BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

CAMPBELL, et al.,	)	
	)	
Complainants,	)	
	)	**Case No. 17-0520-EL-CSS**
v.	)	
	)	
OHIO EDISON COMPANY,	)	
	)	
Respondent.	)	
	)	

OHIO EDISON COMPANY'S POST-HEARING BRIEF

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I. INTRODUCTION

Complainants Jack Campbell ("Mr. Campbell"), Jeff Campbell, and Jeff Campbell, Jr. (collectively, the "Complainants") allege that Ohio Edison Company ("Ohio Edison" or the "Company") has been overcharging them for electric service since 2009 or 2010.[1] The basis for Complainants' allegation is two-fold. First, Complainants believe they have been receiving "single-phase service," which they contend should be charged under a different rate schedule.[2] Second, Complainants argue that Ohio Edison failed to perform the proper steps to place them in a government aggregation run by the Village of Loudonville and, as a result, they have been charged at a higher rate.[3] Complainants are incorrect on both counts and have failed to carry their burden to demonstrate Ohio Edison's charges were either unjust or unreasonable.[4] Accordingly, the Commission must dismiss the Complaint in its entirety, with prejudice.

II. BACKGROUND

Complainants own and operate a commercial retail and services business known as Activewarz, LLC ("Activewarz"), pronounced "Active-wears."[5] At the time of the Complaint and hearing in this matter, Activewarz occupied both 431 and 435 East Haskell Street in Loudonville, Ohio.[6] Historically, Complainants have used 435 East Haskell Street primarily as a tanning salon.[7] It is Ohio Edison's charges for electric service at 435 East Haskell Street (the "Property") that are the subject of this complaint.[8]

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[1] *See* Hearing Tr. at 24:4-14 (Campbell Cross). While no date was expressly provided at hearing, Complainants generally contend that Ohio Edison has overcharged them since they began occupying 435 East Haskell, which, according to Mr. Campbell, was sometime in 2009 or 2010. Notably, neither Mr. Campbell nor any of the other Complainants was customer of record at the property until September 24, 2015.
[2] *See* Hearing Tr. at 9:9-16 (Campbell Direct).
[3] *See* Hearing Tr. at 17:9-13 (Campbell Direct).
[4] *See Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966); *see also* R.C. 4905.26.
[5] *See* Hearing Tr. 23:15-21 (Campbell Cross).
[6] Hearing Tr. at 23:15-24 (Campbell Cross).
[7] *See* Hearing Tr. at 8:16-18 (Campbell Direct).
[8] *See generally* Complaint.

Ohio Edison has provided electric service to the Property pursuant to an account in Mr. Campbell's name since September 24, 2015.[9] Mr. Campbell does not dispute that he applied for commercial electric service at the Property.[10] Mr. Campbell also acknowledges that, despite the account being in his name, the electric service provided to the Property was for and used by Activewarz.[11] As a result, Complainants have been charged as a general service installation in accordance with the provisions of Ohio Edison's tariff.[12]

Under the Company's tariff, four different types of service are available to general service installations – secondary service, sub-transmission service, transmission service, and primary service.[13] Each type of service has different nominal voltages and associated rate schedules.[14] General service installations receiving service from the Company at less than or equal to 600 volts are considered to receive secondary service.[15] Similarly, customers receiving service from the Company at nominal voltages greater than or equal to 69,000 volts are considered to receive transmission service.[16] Sub-transmission service, on the other hand, is reserved for customers receiving service at the specific nominal voltages of 23,000 volts three wire and 34,500 volts three wire.[17] General service installations that do not fall into any of the above categories are considered to receive primary service.[18]

Complainants receive primary service from Ohio Edison. As explained by Company witness Matthew Zapp, Supervisor for Regional Operations, Meter Services:

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[9] Direct Testimony of Deborah Reinhart on Behalf of Ohio Edison Company ("Reinhart Testimony") at 4:7-11.
[10] Hearing Tr. at 24:24 – 25:2 (Campbell Cross).
[11] Hearing Tr. at 23:15-22 (Campbell Cross).
[12] *See* Ohio Edison Company's Schedule of Rates for Electric Service, PUCO No. 11 ("Tariff") at Original Sheet 4, Page 4 of 21, Section IV. C.: "Delivery Voltage"; *see also* Reinhart Testimony Attachment DLR-2.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

