

**In the Matter of the Amendment of)
 Chapters 4901:1-10 and 4901:1-21, Ohio)
 Administrative Code, Regarding Electric) Case No. 14-1411-EL-ORD
 Companies and Competitive Retail Electric)
 Service, to Implement 2014 Sub.S.B. No. 310)**

On October 15, 2014, the Public Utilities Commission of Ohio (“Commission”) issued an Entry in the above-captioned docket setting forth its Staff’s proposed rules to implement R.C. 4928.65, recently enacted as part of Senate Bill (“S.B.”) 310. Ohio Revised Code (“R.C.”) 4928.65 requires the Commission to adopt rules providing for electric distribution utilities and electric services companies to disclose on customer bills the individual customer cost of their compliance with renewable energy resource (“RE”) requirements under R.C. 4928.64 and energy efficiency (“EE”) savings and peak demand reduction (“PDR”) requirements under R.C. 4928.66. In accordance with the October 15, 2014 Entry, the Environmental Law and Policy Center, the Sierra Club, the Natural Resources Defense Council, and the Ohio Environmental Council (collectively, the “Environmental Advocates”) respectfully submit these Comments on the Staff proposal. The Environmental Advocates appreciate the opportunity to submit these Comments and urge the Commission to consider the following issues in order to ensure the required disclosures are clear, understandable, and accurate in accordance with the Commission’s regulations regarding customer billing.

I. BACKGROUND

A. Cost Disclosure Requirements Under R.C. 4928.65.

Under R.C. 4928.65, by January 1, 2015, the Commission must “adopt rules governing the disclosure of the costs to customers of the renewable energy resource, energy efficiency savings, and peak demand reduction requirements of sections 4928.64 and 4928.66 of the Revised Code.”¹ Electric distribution utilities must make these required disclosures “on all customer bills sent by the utility,” in the form of “the individual customer cost of the utility’s compliance with” the RE requirements of R.C. 4928.64 and the EE and PDR benchmarks under R.C. 4928.66.² Electric services companies must similarly disclose “the individual customer cost” of their compliance with R.C. 4928.64 on all customer bills.³ Each of these compliance cost figures is to be listed as a distinct line item on a customer’s monthly bill.⁴

The method for calculating the individual customer cost of a utility’s compliance with the RE standard under R.C. 4928.64 is mandated by R.C. 4928.65(B). Each electric distribution company is to “multiply[] the individual customer's monthly usage by the combined weighted average of renewable-energy-credit [“REC”] costs . . . paid by all electric distribution utilities as listed in” the most recent Commission report on the alternative energy portfolio standard.⁵ Likewise, each electric service company is to perform the same calculation using the combined weighted average of REC costs paid by all electric services companies based on the

¹ R.C. 4928.65(A).

² R.C. 4928.65(A)(1).

³ R.C. 4928.65(A)(2).

⁴ R.C. 4928.65(C).

⁵ R.C. 4928.65(B)(1).

Commission's report.⁶ R.C. 4928.65 does not specify how to calculate the individual customer cost of compliance with the EE and PDR requirements of R.C. 4928.66.

B. Commission Regulations Regarding Customer Billing.

The Commission has promulgated three rules, OAC 4901:1-10-22, 4901:1-21-14, and 4901:1-10-33, which respectively govern customer billing by electric utilities, billing by electric services companies, and consolidated bills issued by electric utilities that also contain charges from electric services companies. These provisions generally require that a customer bill from either a distribution utility or an electric services company must be accurate and "contain clear and understandable form and language."⁷ Additionally, any distribution utility proposing a new bill format must file it with the Commission for approval, with a forty-five-day period for Commission review.⁸

C. Proposed Rules Implementing R.C. 4928.65.

On October 15, 2014, the Commission Staff issued a proposal for implementation of the cost disclosures mandated under R.C. 4928.65. The proposal provides for calculation of the individual customer cost for compliance with RE requirements under R.C. 4928.64 in accordance with the approach described in R.C. 4928.65(B). With respect to the individual customer cost for compliance with EE and PDR requirements under R.C. 4928.66, Commission Staff propose that the cost be calculated as the "customer's usage in kilowatt-hours for the applicable billing period multiplied by the currently effective energy efficiency/peak demand reduction rider that is applicable to the customer," and then multiplied by the proportion of the

⁶ R.C. 4928.65(B)(2).

⁷ OAC 4901:1-10-22(B), 4901:1-10-33(C). The provision regarding bills from electric services company alone, OAC 4901:1-21-14(C), contains slightly different language, directing that "[r]esidential and small commercial customer bills issued by or for CRES providers shall be accurate and understandable."

⁸ OAC 4901:1-10-22(C).

