BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Electric Service and Safety Standards at Chapter 4901:1-10, Of the Ohio Administrative Code.	))))	Case No. 02-564-EL-ORD

REPLY COMMENTS OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION AND SUMMARY

Robert S. Tongren in his capacity as the Ohio Consumers' Counsel ("OCC") hereby replies to the comments filed by other parties regarding Staff's proposed revisions to the Electric Service and Safety Standards ("ESSS") rules. In these reply comments OCC responds to comments made by Columbus Southern Power Company and Ohio Power Company ("AEP"), MidAmerican Energy Company ("MidAmerican"), WPS Energy Service, Inc ("WPS"), Monogahela Power Company ("Mon Power"), Dayton Power and Light Company ("DP&L"), The Cincinnati Gas & Electric Company ("CG&E"), and FirstEnergy Corp. ("FirstEnergy"). For the most part, the commenters argued that the Public Utilities Commission of Ohio ("the Commission") is attempting to change the rules prematurely and complained that these changes will impose additional costs on the electric distribution utilities ("EDUs"). Some of the EDUs correctly point out that the Commission's review of these rules is much sooner than required by law. CG&E Comments at 2.

While it may be premature to implement major changes to the ESSS rules, there are some significant concerns that the original ESSS rules failed to address, particularly, the definition of "outage" and "momentary interruption.," as they are referred to in Rules 10 and 11. It is important that EDUs use the terms consistently in their reporting and that they do not rely on the "outage" definition used under Rule 7. Under Rule 7 any disruption to electric service, which affects 100-2,500 customers for up to 24 hours is not an outage. Any disruption that affects more than 2,500 customers and lasts up to just under four hours is not an "outage." For these reasons, the rules need to establish a definition for "outage" as it is used under Rules 10 and 11.

The EDUs' comments focused mostly on recommendations that the rule requirements be cut dramatically due to the costs associated with implementing them. In considering their comments, the OCC urges the Commission to keep in mind that the EDUs remain regulated monopolists of the distribution system; if their service quality deteriorates, customers will not be able to move to another EDU. Additionally, because the EDUs are all providing distribution services under rate caps, they have incentives to cut costs, which could result in lower service quality.

Increasing EDU requirements will not interfere with competition nor will it place the EDUs in an untenable position. The Commission has already provided in the electric transition plan cases for means whereby the EDUs will recover for implementing the rules and the transition plans. Additionally, EDUs are collecting regulatory assets and stranded costs for generation plant that their affiliates will own and upon which the affiliates will continue to make profits following full competition. Finally, EDUs can request to recover all costs associated with implementing these rules in rate cases in the

future. Accordingly, the costs of implementing fair and necessary safety and service standards is not a sufficient reason for abandoning them.

Additionally, DP&L and CG&E insisted that the Commission should give them a special recovery mechanism for these costs. DP&L Comments at 1; CG&E Comments at 4. As mentioned, an additional cost recovery mechanism is not necessary and is contrary to S.B. 3 requirements that froze distribution rates during the length of the market development period.

In OCC's review of the initial comments filed by other parties, the issues of greatest concern include:

- the EDUs' resistance to regular reporting and records retention regarding significant service quality issues;
- the EDUs' desire to expand their disclosure of private customer information to many more parties;
- the EDUs' resistance to providing actual meter reads when customers terminate service, begin service and change service rates;
- the EDUs' resistance to complying with reasonable performance levels under Rule 9;
- the EDUs' requests to charge customers significantly above cost for accepting payment for their bills, especially through credit cards;
- the EDUs' and CRES suppliers' requests to make customers liable for payments they made to the biller when the biller has not passed the payment on to the service provider;
- the EDUs' resistance to providing separate bill amounts for the CRES services and the EDU services;
- the EDUs' resistance to a prohibition against crediting payments to amounts subject to a bona fide dispute;
- the EDUs' unwillingness to immediately transfer PIPP customers to the standard service offer; and

- the CRES providers' insistence that partial payments be applied first to CRES charges when partial payments should be applied first to EDU charges in order to prevent disconnection of customers.

II. COMMENTS ON INDIVIDUAL RULES

Rule 4901:1-10-02 Purpose and Scope

Mon Power suggested that the Commission adopt an additional sentence under Rule 2(E), which would explicitly permit EDUs to maintain tariffs that are inconsistent with the rules. Mon Power Comments at 1. This is not necessary. Rule 2(C) explicitly allows for waivers from the rules and the only means whereby an EDU would obtain permission to maintain tariffs that are different from the rules is through the waiver process. The additional sentence Mon Power suggested could mislead parties into believing that they can maintain tariffs that are different from the rules without first applying for the waiver. Accordingly, the Commission should not adopt Mon Power's suggestion.

Rule 2(F) gives EDUs the benefit of a rebuttable presumption that they are providing adequate service in a complaint case filed under Ohio Revised Code Section 4905.26 if an EDU is in compliance with the rules. However, Rule 4901:1-10-27 was explicitly excluded from the rebuttable presumption provision. AEP requests that this exclusion of Rule 4901:1-10-27 be deleted. In its original formulation of Rule 27, the Commission chose between two versions which Staff proposed: Version I, which prescribed a maintenance schedule for EDUs and Version II, which allowed EDUs to design their own maintenance schedule. The Commission adopted Version II and because that version allowed the EDUs to design their own maintenance schedule, determined that the EDUs should bear the risk of their own schedule. For that reason the

Commission expressly excluded Rule 27 from the rebuttable presumption protection provided by other rules.[1] Accordingly, Rule 2(F) should not be amended as suggested by AEP.

Rule 4901:1-10-05 Metering

Mon Power and FirstEnergy asked that Rule 5(I) be deleted. Mon Power Comments at 2; FirstEnergy Comments at 4. Mon Power considers providing an actual meter read at the termination of service, when the customer changes electric service providers or any other time the customer is transferred to a new schedule, to be too inconvenient. FirstEnergy is concerned that this requirement could impose too much of a burden on EDUs once a governmental aggregation program is implemented and many meters must be read. Additionally, AEP requested that Rule 5(I) be revised not to require a meter reading when a customer changes electric service providers or any other time the customer is transferred to a new rate schedule. AEP Comments at 7.