> Ohio Edison provides primary service from a 12.47 kilovolt line on its Mohican Circuit to a pole on the Property that is owned by the owner of the Property (the "Pole"). The primary voltage is three-phase, 12.47 kilovolt phase-to-phase, and 7.2 kilovolt, phase-to-neutral, to the Pole. The three-phase primary voltage is connected to current and voltage transformers for metering purposes, and then the primary phases are connected to a bank of three transformers that are owned by the Property owner, located directly underneath the metering transformers.[19]

Put simply, Complainants' landlord owns the pole located on the Property and the transformers attached to that pole. Ohio Edison provides service to that pole and transformers from its 12.47 kilovolt line which runs adjacent to the Property.[20] Such service is considered primary service under the Company's Tariff (it does not fit any other type of service) and appropriately billed on the General Service – Primary ("Rate GP") rate schedule.[21]

As noted above, Complainants' business and the Property are located in Loudonville, Ohio. Beginning in approximately February 2012, the Village of Loudonville began offering government aggregation of competitive retail electric service ("CRES") through an opt-out program in accordance with Section 4928.20 of the Revised Code.[22] As explained by Company witness Deborah Reinhart, "[Ohio Edison]'s only role in implementing such a government aggregation is to provide, upon request, the CRES provider with a list of all customers within the geographical boundaries of the government aggregation at the time such a list is requested by the CRES provider."[23] These lists are then used by the CRES provider to send "opt-out notices" to customers within the geographical boundary of the government aggregation.[24] If a customer receiving an

[19] Direct Testimony of Matthew Zapp on Behalf of Ohio Edison Company ("Zapp Testimony") at 3:20 – 4:5.
[20] Company records indicate that the Property has received service from Ohio Edison's 12.47 kilovolt line since December 1970.
[21] Tariff at Original Sheet 21 ("Rate GP Schedule"); *see also* Reinhart Testimony Attachment DLR-1.
[22] *See In the Matter of the Application for Certification for the Village of Loudonville*, PUCO No. 11-5935-EL-GAG, Application (Dec. 12, 2011), Opt-Out Notice (Feb. 1, 2012).
[23] Reinhart Testimony at 7:6-12.
[24] *See* O.A.C. 4901:1-21-17(D)(2).

"opt-out notice" does not elect to opt-out of the government aggregation within the designated period of time, the customer is automatically enrolled.[25]

In December 2014, Ohio Edison fulfilled its role as it relates to the Village of Loudonville aggregation when it provided FirstEnergy Solutions Corp. ("FES"), the CRES provider for the aggregation, with a list of customers in the Village of Loudonville upon its request.[26] Notably, this request was made before Mr. Campbell became customer of record at the Property and the prior customer of record at the Property was included on the list provided to FES.[27] FES has not made a request for an updated list for the Village of Loudonville government aggregation since December 2014.[28] Accordingly, Mr. Campbell has not been automatically enrolled in the aggregation pursuant to R.C. 4928.20's opt-out procedures. Mr. Campbell, however, has always been eligible to apply for enrollment in the government aggregation on his own initiative, if he so desired.[29]

III. LAW AND ARGUMENT

Complainants have failed to satisfy their burden in this proceeding. Section 4905.26 of the Revised Code requires the Commission set for hearing a complaint against a public utility when grounds appear that:

> [A]ny rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule,

[25] *See* R.C. 4928.20(D).
[26] Reinhart Testimony at 7:16-17.
[27] Reinhart Testimony at 7:17-21; *see also* Reinhart Testimony Attachment DLR-4. Additionally, while the prior customer of record was included on the list provided to FES, Company records indicate that the customer was not ultimately enrolled in the aggregation. This is likely because the customer was already under contract with a CRES provider. *See* Reinhart Testimony at 8:10-19; *see also* R.C. 4928.20(H) (prohibiting a governmental aggregator from including in the aggregation the accounts of "[a] customer in contract with a certified electric services company.")
[28] Reinhart Testimony at 7:21-22.
[29] *See generally* R.C. 4928.20 (allowing for customers to be enrolled in a government aggregation with prior, affirmative consent); *see also* Reinhart Testimony Attachment DLR-3 at 6 (provision allowing for customers to "opt-in" to the Village of Loudonville aggregation "after the expiration of the enrollment period by contacting [FES], who shall determine whether to accept them into Program, and at what rate, subject to written policies mutually agreed upon by the [Village of Loudonville] and [FES]."

> classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is or will be in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained . . .[30]

It is well-established that the burden of proof rests with the complainant in proceedings before the Commission.[31] Thus, Complainants have the burden of proving their allegations that Ohio Edison's charges were unjust or unreasonably excessive.[32] Complainants further must make this demonstration by a preponderance of the evidence.[33] This is a burden Complainants cannot meet. As set forth below, the record evidence in this proceeding demonstrates that Ohio Edison at all times charged Complainants in accordance with its Tariff and otherwise performed its duties as it relates to the Village of Loudonville government aggregation appropriately. As Complainants cannot meet their burden as it relates to these allegations, the Commission must dismiss the Complaint in its entirety, with prejudice.

A. Ohio Edison Has Charged Complainants In Accordance With The Company's Commission-Approved Tariff.

Complainants first allege that Ohio Edison's charges were unjust or unreasonable because Ohio Edison charged them under the incorrect rate schedule. Specifically, Complainants allege that they should have been charged "single-phase" prices as they receive a single-phase service into the facility at the Property.[34] This is incorrect. Ohio Edison's Commission-approved Tariff

[30] R.C. 4905.26.
[31] *Grossman*, 5 Ohio St. 2d at 190.
[32] R.C. §§4905.22, 4905.26; *see also DiSiena v. The Cleveland Electric Illuminating Co.*, PUCO No. 09-0947-EL-CSS, Opinion and Order at 2 (Dec. 8, 2010).
[33] *Ohio Bell Telephone Co. v. Pub. Util. Comm.*, 49 Ohio St. 3d 123, 126 (1990).
[34] *See* Hearing Tr. at 9:13-16 (Campbell Direct).

requires that general service installations be charged based on the type of service the customer receives from the Company, *i.e.* secondary, primary, sub-transmission, or transmission service.[35] Here, as Complainants receive primary service from the Company (a fact that is undisputed in the record), Ohio Edison was obligated to charge the customer under Rate GP. This is exactly what Ohio Edison did and, accordingly, Complainants cannot meet their burden as it relates to their first allegation.

1. Ohio Edison may not charge rates that differ from those set forth in its Tariff and there is no record evidence indicating that Rate GP is unjust or unreasonable.

It is axiomatic that a public utility may not charge rates that differ from those authorized in its tariff. Often referred to generally as the "filed-rate doctrine," Ohio has codified this concept in R.C. 4905.32, which provides, in part:

> No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time. (emphasis added)[36]

Thus, Ohio Edison is required to charge customers for the electric service they receive at the rate that is "applicable to such service as specified in [Ohio Edison's] schedule." While a public utility's adherence with the filed-rate doctrine is insufficient to prevent a subsequent determination that the rate authorized by the tariff is itself unreasonable, it does preclude an order requiring the utility to refund charges duly collected.[37]

Importantly, Complainants here are not challenging the reasonableness of the Commission's established rates in Ohio Edison's Tariff. Rather, Complainants are alleging only

[35] *See* Reinhart Testimony Attachments DLR-1, DLR-2.
[36] R.C. 4905.32.
[37] *See, e.g., Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E. 2d 465 (Mar. 27, 1957).

that Ohio Edison charged them under the wrong rate schedule.[38] The record, thus, is devoid of any evidence that Rate GP is unjust or unreasonable in any way.[39] Accordingly, the Commission need only consider whether Ohio Edison charged Complainants under the appropriate rate schedule – Rate GP. As discussed below, the record demonstrates that Complainants were appropriately charged under Rate GP.

