customer wants to use a prior account with a utility as a means of establishing creditworthiness, the customer must provide proof of the prior account. The prior account must be for the same class of service within two years before the date of application and must not, within the final year of service, have been disconnected for nonpayment, been past due twice, or been disconnected for fraudulent practice, tampering, or unauthorized reconnection.

(12) Paragraph (M). DP&L asserts that Ohio Adm.Code 4901:1-10-14(M)(2) is unjust and unreasonable because implementing a uniform guarantor agreement only complicates a process that has historically performed well. DP&L recognizes that a uniform agreement across the state

is prudent, but argues that the methodology of administering the process will be unduly burdensome to customers and the EDUs. DP&L asserts that its process of granting an applicant service upon verbal acceptance from a guarantor is more efficient than the process adopted in the rules.

(13) The Commission finds that rehearing on DP&L's assignment of error should be denied. The Commission believes that the benefit of having uniform statewide guarantor agreements, as well as a uniform statewide process for administering guarantor agreements, outweighs any burden on customers or the EDUs. We also believe that a guarantor capable of guarantying the account of another customer is capable of faxing or emailing a copy of the guarantor agreement to the EDU. This is not an undue burden or an unreasonable requirement, even if it does require more effort than verbal acceptance.

(14) FirstEnergy asserts that Ohio Adm.Code 4901:1-10-14(M)(2) is unjust and unreasonable. FirstEnergy argues that the rule unreasonably requires the EDUs to provide copies of a guarantor agreement to the guarantor and requires the EDUs to maintain the original document on file. FirstEnergy avers that it is administratively less burdensome and is less costly for the EDU to maintain an electronic version of the guarantor agreement.

(15) The Commission finds that rehearing on FirstEnergy's assignment of error should be granted. We find that the electric utility shall keep a copy of the original file during the term of the guaranty, which may include an electronic copy. Additionally, the electric utility must provide the guarantor an additional copy of the agreement upon request.

Ohio Adm.Code 4901:1-10-22

(16) General. Duke asserts that Ohio Adm.Code 4901:1-10-22 is unjust and unreasonable because it mandates that an EDU provide beginning and ending meter reads for customers that have advanced meters. Duke asserts that beginning and ending meter reads for advanced meters are irrelevant.

OCC opposes the assignment of error raised by Duke. OCC believes that customers must, to the extent practicable, be provided with the necessary information to be able to recalculate their bill to determine its accuracy. Additionally, OCC notes that removing beginning and ending meter reads from customer bills could lead to proposals to change the bill formatting or other billing system changes. OCC is concerned that these other bill formatting or billing system changes could remove information that is helpful and useful to customers.

(17) The Commission finds that rehearing on Duke's assignment of error should be denied. We note that while Duke may be correct that beginning and ending meter reads are not necessary for certain advanced meters, this is not necessarily true for all types of advanced meters. Accordingly, we believe that it is appropriate for the rule to require beginning and ending meter reads for all meters, including advanced meters. However, we also note that if an EDU has deployed advanced meters, then the EDU may file an application or a motion to waive this requirement pursuant to Ohio Adm.Code 4901:1-10-02(C). The Commission will then address this issue through the EDU's application or motion for waiver.

(18) Paragraph (B). FirstEnergy avers as its fourth assignment of error that Ohio Adm.Code 4901:1-10-22(B)(8)(e) is unjust and unreasonable because it requires the EDUs to provide the consumption for each pricing period on the customer's bill. FirstEnergy asserts that this creates unnecessary paperwork, that it adversely impacts EDUs by requiring a specific expenditure to implement, and that it is needlessly burdensome.

FirstEnergy further notes that it has an interruptible service rider that applies to a limited number of customers. FirstEnergy's interruptible service rider applies during emergency interruptions and contains economic buy through opportunities for those customers. Under a buy through period, the customers under the interruptible service rider pay the locational marginal price (LMP) for that hour. FirstEnergy asserts that if Ohio Adm.Code 4901:1-10-22(B)(8) applies to these customers, then rehearing should be

granted on its assignment of error. However, FirstEnergy notes that if these customers are not intended to be included under the rule, then the Commission should provide clarification.

(19) The Commission finds that rehearing on this assignment of error should be denied. The Commission believes that Ohio Adm.Code 4901:1-10-22(B)(8)(e) should not apply to those customers who pay variable rates during economic buy through opportunities. The intent of the rules was to apply to those customers who are billed monthly under variable or hourly rates. Additionally, the Commission again notes that the EDU may file an application or a motion to waive this requirement of the rules pursuant to Ohio Adm.Code 4901:1-10-02(C) if an EDU believes that this rule should not apply to certain customers or situations.

Ohio Adm.Code 4901:1-10-23

(20) Paragraph (A). FirstEnergy asserts that Ohio Adm.Code 4901:1-10-23(A) should be revised so that the electric utilities credit nonresidential customers for overcharges for only the 36 month period prior to the date the company remedies the metering inaccuracy. The adopted rule requires that the electric utilities bill nonresidential customers for an undercharge rendered in the prior 36 month period; therefore, FirstEnergy requests that the same 36 month period requirement apply to crediting customers for overcharges. FirstEnergy proposes that the electric utilities should only be required to credit customers for the total amount of the overcharge that was rendered in the prior 36 month period.

(21) The Commission finds that rehearing on this assignment of error should be denied. As the Commission indicated in the Order, we find that 36 months is sufficient time for the electric utility to identify an undercharge and provide accurate billing. The 36 month limitation on recovering undercharges is appropriate because the burden for accurate billing rests with the electric utility. However, this 36 month period should not apply to crediting customers for overcharges because the electric utility has a continuing responsibility to provide accurate billing. FirstEnergy's

proposal would effectively create a mechanism similar to a statute of limitations, which would provide that if an electric utility overcharges a customer, then the electric utility would not be required to credit the customer for the overcharge after 36 months.

We find that FirstEnergy's proposal should be denied because customers do not have the same capabilities as an electric utility to identify an overcharge and request a credit. If a customer maintains its billing history and records for longer than 36 months, and can demonstrate that an overcharge existed, even prior to the 36 months, then the customer may be entitled to a credit for the overcharge. We note that, because of record retention policies for customer billing, these situations are often determined on a case-by-case basis pursuant to the Commission's complaint procedures in Ohio Adm.Code Chapter 4901-9. If an electric utility identifies an overcharge from before the prior 36 months, then it must provide a credit. Otherwise, the customer may file a complaint and due process will be granted to determine the proper result.

Ohio Adm.Code 4901:1-10-24

(22) Paragraph (F). FirstEnergy and DP&L contend that Ohio Adm.Code 4901:1-10-24(F)(2) is unjust, unreasonable, and unlawful because requiring three or more years of historical data to be used for the generic customer load pattern will be unduly burdensome and exceptionally costly. FirstEnergy argues that it is not possible to rework current formulas for generic customer load patterns without undertaking entirely new load research studies; which can take a year to design, three years for data collection, and another two years to analyze and create. Furthermore, FirstEnergy avers that the installation of smart meters may make this rule unnecessary. DP&L asserts that the Commission should grant utilities a waiver of this rule if the electric utility is not able to immediately comply with the requirement.

(23) The Commission finds that rehearing on this assignment of error should be denied. The Commission finds that the electric utilities across the state of Ohio should use a uniform

period of time for measuring load pattern information, which should be a minimum of three years of historical customer energy usage data. However, pursuant to Ohio Adm.Code 4901:1-10-02(C), an electric utility may file an application or a motion to waive this requirement if the electric utility believes that it has a reliable system of measuring load pattern information or if it believes the cost of implementing this rule far exceeds the benefit.

(24) Paragraph (E). Direct Energy, IGS, DP&L, and Duke assert that Ohio Adm.Code 4901:1-10-24(E) is unjust and unreasonable. Direct Energy avers that this rule is unjust and unreasonable because it too broadly requires CRES providers to obtain disclosures for current customers. DP&L and Duke aver that applying the adopted rule to traditional interval meters will result in a setback to the development of the CRES market in Ohio. Duke then contends that it would be impossible to translate potentially tens of thousands of pieces of paper into the ability to release data electronically, on a monthly basis. IGS argues that the written consent form may deter customers from enrolling in CRES services that require granular usage data.

