

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission's  
Review of its Rules for the  
Establishment of Credit for Residential  
Utility Services and the Disconnection of  
Gas, Natural Gas or Electric Services to  
Residential Customers Contained in  
Ohio Adm. Code Chapters 4901:1-17  
and 4901:1-18**

**Case No. 13-274-AU-ORD**

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**APPLICATION FOR REHEARING OF OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND  
THE TOLEDO EDISON COMPANY**

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ATTORNEYS FOR OHIO EDISON  
COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY  
AND THE TOLEDO EDISON COMPANY

Pursuant to Section 4903.10, Revised Code (“R.C.”) and Rule 4901:1-35, Ohio Administrative Code (“O.A.C.”), Ohio Edison Company (“Ohio Edison”), The Cleveland Electric Illuminating Company (“CEI”), and The Toledo Edison Company (“Toledo Edison”) (collectively, the “Companies”), hereby file their Application for Rehearing of the Finding and Order entered in the journal on June 4, 2014 in the above-captioned case (“Order”). As explained in more detail in the attached Memorandum in Support, the Commission’s Finding and Order in this case is unreasonable and unlawful on the following grounds:

- A. By subjecting electric distribution utilities (“EDUs”) to Chapter 4901:1-17, O.A.C., the Order is unreasonable and unlawful in that it adopts rules that are inconsistent and redundant with the rules contained in Chapter 4901:1-10, O.A.C. in violation of Section 119.032, R.C. and Governor’s Executive Order 2011-01K
- B. Rule 4901:1-17-03(A)(5)(b) needs to be corrected so that it is consistent with the Commissions’ Entry on Rehearing in Case No. 12-2050-EL-ORD.

For those reasons, as discussed in greater detail below, the Companies respectfully request that the Commission grant the Companies’ Application for Rehearing and appropriately modify the rules.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF  
OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND  
THE TOLEDO EDISON COMPANY**

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## **INTRODUCTION**

On June 11, 2013, the Commission issued an Entry (“June 11 Entry”) requesting comments on proposed amendments to the rules contained in Chapters 4901:1-17 and 4901:1-18, Ohio Administrative Code (“O.A.C.”). Comments were filed by several parties on July 12, 2013 and reply comments on August 2, 2013. On June 4, 2014, the Commission issued its Finding and Order adopting several amendments to Chapters 4901:1-17 and 4901:1-18, O.A.C. (“Order”). Ohio Edison Company (“Ohio Edison”), The Cleveland Electric Illuminating Company (“CEI”), and The Toledo Edison Company (“Toledo Edison”) (collectively, the “Companies”) hereby apply for rehearing of that Order.

As a creature of statute, the Commission has only the jurisdiction conferred upon it by the General Assembly.<sup>1</sup> And, while the Commission has general authority to promulgate regulations and rules of procedure, this authority is limited by precluding the Commission from legislating through the promulgation of rules which are in excess of legislative policy, or which conflict with the enabling statute.<sup>2</sup>

Pursuant to Section 119.032(C), Revised Code (“R.C.”), the Commission must consider the following factors when it reviews the rules and determines whether the rules should be amended, rescinded or continued without change:

- (1) Whether the rules should be continued, without amendment, be amended or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted;
- (2) Whether the rule needs amendment or rescission to give more flexibility at the local level;
- (3) Whether the rule needs amendment to eliminate unnecessary paperwork;

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<sup>1</sup> *Canton Storage and Transfer Co. v. Pub. Util. Comm.*, (1995) 72 Ohio St. 3d 1, 5.

<sup>2</sup> *English v. Koster*, (1980) 61 Ohio St. 2d 17, 19.

- (4) Whether the rule duplicates, overlaps with, or conflicts with other rules; and
- (5) Whether the rule has an adverse impact on businesses, reviewing the rule as if it were a draft rule being reviewed under [sections 107.52](#) and [107.53 of the Revised Code](#), and whether any such adverse impact has been eliminated or reduced.