EE/PDR rider associated with either EE or PDR compliance (as determined by the distribution utility or using an 80% EE/20% PDR default) to produce separate EE and PDR cost estimates.⁹

The Commission request that initial comments on these proposed rules be submitted by November 5, 2014, and reply comments by November 17, 2014. Additionally, the Commission specifically solicited comment on the question of whether the proposed rules regarding calculation of EE and PDR compliance costs “should include all costs in the applicable energy efficiency/peak demand reduction rider, or delineate specific costs for inclusion or exclusion.”¹⁰

II. DISCUSSION

The Commission regulations provide that the information provided on a customer’s bill must be accurate, clear, and understandable. The Environmental Advocates propose several additions and amendments to the proposed rules to ensure that R.C. 4928.65 is implemented consistent with these requirements.

A. The Commission Must Require Companies to Provide Contextual Information About the Cost Disclosures to Ensure They Are Clear and Understandable.

These cost disclosures should not suddenly appear on customers’ bills with no accompanying explanation. Otherwise, there is a distinct danger that customers will mistakenly believe that these are new charges, when in fact R.C. 4928.65 simply imposes a new requirement for the separate listing of compliance costs that were already a part of previous distribution utility and electric services company charges. Additionally, these cost figures are impossible to understand in isolation, absent any information about the basic facts of what the energy efficiency, peak demand reduction, and renewable energy requirements are and a description of the benefits provided in return for these costs. Therefore, the Commission should require

⁹ Draft OAC 4901:1-10-35(B)(2), (3).

¹⁰ Entry at 3.

distribution utilities and electric services companies to provide specified explanatory information for customers regarding these new line items.

To ensure that customers understand the significance of these new line items, each bill should provide the contextual information that a customer needs to actually understand the costs being disclosed, including an explanation of the requirements under R.C. 4928.64 and R.C. 4928.66. But costs only tell part of the story. It is also essential that this cost information is accompanied by full disclosure of the benefits produced through the implementation of the RE and EE/PDR requirements, so that customers can understand what they receive in return for the costs listed on their bills. Thus, the Environmental Advocates specifically request that the Commission require that each bill contain the following explanation of the three line items:

Energy Efficiency and Peak Demand Reduction Programs:

Since 2009, Ohio Revised Code 4928.66 has required electric distribution utilities to implement energy efficiency and peak demand reduction programs to reduce their customers' electricity usage by a set percentage each year. Energy efficiency programs reduce customers' overall energy use, while peak demand reduction programs reduce customers' electricity usage at the times when it is highest (and therefore usually the most expensive). As of 2015, utilities must list the costs of these programs as separate line items on customer bills.

Under Ohio law, the Public Utilities Commission of Ohio (PUCO) only approves a utility's proposed set of energy efficiency and peak demand programs if the proposal is cost-effective, meaning that the programs cost less to implement than the price of the electricity they replace. For calendar year *[current year]*, *[name of company]* estimates its energy efficiency and peak demand reduction programs will reduce overall energy usage by *[XX]* megawatt-hours and will reduce peak demand by *[XX]* megawatts.

You may be able to participate in the following energy efficiency and peak demand programs:

[Provide list of programs applicable to the relevant customer class, with short description of each]

More information about these programs and how to participate is available at *[URL]* or by calling *[phone number]*. Annual status reports documenting

compliance with these energy efficiency and peak demand requirements are filed with the PUCO by May 15 of the following year, including information regarding the costs and benefits of these programs. The most recent report is available at [URL] or by calling [phone number].

Renewable Energy Resources:

Since 2009, Ohio Revised Code 4928.64 has required companies selling electricity to obtain a set percentage of that electricity from renewable sources each year. As of 2015, these companies must list the cost of purchasing renewable energy to comply with this requirement as a separate line item on customer bills. This electricity replaces electricity generated from fossil fuel, nuclear, or other non-renewable sources. During calendar year [current year], [name of company] estimates that it will obtain [XX] megawatt-hours of electricity, or [XX]% of the electricity it sells, from renewable sources.

The Commission should incorporate this template as a mandatory part of the bill disclosures under its final rules, requiring companies to add information specific to their compliance measures as indicated by the placeholders above. This information will prevent customer misunderstandings about the costs they are paying and the benefits they are receiving in return for those payments. Preferably, this information should be included in the bill itself to maximize the odds that customers will review and understand the information. As an alternative, the information should be included as an annual bill insert.