Duke further recommends that a working group be created to further review privacy issues. However, Direct Energy opposes Duke's request for a working group to further discuss customer privacy issues and asserts that this proceeding has had sufficient discussion on the issue.

OCC opposes rehearing on this issue and asserts that the electric utility has an obligation to protect customer-specific information. OCC avers that an unauthorized release of granular customer energy data could have a large impact on customers' privacy, and that written consent before a utility is permitted to release the information is a reasonable safeguard.

(25) The Commission finds that rehearing on this assignment of error should be granted. The Commission finds that the electric utilities should not disclose customer energy usage data without the customer's consent, including electronic consent, except for customers with traditional interval meters. However, we note that this does not place the

burden on the electric utility to seek customer consent, as the CRES provider may provide the customer consent to the electric utility, whether written or electronic. However, the electric utility must receive consent from the CRES provider or data recipient before sharing the historical and future customer energy usage data.

Additionally, once the EDU has received the authorization to release the customer energy usage data, the customer account should be noted or flagged and the information should be shared electronically or through an internet web portal. The customer energy usage data consent release should be stored in accordance with current data retention policies. The consent form should also include a time period for data collection, which should decrease the burden to monthly verify the customer's consent. To recover the associated costs of this rule, the Commission finds that the electric utilities may propose a recovery mechanism, which should be filed in their supplier tariffs

Further, the Commission notes that the customer energy usage data disclosure consent in Ohio Adm.Code 4901:1-10-24(E)(3) was intended to apply to residential customers only, therefore the rule generally would not apply to customers using traditional interval meters.

Finally, the Commission recognizes that modern advances in technology will require us to stay proactive to protect the privacy rights of customers, while providing them opportunities to use their customer energy usage data for unique products and services. Accordingly, we note that in Case No. 12-3151-EL-COI we created a market development working group (MDWG) to monitor the development of the competitive market along with advances in modern technology. *In re the Commission's Investigation,* Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 6, 21. We find that the issue of customer energy usage data and proper data release protocols should continue to be evaluated through the MDWG.

(26) Paragraph (G). DP&L requests clarification on Ohio Adm.Code 4901:1-10-24(G) regarding disclosure of customer lists, and recommends removing subsections one through

three since they will be obsolete when the rule becomes effective.

(27) The Commission finds that rehearing on DP&L's assignment of error should be granted. The Commission recognizes that subsections one through three will become obsolete, therefore the rule should be revised to indicate that the lists should be provided to any customer upon request. Additionally, the Commission notes that the list of CRES providers provided to customers should be unbiased and should demonstrate no favoritism of one CRES provider over another.

Ohio Adm.Code 4901:1-10-27

(28) Paragraph (C). FirstEnergy asserts that Ohio Adm.Code 4901:1-10-27(C) is unjust, unreasonable, and unlawful. FirstEnergy argues that requiring an EDU and a transmission owner to file a report with the Commission setting forth its methodology to assess the reliability of its transmission circuits, which is subject to review and approval by Staff, creates confidentiality concerns, is unduly burdensome, creates unnecessary paperwork, and is pre-empted by federal law. FirstEnergy argues that federal law gives FERC exclusive jurisdiction over unbundled transmission service, which could give rise to a conflict between state and federal law.

(29) The Commission finds that rehearing on this assignment of error should be denied. The Commission notes that it has not amended the substantive requirements of Ohio Adm.Code 4901:1-10-27(C), and that these provisions were previously adopted by the Commission. The Commission notes that Ohio Adm.Code 4901:1-10-27(C) for transmission system performance assessments was adopted even prior to 2002. *See In re Commission's Review of its Electric Service and Safety Standards*, Case No. 02-564-EL-ORD, Finding and Order (Sep. 26, 2002) at Attachment I, pg. 50. We believe that FirstEnergy's assignments of error regarding Ohio Adm.Code 4901:1-10-27(C) lack merit.

(30) Paragraph (E). FirstEnergy asserts as one of its assignments of error that Ohio Adm.Code 4901:1-10-27(E) is unjust,

unreasonable, and unlawful because it requires significant expenditures and is needlessly burdensome. FirstEnergy argues that the adopted rule may move the repair of minor deficiencies ahead of other deficiencies that could have a reliability impact. FirstEnergy asserts that the EDUs should prioritize the deficiencies that are most likely to have a reliability impact.

(31) The Commission finds that rehearing on this assignment of error should be denied. The amended rule requires the EDUs to correct all deficiencies by the end of the year, not just those deficiencies likely to cause an outage. However, the amended rule still requires that lines and equipment with recorded defects, that could reasonably be expected to endanger life or property, be promptly repaired, disconnected, or isolated. Additionally, while FirstEnergy asserts that the rule may cause prioritization that is not the most beneficial for customers; the rule does not eliminate the EDUs' obligation to maintain reliability or to conduct their operations in a manner that is most beneficial to customers.

Ohio Adm.Code 4901:1-10-28

(32) Paragraph (A); Microturbine Definition. FirstEnergy asserts that the Commission's Order is unjust and unreasonable because it does not contain a definition with a size limit for the term "microturbine." FirstEnergy asserts that the General Assembly intended a size limit by declaring that a net metering system may be a facility that uses a microturbine.

IGS argues that reciprocating engine technology should be included in the definition of microturbine. IGS asserts that reciprocating engines are the most common generation technology used in combined heat and power systems, and should be eligible for net metering. IGS then avers that if the Commission does not modify the definition of microturbine to include reciprocating engine technology, then it should include it in the list of generating technologies eligible for net metering.

FirstEnergy opposes rehearing on the assignment of error raised by IGS. FirstEnergy points out that the net metering

statute does not include reciprocating engines in the list of technologies that are eligible for net metering. FirstEnergy also notes that reciprocating engines are not per se excluded from net metering under the statute.

(33) The Commission finds that rehearing on this assignment of error should be denied. The Commission notes that this is not the first time the issue of microturbine size has been before us. We previously held that no size limitation for microturbines should be adopted, there is no limitation on the number of distributed generators that can be installed by a customer-generator, and there exists an implied limitation on the size or number of generators. *In re the Commission's Response to Provisions of the Federal Energy Policy Act of 2005*, Case No. 05-1500-EL-COI, Finding and Order (March 28, 2007) at 4.

Further, the Commission finds that IGS's proposed definition of reciprocating engine is too broad for inclusion in the rules. While the Commission recognizes IGS's contention that combined heat and power systems often use reciprocating engine technology, a reciprocating engine can be anything from an internal combustion engine that uses petroleum-based fuel to steam-powered engines. The Commission notes that if a reciprocating engine can meet the criteria in R.C. 4928.01(A)(31), then it could potentially be permissible for net metering. However, as a result of the broad scope of applications that could use reciprocating engine technology, applications for net metering using reciprocating engine technology or microturbines must be considered on a case-by-case basis.

(34) Paragraph (B)(3). DP&L asserts that rehearing should be granted because Ohio Adm.Code 4901:1-10-28(B)(3) incorrectly incorporates by reference Ohio Adm.Code 4901:1-10-28(B)(10). Additionally, DP&L requests clarification on the Commission's intent behind the one-year review to determine if a customer-generator is an excess generator.

(35) The Commission finds that rehearing should be granted on the assignment of error raised by DP&L. The Commission finds that the rule should be revised to state that if a

customer-generator is determined by the electric utility to be an excess generator after any twelve month period, then the electric utility shall contact the customer-generator in order to resolve the change in status.

