BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

INTRODUCTION

The General Assembly enacted Sub. S.B. No. 310 ("S.B. 310"), which became effective on September 12, 2014. Before responding to several parties' comments, it is important to recap what is actually contained in S.B. 310. First, R.C. §4928.65(A) provides "[n]ot later than January 1, 2015, the public utilities commission shall 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." (emphasis added). Subpart (A)(1) states "[t]hat every electric distribution utility list, on all customer bills sent by the utility…….the individual customer cost of the utility's compliance…" Subpart (B)(1) then prescribes how the renewable energy credit costs are to be calculated and provides a simple, streamlined and public method of calculating those costs. Section 4 of S.B. 310 also creates an Energy Mandates Study Committee to study, among other things: "a cost-benefit analysis of the renewable energy, energy efficiency, and peak demand reduction

mandates."[1] In considering the comments filed by various parties, the Commission must consider the intent of the General Assembly in requiring cost information on a customer's bill. Several recommendations ignore the clear statutory language and therefore must be rejected.

In response to the General Assembly's clear and unambiguous direction in S.B. 310, the Commission Staff proposed two new rules: Ohio Adm. Code Rule 4901:1-10-35 regarding electric distribution utilities ("EDUs") and Ohio Adm. Code Rule 4901:1-21-19 regarding competitive retail electric service providers. Pursuant to the Commission's Entry of October 15, 2014, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies") filed comments on the proposed rules that supported Staff's proposed rules as they were the simplest and most effective way to meet the cost disclosure mandates of S.B. 310.

Nevertheless, some parties filed comments seeking to complicate the process, and made several unnecessary and burdensome recommendations such as: excluding certain costs, Commission determination of subjective benefits of energy efficiency and lengthy, editorial bill messages. The General Assembly (given the short period of time it gave the Commission to adopt rules) intended for this exercise to be a simple one, not overly complicated by all of the unauthorized additions some parties seek to impose upon this process. For those reasons, and as discussed below in reply to comments filed by The Ohio Manufacturers' Association Energy Group ("OMAEG"); Dayton Power and Light Company ("DP&L"); The Environmental Law and Policy Center, Sierra Club, Natural

[1] Section 4(C)(1) of S.B. 310.

Resources Defense Council and Ohio Environmental Council (collectively, the "Environmental Advocates"); The Ohio Power Company ("AEP Ohio"); The Office of the Ohio Consumers' Counsel ("OCC"); Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC (collectively "Direct Energy"); and Industrial Energy Users – Ohio ("IEU"), the Companies urge the Commission to adopt the proposed rules from Staff with the exception of a few minor items discussed below.

REPLY COMMENTS

A. The Commission Should Adopt Staff's Proposed Rules, Which Utilize an EDU's Energy Efficiency and Peak Demand Reduction ("EE/PDR") Rider to Calculate Costs to Customers of the EE/PDR Requirements.

Misconstruing the clear and unambiguous language of S.B. 310, OMAEG and the Environmental Advocates recommend that the Commission exclude any recovery of shared savings or lost distribution revenues from the calculation of the cost to customers of the EE/PDR requirements.[2] Shared savings and lost distribution revenues are costs that arise directly from the EE/PDR programs that the Companies implement to achieve the statutory mandates. Moreover, the Commission has authorized their recovery in the applicable tariff riders in accordance with Rule 4901:1-39-07, O.A.C.:

> With the filing of its proposed program portfolio plan, the electric utility may submit a request for recovery of an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, of costs due to electric utility peak-demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and shared savings. Any such recovery shall be subject to annual reconciliation after issuance of the commission verification report issued pursuant to this chapter.

[2] OMAEG Comments at 2-3; Environmental Advocates Comments at 9.

Therefore, the inclusion of these costs in the disclosure to customers is appropriate and in accordance with the statutory mandate that an "individual customer[']s cost of the utility's compliance" be disclosed.

OMAEG also notes that there has been historic volatility and inconsistency in utility EE/PDR riders as a reason that the Commission should not adopt the proposed rules.[3] The Environmental Advocates likewise argue that the Commission should require an EDU to add or subtract "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."[4] But even if there has been historic volatility and inconsistency, which may occur again in the future,[5] those cost do represent the individual customer's costs for that period.[6] The statute does not provide for adjustments in the amount appearing on the bill simply because such costs may vary somewhat over time.

Further ignoring the clear and unambiguous language of S.B. 310, OMAEG, without giving a recommendation as to how this would actually be calculated, argues that the EE/PDR calculation method does not take into account benefits for customers.[7] While adopting such a recommendation would be inconsistent with the statute, as an initial matter, this recommendation is premature. As indicated in Section 4 of S.B. 310, this is one of the issues that the Energy Mandates Study Committee is investigating.