Estimated readings are frequently inaccurate because of variations in usage patterns and because of advances in energy conservation technology. For this reason, EDUs should rely upon actual readings as much as possible, particularly when the inaccuracy of an estimated reading may attribute the wrong charges to a customer. A customer is most likely to be attributed the wrong charges due to estimated meter reads when a customer initiates service, when a customer terminates service, when a customer changes a CRES provider or when a customer is transferred to a new rate schedule. Also, because customers are not likely to be aware of how frequently electric utilities rely upon

[1] *In the Matter of the Commission's Promulgation or Amendments to the Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code,* Case No. 99-1613-EL-ORD, Finding and Order, April 7, 2000, at 17-18

estimated readings to calculate charges, customers need to be made aware that an actual meter read is available to them. For the reasons addressed above Rule 5(I) should not be amended.

Rule 4901:1-10-08 Emergency plans, et al.

Mon Power reported that members of the Commission have indicated that, due to the confidentiality of the emergency plans, the Commission would prefer that these manuals not be submitted to it because of potential liability. Mon Power Comments at 3. Because the Commission is responsible for overseeing the reliability and functioning of the electric distribution system in Ohio, the Commission cannot neglect the thorough review of emergency plans that submission of these plans would allow. The Commission may be concerned about that part of the emergency plan that deals with responses to terrorist acts, particularly within the context of any public records requests the Commission may receive. The Commission would likely get an exception to having to release such information under Ohio Revised Code Section 149.43(A)(2)(c). Alternatively, the Commission should continue to require EDUs to submit their emergency plans as they relate to storms and other acts of nature. Only the part of the plan specifically dealing with terrorist acts should not be submitted.

FirstEnergy objected to the requirement under Rule 8(K) that the EDU submit a report to the Commission if it relies on the actual implementation of an emergency plan as a substitute for any part of the required emergency exercise. FirstEnergy Comments at 17. FirstEnergy wants to be obligated only to provide an oral, informal report. Because the actual implementation of an emergency plan may not be an appropriate replacement

for the part of the emergency exercise the utility wants to forgo, the utility should be accountable and provide a report in writing. In the written report the EDU should document what part of the exercise the implemented plan replaces, why it is an appropriate replacement for that part of the plan and whether the implemented plan indicates that its response to the emergency was sufficient. Accordingly, FirstEnergy's request should not be granted.

Rule 4901:1-10-09 Minimum Customer Service Levels

Staff proposed Rule 9(A)(1) and (2) increases the minimum service level for meeting the standard 90% to 95% of the time. Mon Power complained that this was unreasonable. Mon Power Comments at 3. AEP, FirstEnergy, CG&E and DP&L complained that the increase under Rule 9(A)(2) is unreasonable because it will involve an increase in costs. DP&L Comments at 3, AEP Comments at 13, FirstEnergy Comments at 5, CG&E Comments at 5. While the EDUs provide some cost estimates, the cost estimates are not sufficiently substantiated.

DP&L stated that the increase in the service level would have no commensurate customer benefit. This statement is incorrect on its face. If DP&L meets this service level, then 5% more of the customers will be getting timely new service installations requiring construction. The amendment would thus benefit an additional 5% of the customers who request new service installations. All customers should expect timely service installations. For this reason, the Rule should be retained as proposed.

AEP, Mon Power, FirstEnergy and CG&E requested that EDUs not be required to provide written documentation and justification for their inability to meet the deadline for

installation or upgrade work. AEP Comments at 14, Mon Power Comments at 4, FirstEnergy Comments at 5, CG&E Comments at 7. They indicated that the written documentation and associated record keeping would impose excessive costs on the EDUs. Mon Power claimed that customers prefer oral notifications and AEP and CG&E claimed that written notification would be unnecessary because most work is completed the day following the deadline. If it is true that most delayed work is completed the day after the deadline, it may be appropriate to rely on oral notification to the customer about the delay if it is completed one day past the deadline. However, for work that is delayed beyond one day, the written documentation is necessary in order to ensure that the EDU remains accountable to customers. To incorporate this compromise, Rule 9(A)(3) should be revised to state:

> . . .If such probable completion date cannot be met, repeat notification shall be made to the customer INFORMING THE customer OF the reason for the delay, the steps being taken to complete the work and the revised completion date. IF THE COMPLETION DATE IS WITHIN ONE DAY OF THE DEADLINE ESTABLISHED IN THIS RULE THE NOTIFICATION CAN BE MADE ORALLY TO THE CUSTOMER. DELAYS FOR LONGER THAN ONE DAY MUST BE DOCUMENTED AND EXPLAINED TO THE CUSTOMER IN WRITING. Each subsequent missed completion date shall count as a missed service installation or upgrade pursuant to paragraph (A)(1) or (A)(2) of this rule.

Additionally, FirstEnergy argued that counting each time a date is missed as an additional missed service installation or upgrade under Rule 9(A) may result in misleading results. Rather, FirstEnergy would count each situation in which a particular customer's service installation is missed as just one miss. FirstEnergy perceives that there are particular problem situations that will cause the EDU to miss installation dates

repeatedly. FirstEnergy Comments at 6. The EDUs should continue to count each time a deadline is missed as an additional missed service installation or upgrade. If each missed date is not counted, EDUs could neglect those customers whose installation date was already missed and place all focus on new orders in order to improve their performance reports. This approach to performance standards could result in degredation of service quality and is unacceptable. Additionally, the rules should encourage EDUs to improve installation time even for difficult situations. For those reasons, the rule should remain as it has been proposed.

CG&E, DP&L, FirstEnergy and AEP complained that under Rule 9(B) busy signals or calls, which are disconnected or dropped after being answered, constitute a failure to meet the rule. They consider this unreasonable. DP&L Comments at 3; AEP Comments at 15; CG&E Comments at 8; FirstEnergy Comments at 6. AEP and CG&E suggested that the standard should be that busy signals or calls, which are disconnected or dropped after being answered, should not exceed 5% of all calls to the EDU. OCC agrees that calls that are dropped should not exceed 5% of all calls to meet the standard. Abandoned calls should be considered the same as dropped calls. Busy signals, on the other hand, indicate that a company has a more widespread problem in meeting call levels and each such incident should be reported to the Commission as a failure to meet the standards. EDUs provide a vital service to customers and should make themselves available to customers as needed. In order to incorporate this policy, Rule 9(B) should state:

> (B). . .shall not exceed sixty seconds. Customers' inability to reach the EDU due to busy signals SHALL CONSTITUTE A FAILURE TO MEET THE STANDARD AND MUST BE REPORTED TO THE

COMMISSION. Calls which are disconnected, ABANDONED or dropped after being answered at the EDU shall NOT EXCEED 1% OF ALL CALLS TO THE EDU. BUSY SIGNALS, DISCONNECTED, ABANDONED OR DROPPED CALLS SHALL NOT CONSTITUTE A FAILURE TO MEET THE STANDARD where such occurrences are a result of equipment failure or other problems at the telephone company.

