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. 310.	)))))	Case No. 14-1411-EL-ORD

APPLICATION FOR REHEARING OF THE RETAIL ENERGY SUPPLY ASSOCIATION

On December 17, 2014, the Public Utilities Commission of Ohio ("Commission") adopted two new rules, 4901:1-10-35[1] and 4901:1-21-19, intended to comply with Substitute Senate Bill 310 and with Section 4928.65, Revised Code, in particular. The rules address disclosure of the costs to customers of the renewable energy resource, energy efficiency savings, and peak demand reduction requirements set forth in Sections 4928.64 and 4928.66, Revised Code. However, the Retail Energy Supply Association ("RESA") finds that Commission-adopted rule 10-35(B) conflicts with Section 4928.65(A) (1), Revised Code, and should be modified.[2] Two other changes to the adopted rules are warranted as well.

Specifically, the Commission's December 17, 2014 decision is unreasonable and unjust in the following respects:

(1) Instead of adopting a rule that requires the EDUs to include on the utility-consolidated bills the EDUs' costs of compliance, the Commission adopted 10-

[1] Hereinafter, adopted rule 4901:1-10-35 will be simply referred to as rule 10-35.
[2] RESA did not file comments earlier in this proceeding. However, intervention was not necessary as this is a Commission-opened docket seeking comments and is an uncontested proceeding. RESA does not seek leave to file this application for rehearing, consistent with the Commission's previous determination that leave to seek rehearing is unnecessary in uncontested Commission-opened dockets seeking comments. *In the Matter of Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Entry on Rehearing at 2 (October 16, 2013).

35(B) which requires the CRES providers to include certain cost of compliance information for the supplier's section of the consolidated bill, contrary to Section 4928.65, Revised Code.

(2) As to the issue of placement of the cost information, rule 10-35(B) is not worded consistently with the Commission's decision (page 9) in paragraph 15. To avoid confusion and error, rule 10-35(B) should be modified to be consistent with the Commission's decision.

(3) There is a one-word correction needed for rule 10-35(B) – changing "set" to "sent."

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF THE APPLICATION OF REHEARING OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. Introduction

On June 13, 2014, the Governor of Ohio signed into law Substitute Senate Bill 310 (Sub. S.B. 310), which became effective on September 11, 2014. This new legislation includes Section 4928.65, Revised Code, which requires the Public Utilities Commission of Ohio ("Commission") to adopt rules governing disclosure of the costs to customers of the renewable energy resource, energy efficiency savings, and peak demand reduction requirements set forth in Sections 4928.64 and 4928.66, Revised Code. Section 4928.65, Revised Code, requires rules that apply to both electric distribution utilities ("EDUs") and to competitive retail electric service ("CRES") providers. In particular, Section 4928.65(A)(1), Revised Code, requires that, under the Commission's new rules, the EDUs must include on the utility-consolidated bills the EDUs' costs of compliance.

On December 17, 2014, the Commission timely adopted two new rules, 4901:1-10-35 and 4901:1-21-19, intended to comply with Sub. S.B. 310 and Section 4928.65, Revised Code, in particular. However, adopted rule 10-35(B) conflicts with the very requirement in Section 4928.65(A)(1), Revised Code noted above. Instead of adopting a rule that requires the EDUs to include on the utility-consolidated bills the EDUs' costs of compliance, the Commission adopted a provision that requires the CRES providers, including members of the Retail Energy Supply Association ("RESA"), to provide the EDUs with certain cost of compliance information for inclusion in the supplier's section of the consolidated bill. Rule 10-35(B) does not comport with Section 4928.65, Revised Code. Additionally, the rule unnecessarily requires CRES providers to

get involved in the process of providing this information to customers. For these reasons, the Commission should grant rehearing and modify rule 10-35(B) by omitting the last sentence in that provision and making it clear that CRES providers are not required to provide any information for the EDUs to comply with the statute for EDU-consolidated bills. Additionally, rule 10-35(B) should be worded consistently with the Commission's decision on the issue of placement of the cost information. Finally, there is a one-word correction needed for rule 10-35(B) – changing "set" to "sent."

II. Sub. S.B. 310's requirement to adopt rules that mandate disclosure of compliance costs provides that the EDUs' costs of compliance are the costs to be on utility-consolidated bills.

1. The Commission's Order and adopted rules are unlawful and unreasonable inasmuch as they violate the plain language included in Section 4928.65, Revised Code.