---

[3] OMAEG Comments at 3-4.
[4] Environmental Advocates Comments at 10.
[5] The Companies disagree with OMAEG's assertion that there is an unreasonable amount of volatility in the rate as they reconcile and revise the update every six months – which is not unreasonable.
[6] In its reply comments, OMAEG attempts to utilize an example from Toledo to demonstrate its point. Not only is the source of this information not provided, it also does not change the fact that the rider amount is what the individual customer's cost of compliance for that period was – whether it ends up being a credit or not. (OMAEG Reply Comments at 3-4.)
[7] OMAEG Comments at 6.

Moreover, disclosing costs based on the EE/PDR Rider provides a known, specific and quantifiable calculation while a calculation based on potential benefits is speculative, at best, and not contemplated by the statute. Further, a customer only realizes benefits through program participation while non-participants do not receive energy savings but are still paying the costs. There would not be a simple and accurate way to determine individual customer benefits on a customer by customer basis. Last, any theoretical benefits that the Environmental Advocates and others have asked be shown on bills involve projections of avoided energy benefits that would only be realized, if at all, over a future time period lasting years or decades, not during the billing period. Presenting such highly-variable and speculative benefits against known and true costs that customers pay through their utility bills is not appropriate and would lead to greater customer confusion Clearly, the General Assembly did not include a costs versus benefit approach to the calculation prescribed in S.B. 310.

The Companies agree with IEU that the individual customer cost of the utility's compliance is "reflected by the actual rates paid by the individual customers under their [EDU's] EE/PDR rider."[8] The Companies likewise agree with IEU that "because R.C. 4928.65 is clear and unambiguous, the Commission lacks discretion to adopt rules that do disclose an individual customer's cost to comply with the renewable energy resource, the energy efficiency and the peak demand reduction mandates" and "cannot include some lesser amount of costs or some form of net costs and still be in compliance with the requirements of R.C. 4928.65."[9] Any effort to net the speculative benefits against the

[8] IEU Comments at 2.
[9] *Id.* at 7.

cost of compliance would be against the clear and unambiguous statutory language of S.B. 310.

Last, the Environmental Advocates also claim that the Commission should require an EDU "to exclude any program costs that the utility does not use for compliance."[10] They forget that any over compliance is banked by the Companies, and applicable to future mandates thus avoiding future compliance costs. Thus, there is no reason to exclude those costs at the time they are incurred and such exclusion is not provided for by the statute.

As stated in the Companies' initial comments, Staff's proposed rules should be adopted because they will best represent the individual customer's costs for an EDU's compliance with EE/PDR requirements in accordance with the intent and unambiguous language of S.B. 310. Any deviation from simply the utilizing the EE/PDR rider costs is not permissible.

B. <u>With the Exception of a Short Bill Message to Identify the New Line Items, the Commission Should Reject Any Requirements for Bill Messaging or Bill Inserts.</u>

OMAEG recommends that the Commission "order the inclusion of a bill message accompanying the compliance cost itemization on consumer bills, directing consumers to a Commission website with supplemental information on the benefits of EE and PDR resources, as well as an apples-to-apples comparison of EE and PDR resources versus other generation resources."[11] Again, as discussed above, this request is premature at best. The Energy Mandates Study Committee is undertaking an investigation as to this issue. Moreover, S.B. 310 does not provide for the Commission engaging in such an

[10] Environmental Advocates Comments at 8.
[11] OMAEG Comments at 9.

exercise. Had the General Assembly wanted the Commission to undertake these activities, it would have language to that effect in the statute.

While the Companies do not dispute that a customer's bill should be understandable and accurate, OCC's recommendation that the Commission require EDUs to include the bill message "energy efficiency and peak demand reduction programs can also save money on your electric bill" is likewise premature and misguided.[12] While EE/PDR programs may, under certain circumstances, save money on a participating customer's electric bill, given the costs associated with EE/PDR mandates and the fact that generally only the small fraction of customers who take advantage of EE/PDR programs may actually save money on their bills, this is not an accurate statement. Similar to the case cited by OCC, the Commission should not require this bill message because it "may not be a true indicator of the customer's savings…"[13]

The Environmental Advocates noted a similar concern.[14] For example, the Environmental Advocates propose a lengthy (more than a page long) disclosure.[15] For the most part, they propose information that is either already available on the Commission's website (e.g. cites to Ohio law, the Companies' annual reports) or on the Companies' websites. Moreover, they forget that there are space and cost constraints in changing an EDU's bill format and providing bill disclosures. Lengthy bill messages increase printing costs and the size of bills requiring new costs. Changes to the Companies' billing system would also impact operations in other states, which further increases costs and is inefficient. The Environmental Advocates fail to discuss these

[12] OCC Comments at 5-6.
[13] *Id.* at 5.
[14] Environmental Advocates Comments at 4.
[15] *Id.* at 5-6.

hurdles or the recovery of the costs that would be incurred to provide this type of bill message or insert.