2. Complainants contracted for, and Ohio Edison provides, primary electric service to Complainants.

Ohio Edison provides primary service to Complainants pursuant to a contract between Mr. Campbell and the Company. Sections II.A and II.B of the Company's Tariff provide the basis for a contract between a customer and the Company. Sections II.A and II.B provide:

> **A. Service Application:** For each class of service requested by an individual or an entity, before such service is supplied by the Company, the individual or entity must apply for service following the process required by the Company or enter into another form of contract between the Company and the individual or entity. Service will not be supplied by the Company until the Company accepts the application or supplies service according to the provisions of the application. This requirement generally applies to, but is not limited to, new installations, installations where service is to be re-established, a change in the class of service to be provided to the customer, or to a change in the identity of the customer to be served.
>
> **B. Acceptance of Application:** When the application for service is accepted by the Company or service is supplied according to the provisions of the application, the application constitutes a service contract between the Company and the customer for supply of electric service subject to these Electric Service Regulations. Additional contracts may be required by tariff, which shall be incorporated in the service contract. Upon acceptance of the application or contract, the individual or entity is not a customer.

[38] *See generally* Hearing Tr.
[39] *See generally* Hearing Tr.

Here, it is undisputed that Mr. Campbell applied to Ohio Edison for electric service at the Property and that Ohio Edison indeed provided electric service to the Property pursuant to that application.[40] It is also undisputed that the service was for Activewarz and it was Activewarz that utilized the Company's service at the Property.[41] Thus, there was a contract between Ohio Edison and Mr. Campbell to provide non-residential electric service to the Property in accordance with the provisions of Ohio Edison's Tariff. Ohio Edison did just that by providing Complainants with the service already connected at the Property – primary service.[42]

Ohio Edison's Tariff classifies the type of service received by a customer based on the voltage delivered to that customer by the Company. For general service installations, there are four types of service – secondary, sub-transmission, transmission, and primary.[43] Installations receiving service from the Company at less than or equal to 600 volts are considered to receive secondary service.[44] Similarly, customers receiving service at voltages greater than 69,000 volts are considered to receive transmission service.[45] Unlike secondary and transmission service, installations that are considered sub-transmission service receive specific nominal voltages of either 23,000 volts three wire or 34,500 volts three wire.[46] Customers receiving service from the Company at any other voltage are considered to be receiving primary service.[47]

Company witness Zapp explained the configuration of Ohio Edison's service at the Property in his pre-filed testimony. Ohio Edison provides service to the Property from a 12.47 kilovolt line on its Mohican Circuit.[48] This service feeds a bank of transformers located on a pole

[40] Hearing Tr. at 24:24 – 25:2 (Campbell Cross).
[41] Hearing Tr. at 23:15-20 (Campbell Cross).
[42] *See* Zapp Testimony at 3:20 – 4:11.
[43] Reinhart Testimony Attachment DLR-2.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Zapp Testimony at 3:22-23.

at the Property – both of which are owned by Complainants' landlord.[49] Thus, while the voltage ultimately reaching the facility may be different due to the non-Ohio Edison transformers and other facilities owned by the Complainants' landlord thereafter, Ohio Edison provides service to the property at 12.47 kilovolts. Under the Company's Tariff, this qualifies as primary service.

Complainants do not dispute that Ohio Edison provides service to the Property from its 12.47 kilovolt line or even that they receive primary service from the Company.[50] Rather, Complainants appear to argue that the rate schedule they are charged under should always be based on characteristics of the service they receive into the facility – particularly whether the service is single or three-phase.[51] As discussed below, such a scheme is inconsistent with both the Company's Tariff and cost of service rate-making principles and should be rejected.