(36) Paragraph (B)(6). DP&L, FirstEnergy, and Ohio Power argue that Ohio Adm.Code 4901:1-10-28(B)(6) is unjust and unreasonable. DP&L asserts that this rule is unreasonable because it requires electric utilities to measure the output of the customer-generator before the electricity flows through the utility's meter. DP&L proposes that the language be revised to state that "a customer-generator that delivers net electricity to the utility that is less than twenty percent of the customer-generator's requirements for electricity, for any 12 month period, shall be considered primarily intending to offset part or all of its requirements for electricity." Ohio Power avers that the Commission should adopt a policy where utilities verify the customer-generator's system to ensure that customers are designing their systems for 100 percent of their requirements for electricity and not more. Additionally, Ohio Power argues that the rebuttable presumption at 120 percent of the customer-generator's requirements for electricity is too vague and uncertain.

Similarly, FirstEnergy and Ohio Power assert that Ohio Adm.Code 4901:1-10-28(B)(6) is unjust and unreasonable because it incents customer-generators to size their net metering system to be at 120 percent of their requirements, in violation of R.C. 4928.01(31).

IREC opposes rehearing on the assignment of error raised by FirstEnergy and Ohio Power. IREC asserts that the Commission sufficiently addressed this issue in its Finding and Order, and that the Commission is right to permit a 20 percent margin of error in order to give customer-generators the ability to implement energy-efficiency measures and to account for the unpredictability of renewable energy. As the Commission pointed out in its Finding and Order, the Commission's intent is to protect customer-generators who incidentally generate more than their requirements for electricity.

IGS also opposes rehearing on the assignments of error because IGS believes that no limit should be placed on the size of net metering facilities. IGS asserts that distributed generation should have the opportunity to compete with all forms of generation.

(37) The Commission finds that rehearing on the assignments of error raised by DP&L, Ohio Power, and FirstEnergy should be denied. Initially, the Commission notes that while DP&L and Ohio Power argue that the rebuttable presumption at 120 percent is vague and uncertain; this is the result of the primary-intent based test adopted by the General Assembly. Pursuant to R.C. 4928.01(31), a net metering system must be intended primarily to offset part or all of the customer-generator's requirements for electricity. The Commission has recognized that this places an implied limitation on the size of a net metering facility, as the primary intent of a customer-generator must be to offset its requirements for electricity. However, the Commission has seen over the past five years, in the time since the previous 5-year rule review, that the vague and uncertain primary-intent based test in the statute has resulted in electric utilities inconsistently applying the statute to customer-generators. The Commission's adoption of Ohio Adm.Code 4901:1-10-28(B)(6) maintains the primary-intent based test, while providing more clarity, and hopefully consistency, in applying the statute to customer-generators. The rebuttable presumption mechanism permits customer-generators to generate in excess of their requirements for electricity without primarily intending to, and provides the electric utilities an opportunity to rebut the presumption for those customer-generators who are not primarily intending to generate their requirements for electricity.

Further, the Commission notes that it addressed this issue in its Finding and Order, and that the 120 percent threshold for the rebuttable presumption is an appropriate and reasonable threshold. We do not believe that this rule incents customer-generators to intend primarily to generate in excess of their requirements for electricity. Additionally, we do not believe that the statute indicates that a customer-generator who incidentally generates in excess of 100 percent of its

requirements has violated R.C. 4928.01(31). The amended rule will provide a level of consumer protection to customer-generators who incidentally generate in excess of their total requirements. This rule places a reasonable restriction on excess generation while preventing customer-generators from being penalized for incidentally generating in excess of their requirements, which can result from engaging in energy efficiency measures or from the unpredictability of renewable resources.

(38) Paragraph (B)(7). DP&L requests that the Commission clarify that Ohio Adm.Code 4901:1-10-28(B)(7) requires a one-time calculation of the customer-generator's requirements for electricity, based upon the three previous years before the customer-generator becomes a net metering customer. Additionally, DP&L asserts that if the Commission does not make this clarification, then the Commission clarify whether the rule requires a rolling three-year average computation.

(39) The Commission finds that rehearing on the assignment of error raised by DP&L should be denied. However, we clarify that Ohio Adm.Code 4901:1-10-28(B)(7) does not require or prohibit a three-year rolling average. The adopted rule requires that when a customer-generator's requirement for electricity is calculated, the amount should be the average amount of electricity consumed annually by the customer-generator over the previous three years. This rule does not require or indicate how often the EDU must make the calculation; although, there must be, at least, a one-time calculation of the customer-generator's requirements for electricity to determine the customer's consumption baseline for sizing the facility. The EDUs may decide, at their discretion, whether to use a one-time calculation or a rolling three-year average. Whether the EDU intends to conduct a one-time calculation or a three year rolling average should be addressed by the EDUs in their net metering tariff.

(40) Paragraph (B)(9). DP&L asserts that Ohio Adm.Code 4901:1-10-28(B)(9)(c) is unjust and unreasonable because it unnecessarily requires electric utilities to refund annually, without the request of the customer-generator. DP&L

asserts that most net metering customers prefer that the monetary credit for excess generation rollover to the next monthly billing period indefinitely.

(41) The Commission finds that DP&L's assignment of error should be denied. DP&L's proposal would make an indefinite monetary credit rollover the default and require customers to request a refund if they desire one. The Commission believes that providing customer-generators a monetary refund for net excess generation should be the default.

(42) Ohio Power and DP&L assert that Ohio Adm.Code 4901:1-10-28(B)(9)(c) is unlawful and unreasonable because it improperly characterizes a competitive generation service as noncompetitive. DP&L asserts that any credit for net excess generation should be the responsibility of the customer's generation supplier, regardless of whether the supplier is a CRES provider or the SSO provider. Ohio Power avers that Ohio law and federal law only require an electric utility to provide net metering for customer-generators that the electric utility is supplying electricity.

DP&L and Ohio Power then assert that if the rules continue to require the electric utilities to provide a monetary credit refund to customer generators, then the rule should clarify how the utility recovers that cost. DP&L and Ohio Power assert that if the Commission finds that net metering is a noncompetitive service, then the electric utility should be permitted to recover the costs through a nonbypassable charge. Ohio Power further argues that if the electric utility is recovering this cost through negative load, then that load should be included as a reduction to the SSO load (accounts) for purposes of PJM settlement.

Direct Energy opposes rehearing on this assignment of error and asserts that the rule, as written, adequately addresses how net metering credits are applied. Additionally, IGS also opposes rehearing on this assignment of error and asserts that CRES suppliers should not be required to credit the customer for net metered generation because CRES suppliers will not be getting access to, or utilization of, the electricity that is delivered back to the distribution system.

IGS asserts that since the electricity generated by a net metering customer-generator is placed directly onto the distribution system, the distribution utility receives the electricity, which reduces the SSO obligation of the electric distribution utility.

(43) The Commission finds that rehearing on the assignment of error raised by DP&L and Ohio Power should be denied. The Commission has determined that net metering service is a noncompetitive distribution service and that the electric distribution utilities should make a net metering tariff available to all customers, whether shopping or not. The Commission finds that since net metering is a distribution service to be provided by the distribution utility, a customer-generator may shop with a CRES provider for its generation service. Further, metering is a traditional function of the distribution utility and net metering is no different. Therefore, the Commission finds that the EDUs should provide the net metering tariff consistent with R.C. 4928.67. The statute also provides that the distribution tariff or contract should be identical in rate structure, all retail rate components, and any monthly charges to which the same customer would be assigned if that customer were not a customer-generator, consistent with R.C. 4928.67(A)(1). Therefore, a residential customer-generator on the net metering tariff shall remain a residential customer and not be placed on a small power producer tariff, and no additional distribution charges shall be imposed on the customer-generator that are not identical to which the same customer would be assigned if that customer were not a customer-generator. Additionally, the distribution tariff should include provisions for the distribution utility to provide a refund to customer-generators for their net excess generation, since it is being supplied directly to the distribution utility's distribution system.

(44) Ohio Power argues that Ohio Adm.Code 4901:1-10-28(B)(9)(c) should be revised so that the credit for net excess generation should reflect only energy charges. Ohio Power avers that the SSO rate has both energy and capacity built into it, and that the refund for net excess generation should only reflect energy charges. Ohio Power further asserts that

under the Supreme Court's holding in *FirstEnergy Corp.*, it would be unlawful to refund customer-generators for capacity when they have provided no capacity to the utility. *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 401 (2002).