The inclusion of such information would be consistent with existing company practices and Commission precedent. It is not unusual for the Commission to order regulated utilities to provide customers with information – through particular bill messages, bill inserts, or other means – regarding new riders or amendments to existing riders.¹¹ Likewise, Ohio utilities often

¹¹ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Transmission Cost Recovery Rider*, Pub. Util. Comm. No. 08-1172-EL-ATA, 2008 Ohio PUC LEXIS 784, at 6 (Dec. 19, 2008) (requiring notification via bill message or bill insert regarding any modified customer charges pursuant to an amended transmission and ancillary services rider); *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set the Annually Adjusted Component of its Market-Based Standard Service Offer*, Pub. Util. Comm. No. 06-1085-EL-

voluntarily provide customers with supplemental information to educate those customers about new items appearing on their bills.¹² The cost disclosures required under R.C. 4928.65 will similarly be new to customers, even if the costs themselves are not new, and therefore merit the same types of measures to ensure customer understanding.

The language proposed above will ensure that the new cost disclosures required under R.C. 4928.65 are clear and understandable. If the Commission does not require utilities to include this information on the bill itself, it should at least be provided once each year as a bill insert, so that any new customers receive the same information explaining these line items. Otherwise, customers will be left with meaningless cost disclosures for which they have no context.

B. The Commission Must Adjust the Calculation of EE and PDR Line Items to Accurately Include Only Costs of Compliance with R.C. 4928.66.

The plain language of R.C. 4928.65 requires the disclosures of “the individual customer cost of the utility’s *compliance with*” R.C. 4928.66.¹³ This plain language requires that the cost disclosures under this provision should only include EE and PDR program costs directly related to meeting the relevant statutory benchmarks. Because a company’s EE/PDR rider may include various other costs, a calculation that simply multiplies an individual customer’s electricity usage by the amount of that rider will not accurately provide the information required under

UNC, 2007 Ohio PUC LEXIS 852, at 2 (Dec. 19, 2007) (requiring notification of new rider through bill insert or bill message); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Rider for the Collection of RTO Costs and Transmission and Ancillary Service Costs and for Accounting Authority to Modify Their Accounting Procedures*, Pub. Util. Comm. No. 04-1932-EL-ATA, 2005 Ohio PUC LEXIS 663, at 5 (Dec. 21, 2005) (similar).

¹² See, e.g., *In the Matter of The Dayton Power and Light Company with the Rule Amendments Adopted in Case No. 08-723-AU-ORD*, Pub. Util. Comm. No. 10-1006-EL-UNC, 2010 Ohio PUC LEXIS 1166, at 4-5 (Nov. 3, 2010).

¹³ R.C. 4928.65(A)(1) (emphasis added).

R.C. 4928.65. Therefore, the Commission must adjust the draft rules to screen out rider costs that do not constitute costs of implementing the programs that produce the EE savings and PDR mandated by R.C. 4928.66.

First, the Commission should require a utility to exclude any program costs that the utility does not use for compliance with R.C. 4928.66. That may include the costs of experimental or pilot programs, if those programs are not counted toward statutory compliance; costs that do not relate to the approved set of programs offered to eligible utility customers; and costs relating to any EE savings and PDR that represent over-compliance. Otherwise the cost disclosures on a customer's bill will include costs that the utility has incurred for reasons other than compliance with R.C. 4928.66 (for example, to achieve additional EE savings that will result in a shared savings award for the utility).

With respect to over-compliance, there may be no way to precisely determine how much of a utility's EE savings or PDR the company will use for its annual compliance, and thus whether the costs of that program should be included in the calculation under R.C. 4928.65 – especially since the utility may bank savings from one year and use them for compliance in the following year. However, that does not mean that the utility may simply ignore this problem and provide its customers with inaccurate cost estimates. The Environmental Advocates submit that a utility may simply adjust for over-compliance based on its projected program costs and EE/PDR results for the relevant year. Using those forecasts, the utility can proportionally reduce the program costs to account for any anticipated over-compliance – for example, if a utility projects it will achieve 125% of the EE savings required under R.C. 4928.66 for a year, then 1/5 of the program costs for that year are attributable to over-compliance, and the utility should reduce the calculated individual customer cost accordingly.

For similar reasons, to the extent an EE/PDR rider includes shared savings payments for a utility, those amounts should also be excluded from the aggregate cost of compliance with R.C. 4928.66. The Commission has approved the award of shared savings to Ohio utilities as an incentive to *exceed* the benchmarks of R.C. 4928.66, and the utilities thus receive shared savings awards based only on EE and PDR savings beyond the statutory requirements.¹⁴ Therefore, customer payments to utilities in the form of a shared savings award do not constitute a cost of compliance with R.C. 4928.66 and should not be included in calculations for purposes of R.C. 4928.65.