AEP recommended that the requirement that EDUs transfer customers to a live attendant be waived when overflow systems are utilized to handle callers. AEP Comments at 15. AEP explained that during storms companies use overflow systems that do not have the capability of transferring calls to a live agent. If this is the case, the waiver should only be applicable during storm conditions. To incorporate this waiver, the rules should be revised to state:

(3) . . .At any time during the call, the customer shall be transferred to a live attendant if the customer fails to interact with the system for a period of ten seconds following any prompt. IF DURING A MAJOR STORM THE EDU MUST RELY ON OVERFLOW SYSTEMS TO HANDLE CALLERS THAT WOULD HAVE OTHERWISE RECEIVED A BUSY SIGNAL, THE REQUIREMENT OF THE LIVE AGENT AVAILABILITY SHALL BE WAIVED.

The Staff amended Rule 9(C) to require the EDUs who miss the customer service target for any month to report to the Commission. DP&L, CG&E, FirstEnergy and AEP believe that such a requirement is inappropriate. DP&L Comments at 5; CG&E Comments at 9; FirstEnergy Comments at 6; AEP Comments at 17. The Commission's experience with telephone service quality problems demonstrates otherwise. If service quality problems are left unchecked, it may require years of intervention for the public

utilities to correct them.[2] The Commission must be alerted immediately as service quality problems arise. Suppliers who are not meeting the targets at anytime should be required to provide a plan of correction immediately.

FirstEnergy complained that Rule 9(C)(2) requires EDUs to report "major storm" performance data to the Commission. FirstEnergy Comments at 7. After reporting, the Commission Staff and the EDU will determine if the "major storm" data is to be included or excluded from the performance values under Rule 9(A) and (B). FirstEnergy claims this reporting requirement is not justified. Because EDU performance during a "major storm" is important in returning power to customers who may be in life-threatening situations, the Staff should be commended for including this requirement and the Commission should retain it.

DP&L also argued that it should not be required to maintain records relating to compliance with this rule for three years because it is costly and has no benefit to customers. Records retention benefits customers to the extent that it aids the Commission in ensuring that EDUs are accountable for their service quality. If service quality problems arise with a particular company, and the Staff sees a need to audit the company records or if a formal complaint is filed, the company should have sufficient records to evidence its compliance with the rules.

Rule 4901:1-10-10 Distribution system reliability

AEP requested that it be permitted to exclude all outages that are caused by

[2] *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of Case No. 99-938-TP-COI, the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5 Ohio Administrative Code,* Case No. 99-938-TP-ORD Second Supplemental Opinion and Order (January 31, 2002).

factors outside the control of the EDU from the calculation of the indices, proposed targets and any revised performance targets. AEP Comments at 20. This exclusion would be inappropriate because the indices should measure not just weaknesses in the distribution system but also the length of time it takes EDUs to make corrections, regardless of whether or not the outage was caused by factors in the control of the EDU. Accordingly, AEP's request should not be granted.

FirstEnergy and Mon Power requested that outages caused by transmission facilities should not be excluded from distribution target values and indices because it will require them to adjust their calculations. FirstEnergy Comments at 7; Mon Power Comments at 6. Transmission outages are of a different concern to the Commission. Because the Commission should be able to gauge how the distribution company is functioning, separately from the transmission function, the Commission should have access to the distribution target values and indices separate from the transmission target values and indices. For that reason the request by FirstEnergy and Mon Power should be denied.

DP&L perceives that Rule 10(C)(2) is duplicative of the reporting requirements under Rule 26 and suggested that the reporting requirements of Rule 10(C) be deleted. DP&L Comments at 5. It appears that the annual report required under Rule 10 addresses specific performance targets of distribution system reliability and should not be absorbed and/or diluted in the general reporting requirements under Rule 26. Accordingly, the reporting requirements under Rule 10(C) should be retained.

DP&L, FirstEnergy and AEP argued that the requirement under Rule 10(C)(2)(b) that it submit an action plan for any distribution system reliability index that drops below

the target for a single year is inappropriate and unnecessary. DP&L Comments at 5; FirstEnergy Comments at 7; AEP Comments at 21. Mon Power complained that the status reports should only be required annually, rather than monthly. Mon Power Comments at 6. They claim this is true because reliability indices are influenced by random events and variation. Their arguments are beside the point. Because targets are meant to be the minimum level of performance, EDUs should be required to respond to a situation where they have not met the target. Even though the indices may be influenced by random events, EDUs should at least be held to a plan that monitors for non-random events and encourages appropriate responses to random events when the EDUs do not meet the minimum performance standard. Allowing a distribution reliability index to remain below the minimum for more than one year without paying any attention to the potential problem could lead to a long-term serious reliability problem. Reliability problems in the provision of such a vital service as electricity could result in serious harm to customers.

Rule 4901:1-10-11 Distribution Circuit Performance

DP&L, Mon Power, CG&E, FirstEnergy and AEP complained that the increase in reporting requirements under Rule 11(C) from 4% to 10% is excessive and burdensome and that current standards already require quality and reliable service. DP&L Comments at 5, Mon Power at 5, CG&E Comments at 10, FirstEnergy Comments at 8, AEP Comments at 23. To the contrary, the Staff is to be commended for this amendment. Because the EDUs are all presently serving under a rate freeze, the EDUs may reduce service quality costs by decreasing resources that are committed to such service quality

activities as maintaining distribution circuit performance. So, while the EDUs may have provided quality and reliable service in the past, the present rate structure may lead to service deterioration. The increased reporting requirements will inhibit such deterioration.

AEP and CG&E also suggested that EDUs not submit distribution circuit performance reports until 120 days after each reporting period, rather than the 60 days suggested by the Staff. AEP Comments at 23, CG&E at 10. They claimed that EDUs need more time to prepare the reports. However, because it is important that reliability problems be identified and resolved quickly, the 60 day delay proposed by the Staff is preferable. AEP's and CG&E's suggested revision should not be adopted.