Section 4928.65, Revised Code, is the pertinent portion of Sub. S.B. 310 that is involved in this issue. Section 4928.65, Revised Code, states as follows:

> (A) Not 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. The rules shall include both of the following requirements:
>
> > (1) That every electric distribution utility list, on all customer bills sent by the utility, including utility consolidated bills that include both electric distribution utility and electric services company charges, the individual customer cost of the utility's compliance with all of the following for the applicable billing period:
> >
> > > (a) The renewable energy resource requirements under section 4928.64 of the Revised Code, subject to division (B) of this section;
> > >
> > > (b) The energy efficiency savings requirements under section 4928.66 of the Revised Code;

(c) The peak demand reduction requirements under section 4928.66 of the Revised Code.

(2) That every electric services company list, on all customer bills sent by the company, the individual customer cost, subject to division (B) of this section, of the company's compliance with the renewable energy resource requirements under section 4928.64 of the Revised Code for the applicable billing period.

(B) (1) For purposes of division (A)(1)(a) of this section, the cost of compliance with the renewable energy resource requirements shall be calculated by multiplying the individual customer's monthly usage by the combined weighted average of renewable-energy-credit costs, including solar-renewable-energy-credit costs, paid by all electric distribution utilities, as listed in the commission's most recently available alternative energy portfolio standard report.

(2) For purposes of division (A)(2) of this section, the cost of compliance with the renewable energy resource requirements shall be calculated by multiplying the individual customer's monthly usage by the combined weighted average of renewable-energy-credit costs, including solar-renewable-energy-credit costs, paid by all electric services companies, as listed in the commission's most recently available alternative energy portfolio standard report.

(C) The costs required to be listed under division (A)(1) of this section shall be listed on each customer's monthly bill as three distinct line items. The cost required to be listed under division (A)(2) of this section shall be listed on each customer's monthly bill as a distinct line item.

(Emphasis added.)

As emphasized above in provision (A)(1) and (B)(1), the costs to be included on the utility-consolidated bills are the EDUs' costs. CRES providers are not statutorily required and, thus, cannot be required by rule to provide CRES information to the EDUs in order for the EDUs to include the EDUs' own costs of compliance on consolidated bills. Only when the CRES provider directly bills the customer is the CRES provider statutorily required to calculate and include costs of compliance on the customer bills. Nothing in the authorizing statutory language states that the utility-consolidated bills shall include costs of compliance from both EDUs and

CRES providers. If the General Assembly had intended to require CRES providers to provide cost of compliance information to the EDUs for the utility-consolidated bills, the General Assembly would have said so.

The Commission is a creature of statute and has and can exercise only the authority conferred upon it by the General Assembly. *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, citing *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 O.O.3d 410, 429 N.E.2d 444; *Consumers' Counsel v. Pub. Util. Comm.* (1981) 67 Ohio St.2d 152, 21 O.O.3d 96, 423 N.E.2d 820; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 O.O.3d 478, 414 N.E.2d 1051. Inasmuch as that statutory authority was not conferred upon the Commission in Sub. S.B.310, the Commission-adopted rule 10-35(B) should be modified.

2. The Commission's Order and adopted rules are unreasonable inasmuch as they would interject an entirely unnecessary step in the process of providing accurate cost information to customers. The utilities already have all the information and tools needed to make and provide the calculation.

Rule 10-35(B) makes CRES providers "responsible for providing the EDU with the individual customer cost of compliance pursuant to paragraph (B)(1) of rule 4901:1-29-19 of the Administrative Code for the applicable billing period which will be included under the supplier section of charges." Adopted rule 4901:1-29-19(B)(1) dictates a cost of compliance calculation -- the sum of the customer's monthly usage times the average CRES provider compliance cost, as reported in the Commission's most recent compliance report provided to the general assembly. In addition to being illegal (as previously described), the Commission's adopted rules would require CRES providers to unnecessarily participate in the process of providing accurate cost

information to customers. Simply put, as a practical matter in the real world of rate-ready and bill-ready markets, implementation of the adopted rule makes little sense.

None of the items required for the compliance calculation are uniquely within CRES providers' knowledge or control. In fact, when it comes to customer usage, it is the utilities that obtain that information and then provide those values to the CRES providers. The utilities read customer meters for all customers. Thus, the utilities already possess every customer's monthly usage. Under this proposal, the utilities would read the meters, obtain the values, give those values to the CRES providers, and then the CRES providers would be required to give that same value back to the utility. Additionally, as noted by the Commission's Order and the rules, the compliance cost portion of the equation is a statewide average published by the Commission once per year and there will be no individual company costs utilized for the calculation. Therefore, the utilities will already have all the pieces of the puzzle to do this calculation. The utilities make all the other calculations necessary to calculate, send, and collect a customer's bill. The simple A (customer usage) x B (statewide average cost) = C (total mandate cost) calculation, which does not even go in the section of the bill with the customer's actual charges (Finding and Order at 9, paragraph 15), cannot be a large burden to any of the utilities. Requiring a CRES provider to get involved only injects more possibilities of incorrect charges and confusion to customers and is simply unnecessary for this process.