IREC opposes rehearing on the assignment of error raised by Ohio Power. IREC notes that the Commission already addressed this issue in its Finding and Order and requests that the Commission deny rehearing on the assignment of error alleged by Ohio Power. IREC argues that Ohio Power's proposal would decrease the credit rate that customer-generators receive for their net excess generation. IREC further avers that Ohio Power's proposal is adverse to industry best practices and is contrary to the Commission's intent in the rules.

(45) The Commission finds that rehearing on the assignment of error raised by Ohio Power should be denied. Pursuant to the Supreme Court's holding in *FirstEnergy Corp.* and R.C. 4928.67(B)(1) and (2), the refund for net excess generation must be for the electricity supplied and may not include distribution, transmission, ancillary services, transition, universal service fund, or energy efficiency fund costs. *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 401 (2002) at 405. The Court pointed out that R.C. 4928.67 speaks in terms of electricity generated and supplied, which is generation service. Included in generation service and the generation service rate are energy, demand, and capacity. The Commission has carefully considered its amendments and finds that using the SSO generation rate for calculating the monetary refund for customer-generators is consistent with the Revised Code and the Supreme Court's holding in *FirstEnergy Corp.*

Further, the Commission notes that energy, demand, and capacity are the components of electricity, which is indicated on customer bills as generation. Consistent with the Supreme Court's holding, the adopted rule for Ohio Adm.Code 4901:1-10-28(B)(9)(c) appropriately establishes a refund for net excess generation that compensates customer-generators for *electricity* generated and supplied to the EDU's distribution system, not just for the energy

component of the generation. While Ohio Power may contend that it does not receive capacity from the customer-generator, this is an oversimplification of the issue. In reality, the net metering customer-generator has offset their demand, which requires less capacity to be procured by the EDU for the area. While Ohio Power may not receive a supply of capacity from the customer-generator, it has in actuality received a demand-side reduction in the amount of capacity that it must procure.

Additionally, the Commission believes that it would be impractical, if not impossible, for each EDU to accurately isolate just the energy price component from its full requirements SSO products and attribute it to the electricity generated by a customer-generator. Ohio Power has not demonstrated to us that it would be practical, or even possible, to attribute an energy price to the electricity generated by a customer-generator. Further, Ohio Power has not demonstrated that it is not being adequately compensated for its capacity obligation, as it receives capacity revenues from SSO customers through an established state compensation mechanism. *See In re Commission Review of the Capacity Charges of Ohio Power*, 10-2929-EL-UNC, Opinion and Order (July 2, 2012) at 33. Accordingly, rehearing on the assignment of error raised by Ohio Power is denied.

(46) Paragraph (B)(10). DP&L asserts that Ohio Adm.Code 4901:1-10-28(B)(10) is unlawful and unreasonable because it does not recognize that customer-generators with excess generation avoid the cost of using the distribution system, at the expense of customers without net metering. DP&L proposes that an exception be added to Ohio Adm.Code 4901:1-10-28(B)(10) that excess generation shall be charged at the electric utility's base distribution rate.

IREC opposes DP&L's assignment or error and notes that DP&L previously raised this same issue in its comments and the Commission denied it. Additionally, IREC avers that charging customer-generators at the base distribution rate would violate Ohio Adm.Code 4901:1-10-28(B)(10) and 4901:1-10-28(B)(9)(c). IREC notes that the Commission has adopted numerous safeguards to prevent significant excess

generation and has adopted mechanisms for the purpose of encouraging the electric utilities and net metering customers to engage in proper dialogue to discourage excess generation while recognizing that it may incidentally occur.

IGS also opposes rehearing on this assignments of error. IGS asserts that DP&L and FirstEnergy intend to increase the cost of distributed generation so as to discourage its deployment. IGS argues that it would be unreasonable to levy additional distribution or administrative charges on customer-generators.

(47) The Commission finds that rehearing on DP&L's assignment of error should be denied. Initially, the Commission notes that, pursuant to Ohio Adm.Code 4901:1-10-28 and the Supreme Court's holding in *FirstEnergy Corp.*, customer-generators still pay for distribution service. *FirstEnergy Corp. v. PUCO*, 95 Ohio St.3d 401, 2002-Ohio-2430. Therefore, customer-generators are not avoiding the cost of using the distribution system since they are still paying distribution charges. While net metering is a distribution service offered by the distribution utility, a net metering system decreases the generation portion of the customer-generator's bill. If there is excess generation that is credited to the customer-generator's next monthly bill, then the monetary credit should be calculated at the SSO rate. That monetary credit would then be applied to the customer-generator's next monthly bill. This does not mean that the customer-generator will not pay its distribution charges in the next month. Rather, the monetary credit from the previous month may offset the monetary amount owed by the customer-generator for that month's total bill. Since excess generation is calculated as a monetary credit, the monetary amount of the total bill owed to the utility is offset by the monetary amount that the utility credited the customer-generator for its previous months excess generation. The distribution charges, just like all of the other charges, have still been paid by the net metering customer-generator, they were just offset by the monetary credit from the previous month's excess generation.

Additionally, R.C. 4928.67(A)(1) also provides that the net metering tariff or contract should be identical in rate

structure, all retail rate components, and any monthly charges to which the same customer would be assigned if that customer were not a customer-generator. The statute provides that no additional distribution charges shall be imposed on the customer-generator for being a customer-generator. We find that DP&L's proposal would actually violate R.C. 4928.67(A)(1).

(48) Paragraph (C). DP&L requests clarification on how an electric utility is to bill a hospital net metering customer on both tariff charges and market value. Additionally, DP&L seeks clarification on how to calculate hourly values in a process that is done at month's end and of the net of two different meter reads.

(49) The Commission finds that rehearing on the assignment of error raised by DP&L should be denied. The Commission notes that pursuant to Ohio Adm.Code 4901:1-10-28(C)(6), the hospital should be charged for electricity provided by the utility at the regular tariff rate. However, electricity delivered by the hospital should be calculated at the market value as of the time the hospital generated the electricity. The Commission notes that R.C. 4928.67(A)(1)(b) requires that the contract or tariff be based upon the market value of the customer generated electricity at the time it was generated. Pursuant to Ohio Adm.Code 4901:1-10-28(C)(4), the hospital customer-generator must have a meter capable of measuring electricity generated by the hospital at the time it is generated. Pursuant to R.C. 4928.67(A)(1)(b) and Ohio Adm.Code 4901:1-10-28(C)(6)(b), the electric utility should use the LMP for the generated electricity at the time it was generated. If the electric utility makes this calculation at the end of the month, then it should use the historical real-time total LMP for its transmission zone and apply it to the electricity generated by the hospital net metering customer at the time it was generated. While this may be a laborious or burdensome process, this is the result of the statutory requirement in R.C. 4928.67(A)(1)(b). Additionally, we note that the statute only requires that the electricity generated by the hospital customer-generated be calculated at the market value as of the time it was generated. It is for this reason

that the price paid by the hospital customer-generator may be the tariff price.

(50) Virtual and Aggregate Net Metering. FirstEnergy asserts that the Commission's Order was unjust and unreasonable as it relates to opening a new docket for further evaluation of virtual and aggregate net metering.

(51) The Commission finds that rehearing on FirstEnergy's assignment of error should be denied. The Commission has the authority to decide to open a new docket to further consider virtual and aggregate net metering. The Commission may open dockets at its discretion pursuant to effectuate the policy of the state of Ohio pursuant to R.C. 4928.02 and 4928.06. If FirstEnergy desires to oppose virtual and aggregate net metering, then it may do so in the appropriate docket. However, FirstEnergy's assertion that the Commission's decision to open a docket was unjust or unreasonable lacks merit.