AEP also requested that outages caused by factors outside the control of the EDU be excluded in the calculations of circuit performance indices under Rule 11(B). As indicated earlier, performance data should reflect the speed with which the company responds to outages, regardless of whether the outages were caused by a factor in the control of the company. Accordingly, this exclusion should not be incorporated.

AEP, FirstEnergy and Mon Power recommended that EDUs not be required to report the MAIFI index, which represents the average number of momentary interruptions per customer under Rule 11(C)(5)(d). AEP Comments at 26; FirstEnergy Comments at 9; Mon Power Comments at 7. AEP claimed that it would be expensive for EDUs to measure MAIFI and that it would be of little benefit to customers. Additionally, AEP and Mon Power also requested that EDUs not report the total number of "momentary interruptions" under Rule 11(C)(9) for the same reasons they did not want to report the MAIFI index. AEP Comments at 30; Mon Power Comments at 8.

Most importantly, the Rules 10 and 11 should have a definition of "momentary interruption" as well as a definition for "outage" so that it is clear to the EDUs, the Commission and interested parties what "momentary interruptions" involve.

Customers do complain about the inconveniences associated with "momentary interruptions" such as resetting clocks. Additionally, "momentary interruptions" could lead to customers losing data while working on their computers. "Momentary interruptions" may be important with regard to the relative reliability of the system and the Commission should require EDUs to file some indices or data that reveals the degree to which each EDU may have a problem with "momentary interruptions."

Both AEP and CG&E objected to having to provide a description of and rationale for remedial action taken or planned to improve circuit performance under Rule 10(B). AEP Comments at 21; CG&E Comments at 11. They insisted that the reports would require significant expenditures of money. However, EDUs must be required to repair their systems, particularly where weaknesses exist and the reports are necessary to ensure that service reliability problems are being corrected. For that reason, the requirement should not be removed.

Rule 4901:1-10-12 Provision of customer rights and obligations

AEP wants more options for which it can release private customer information under Rule 12(F)(1) and (2). AEP Comments at 35. The proposed rules already permit EDUs to disclose the customer's account number and social security number for commercial collection and credit reporting without the customer's consent. AEP wants to broaden that disclosure to the vague category of "programs designed to assist the EDU's

credit and collection activities." Such a broad category would unnecessarily place customers at risk of having personal information fall into the wrong hands. Identity theft is becoming an increasingly serious problem[3] and is achieved mostly through disclosure of an individual's social security number. For this reason, EDU's ability to disclose a customer's social security number should be limited severely.

Moreover, AEP and FirstEnergy want to be able to disclose a customer's social security number to law enforcement and security agencies and FirstEnergy wants to be able to disclose a customer's social security number to public agencies, courts of law and law enforcement agencies. AEP Comments at 35; FirstEnergy Comments at 10. Public utilities should not provide public agencies, courts of law, and law enforcement and security agencies private information unless they are compelled to through the proper channels. The Commission should deny this request.

DP&L suggested that Rule 12(I) be deleted because it allows large commercial and industrial customers to change their mind about a contract, which is contrary to what was decided in the pro forma supplier tariffs. DP&L Comments at 8. However if Rule 12(I) is deleted, it would take away the residential customers' notice in the customers' notice of rights and obligations that they are able to rescind a contract within seven days after the being sent the confirmation notice. If DP&L is correct about the rescission not applying to large commercial and industrial customers, the Rule should be revised to reflect this.

[3] See "When Bad Things Happen to Your Good Name," Guest Column, Ohio Attorney General, Betty D. Montgomery, February 2002, www.ag.state.oh.us.

FirstEnergy recommended that the Commission adopt a time limit by which a customer must lodge a slamming complaint and suggested six months. FirstEnergy Comments at 11. Because most customers have never shopped for electric service and are not accustomed to having to watch their electric bills for slamming possibilities, it is premature to place a time limit on a customer's ability to lodge a slamming complaint. Additionally, most customers will not be billed by the CRES provider and will not be making payments to the CRES provider so that it will be difficult to realize quickly that slamming has occurred. Accordingly, a limit should not be placed on the time in which a customer has to lodge a slamming complaint.

Additionally, DP&L recommended that the language under Rule 12(J)(3), which describes the customer's rights under the slamming rule, be simplified. DP&L Comments at 8. DP&L is concerned that such language will confuse customers and will conflict with the rules. The language that DP&L suggested to replace Rule 12(J)(3) is too vague and does not put customers on notice as to each of their rights under the slamming provisions. The Staff's proposed language is preferable as it identifies that the customer must be credited and/or reimbursed for switching fees and "for any charges in excess of what the customer would have paid absent the unauthorized change." The Staff's language clarifies the meaning of being "made financially whole." Moreover, EDUs must ensure that customers have all the rights and obligations found in the rules, and must spell out a customer's rights with regard to slamming. Accordingly, Rule 12(J)(3) should not be modified.

AEP and FirstEnergy, on the other hand, recommended that the customer not be notified that he or she will be switched back without a fee following a slam and that his

or her account will be credited with the switching fee under Rule 12(J)(3)(c). AEP Comments at 38, FirstEnergy Comments at 10. They believe that the customer should be responsible for obtaining the switching fee from the CRES provider directly rather than having the switching fee credited by the EDU, who then must recover it from the CRES provider. The process the Commission adopts to rectify unauthorized switches should be designed to correct enrollments and to make customers whole quickly. It is far more efficient to require a biller to collect switching fees and unauthorized charges from a CRES slammer than to require each customer to recover the money. Moreover, if the biller is also the EDU, the EDU holds a financial security from the CRES supplier and it has a mechanism available to it to recover the switching fee and other customer losses. Accordingly, the suggested revisions should not be adopted.

CG&E recommended that Rule 12(J) be revised to allow for informal resolution of slamming complaints before the Commission Staff becomes involved. CG&E Comments at 16. The revision should not be adopted. The process established by the proposed rule is efficient and streamlined. It gives the Commission Staff immediate information relating to slamming by particular suppliers or problems relating to fraudulent or misleading marketing practices. Such problems need to be corrected quickly for all customers. Allowing a supplier to rectify unauthorized switching or misleading marketing practices only for those customers who complain to the supplier does little to solve the problem.

In addition, CG&E refers to the slamming process established in the rules as a "formal complaint" with the Commission. CG&E Comments at 17. As discussed in OCC's Initial Comments, the process established in the rules is not a "formal complaint."