The Commission should likewise require utilities to exclude any lost distribution revenues in calculating individual customer costs under R.C. 4928.65. As described by the Commission, recovery of lost distribution revenue through a utility's EE/PDR rider is authorized under OAC 4901:1-39-07(A) as a "revenue decoupling mechanism" to address the "risk of not collecting enough revenue to cover their fixed distribution costs when sales fall" as a result of EE and PDR programs.¹⁵ Thus, even without these programs in place, utilities would receive the same revenues from their ratepayers in the form of higher energy sales, and they cannot be considered a cost of compliance with R.C. 4928.66.

Finally, the Commission must address the fact that a utility's EE/PDR rider recovery is based on forecasted, rather than actual, program costs. The Environmental Advocates propose

¹⁴ See, e.g., In the Matter of the Application of The Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2013 through 2015, Pub. Util. Comm. Nos. 13-833-EL-POR, 13-837-EL-WVR, 2013 Ohio PUC LEXIS 266, at 12 (Dec. 4, 2013) (approving "shared savings incentive for over compliance").

¹⁵ In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration; In the Matter of the Application of Ohio Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration, Pub. Util. Comm. Nos. 09-1089-EL-POR, 09-1090-EL-POR, 2010 Ohio PUC LEXIS 516, at 56 (May 13, 2010).

that, in order to ensure accurate cost calculations in accordance with R.C. 4928.65, the Commission include a mechanism under these rules to reflect the results of the cost reconciliation process for each utility – most straightforwardly, by adding or subtracting any difference between the forecasted and actual costs from the rider amount used for cost calculations under these rules over the following corresponding time period. Absent such a mechanism, over- or under-estimates in a utility’s forecasting of the costs of its EE and PDR mechanisms could lead to inaccurate disclosures of the costs of those programs to customers.

C. Sample Bills and Cost Calculations Should Be Subject to Commission and Stakeholder Review.

As the discussion above demonstrates, the calculation of RE, EE, and PDR compliance costs is a complicated task, and it seems likely that the Commission’s final rules will still leave some leeway as to exactly how a particular distribution utility or electric services company calculates the relevant costs and formats its bills. In order to ensure that this leeway does not open the door to inaccuracy or customer confusion, the Commission should require each company subject to the proposed regulations to file a sample bill, and an accompanying sample calculation, for review and approval by the Commission each year before these bills are actually issued to customers. With respect to EE and PDR costs, these filings should be based on a utility’s projected program costs for the year, and should include a description of the costs included in the EE/PDR rider; which costs have been designated as EE or PDR compliance costs for purposes of R.C. 4928.65; and which costs the utility has excluded from its calculation of individual customer cost of compliance with R.C. 4928.66.

The Commission’s rules already mandate such a review process for any distribution utility proposing a new bill format, presumably to provide a vital opportunity for stakeholders and the Commission to analyze in detail whether that new bill format is accurate, clear, and

understandable before it is sent to thousands of customers.¹⁶ The same purpose would be served by extending that filing requirement to companies that will be including new cost disclosures on their bills under these rules, and by providing for Commission review of the calculations underlying the cost estimates to be included in the bills.

The Commission should also provide a retrospective review process for distribution utilities' EE and PDR cost disclosures as part of each distribution utility's cost reconciliation process, in order to verify that those costs have been accurately calculated as described in Part B above. In order to facilitate that review, each utility should be required to file a sample cost calculation applying the same methodology as its initial cost calculation for the year, but using actual rather than projected costs.

III. CONCLUSION

The Environmental Advocates appreciate the opportunity to provide regarding these proposed rules, and urge the Commission to adopt the measures proposed above to ensure that the cost disclosures mandated by R.C. 4928.65 are, as required under the Commission's regulations, accurate and understandable to customers.

Dated: November 5, 2014

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
P: 614-488-3301
F: 614-487-7510
mfleisher@elpc.org

Samantha Williams

¹⁶ OAC 4901:1-10-22(C).

Staff Attorney
Natural Resources Defense Council
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 651-7930
swilliams@nrdc.org

Trent A. Dougherty
Managing Director of Legal Affairs
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
(614) 487-5823
trent@theoec.org

Dan Sawmiller
Senior Campaign Representative, Ohio and
Kentucky
Sierra Club, Beyond Coal Campaign
131 N. High Street, Suite 605
Columbus, OH 43215
(614) 461-0734 x305
daniel.sawmiller@sierraclub.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Comments has been electronically filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on November 5, 2014.

/s/ Madeline Fleisher
Madeline Fleisher

sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
kyle.kern@occ.ohio.gov
michael.schuler@occ.ohio.gov
william.wright@puc.state.oh.us
mandy.willey@puc.state.oh.us

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Summary: Comments Comments by the Environmental Law & Policy Center, Sierra Club, Natural Resources Defense Council, and Ohio Environmental Council electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center