Ohio Adm.Code 4901:1-10-34

(52) Ohio Power avers that the Commission should clarify the scope and impact of adopted Ohio Adm.Code 4901:1-10-34. Ohio Power asserts that current business practice is that SSO load is reduced by the QF energy amount, and if this is what the Commission intended in the rule, then the Commission should provide clarification. However, the existing rule could be interpreted as requiring the QF load to be included in the SSO load, which would require a revision to the auction rules and other auction related documents. Additionally, this could require a plan for the EDUs to handle QFs separate from the auction. Ohio Power requests clarification on this issue.

FirstEnergy proposes that the EDUs be authorized to establish a mechanism for full and timely recovery of the costs of all energy payments made under the rule to QFs, as well as all other costs reasonably incurred to comply with the rule. FirstEnergy argues that requiring the EDUs to absorb the costs would be contrary to law. FirstEnergy proposes that new language be adopted that states "the EDU is entitled to full and timely recovery of all energy payments

made under this rule to qualifying facilities together with all costs reasonably incurred to comply with this rule. Cost recovery may occur through an existing recovery mechanism of the EDU or through a newly proposed recovery mechanism." FirstEnergy also argues that Ohio Adm.Code 4901:1-10-34 needs clarified to explain whether the LMP is the Day-Ahead LMP or the Real-Time LMP.

(53) The Commission finds that rehearing on the assignments of error raised by Ohio Power and FirstEnergy should be granted. The Commission finds that the energy procured by the EDU to serve SSO load should be reduced by the amount of QF purchased energy. Further, the Commission finds that the EDU may recover all prudently incurred costs associated with energy payments to QFs, including any market settlement charges, penalties, or administrative costs directly attributable to the QF, through the existing mechanisms that the EDU currently uses to recover other costs incurred to serve SSO load through the auction process.

Additionally, the Commission finds that the EDU should purchase the energy from the QF at the Day-Ahead LMP, net of any market settlement charges, penalties, or administrative costs directly attributable to the QF.

Finally, the Commission finds that to maintain the integrity of existing auction products, as well as the existing auction process, we will permit the EDUs to file applications for waiver of Ohio Adm.Code 4901:1-10-34 as needed.

Conclusion

(54) In making its review, an agency is required to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules. The Commission has evaluated the rules in Ohio Adm.Code Chapter 4901:1-10 and recommends amendments to several rules as shown in the attachment to this entry.

(55) An agency must also demonstrate that it has included stakeholders in the development of the rule, that it has evaluated the impact of the rule on businesses, and that the

purpose of the rule is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation. The Commission has included stakeholders in the development of these rules and has sought to eliminate excessive or duplicative rules that stand in the way of job creation.

(56) In order to avoid needless production of paper copies, the Commission will serve a paper copy of this entry only and will make the rules, as well as the business impact analysis, available online at: www.puco.ohio.gov/puco/rules. All interested persons may download the rules and the business impact analysis from the above website, or contact the Commission's Docketing Division to be sent a paper copy.

It is, therefore,

ORDERED, That the applications for rehearing filed by DP&L, FirstEnergy, Duke, Ohio Power, Direct Energy, and IGS are granted, in part, and denied, in part, as discussed herein. It is, further,

ORDERED, That the application for rehearing filed by OHA is denied, as discussed herein. It is, further,

ORDERED, That attached amended Ohio Adm.Code 4901:1-10-14, 4901:1-10-24, 4901:1-10-28, and 4901:1-10-34 be adopted. It is, further,

ORDERED, That the electric distribution utilities file four complete copies of proposed tariffs consistent with the Commission's Finding and Order and this Second Entry on Rehearing. One copy shall by filed in this case docket, one shall be filed in the utility's TRF docket, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. It is, further,

ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-10 shall be in compliance with R.C. 119.032. It is, further,

ORDERED, That a copy of this Second Entry on Rehearing be served upon all electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

BAM/sc

Entered in the Journal

MAY 28 2014

Barcy F. McNeal
Secretary

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4901:1-10-14 Establishment of credit for applicants and customers.

(A) Each electric utility shall establish written procedures to determine creditworthiness of applicants and customers for service based solely on the customer's or applicant's creditworthiness. These procedures shall be submitted in current form to the staff upon request.

(B) Upon request, each electric utility shall provide applicants/customers with the following information:

(1) Their credit history with that company.

(2) A copy of this rule, the commission's website and the toll-free and TTY numbers of the commission's call center.

(C) An applicant shall be deemed creditworthy if one of the following criteria is satisfied:

(1) The electric utility verifies that the applicant is a creditworthy property owner or verifies the applicant's creditworthiness in accordance with legally accepted practices to verify credit. Verification methods for residential applicants shall include, but not be limited to, consideration of the applicant's employer and length of service, reference letters, and substantive credit cards;

(a) The company may request the applicant's social security or tax identification number in order to obtain credit information and to establish identity, however if the applicant elects not to provide his/her social security number or tax identification number, the utility company may not refuse to provide service.

(b) If the applicant declines the utility company's request for a social security or tax identification number, the utility company shall inform the applicant of other options for establishing creditworthiness.

(2) The applicant had a prior account with ~~the~~ an electric utility for the same class of service within two years before the date of application, and the applicant provides proof of the prior account, unless during the final year of prior service one of the following occurred:

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(a) The company disconnected applicant for nonpayment.

(b) The applicant failed to pay its bill by the due date at least two times.

(c) The company disconnected the applicant for a fraudulent practice, tampering, or unauthorized reconnection.

(3) The applicant furnishes a reasonably safe guarantor, who is a customer of that electric utility, to secure payment of bills in an amount sufficient for a sixty-day supply for the service requested.

(4) The applicant makes a cash deposit as set forth in this rule.

(D) Unless otherwise provided in paragraph (~~H~~G) of this rule, when an electric utility fails to demand security within thirty calendar days after initiation of service, it may not require security for that service.

(E) Deposit to establish tariffed service; review of deposit upon customer request.

(1) An electric utility may require an applicant who fails to establish creditworthiness to make a deposit. The amount of the deposit shall not exceed one hundred thirty per cent of the estimated annual average monthly bill for the customer's tariffed service for the ensuing twelve months.

(2) Upon the customer's request, the amount of the deposit paid is subject to adjustment, when the deposit paid differs by twenty per cent or more from the deposit which would have been required, based upon actual usage for three consecutive billing periods while taking into account seasonal variations in usage.

(F) Each electric utility which requires a cash deposit shall communicate to the applicant/customer:

(1) The reason(s) for its decision.

(2) Options available to establish credit (including a guarantor to secure payment).

(3) The applicant/customer's right to contest the electric utility's decision and to demonstrate creditworthiness.

(4) The applicant/customer may appeal the electric utility's decision to the staff.

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(5) The commission's website and the toll-free and TTY telephone numbers of the commission's call center.

Upon request of the applicant/customer, the information in ~~paragraph (C) of~~ this rule shall be provided in writing.

(G) Deposit to reestablish creditworthiness for tariffed service.

(1) An electric utility may require a customer to make ~~an initial or additional~~ a deposit, not to exceed one hundred thirty percent of the estimated annual average monthly bill for the customer's tariffed service for the ensuing twelve months, on an existing account, as set forth in this rule, to reestablish creditworthiness for tariffed service based on the customer's credit history on that account with that electric utility.

(2) A deposit may be required if the customer meets one of the following criteria:

(a) ~~The customer has not made full payment or payment arrangements by the due date for two consecutive bills during the preceding twelve months~~After considering the totality of the customer's circumstances, a utility company may require a deposit if the customer has not made full payment or payment arrangements for any given bill containing a previous balance for regulated service provided by that utility company.

~~(b) The customer has been issued a disconnection notice for nonpayment on two or more occasions during the preceding twelve months.~~

(eb) The customer has had service disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection during the preceding twelve months.

(H) Upon acceptance of a deposit, each electric utility shall furnish a receipt to the applicant or customer which shows:

(1) The name of the applicant.

(2) The address of the premises currently served or to be served.

(3) The billing address for service.

(4) The amount of the deposit.

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(5) A statement as to the interest rate to be paid and the length of time the deposit must be held to qualify for interest.

(6) The conditions for refunding the deposit.