The slamming process in the rules is not the final determination of a slamming allegation; customers still have the right to file a formal complaint under Ohio Revised Code Section 4905.26 if they are dissatisfied with the Staff's determination. The Commission should clarify this.

DP&L and FirstEnergy suggested that the notice of customers' rights and obligations not inform the customer that he or she has a right to a meter read, and that the customer's right to a meter read only be addressed in Rule 5. DP&L Comments at 8; FirstEnergy Comments at 11. The Rule 12 notification requirement is meant to inform customers as to all their rights and obligations concerning electric service. The right to an actual meter read is an important customer protection measure, especially when a customer's usage varies over time and estimated reads may be inaccurate. Therefore, the right to an actual meter read should remain included in the notice of customers' rights and obligations.

Mon Power requested that the notice of customers' rights and obligations be revised not to require actual meter reads "at the termination of service, transfer to a new electric service provider, or transfer to a new rate schedule." Mon Power Comments at 9. As mentioned previously, actual reads are important for customers to be charged appropriately, particularly at the end and beginning of service. Therefore, Mon Power's request should not be granted.

Rule 4901:1-10-14 Deposits

CG&E indicated in a discussion under Rule 24 that it does not require customers to provide their social security number to establish service. CG&E Comments at 22.

Electric service is a vital service and customers can establish credit in numerous ways without giving their social security number. And given the identity theft problem mentioned previously, the Commission should include under Rule 14 a provision that EDUs may not require the disclosure of a customer's social security number to establish service. An appropriate means of implementing this policy would be to include it under Rule 14(C) as an additional provision:

> (5) IN ANY CASE, THE EDU MAY NOT REQUIRE A CUSTOMER TO DISCLOSE HIS OR HER SOCIAL SECURITY NUMBER IF THE CUSTOMER CAN ESTABLISH CREDITWORTHINESS UNDER ONE OF THE ABOVE CRITERIA WITHOUT DISCLOSURE OF HIS OR HER SOCIAL SECURITY NUMBER.

DP&L, Mon Power and AEP recommended that the deposit limit of 1.3 times the average monthly usage should be increased to 2 times the average monthly usage for all classes of accounts under Rule 14(E). DP&L Comments at 8, Mon Power Comments at 9; AEP Comments at 40. Because electric service is a vital service for households and deposits add an additional burden to establishing or maintaining service, the Commission should not consider increasing the deposit limit. The deposit represents a payment for something above and beyond actual services rendered by the company. And it is especially difficult to meet for many customers who face financial difficulties. Additionally, EDUs can recover losses from uncollectible amounts through the ratemaking process. The deposit limit need not be increased as requested by the EDUs.

Rule 4901:1-10-19 Delinquent residential bills

DP&L perceives that Rule 19(A) and (C) are not consistent with Rule 33(G). Because Rule 33(G) requires that payments of customers facing disconnection apply first to past due EDU and CRES charges and not to current EDU charges, DP&L apparently believes that a customer facing disconnection during a billing cycle can be disconnected for nonpayment of current EDU charges. DP&L suggested that because of this inconsistency, either Rule 33 should not be adopted as proposed or Rule 19 should be deleted. It appears from the language of the rules that a customer cannot be disconnected during a current billing cycle for nonpayment of current charges. Accordingly, the rules should not conflict. However, if this is not correct and customers facing disconnection during a billing cycle could be disconnected if current EDU charges are not paid that month, then Rule 33 should be altered and Rule 19(A) and (C) should be retained. To remove Rule 19(A) and (C) would be inconsistent with Commission procedure[4] and policy[5] as OCC indicated in its Initial Comments.

AEP requested that the Commission clarify under Rule 19(B) that a CRES provider performing consolidated billing is not considered an authorized agent of the EDU. AEP Comments at 46. The end result of AEP's requested clarification is that EDUs would have justification to disconnect customers if the CRES provider fails to submit payment for the customer's EDU services. This result is unacceptable. If a customer has paid a CRES provider for consolidated CRES and EDU services, and the

[4] Rule 4901:1-5-19(C); Proposed Rule 4901:1-10-22(G); Rule 4901:1-29-12(J).
[5] Rule 4901:1-5-19(A); Rule 4901:1-10-19(A); Rule 4901:1-29-12(K).

CRES provider fails to pass the amount on, the EDU should be responsible for obtaining the amount from the biller. Electric service is a vital service and customers should not be disconnected due to the fault of a biller. Therefore, AEP's request should be denied. In the alternative, if the clarification is adopted, the rule should explicitly state that a customer can not be disconnected by the EDU if the biller fails to pass on a customer's payment for EDU services.

Mon Power recommended that Rule 19(D)(2) be deleted because it could be confusing to customers. Mon Power Comments at 13. Rule 19(D)(2) requires notice to the customer that nonpayment of CRES charges, will result in the customer being returned to the standard service offer. This is important for the customer to understand. For that reason, Mon Power's recommendation should not be adopted.

Rule 4901:1-10-21 Customer complaints, slamming complaints, and complaint-handling procedures

DP&L objected to the Staff's proposed slamming procedure, particularly with regard to not requiring the customer to contact a supplier regarding an alleged slam before the customer is referred to the Staff for an investigation. DP&L Comments at 10. DP&L and CG&E are concerned that many of the alleged slams may be inadvertent errors relating to the transposition of numbers. See id.; CG&E Comments at 15. DP&L perceives that these errors should be dealt with without Staff intervention.

On the other hand, if a large number of slamming allegations are related to inadvertent errors, this is something of which the Staff should be aware. Large increases in such errors could indicate that the parties may not be relying on sufficient resources to implement switches. Additionally, the customers who are the victims of inadvertent

slams should be assured the same reimbursement and corrections provided to victims of intentional slams. Moreover, as mentioned previously, suppliers who have problems with slamming should not be given an opportunity to rectify unauthorized switches only for those customers who complain. It is important that the Staff obtain immediate information regarding slamming problems so that all victims of the slamming suppliers are made whole. For these reasons, Rule 21(H) should not be revised.

FirstEnergy requested that Rule 21(H)(3) be revised so that it would not limit the payments EDUs are entitled to receive from CRES providers in a slamming situation. FirstEnergy Comments at 12. FirstEnergy's request should be denied. EDUs should recover only the incremental costs incurred to correct the unauthorized switch and the rule should not be revised as requested.