3. Under the Company's Tariff, Ohio Edison must (and does) charge Complainants for service under Rate GP.

Under Ohio Edison's Tariff, each type of service available for general service installations has an associated rate schedule. For primary service, that schedule is Rate GP. Rate GP provides, in part: "Available to general service installations requiring Primary Service. Primary Service is defined in the Company's Electric Service Regulations. Choice of voltage shall be at the option of the Company."[52] As Complainants receive primary service as defined in the Company's electric service regulations, Ohio Edison was obligated to charge them under Rate GP – which is exactly what it did. Moreover, each of the rate schedules available to the other types of general service installations (secondary, sub-transmission, and transmission) have provisions analogous to the

[49] Zapp Testimony at 4:1-5.
[50] Hearing Tr. at 25:3-6 (Campbell Cross).
[51] *See* Hearing Tr. at 9:9-16 (Campbell Direct).
[52] Reinhart Testimony Attachment DLR-1 (emphasis added).

provision quoted above for Rate GP.[53] As a result, Complainants not only meet the criteria for Rate GP, but there is also no other rate under which their current service could be charged. Ohio Edison, therefore, appropriately charged Complainants under Rate GP.

Complainants, however, appear to argue they should not have been charged under Rate GP because they receive only a single-phase service into their facility.[54] Complainants reason that this single-phase service is more akin to secondary service and, therefore, should be charged under the Company's General Service – Secondary ("Rate GS") rate schedule. As explained above though, the Company's Tariff does not dictate the rate schedule under which a customer is charged based on the phase of service the customer receives into its facility. Rather, the rate schedule is determined by the type of service the Company provides the customer, which, in turn, is defined by the voltage at which the customer receives service from the Company. Here, it is undisputed that the Company's service to the Property is a primary service at 12.47 kilovolts, making Rate GP the appropriate rate schedule.

Moreover, Complainants argue for a scheme that is not practicable from a regulatory perspective and inconsistent with cost of service rate-making principles. The Company can only control the services it provides to a customer, and, while it can refuse to connect service if a customer's facilities do not meet appropriate standards, it cannot prevent a customer from deciding to make changes. A regulatory scheme that determines a customer's rate schedule based on service configurations not owned by the Company is subject to potential gamesmanship and substantial deviation from cost of service rates as a result. The Commission, therefore, should reject

[53] *See* Reinhart Testimony Attachment DLR-1; *see also* Tariff at Original Sheet 20, Pg. 1 of 3, "General Service – Secondary (Rate "GS")"; *see also* Tariff at Original Sheet 22, Pg. 1 of 2, "General Service – Subtransmission (Rate "GSU")"; *see also* Tariff at Original Sheet 23, Pg. 1 of 2, "General Service – Transmission (Rate "GT")".
[54] *See* Hearing Tr. at 9:9-16 (Campbell Direct).

Complainants' argument and determine Ohio Edison properly charged Complainants under Rate GP.

4. Complainants' remaining arguments that Ohio Edison charged them under the incorrect rate schedule are similarly without merit.

Complainants also appear to make two additional arguments in support of their conclusion that Ohio Edison should have charged them under Rate GS. First, Complainants argue that an alleged failure to obtain a written contract for services provided to the Property means that they cannot be charged under Rate GP.[55] This argument misunderstands the purpose of a contract under Rate GP and, regardless whether a written contract existed, does not justify the special treatment Complainants seek.

Rate GP provides that "[e]lectric service hereunder shall be furnished in accordance with a written contract . . ." (emphasis added).[56] Accordingly, the terms of any written contract pursuant to Rate GP would necessarily be the same terms provided for in the Rate GP schedule. Indeed, the only additional detail contemplated by this provision of the Rate GP schedule calls for a written contract to contain a contract demand, which could only serve to increase the Company's charges to Complainant.[57] Complainants, therefore, have not been harmed by the absence of a written contract and indeed may have benefitted from it. Moreover, Complainants' speculation that the service configuration at the Property would have been changed to allow for secondary service had a written contract been presented to Complainants' landlord is without record support. Complainants' landlord (the only person empowered to make such a decision) did not testify at hearing and there is no other evidence suggesting this may be the case. The Commission should

[55] *See* Hearing Tr. at 15:2-6 (Campbell Direct); *see also* Hearing Tr. at 53:10-12 (Complainants' Closing Statement).
[56] Reinhart Testimony Attachment DLR-1 at 2.
[57] *Id.*

reject this red herring designed to distract from the undisputed fact that Complainants were charged correctly for the electric service provided to the Property by the Company.