(I) Each electric utility shall:

(1) Review each nonresidential account after the first two years of service for which a deposit is being held, and shall promptly refund the deposit or credit the nonresidential customer's account, plus interest accrued, if during the preceding twenty-four months, both of the following are true:

(a) The customer's service was not disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection.

(b) The customer had not more than three past due bills.

(2) Upon customer request, but not more than annually, review each nonresidential account after the first two years of service for which a deposit is being held, and shall promptly refund the deposit or credit the customer's account, plus interest accrued, if, with regard to the preceding twelve months, both of the following are true:

(a) The customer's service was not disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection.

(b) The customer had not more than two past due bills.

(3) Annually review each residential account, for which a deposit is being held, and shall promptly refund the deposit or credit the customer's account, plus interest accrued, if during the preceding twelve months:

(a) The customer's service was not disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection; and

(b) The customer had not more than two past due bills.

(J) Each electric utility shall pay interest on a deposit of not less than three per cent per annum, provided the company has held the deposit for at least six consecutive months.

(K) When service is terminated or disconnected, each electric utility shall promptly:

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(1) Apply the deposit and interest accrued to the final bill for service.

(2) Refund any amount in excess of the final bill to the customer, unless the amount of the refund is less than one dollar.

A transfer of service from one premise to another premise within the electric utility's certified territory or service area shall not be deemed a disconnection under this paragraph.

(L) Deposits for customers leaving bundled or standard offer services.

When a customer who has previously paid a deposit to the electric utility switches to a competitive retail electric service provider and is no longer served under an electric utility's bundled service or standard offer service, the electric utility shall apply the electric utility's generation service portion of the deposit and the accrued interest to the amounts due and payable on the next bill and refund any amount remaining to the customer, unless the amount of the refund is less than one dollar.

(M) Residential service guarantors.

(1) Each electric utility shall annually review an account where the residential customer provided a guarantor. When a residential customer satisfies the requirements for a deposit refund under paragraph (I) of this rule, each company shall notify the guarantor in writing within thirty days that he/she is no longer obligated for that account.

(2) The guarantor shall sign a written guarantor agreement provided by the commission and posted on the commission website. The electric utility shall provide the guarantor with a copy of the signed agreement upon request and shall keep a copy of the original on file during the term of the guaranty.

(~~2~~3) Each electric utility shall provide to the guarantor of a residential account all notices of disconnection of service which are provided to the customer.

(~~3~~4) Upon the residential customer's default, an electric utility may:

(a) Transfer the balance owed by the customer, not to exceed the amount for sixty days service, to his/her guarantor's account; and

(b) Disconnect service under the guaranty, if the guarantor fails to pay the customer's balance within thirty days after notice of the customer's

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default or fails to make other payment arrangements acceptable to the electric utility.

(5) Under the circumstances where a guarantor's electric utility service is subject to disconnection or has requested release of financial responsibility related to a customer's account, the electric utility shall, within ten calendar days, advise the customer who provided the guarantor that the guarantor's responsibility to the customer's account will end by a specific date (thirty days from the date of the notice to the guaranteed customer). The electric utility shall also advise the customer that, prior to the specific end date stated in the notice he/she must reestablish credit through one of the alternative means set forth in paragraph (C) of this rule, or be subject to disconnection according to the applicable disconnection rules in Chapter 4901:1-18 of the Administrative Code.

(N) Each electric utility shall retain records of customer deposits for at least one year after the deposit, including interest, is returned and/or applied to the customer's bill.

4901:1-10-24 Customer safeguards and information.

(A) Each electric utility shall notify customers annually, by bill insert or other notice, about its summary of customer rights and responsibilities, as prescribed by rule 4901:1-10-12 of the Administrative Code, and how to request a copy from the electric utility.

(B) Each electric utility shall maintain a listing in each local telephone service provider's directory operating in the electric utility's certified territory.

(C) Customer education and marketing practices.

Each electric utility shall provide informational, promotional, and educational materials that are non-customer specific and explain services, rates, and options to customers. The staff may review and/or request modification of informational, promotional, and educational materials. Such materials, shall include the following information:

(1) An explanation of the service, its application, and any material exclusions, reservations, restrictions, limitations, modifications, or conditions.

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(2) If services are bundled, an identification and explanation of service components and associated prices.

(3) An identification and explanation of:

(a) Any one-time or nonrecurring charge(s) (e.g., penalties and open-ended clauses).

(b) Recurring charge(s) (e.g., usage).

(4) An explanation of how the customer can access the approximate generation resource mix and environmental disclosure data, as prescribed in Rule 4901:1-10-31.

(D) Unfair and deceptive acts or practices. No electric utility shall commit an unfair or deceptive act or practice in connection with the promotion or provision of service, including an omission of material information. An unfair or deceptive act/practice includes, but is not limited to, the following:

(1) An electric utility states to a customer that distribution service will or may be disconnected unless the customer pays any amount due for a ~~nontariffed~~ non-tariffed or ~~nonregulated~~ non-regulated service.

(2) An electric utility charges a customer for a service for which the customer did not make an initial affirmative order. An affirmative order means that a customer or applicant for service must positively elect to subscribe to a service before it is added to the account. Failure to refuse an offered or proposed service is not an affirmative order for the service.

(E) Customer specific information.

(1) An electric utility shall not disclose a customer's account number without the customer's ~~written~~ consent and proof of that consent as delineated in paragraph (E)(4) of this rule, ~~or electronic authorization,~~ or a court or commission directive ordering disclosure, except for the following purposes:

(a) An electric utility's collections and/or credit reporting activities.

(b) Participation in the home energy assistance program, the emergency home energy assistance program, and programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.

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(c) Cooperation with governmental aggregation programs, pursuant to section 4928.20 of the Revised Code.

~~The electric utility must use the consent form set forth in paragraph (E)(3) of this rule, unless authorization is obtained electronically.~~

(2) An electric utility shall not disclose a customer's social security number without the customer's written consent as delineated in paragraph (E)(4) of this rule, or without a court order, except for the following purposes:

(a) Completing a customer credit evaluation.

(b) An electric utility's or competitive retail electric service (CRES) provider's collections and/or credit reporting activities.

(c) Participation in the home energy assistance program, the emergency home energy assistance program, and programs funded by the universal service fund, pursuant to section 4928.52 of the Revised Code, such as the percentage of income payment plan programs.

~~The electric utility must use the consent form set forth in paragraph (E)(3) of this rule.~~

(3) An electric utility shall not disclose residential customer energy usage data that is more granular than the monthly historical consumption data, provided on the customer pre-enrollment list pursuant to Rule 4901:1-10-29(E) of the Administrative Code, without the customer's ~~written~~ consent ~~as delineated in paragraph (E)(4)(a) of this rule~~, or a court or commission directive ordering disclosure.

(4) Customer information release consent form

(~~3~~a) ~~The~~Written consent ~~form~~ shall be on a separate piece of paper and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen-point type. The following statement shall appear prominently on the consent form, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the electric utility) to release the information set forth above. By my signature, I freely give (name of the electric utility) permission to release the information designated above." The written consent form for the release of customer

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energy usage data shall specify the identity of any recipients of the data, type and granularity of the data being collected, and uses for which the data is being collected~~information that the electric utility seeks to release shall be specified on the form~~. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.

(b) Electronic consent shall be verifiable and in a substantially similar format to the written consent in section (a) of this rule. The following statement shall appear prominently: "I realize that under the rules and regulations of the public utilities commission of Ohio, I may refuse to allow (name of the electric utility) to release the information set forth above. By providing my electronic signature, I freely give (name of the electric utility) permission to release the information designated above."

(45) Nothing in this rule prohibits the commission from accessing records or business activities of an electric utility, as provided for in paragraph (B) of rule 4901:1-10-03 of the Administrative Code.

(F) Customer load pattern information. An electric utility shall:

(1) Upon request, timely provide twenty-four months of a customer's usage history, payment history, detailed consumption data, if available, and time differentiated price data, if applicable, to the customer without charge.