AEP suggested that EDUs not be required to meet with customers under Rule 21(F). AEP Comments at 48. AEP is concerned that this rule would require its employees to meet with customers in instances where the employees' safety could be jeopardized. However, the rule states that EDUs should be willing to meet with customers "at a reasonable time and place." Accordingly, the rule permits the EDU to arrange a meeting with the customers at a place where the employees could feel safe. Therefore, no change is necessary.

AEP again objected to the EDU having to recover money from CRES providers who have slammed customers under Rules 21(H)(3),(4), and (5). AEP Comments at 49. As discussed above, the Rule should not be adjusted in the manner proposed by AEP as it is far more efficient for the EDU or another biller to collect money from a slammer than is it for each individual customer to do so.

Mon Power requested that EDUs not be prohibited from issuing the confirmation notice when a customer is returned to a CRES provider after having been slammed because to alter the processes to not send the notice would be costly. Mon Power Comments at 13. The prohibition was incorporated in the rules because the rescission period included in the notice does not apply to customers returning to a CRES provider after having been slammed. Some EDUs suggested that the notification be altered to state that if a customer is returning to a CRES after having been slammed, the rescission period does not apply to them. If the Commission determines that EDUs should continue to send the confirmation notice to customers, it is preferable that the EDUs revise the confirmation notice as described above, rather than relying on the customer to understand that the rescission does not apply.

Rule 4901:1-10-22 EDU customer billing and payments

WPS noted the limitations of the price to compare required under Rule 22(B)(23). WPS Comments at 2. WPS' point is that most utilities' price to compare is calculated based upon the customer's usage during the month covered by the bill. However, FirstEnergy's usage is based upon an average of the customer's usage through the year. The price to compare based on one month's usage is more comparable to rates that vary seasonally. A price to compare, such as FirstEnergy's, that is based on the year's average monthly usage is more comparable to rates that are fixed. In order to correct this problem, the Commission could require EDUs to provide both forms of the price to compare.

In order to implement the requirement, Rule 22(B)(23) should read:

> A price-to-compare notice on residential and small commercial bills THAT GIVES ONE RATE PER KWH THAT IS APPLICABLE TO THE CUSTOMER'S 12-

MONTH AVERAGE USAGE AND ONE RATE PER KHW THAT IS APPLICABLE TO THE CUSTOMER'S CURRENT MONTH USAGE. THE NOTICE SHOULD EXPLAIN THAT THE RATE BASED ON THE 12 MONTH AVERAGE IS COMPARABLE TO FIXED RATE OFFERS AND THE RATE BASED ON THE CURRENT MONTH USAGE IS COMPARABLE TO SEASONAL RATES; and . . .

Mon Power requested that the Commission not require it to include all the language included under Section (B)(5) in its bills. Mon Power Comments at 14. Mon Power indicated that it has spacing problems on its bills and perceives that the information is excessive. Mon Power's argument is not persuasive. Because the customer usually needs assistance when the customer is reviewing a bill, it is the most important location for information about how the customer can obtain assistance from OCC or the PUCO. In addition, it is important for customers to know when assistance is available. For this reason, Mon Power's request should not be granted.

AEP suggested that the Commission strike the words "or order" from Rule 22(B)(24). AEP Comments at 51. The rule should continue to allow the Commission to order information on the bill through an order because parties may require the Commission to interpret a rule through a Commission order.

Mon Power also asked that Rule 22(C) be removed because future bill revisions that have not changed the content of the bill should not need approval from the Commission. Mon Power Comments at 22. Whether a change in a bill is a change in content is relative and frequently a matter of opinion. Even a change in the location of necessary bill language can dramatically reduce the likelihood that the language will be seen. For that reason, all bill format changes should be reviewed.

Mon Power suggested that the last sentence of Rule 22(D) be changed to allow authorized agents and local payment centers to charge more than two times the cost of a first-class stamp. Mon Power Comments at 14. This suggestion should not be adopted. Customers should not have to pay fees that are above the related costs to pay their bills when they pay through an authorized agent or payment center.

Additionally, because EDUs have been closing many of the local payment centers, EDUs should be required to provide other alternative means of payment such as credit card payment, without additional fees. As mentioned in our initial comments, many utilities have been allowing customers to pay with a credit card but allow such customers to use only one agent for that purpose. OCC Comments at 13. Many of the customers who pay using that method are facing disconnection, and are, therefore, desperate. In order to use that method of payment, the credit card agents require customers to pay over $5 for the service. This is a large fee, especially in light of the fact that most retailers accept credit card payment with no fee attached. Most importantly, customers who wish to pay their bills with a credit card do not have a choice as to which agent they will use, and the monopolist agent has total discretion to set its fee. For this reason, the Commission should also require EDUs to accept credit card payments without charging a fee. At the very least, if the Commission is going to permit the agents to set the charge at the agent's discretion, the customers should have a choice as to which agent they will use.

Mon Power also objected to the requirement of Rule 22(E), which does not permit EDUs to disconnect customers until after the close of business on the disconnection notices. Comments at 15. Mon Power's objection is based on the company's practice of

scheduling disconnections after 8:00 a.m. on the disconnection date of the notice. To remedy this problem, Mon Power could reschedule its disconnection for after 8:00 a.m. on the day after the disconnection date on the notice to comply with the rule. Accordingly, Mon Power's objection should not be accepted.

Mon Power and DP&L asked that Rule 22(G) be deleted because its systems do not allow not crediting payments to disputed amounts. Mon Power Comments at 15. DP&L Comments at 12. Mon Power indicated that deletion of the paragraph will not result in the disconnection of a customer who does not make payment toward a disputed amount. Its assurances are not convincing, particularly in cases where the disputed amount is very large and the dispute takes a long time to resolve. DP&L's business practices, which can be changed, do not resolve the issue either. Customers should not be required to pay disputed amounts and should especially not be disconnected for non-payment of disputed amounts. Accordingly the last paragraph of Rule 22(G) should be retained.

Rule 4901:1-10-23 Billing adjustments

DP&L recommended that Rule 23(B) be stricken because the requirement already exists under Ohio Revised Code Section 4933.28. Many of the rule requirements are restatements of requirements in the Ohio Revised Code. The purpose of restating these requirements in the rules is to provide alternative sources of information and more detail regarding requirements. Because it is important for customers to be informed as to what their rights are as utility customers, and because the rules provide an alternative source of

information for them, the billing adjustment limitations of Rule 23(B) should remain in the rules.