Finally, Complainants also appeared to argue at hearing that they should receive Rate GS because Ohio Edison allegedly provided a former owner of the Property with advice on the reconfiguration of his services that was designed to preserve Ohio Edison's ability to provide primary service to the Property.[58] This allegation similarly finds no support in the record. On cross-examination, Mr. Campbell admitted that, while he was aware of an alleged request by a prior owner to change the configuration of electric service at the Property, he cannot truthfully say he knows what that request entailed.[59] Indeed, Complainants offered no evidence at hearing regarding the details of that request and certainly offered no evidence that the request was to move from primary to secondary service. In short, Complainants' allegation is based on pure speculation and lacks any support in the record.[60] As such, the Commission should reject it outright.

5. Complainants' allegation that Ohio Edison "changed that service on that pole" during the course of this proceeding is both factually incorrect and irrelevant.

Finally, while not directly related to Complainants' allegation that Ohio Edison overcharged them by placing them on the incorrect rate schedule, Complainants' witness Mr. Campbell also alleged at hearing that Ohio Edison "changed that service on that pole" sometime after the pre-hearing conference in this matter in May 2017.[61] Presumably, this allegation pertains to the pole located on the Property to which Ohio Edison provides electric service and is intended to imbue doubt on the configuration of Ohio Edison's services at the Property. This allegation,

[58] *See* Hearing Tr. at 14:6-20.
[59] Hearing Tr. at 26:14-17.
[60] *See Lakota Local Sch. Dist. Bd. of Educ. v. Butler County Bd. of Revision*, 108 Ohio St. 3d 310, 312, 2006-Ohio-1059 (Mar. 22, 2006) ("Mere speculation is not evidence.").
[61] Hearing Tr. at 15:11 – 16:2.

however, is both factually inaccurate and irrelevant to Complainants' claim and, accordingly, should be ignored by the Commission.

The only evidence in the record demonstrating the physical configuration of Ohio Edison's service at the Property was presented by Company witness Zapp. In addition to a detailed description of the service in his pre-filed testimony, Mr. Zapp also provided two pictures which he had previously taken at the Property showing the service configuration.[62] These pictures demonstrate that the change alleged by Mr. Campbell did not indeed occur.

Moreover, even assuming a change did occur (which it did not), Complainants did not allege that the change altered the type of service under which it should be charged. Indeed, Complainants admit that Ohio Edison has historically provided and continues to provide primary service to the Property.[63] As such, this allegation is irrelevant to Complainants' claim that Ohio Edison charged them under the improper rate schedule and, therefore, should be rejected.

As described above, Complainants' first allegation that Ohio Edison charges were unjust or unreasonable because Ohio Edison charged Complainants under the incorrect rate schedule lacks merit. The record evidence demonstrates that Complainants receive primary service from the Company and that primary service is appropriately charged under Rate GP. Accordingly, Complainants have failed to meet their burden as to this first allegation.

B. Ohio Edison Appropriately Performed Its Obligations As It Pertains To The Village Of Loudonville Government Aggregation Program.

Complainants' second allegation in support of its contention that Ohio Edison's charges were unjust or unreasonable is that Ohio Edison wrongfully failed to include them in the Village of Loudonville government aggregation, causing them to pay higher rates. Complainants, again,

[62] Zapp Testimony at 3:7 – 4:5, Attachments MAZ-1, MAZ-2.
[63] Hearing Tr. 25:3-6 (Campbell Cross).

are incorrect for three main reasons. First, Complainants' allegation misunderstands Ohio Edison's role as it pertains to the implementation of government aggregations. Ohio Edison plays a limited role in implementing government aggregations and is not responsible for the ultimate determination regarding whom gets enrolled in the programs. Second, Ohio Edison fulfilled its limited obligations as it pertains to the Village of Loudonville aggregation program. And, finally, even presuming Ohio Edison did not fulfill its obligations (which it did), Complainants' damages were caused by their own failure to apply for the program. Accordingly, Complainants cannot meet their burden as it relates to their second allegation either.

1. Ohio Edison plays a limited role in the implementation of government aggregation programs and is not responsible for ultimate enrollment determinations.