(2) Provide generic customer load pattern information, in a universal and user-friendly file format, to other electric service providers on a comparable and nondiscriminatory basis. Load pattern information shall be based upon a minimum of three years of historical customer usage data.

(3) Provide customer-specific information to CRES providers on a comparable and nondiscriminatory basis as prescribed in paragraph (E) of rule 4901:1-10-29 of the Administrative Code, unless the customer objects to the disclosure of such information.

(4) Prior to issuing any eligible-customer lists and at least four times per calendar year, provide all customers clear written notice, in billing statements or other communications, of their right to object to being included on such lists. Such notice shall include instructions for reporting such objection. This notice shall read as follows:

"We are required to include your name, address, and usage information on a

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

In addition, the electric utility may offer its customers the option of contacting the electric utility by electronic means and, if it does so, the electric utility shall add its electronic mail address or web site to the above notice.

(5) If a customer objects as provided in paragraphs (F)(3) and (F)(4) of this rule, the electric utility shall not release such information unless and until the customer affirmatively indicates that the information may be released.

(G) Each electric utility shall develop, update, and maintain a list of certified CRES providers that are actively seeking residential customers within the electric utility's service territory. Where CRES providers are actively seeking residential customers, the electric utility shall disclose such lists on the electric utility's website, in an unbiased manner, and shall provide such lists to any customer upon request. ~~to:~~

~~(1) All of its customers quarterly.~~

~~(2) All applicants for new service and customers returning to standard offer service.~~

~~(3) Any customer upon request.~~

4901:1-10-28 Net metering.

(A) For purposes of this rule, the following definitions shall apply:

(1) "Customer-generator" shall have the meaning set forth in section 4928.01(A)(29) of the Revised Code. A customer that hosts or leases third-

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party owned generation equipment on its premises is considered a customer-generator.

(2) "Electric utility" shall have the meaning set forth in section 4928.01(A)(11) of the Revised Code.

(3) "Excess-generator" means a customer-generator that generates in excess of the customer-generator's requirements for electricity as specified in (B)(6) of this rule.

(4) "Net metering" shall have the meaning set forth in section 4928.01(A)(30) of the Revised Code.

(5) "Net metering system" shall have the meaning set forth in section 4928.01(A)(31) of the Revised Code.

(6) "Third party" means a person or entity that may be indirectly involved or affected but is not a principal party to an arrangement, contract, or transaction between other parties.

(B) Standard net metering.

(1) Each electric utility shall develop a tariff for net metering. Such tariff shall be made available to customer-generators upon request in a timely manner and on a nondiscriminatory basis.

(2) Net metering arrangements shall be made available regardless of the date the customer-generator's generating facility was installed.

(3) The electric utility's tariff for net metering shall be identical in rate structure, all retail rate components, and any monthly charges, to the tariff to which the same customer would be assigned if that customer were not a customer-generator. Such terms shall not change simply because a customer becomes a customer-generator. The tariff shall also contain provisions on the procedures the electric utility will follow in working with and handling a customer-generator that becomes an excess-generator. ~~Subsequent to the one-year review, as specified in (B)(10), if the~~If a customer-generator ~~thereafter~~ becomes an excess-generator after any twelve-month period, the electric utility shall contact the customer-generator in order to resolve the change in status.

(a) The electric utility shall disclose on the electric utility's website and to

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customer-generators upon request, the name, address, telephone number, and email address of the electric utility's net metering department or contact person.

(b) The electric utility shall provide all necessary information regarding a customer's potential enrollment in net metering on the electric utility's website. The electric utility shall also provide this information to a customer within the net metering application packet. The website and application packet shall describe and/or provide the following information in a straightforward manner: net metering tariff terms and conditions, sample net metering and interconnection agreements, and the terms and conditions regarding excess generation. The terms and conditions regarding excess generation should include, but are not limited to, criteria used in determining whether a customer-generator is considered to be an excess-generator and the procedures an electric utility has in place to address excess-generator situations. The website and application packet shall also provide information on costs that the customer may incur as a result of net metering enrollment, including, but not limited to, any costs associated with the following: application, interconnection, and meter installation.

(4) No electric utility's tariff for net metering shall require customer-generators to:

(a) Comply with any additional safety or performance standards beyond those established by rules in Chapter 4901:1-22 of the Administrative Code, and the "National Electrical Code," the "Institute of Electrical and Electronics Engineers," and "Underwriters Laboratories," in effect as set forth in rule 4901:1-22-03 of the Administrative Code.

(b) Perform or pay for additional tests beyond those required by paragraph (B)(4)(a) of this rule.

(c) Purchase additional liability insurance beyond that required by paragraph (B)(4)(a) of this rule.

(5) A customer-generator's premises include areas owned, operated, or leased by the customer-generator. A net metering system must be located on the customer-generator's premises, which may include a contiguous lot that is owned, operated, or leased by the customer-generator. For purposes of this rule, a property is considered a contiguous lot, regardless of easements,

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public thoroughfares, transportation rights-of-way, or utility rights-of-way contained on such lot.

(6) A customer-generator must intend primarily to offset part or all of the customer-generator's requirements for electricity. A customer-generator that annually generates less than one hundred and twenty percent of its requirements for electricity is presumed to be primarily intending to offset part or all of its requirements for electricity.

(7) A customer-generator's requirements for electricity is the average amount of electricity consumed annually by the customer-generator over the previous three years. If the electric utility does not have the data or cannot calculate the average amount of electricity consumed annually over the previous three years, such as in instances of new construction, vacant properties, facility expansion, or other unique circumstances, the electric utility shall use any available consumption data and any appropriate data or measures submitted by the customer-generator to determine the customer-generator's consumption baseline for sizing a facility, and provide the estimation data to the customer-generator.

(8) Net metering shall be accomplished using a single meter capable of registering the flow of electricity in each direction. A customer's existing single-register meter that is capable of registering the flow of electricity in each direction satisfies this requirement. If the customer's existing electrical meter is not capable of measuring the flow of electricity each direction, the electric utility, upon written request from the customer, shall install at the customer's expense a meter that is capable of measuring electricity flow in each direction. The electric utility shall provide a detailed cost estimate to the customer as outlined in (B)(3)(b) of this rule.

(a) The electric utility, at its own expense and with the written consent of the customer-generator, may install one or more additional meters to monitor the flow of electricity in each direction.

(b) If a customer's existing meter needs to be reprogrammed or set up for the customer to become a customer-generator or to accommodate net metering, the electric utility shall provide the customer a detailed cost estimate for the reprogramming or setup of the existing meter. The cost of setting up the meter to accommodate net metering shall be at the customer's expense. If a customer-generator has a meter that is capable

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of measuring the flow of electricity in each direction, is sufficient for net metering, and there are no set up costs, then the customer-generator shall not be charged meter fees.

(9) The measurement of net electricity supplied or generated shall be calculated in the following manner:

(a) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(b) If the electric utility supplies more electricity than the customer-generator feeds back to the system in a given billing period, the customer generator shall be billed for the net electricity that the electric utility supplied, as measured in accordance with normal metering practices.

(c) If the customer-generator accrues excess generation during a monthly billing period, the electric utility shall issue a monetary credit in the amount of the net excess generation onto the customer-generator's next monthly bill. If the full amount of the monetary credit is not used within the next monthly billing period, the remaining monetary credit shall be stored in the customer-generator's account and subsequently credited to the customer-generator in months where the monetary credit from the previous month is insufficient to cover the cost of the customer-generator's requirements for electricity. The electric utility shall issue a refund to the customer-generator for the amount of the monetary credit remaining in the account at the end of the May billing cycle, regardless of whether the customer-generator is receiving generation from the electric utility or a competitive retail electric service provider. This refund shall be calculated at the electric utility's standard service offer generation rate. The annual refund shall be issued to customer-generators by July 1.

~~(10) If the electric utility cannot determine the generation rate paid by a customer to a competitive retail electric supplier, the utility's SSO rate shall be applied.~~

(~~11~~10) In no event shall the electric utility impose on the customer-generator any charges that relate to the electricity the customer-generator feeds back to the system.