Subpart (D) of Section 119.032, R.C. also provides:

In making the review required under division (C) of this section, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

Additionally, pursuant to the Governor's Executive Order 2011-01K, the

Commission must:

- (a) Determine the impact that a rule has on small businesses;
- (b) Attempt to balance the critical objections of regulation and the cost of compliance by the regulated parties; and
- (c) Amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

By subjecting the electric distribution utilities ("EDUs") to Chapter 4901:1-17, O.A.C., the Order is unreasonable and unlawful in that it adopts rules that are inconsistent and redundant with the rules contained in Chapter 4901:1-10, O.A.C. in violation of Section 119.032, R.C. and Governor's Executive Order 2011-01K. At a minimum, the Commission should correct Rule 4901:1-17-03(5)(b), O.A.C. as it is inconsistent with the Entry on Rehearing in Case No. 12-2050-EL-ORD related to Rule 4901:1-10-14(M)(2). For those reasons the Commission should grant rehearing.

## ARGUMENT

**I. By subjecting EDUs to Chapter 4901:1-17, O.A.C., the Order is unreasonable and unlawful in that it adopts rules that are inconsistent and redundant with the rules contained in Chapter 4901:1-10, O.A.C. in violation of Section 119.032, R.C. and Governor’s Executive Order 2011-01K.**

Chapter 4901:1-17, O.A.C. pertains to the establishment of credit for residential service and currently only applies to gas, natural gas, waterworks or sewage disposal services. The Commission has approved an amendment to this chapter so that it would now pertain to EDUs as well.<sup>3</sup> The Commission also removed the sentence “Rules for establishment of credit for an electric utility company are included in Chapter 4901:1-10 of the Administrative Code.”<sup>4</sup> Credit rules pertaining to EDUs do, however, continue to remain in Chapter 4901:1-10, O.A.C. In 2008, notably, in Case No. 08-723-AU-ORD, the Commission rejected Staff’s attempt to include this same change. In that case, the Commission found:

After carefully considering all of the arguments raised by the electric utility companies regarding Chapter 4901:1-17, the Commission finds that all references to electric utility companies as proposed by Staff shall be deleted from Chapter 4901:1-17. The electric utility companies are subject to Chapter 4901:1-10, the Electric Service and Safety Standards (ESSS). The ESSS rules are tailored for the electric utility companies and already provide sufficient protections to ensure that customers are subject to reasonable and nondiscriminatory credit practices when establishing and reestablishing service. Accordingly, in order to avoid confusion and potentially conflicting requirements, the Commission agrees that the ESSS should be the only requirements governing the credit practices of electric utility companies.<sup>5</sup>

The reasons for not subjecting EDUs to Chapter 4901:1-17, O.A.C. remain as valid today as they did in 2008 because subjecting EDUs to those rules is redundant,

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<sup>3</sup> See Proposed Rules, Rule 4901:1-17-01(J).

<sup>4</sup> See *id.*

<sup>5</sup> *In the Matter of the Commission’s Review of Chapters 4901:1-17 and 4901:1-18 and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14 and 4901:1-29-12 of the Ohio Administrative Code*, Case No. 08-723-AU-ORD, Finding and Order at 5 (December 17, 2008).

unnecessary, duplicative, burdensome and conflicts with other rules, which is contrary to Section 119.032, R.C. and Executive Order 2011-01K. Rule 4901:1-10-14, O.A.C. should contain all of the ways an applicant for electric service can establish credit – piecemeal regulation should not be encouraged and will only contribute both to the Companies and the Commission’s burden in administering the rules and confusion for customers. Moreover, Chapter 4901:1-17, O.A.C. and Rule 4901:1-10-14, O.A.C. are duplicative and redundant. Having rules in both locations is not necessary.