Rule 4901:1-21-17(D)(1) describes an electric utility's obligations as it relates to the implementation of an opt-out governmental aggregation program:

> (D) List of eligible government aggregation customers.
> (1) To assist in the preparation and dissemination of required opt-out notices, a governmental aggregator that is certified by the commission shall request that an electric utility provide, for all customers residing within the governmental aggregator's boundaries, including those who have opted off the pre-enrollment list, the following information:
> (a) An updated list of names, addresses, account numbers, rate codes, percentage of income payment plan codes, load data, and other related customer information, consistent with the information that is provided to other CRES providers.
> (b) An identification of customers that are currently in contract with an electric services company or in a special arrangement with the electric utility.
> (c) On a best efforts basis, an identification of mercantile customers.[64]

Thus, an electric utility's sole role in the implementation of an opt-out governmental aggregation program is to provide the CRES provider serving the governmental aggregation with a list of

[64] O.A.C. 4901:1-21-17(D)(1).

customers "residing within the governmental aggregator's boundaries" and the additional information delineated above. Furthermore, the above-referenced rule and R.C. 4928.20 make it clear that it is the governmental aggregator (or its CRES provider agent), and not the public utility, that is responsible for determining the customers that are ultimately enrolled in the aggregation.[65]

These rules and statutory provisions align with Ohio Edison's policies described in Company witness Reinhart's pre-filed testimony. Specifically, Ms. Reinhart testified that "[Ohio Edison]'s only role in implementing such a government aggregation agreement is to provide, upon request, the CRES provider with a list of all customers within the geographical boundaries of the government aggregation at the time such a list is requested by the CRES provider."[66] As described below, Ohio Edison complied with these statutes, regulations, and its own procedures as it relates to the Village of Loudonville aggregation. Accordingly, Complainants' allegation that Ohio Edison's charges were unjust or unreasonable because Ohio Edison caused them to wrongfully be excluded from the Village of Loudonville aggregation is misplaced, unsupported by the record, and should be dismissed by the Commission.

2. Ohio Edison fulfilled its obligations pertaining to the Village of Loudonville aggregation.

The Village of Loudonville began offering aggregated CRES services to its residents in or around February 2012.[67] As an opt-out aggregation, the Village of Loudonville and FES (its chosen CRES provider) were required to comply with the opt-out notice requirements set forth in R.C. 4928.20 and Rule 4901:1-21-17. Pursuant to R.C. 4928.20(D) the Village of Loudonville or

[65] *See* R.C. 4928.20(H) ("A governmental aggregator shall not include in its aggregation the accounts of any of the following . . .") (emphasis added); *see also* O.A.C. 4901:1-21-17(E)(1) ("Each governmental aggregator shall ensure that only eligible customers are included in its aggregation . . .") (emphasis added).
[66] Reinhart Testimony at 7:9-12.
[67] *See In the Matter of the Application for Certification for the Village of Loudonville*, PUCO No. 11-5935-EL-GAG, Application (Dec. 12, 2011), Opt-Out Notice (Feb. 1, 2012).

FES was also required to send an updated opt-out notice every three years after the commencement of the aggregation. To fulfill these obligations, Ohio Edison was required to provide FES, upon request, a list of customers located within the Village of Loudonville's boundaries.

The record evidence demonstrates three important facts as it relates to Ohio Edison's role in the implementation of the Village of Loudonville aggregation. First, Ohio Edison last received a request for a customer list from FES in 2014.[68] This is prior to Mr. Campbell becoming customer of record at the Property and, accordingly, the Complainants have not been enrolled in the aggregation as part of an opt-out enrollment period.[69] Second, Ohio Edison included the Property in the list provided to FES upon its request in 2014.[70] And, third, the customer of record at the Property prior to Mr. Campbell was under contract with a CRES provider, preventing enrollment in the aggregation.[71]