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(~~12~~11) Customer-generators shall comply with the interconnection standards set forth in Chapter 4901:1-22 of the Administrative Code.

(~~13~~12) Renewable energy credits associated with a customer-generator's net metering facility shall be the property of the customer-generator, unless otherwise contracted through a separate transaction, independent of the net metering tariff or the customer-generator's net metering agreement with the electric utility.

(~~14~~13) The electric utility shall report net metering data to the commission consistent with Chapter 4901:1-25 of the Administrative Code, which shall include:

(a) The total number and rated generation capacity of net metering systems in the electric utility's service territory, as well as the number and installed capacity of net metering systems for each technology type and customer class.

(b) The number of net metering customers who have exported excess generation to the grid, and the number whose on-site generation does not exceed load during the reporting period.

(c) The total number of new eligible net metering customers that began participating in the net metering tariff during the reporting period of June 1 to May 31.

(d) The total number of eligible net metering customers that ceased to participate in the net metering tariff during the reporting period.

(e) The estimated total net kilowatt hours supplied to customer-generators by the electric utility, as well as the estimated total kilowatt-hours received from customer-generators by the electric utility.

(f) The total estimated kilowatt hours of energy produced by the customer-generators, if known.

(g) The total number of customer-generators deemed by the electric utility to be excess-generators at the end of the reporting period.

(h) The total dollar amount issued in refunds for net excess generation.

(i) Any other data the commission deems necessary or appropriate.

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(C) Hospital net metering.

(1) Each electric utility shall develop a separate tariff providing for net metering for hospitals. Such tariff shall be made available to qualifying hospital customers upon request.

(a) As defined in section 3701.01 of the Revised Code, "hospital" includes public health centers and general, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, self-care units, and central service facilities operated in connection with hospitals, and also includes education and training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(b) A qualifying hospital customer generator is one whose generating facilities are:

(i) Located on a customer-generator's premises.

(ii) Operated in parallel with the electric utility's transmission and distribution facilities.

(2) Net metering arrangements shall be made available regardless of the date the hospital's generating facility was installed.

(3) The tariff shall be based both upon the rate structure, rate components, and any charges to which the hospital would otherwise be assigned if the hospital were not taking service under this rule and upon the market value of the customer-generated electricity at the time it is generated. For purposes of this rule, market value means the locational marginal price of energy determined by a regional transmission organization's operational market at the time the customer-generated electricity is generated.

(4) For hospital customer-generators, net metering shall be accomplished using either two meters or a single meter with two registers that are capable of separately measuring the flow of electricity in both directions. One meter or register shall be capable of measuring the electricity generated by the hospital at the output of the generator or net of the hospital's load behind the meter at the time it is generated. If the hospital's existing electrical meter is not capable of separately measuring electricity the hospital generates at

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the time it is generated, the electric utility, upon written request from the hospital, shall install at the hospital's expense a meter that is capable of such measurement.

(5) The tariff shall allow the hospital customer-generator to operate its electric generating facilities individually or collectively without any wattage limitation on size. The interconnection review process shall determine any needed distribution equipment upgrades to accommodate the hospital net metering facility, and these additional costs shall be borne by the hospital customer-generators.

(6) The hospital customer-generator's net metering service shall be calculated as follows:

(a) All electricity flowing from the electric utility to the hospital shall be charged as it would have been if the hospital were not taking service under this rule.

(b) All electricity generated by the hospital and delivered to the electric utility rather than consumed on-site shall be measured and credited at the market value as of the time the hospital generated the electricity.

(c) Each monthly bill shall reflect the net of paragraphs(C)(6)(a) and (C)(6)(b) of this rule. If the resulting bill indicates a net credit dollar amount, the credit shall be netted against the hospital customer-generator's bill until the hospital requests in writing a refund that amounts to, but is no greater than, an annual true-up of accumulated credits over a twelve-month period.

(7) No electric utility's tariff for net metering shall require hospital customer-generators to:

(a) Comply with any additional safety or performance standards beyond those established by rules in Chapter 4901:1-22 of the Administrative Code, and the National Electrical Code, the institute of electrical and electronics engineers, and underwriters laboratories, in effect as set forth in rule 4901:1-22-03 of the Administrative Code.

(b) Perform or pay for additional tests beyond those required by paragraph (C)(7)(a) of this rule.

(c) Purchase additional liability insurance beyond that required by

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paragraph (C)(7)(a) of this rule.

(8) In no event shall the electric utility impose on the hospital customer-generator any charges that relate to the electricity the customer-generator feeds back to the system.

4901:1-10-34 Compliance with PURPA.

(A) For purposes of this rule, the following definitions shall apply:

(1) "Day-ahead energy market" means the day-ahead hourly forward market in which participants offer to sell and bid to buy energy.

(2) "Locational marginal price" means the hourly integrated market clearing price for energy at the location the energy is delivered or received.

(3) "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005, at 16 U.S.C.S. Section 824a-3.

(4) "Qualifying facility" means a small power producer and/or cogenerator that meets the criteria specified by the Federal Energy Regulatory Commission in 18 C.F.R. Sections 292.203(a) and (b).

(5) "RTO/ISO" means the regional transmission organization or independent system operator.

(B) The purpose of this rule is to implement a standard market-based rate for electricity transactions between EDUs and qualifying facilities as provided by PURPA, specifically for small power production facilities and cogeneration facilities.

(C) Except to the extent consistent with the voluntary negotiated agreement pursuant to rule 4901:1-10-34(I) of the Administrative Code, the rates paid by each EDU in Ohio to purchase energy from qualifying facilities that have a net capacity of 20 megawatts or less shall be set in accordance with Section 4901:1-10-34(L) of the Administrative Code.

(D) An EDU's qualifying facility energy purchase obligation shall not be abrogated by the establishment of a power procurement auction mechanism within the EDU's standard service offer supply framework. The energy provided to the

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EDU by a qualifying facility supplier shall not be included as part of the product being offered through a competitive auction process.

(E) All qualifying facilities must operate their interconnected facilities pursuant to the operating requirements of the RTO/ISO and in accordance with the EDU's specifications for interconnection and parallel operation.

(F) All qualifying facilities interconnecting at the distribution level must comply with the guideless set forth in Section 4901:1-22 of the Administrative Code, as well as the standard interconnection agreement by the EDU.

(G) All qualifying facilities interconnected at the transmission level must comply with the RTO/ISO's policies and procedures for interconnection, including interconnection procedures for small generators.

(H) Nothing in this rule shall affect, modify, or amend the terms and conditions of any existing qualifying facility's contract with an EDU.

(I) A qualifying facility may elect to execute a negotiated contract with the EDU instead of selling the electrical output of the qualifying facility at the standard market-based rate.

(J) The terms of the contract may take into account, among other factors, a utility's system costs, contract duration, qualifying facility availability during daily or system peaks, whether the utility avoids costs from the daily or system peaks, and costs or savings from line losses. Any such contract shall be subject to approval by the Commission within 120 days of its filing with the Commission.

(K) The EDU or the qualifying facility may seek alternative dispute resolution of any disputes which may arise out of the EDU tariffs filed under these rules, in accordance with Chapter 4901:1-26 of the Administrative Code.

(L) Energy payments to qualifying facilities shall be based on the day-ahead locational marginal price at the RTO/ISO's pricing node that is closest to the qualifying facility's points of injection, or at a relevant trading hub or zone. The energy payments may be adjusted for any market settlement charges, penalties, or administrative costs directly attributable to the qualifying facility.

(M) The EDUs shall file a report in accordance with the market monitoring rules set forth in rule 4901:1-25-02 of the Administrative Code, detailing the qualifying facility activity in the EDU's service territory that includes the following:

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(1) The name and address of each owner of a qualifying facility.

(2) The address of the location of each qualifying facility.

(3) A brief description of the type of each qualifying facility.

(4) The date of installation and the on-line date of each qualifying facility.

(5) The design capacity of each qualifying facility.

(6) A discussion identifying any qualifying facility that was denied interconnection by the EDU, including a statement of reasons for such denial.