Rule 4901:1-10-24 Customer safeguards and information

DP&L asked that the Commission agree that when a customer initializes an installation form for EDU service at his premises and has a verbal agreement with the EDU for a service, the initialization meets the "positively elected to subscribe" requirement contained in Rule 24(D)(2) DP&L Comments at 13. It is not clear whether DP&L is referring to the establishment of electric distribution service or some other types of ancillary, competitive service. If DP&L is referring to the establishment of initial service, a recording on the telephone would be the most convenient means of showing that a customer positively elected to subscribe. EDUs should rely on the method that will be the most convenient for both customers and themselves.

Moreover, the Commission should not agree that an initialization of an installation form that does not fully describe the terms and conditions of a service should meet the requirement of Rule 24(D)(2). If the EDU is going to rely upon a written document to show that a customer positively elected to subscribe, it would be just as easy to obtain a full signature as an initialization. And it would be equally convenient to include a full description of the terms, price and conditions of the service on a document. Accordingly, DP&L's request, as described in its comments, should be denied.

AEP requested again that under Rule 24(E)(1) and (2) it be permitted to expand its disclosure of a customer's social security number and account number without the customer's consent for "programs designed to assist the EDU's credit and collection

activities" and to law enforcement and security agencies. AEP Comments at 54. FirstEnergy wants to be able to disclose social security numbers to public agencies, courts of law and law enforcement agencies. FirstEnergy Comments at 13. As previously discussed, under Rule 12(F)(1) utilities should disclose private customer information to public agencies, courts of law and law enforcement agencies only if they are compelled under the proper channels. The requested expansion is dangerous and uncalled for. Accordingly, the EDUs' changes should not be adopted.

Mon Power objected to the message that EDUs must use to relay information to the customer regarding mass eligibility lists under Rule 24(E)(6). Mon Power Comments at 16. Mon Power complained that the information is too much to include on a bill. However, the rule allows the EDU to place the message on a separate notice from the bill or as a separate communication. For that reason, Mon Power's objection is not justified.

Rule 4901:1-10-26 Annual system improvement plan report

DP&L requested that this report not be filed, but rather just submitted to the Director of Consumer Services Department under Rule 26(B). DP&L Comments at 13 DP&L considers the information to be sensitive business information. Because EDUs remain regulated monopolies, and the reliability and performance of their systems is of particular importance to all ratepayers who bear the cost of the systems, the annual reports should be public information. And because EDUs do not face competition, there is no reason these annual reports should be considered sensitive business information. DP&L's request should be denied.

DP&L suggested that Rule 26(B)(3)(b) be deleted because the Commission has the ability to track complaints. The number and substance of customers' safety and reliability complaints is of critical importance to all ratepayers and to other parties, such as OCC. Because EDUs remain regulated monopolists for distribution service, they must be accountable to all customers who they serve. Accordingly, EDUs should include the number and substance of customers' safety and reliability complaints in annual reports that are available to the public and thus, the requirement under rule 26(B)(3)(b) must be retained.

DP&L recommended that Rule 26(C) be deleted because it includes items, the company asserts, that would be better addressed in the CRES rules. DP&L Comments at 13. The Rule does address requirements that should be included in the CRES rules. However, EDUs should be forbidden to enter into a supplier agreement that does not include the requirements identified under Rule 26(C). Moreover, when an EDU bills for a CRES provider, the EDU should be forbidden to enter into a supplier agreement that does not explicitly recognize that the customer's liability to the CRES ceases once a customer pays the EDU for CRES charges. Accordingly, Rule 26(C) should remain in place.

Rule 4901:1-10-27(A) Inspection, maintenance, repair, and replacement of transmission facilities (circuits and equipment)

Again, AEP requested that the Commission override its previous decision that the rebuttable presumption should not apply to the EDU's compliance with rules relating to distribution and transmission maintenance under Rule 27. AEP Comments at 58. As mentioned previously under the discussion of Rule 10, the Commission determined that because EDUs may design their own maintenance schedules, EDUs must also bear the

risk that such schedules are adequate and therefore the rebuttable presumption should not apply. Accordingly, AEP's proposed revision should not be adopted.

Rule 4901:1-10-29 Coordination with CRES providers

WPS requested that all EDU-based charges should be assessed to the customer instead of the CRES provider. WPS Comments at 3. WPS is concerned that the affiliates of EDUs will have these charges waived or "absorbed" by the EDU. If the EDU is waiving or absorbing EDU-based charges for its affiliates, then the EDU is violating the affiliate code of conduct. Accordingly, requiring the EDU to assess the customer all EDU-based charges is not necessary.

However, either the customer or the CRES provider should be assessed all the EDU-based charges. It would be too difficult for customers to compare offers if some offers include EDU-based charges and other do not. Additionally, Rule 29(B) should be revised to include either the requirement that all EDU-based charges be assessed against the CRES providers, including affiliate CRES providers or the requirement that all EDU-based charges be assessed against the customer.

Mon Power, WPS and FirstEnergy believe that the customer should remain liable to the CRES provider until the EDU pays the CRES provider under Rule 29(C). Mon Power Comments at 17; WPS Comments at 4; FirstEnergy at 14. Mon Power's concern appears to be with returned checks. However, this concern is not necessary because if a check is returned due to insufficient funds, the customer will be liable to the EDU. Additionally, customers should not be held liable for the EDU's failure to pay the CRES provider once the customer has paid the EDU.

AEP suggested that supplier agreements under Rule 29(C) not address the customers' rights and that a reference to the customer's liability should not be included. AEP Comments at 59. AEP's deletion should not be adopted. It is important that the supplier agreements establish that once the customer pays the EDU, the CRES provider can recover the payment from the EDU. This reference does not establish the rights of a third party; it addresses the liability of the EDU. If the Commission wishes to clarify that in the rule, it could be revised to state:

> (C) . . . The supplier agreement must also provide that if the EDU collects customer payments on behalf of the CRES provider, when the customer makes payment to the EDU, THE CRES PROVIDER MUST COLLECT THE PAYMENT AMOUNT FROM THE EDU.

AEP requested that the requirement that the confirmation notice be "competitively neutral" be deleted from Rule 29(F)(1) because it is a remedy for a problem that does not exist. AEP Comments at 60. However, AEP then admits that it could exist if EDUs change their confirmation notices. Because it is important that confirmation notices remain competitively neutral, the rule should remain as a preventative measure.