All parties affected by the Commission's Order as well as the adopted rules will undertake some billing system programming to implement the new rules. Obviously, the framework the Commission adopts will greatly affect that programming. The Commission's Order and adopted rules will require CRES providers to needlessly undertake computer programming to transmit a cost back to the utility when the utility already possesses the

information to make the calculation and will already be doing similar programming for the non-shopping customers. The Commission should not subject CRES providers to this additional programming costs and other effort. Moreover, requiring CRES providers to submit this information will necessitate an additional layer of programming on the EDUs' parts in order to further communicate and incorporate this information from CRES providers. The utility will have to program for two different calculations instead of one, making the utility compliance with the rules more costly for customers when the utility requests to recover its compliance costs.

Moreover, if the Commission agrees with RESA that the EDU compliance cost (rather than CRES provider compliance cost) is the correct cost for shopping customers in the cost calculation, then the utilities will be using the same calculation for shopping customers as non-shopping customers. There is no need to involve a CRES provider when the exact same calculation will be made for shopping and non-shopping customers, making CRES provider involvement even more needless.

Finally, even assuming CRES providers are involved in the calculation, under the current billing formats, the calculation provided by the CRES provider is not likely to be able to be used by the utility. While the various utility billing systems differ, a CRES provider using rate-ready billing will simply send the rates for its various rate codes for its customers that month to the utility for billing purposes. CRES providers are not given any space on the bill for bill messaging. And, CRES providers using bill-ready billing will likely not get enough space in the bill messaging portion of the bill to properly describe (per the Commission's Order) the charges.

RESA urges the Commission to follow the plain language of the statute and direct EDUs to utilize the statewide EDU average compliance cost as the required input into the cost calculation (instead of the statewide CRES average compliance cost) and direct the EDUs to

make the cost calculation without CRES provider involvement. This modification was originally supported by CRES providers and two other Ohio electric utilities. These changes will solve all of the difficulties described above.

III. Rule 10-35(B) should not require that these costs of compliance be included under the EDU's or the CRES provider's section of charges on consolidated bills when the Commission specifically ruled that the disclosures should be placed on the bill in a bill message or similar area.

As adopted, rule 10-35(B) states that the cost of compliance for the energy efficiency and peak demand reduction mandates "will be included under the EDU's section of charges" and, for shopping customers, compliance with the renewable energy resource requirements "will be included under the supplier section of charges." The Commission also included in its Order (paragraph 19 on page 12) an edict that the individual customer compliance cost provided by a CRES provider "should appear under the supplier section of charges on the bill." However, the Commission's decision, in adopting rule 10-35(B), specifically ruled otherwise. In paragraph 15 on page 9 of the Commission's December 17, 2014 Finding and Order, the Commission states that "the line item disclosures should be placed on the bill in a bill message or similar area." The language of rule 10-35(B) does not comport with this Commission conclusion and the two should be consistent.

It is best to make this change for good regulatory policy reasons. Specifically, as the Commission acknowledges in its Order, customers might be confused if customers believe they are being double-charged. As the compliance cost calculation is informational only, it is better suited to a bill message or some other part of the bill.

Accordingly, the Commission should modify rule 10-35(B) on this point, so that the rule is consistent with the Commission's decision and for the good policy reasons articulated above.

IV. RESA's recommended revisions to adopted rule 10-35(B) are reasonable, consistent with the authorizing statute, and match the Commission's decision.

For the reasons set forth above, RESA recommends that the Commission modify rule 10-35(B) so that it corresponds with the statutory mandate set forth in Section 4928.65(A)(1), Revised Code, and the Commission's stated decision on placement of the line items. Also, there is a one-word correction needed for rule 10-35(B) – changing "set" to "sent." To that end, RESA recommends that rule 10-35(B) be revised as follows:

> Each electric distribution utility (EDU) shall list on all customer bills sent by the EDU, the individual customer cost of compliance for paragraphs (B)(l), (B)(2), and (B)(3) of this rule for the applicable billing period. Consolidated bills ~~**set**~~ **sent** by the EDU, which include supplier charges, shall include the EDU's individual customer cost of compliance for paragraphs **(B)(1),** (B)(2) and (B)(3) of this rule for the applicable billing period and will be included ~~**under the EDU's section of charges**~~ **in a bill message or similar area of the EDU-consolidated bill**. ~~**Suppliers are responsible for providing the EDU with the individual customer cost of compliance pursuant to paragraph (B)(1) of rule 4901:1-21-19 of the Administrative Code for the applicable billing period which will be included under the supplier section of charges.**~~

V. Conclusion

WHEREFORE, RESA recommends that the Commission grant this application for rehearing and modify rule 10-35(B) as delineated above.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 16th day of January 2015 upon all persons/entities listed below.

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