The Companies do agree, however, that they should be permitted to include a bill message for at least the first few months of posting the new line items to inform customers about those new line items.[16] However, the Companies should propose their own language in their bill format applications filed in accordance with Rule 4901:10-22(C), O.A.C. Nevertheless, the Commission should reject OCC and the Environmental Advocates' recommendations.

C. <u>The Commission Should Provide for Implementation Flexibility.</u>

Several parties made implementation recommendations to which the Companies agree. First, Direct Energy recommends that the Commission clarify that the "distinct line item" for renewable energy costs be "included on a portion of the bill that is not a listing of the individual charges so long as it is listed by itself as a single line item…"[17] The Companies agree as customers will be confused if their bills do not actually add up to the individual amounts listed in the charges section of their bills. While the Commission may not necessarily address this in the proposed rules, in approving the EDUs' bill format, it should permit flexibility as to the location of this line item as requested by Direct Energy.

Second, the Companies agree with DP&L that the Commission revise Rule 4901:1-10-35(B)(1)(d) to only require EDUs to provide their cost of compliance with renewable energy resources not either an EDU's cost or a CRES provider's costs –

[16] OCC Comments at 7.
[17] Direct Energy Comments at 5.

depending on whether a customer is shopping or not.[18] The EDU's cost of compliance is what is contemplated by the statute and would make implementation easier. Further using the EDU's costs of compliance would alleviate the concerns raised by AEP Ohio in their comments namely that the CRES provider supply the individual customer cost of compliance to the EDU for placement on the consolidated bill.[19] Indeed, as pointed out by DP&L, R.C. 4928.65(A)(1) does not require the EDU to calculate the CRES provider charges.

Third, AEP Ohio recommends cost recovery for implementation of the new billing requirements through the existing riders.[20] AEP Ohio also recommends that the Commission permit EDUs thirty days after the report to the General Assembly contemplated by R.C. 4928.64(B)(1) and (B)(2) is provided to make changes to the renewable energy cost of compliance.[21] The Companies agree with both of these recommendations.

Last, Direct Energy recommends that the Commission allow 90 days once the rules are finalized before costs must be disclosed.[22] Likewise, DP&L recommends that EDUs should be provided at least six months from the effective date of the rules to implement these changes.[23] The Companies agree that a certain period of time is necessary to implement the changes and agree with DP&L's recommendation. While the Companies will file a bill format application pursuant to Rule 4901:1-10-22(C), the

[18] DP&L Comments at 2.
[19] AEP Ohio Comments at 3.
[20] *Id.* at 1.
[21] *Id.* at 3.
[22] Direct Energy Comments at 7.
[23] DP&L Comments at 3.

Companies disagree with the Environmental Advocates' desire to complicate that process. A large expense of Commission time and effort is not needed to implement the statutory mandates in S.B. 310.[24]

CONCLUSION

The Companies appreciate the opportunity to comment on the proposed rules and to reply to the comments of other interested stakeholders. The Companies urge the Commission to adopt the proposed rules with the recommended changes described above.

Respectfully submitted,

/s/ *Carrie M. Dunn*
Carrie M. Dunn (0076952)
Counsel of Record
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-2352
(330) 384-3875 (fax)
cdunn@firstenergycorp.com

Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

[24] Environmental Advocates Comments at 11.

CERTIFICATE OF SERVICE

On November 17, 2014, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document and the undersigned has served electronic copies to the following parties:

Environmental Law and Policy Center (mfleisher@elpc.org)
Natural Resources Defense Council (swilliams@nrdc.org)
Ohio Environmental Council (trent@theoec.org)
Sierra Club (Daniel.sawmiller@sierraclub.org)
Direct Energy (Joseph.clark@directenergy.com)
AEP Ohio (stnourse@aep.com)
The Dayton Power and Light Company (judi.sobecki@aes.com)
IEU-Ohio (mpritchard@mwncmh.com)
OMAEG (bojko@carpenterlipps.com)
OCC (kyle.kern@occ.ohio.gov)

/s/ *Carrie M. Dunn*
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

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