Last, some of rules contained in Chapter 4901:1-17, O.A.C. conflict with Rule 4901:1-10-14, O.A.C. First, Rule 4901:1-17-02(D), O.A.C. provides that each utility shall establish and maintain written credit procedures and requires the utility to make its credit procedures available to applicants and customers upon request and shall provide this information either verbally or in writing based upon the applicant’s or customer’s preference. Rule 4901:10-14(A), O.A.C. provides that each electric utility shall establish written procedures to determine creditworthiness of applications and also requires that those procedures to be submitted to Staff upon request. However, it does not require EDUs to provide those procedures to customers. Second, Rule 4901:1-17-03(A)(3), O.A.C. requires an EDU to provide payment history information within five business days to a customer. This requirement is not part of Rule 4901:10-14, O.A.C. Third, Rule 4901:1-17-03(A)(1)(d), O.A.C. requires the utility to send a notice to the guarantor when the guaranteed customer requests a transfer of service to a new location. Rule 4901:1-10-14(M), O.A.C. does not contain this requirement.

For the same reasons in its Finding and Order in Case No. 08-723-AU-ORD, the Commission should grant rehearing and delete reference to EDUs from Chapter 4901:1-

17, O.A.C.. The Order does not indicate a change in circumstances that warrant including EDUs in Chapter 4901:1-17, O.A.C.

**II. Rule 4901:1-17-03(A)(5)(b), O.A.C. needs to be corrected so that it is consistent with the Commission's Entry on Rehearing in Case No. 12-2050-EL-ORD.**

Rule 4901:1-17-03(A)(5)(b), O.A.C. contains a requirement that an EDU provide a copy of the signed guarantor agreement and maintain the original agreement. In Case No. 12-2050-EL-ORD, Rule 4901:1-10-14(M)(2) was amended to contain the same requirement. However, in Case No. 12-2050-EL-ORD, the Companies raised on rehearing that the Commission should delete the requirement in Rule 4901:1-10-14(M)(2), O.A.C. that an EDU provide a copy of the signed guarantor agreement and maintain the original agreement.<sup>6</sup> The Companies argued that the rule needs to be clarified or changed in that it is unreasonable for an EDU to have to send a copy of the signed agreement to the guarantor when the guarantor is the one who sends the agreement to the EDU with the guarantor's signature – it is not countersigned by the EDU. Therefore, the guarantor would already have the signed copy of the guarantor agreement.

The Companies also argued on rehearing in Case No. 12-2050-EL-ORD that Rule 4901:1-10-14(M)(2), O.A.C. is also unreasonable in that requiring EDUs to maintain the original agreement in hard copy creates unnecessary paperwork given that modern business practices often allow documents to be scanned and electronically stored.<sup>7</sup> Requiring a utility to maintain the original hard copy agreement is also needlessly burdensome especially given that Subpart (M)(2) requires the document to be kept until

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<sup>6</sup> *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Utilities*, Case No. 12-2050-EL-ORD, Companies' Application for Rehearing at 7 (February 14, 2014).

<sup>7</sup> *Id.*



the end of the guarantor agreement. Further, often guarantor agreements are faxed and a written original agreement is not received by the EDU.

For those reasons, in Case No. 12-2050-EL-ORD, the Commission granted rehearing and found that the “electric utility shall keep a copy of the original file during the term of the guaranty, which may include an electronic copy.”<sup>8</sup> Additionally, the Commission also found that an electric utility must only provide the guarantor an additional copy of the agreement upon request.”<sup>9</sup> The Commission thus modified Rule 4901:1-10-14(M)(2), O.A.C. accordingly in Case No. 12-2050-EL-ORD.

Here, the Commission should likewise grant rehearing and amend Rule 4901:1-17(A)(5)(b), O.A.C. in the same manner as it did in Case No. 12-2050-EL-ORD as follows:

The guarantor shall sign the written guarantor agreement provided by the commission in Exhibit A, which will also be posted on the commission’s website in the forms section. The 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

Additionally, as it found in Case No. 12-2050-EL-ORD, the Commission should also clarify that an electric utility may keep an electronic copy of the guaranty agreement

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<sup>8</sup> *Id.*, Second Entry on Rehearing at ¶15 (May 28, 2014).

<sup>9</sup> *Id.*

## **CONCLUSION**

For all of the foregoing reasons, the Commission should grant rehearing on the issues discussed above.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

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