Complainants' allegation rests on the assumption that, since they have never opted-out of the program, Complainant's non-enrollment in the Village of Loudonville aggregation must be a result of Ohio Edison's failure to follow proper procedures. This is incorrect. Complainants have not been a customer of record at the Property during an opt-out enrollment period and, thus, have never themselves been enrolled in the aggregation through this procedure. Additionally, during the entirety of the time Complainants allege to have been occupying the Property as a tenant (and paying the electric bills), the Property was likely not enrolled in the aggregation because the prior customer of record at the Property was already shopping for CRES services – making him ineligible for inclusion in the program.[72] Moreover, the record demonstrates that Ohio Edison

[68] Reinhart Testimony at 7:16-17.
[69] Reinhart Testimony at 7:17-18.
[70] Reinhart Testimony at 7:18-21, Attachment DLR-4.
[71] Reinhart Testimony at 8:12-19, Attachments DLR-5, DLR-6.
[72] *See* Reinhart Testimony at 8:12-19; *see also* R.C. 4928.20 (H)(2) (prohibiting a governmental aggregator from enrolling a customer under contract with a CRES provider in an opt-out aggregation).

complied with its obligations under Rule 4901:1-21-17 by providing FES with a customer list upon request in 2014.[73] All of this indicates that Ohio Edison fulfilled its obligations as it pertains to the Village of Loudonville aggregation and, therefore, Complainants' non-enrollment in the program was not a result of a failure by the Company.

3. Complainants can apply to participate in the aggregation and have neglected to do so.

Even assuming Ohio Edison failed to meet its obligations (which it did not), Complainants have failed to demonstrate that such failure was the proximate cause of any harm. Complainants are not limited to enrolling in the aggregation program during the opt-out period.[74] Rather, Complainants can apply for enrollment in the program at any time and have simply neglected to do so.[75] Complainants cannot, therefore, allege that any act or omission by Ohio Edison has caused them not to be enrolled in the program for any definitive period of time. As a result, even presuming a failure by Ohio Edison to fulfil its obligations (which there was not), there is no evidence in the record to support a finding that such failure caused damage to Complainants.

Accordingly, as set forth above, Complainants have failed to meet their burden as it relates to this second allegation and the Complaint should be dismissed.

IV. CONCLUSION

Complainants have failed to meet their burden in this proceeding to demonstrate that Ohio Edison's charges were either unjust or unreasonable. As the evidence shows, Ohio Edison at all times charged Complainants in accordance with its Tariff, as it was required to do by law. The

[73] Reinhart Testimony at 18-21.
[74] *See generally* R.C. 4928.20 (allowing for customers to be enrolled in a government aggregation with prior, affirmative consent); *see also* Reinhart Testimony Attachment DLR-3 at 6 (provision allowing for customers to "opt-in" to the Village of Loudonville aggregation "after the expiration of the enrollment period by contacting [FES], who shall determine whether to accept them into Program, and at what rate, subject to written policies mutually agreed upon by the [Village of Loudonville] and [FES]."
[75] *Id.*

configuration of Complainants' service dictated that Ohio Edison charge Complainants under Rate GP, which is exactly what it did. Moreover, Complainants have not challenged (and have presented no evidence demonstrating) that Ohio Edison's Commission-approved Rate GP is either unjust or unreasonable. Rather, Complainants have alleged only that Ohio Edison was charging them under the incorrect rate schedule. Complainants are incorrect and, thus, have failed to meet their burden as it relates to this first allegation.

The record also demonstrates that Ohio Edison appropriately performed all its duties as it relates to the Village of Loudonville government aggregation program. Ohio Edison plays no role in determining what customers are ultimately enrolled in a government aggregation. Indeed, Ohio Edison's only role is to provide the CRES provider servicing the aggregation with a list of customers within the aggregation's boundaries. Again, that is exactly what Ohio Edison did here. As Complainants have failed to meet their burden on both allegations underlying their claim that the Company's charges were unjust or unreasonable, Ohio Edison respectfully requests that the Commission dismiss the complaint in its entirety, with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Ohio Edison Company's Post-Hearing Brief was served upon the following by regular U.S. mail and electronic mail on this 9th day of February 2018.

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Summary: Brief --Ohio Edison Company's Post-Hearing Brief electronically filed by Mr. Joshua R. Eckert on behalf of Ohio Edison Company