FirstEnergy and CG&E argued against the immediate transfer of PIPP customers to the standard service offer as required under the Staff's proposed Rule 29(I)(ii) and (iii). FirstEnergy Comments at 14; CG&E Comments at 27. They complained that this rule is unfair because it would simply transfer the burden of PIPP customers from the CRES providers to the EDUs. However, the proposed Rule is appropriate. PIPP customers should become eligible for PIPP benefits immediately upon being accepted into the program. Additionally, EDUs are able to recover their losses related to PIPP payments

through the PIPP program and should be willing to accept the customers immediately. Accordingly, the Rule should be adopted as it is proposed.

WPS reported that it had losses associated with customers who were not transferred back to the standard service offer immediately upon being found eligible for PIPP. WPS Comments at 5. If the proposed rule is not adopted and the CRES providers must continue to serve PIPP customers after they are placed on the program, the Commission should consider ensuring that CRES providers receive PIPP dollars for reimbursement. The Commission should be particularly concerned if the CRES providers are facing a competitive disadvantage and EDUs are collecting more in PIPP dollars than they need be.

Rule 4901:1-10-31 Environmental Disclosure

WPS suggested that the Commission require CRES providers to provide full environmental disclosure information only upon enrollment, once a year thereafter, and quarterly when there is a change in the information. WPS Comments at 5. WPS recommended that when there has been no change in the environmental information, customers be notified that there has been no change by bill message.

This suggestion will likely save CRES providers and possibly customers expenses. However, there should be a quarterly bill message that indicates that there have been no changes in environmental information and that the customer can obtain the environmental information at the CRES provider's website or through the mail upon request.

Rule 4901:1-10-33 Consolidated billing requirements

DP&L complained that the Staff ignored all input that Staff received through the operational support working group. DP&L Comments at 16. DP&L's major complaint seems to be that the Staff is requiring consolidated billers to separate regulated charges from CRES charges on the bill. Additionally, CG&E argued that customers do not want to see this kind of detail on the bill. CG&E Comments at 28. However, the separation and itemization of CRES charges is required under Ohio Revised Code Section 4928.07. Therefore, the itemization of charges must either be done on a bill or disclosed to the customer in a separate mailing. Additionally, Ohio Revised Code Section 4928.10 directed the Commission to issue rules that require bills with " price disclosure and disclosures of total billing units for the billing period and . . . separate listing of each service component to enable a customer to recalculate its bill for accuracy." Because of those provisions, the Staff could not adopt the recommendations of EDUs and/or suppliers that they not be required to separate out the regulated charges and each of the CRES charges on bills.

CG&E requested that billers be permitted to include additional information on their bills that has been approved by the Commission. CG&E Comments at 28. However, the language that CG&E proposes does not reflect that proposal. Id. at 39. CG&E's proposed language states that the biller can include additional information "if, in the discretion of the EDU or CRES provider, such information is warranted." In order to accurately reflect CG&E's request, the Commission should adopt the following language:

> (A) . . . THESE ARE MINIMUM BILL REQUIREMENTS AND NOTHING HEREIN PREVENTS AN EDU OR CRES PROVIDER FROM INCLUDING ADDITIONAL INFORMATION THEREON, IF

PREVIOUSLY APPROVED BY THE
COMMISSION. . .

DP&L suggested numerous changes to Rule 33 that address whether a consolidated biller must break down current and past due charges between the EDU and CRES charges.[6] Most of DP&L's recommendations regarding not separating CRES charges from EDU charges should be disregarded. One appropriate suggestion that DP&L made with regard to not separating CRES charges from EDU charges was its suggested change to Rule 33(B)(21): that the budget amount due need not be itemized between the EDU and CRES charges.

FirstEnergy complained that it could not provide supplier balances when it does provide a CRES budget billing amount because all the supplier gives them is the budget amount. FirstEnergy at 16. However, suppliers should provide FirstEnergy the budget balance amount and it should be on the bill. In any case, as required under Ohio Revised Code Sections 4928.07 and 4928.10, each bill must distinguish between the EDU charges and each different CRES provider's charges.

Perhaps a reasonable compromise would be to allow an EDU to provide either each of the CRES and EDUs budget amounts currently due or the current charges of both the EDU and the CRES accounts. In addition, each bill should provide a total budget balance for both the CRES and the EDU charges. Customers need to be aware of their future responsibilities with regard to a budget-billing program. In addition, customers must be able to have a sufficient separate listing of service components so that the customer can recalculate his or her bill for accuracy.

[6] See DP&L Comments at 16-18 addressing Rule 33(B)(13); Rule 33(C); 33(C)(6); Rule 33(D); Rule 33(D)(3); and Rule 33(D)(4).

DP&L pointed out that Rule 33(A) does not specify who is responsible for providing the various notices that EDUs are presently required to provide and have been providing as bill inserts. DP&L Comments at 16. The Commission should continue to require EDUs to provide each of the notices DP&L identified in its comments.[7] However, the CRES billers could assume these responsibilities and charge the EDUs a reasonable price to include the notices in the bill.

Mon Power again requested that the Commission reduce the language required on the bill associated with the customer's ability to contact the PUCO and OCC under Rule 33(B)(5). Mon Power Comments at 20. As discussed under Rule 22, all of this language is necessary and should not be reduced.

DP&L and AEP claimed that Rule 33(B)(12) is duplicative of Rule 33(C)(6) and (4). DP&L Comments at 16; AEP Comments at 63. Because Rule 33(4) and (6) addresses only EDU charges and Rule 33(B) also addresses CRES charges, Rule 33(B)(12) is not duplicative. The suggested deletion should not be implemented.

CG&E's recommendation to add "during the market development period" after Rule 33(B)(20), which requires the inclusion of the price to compare on the bill, is not necessary and should not be adopted. CG&E Comments at 41. It is premature to determine at this time what will be needed on the bill after the market development period. Moreover, CG&E's suggestion to delete "transition charge" from Rule 33(C)(4) is inappropriate and the Commission should not incorporate it into the Rules. Id.

WPS recommended that Rule 33(C)(5) should require notice to the customer when only the EDU's charges are in the budgeted amount so that customers are aware

[7] Extended payment plan notices, certified supplier lists, energy theft inserts, life support inserts, medical certification inserts, excise tax inserts and low income weatherization inserts.

that they have to pay more than the budgeted amount. WPS Comments at 7. Frequently, customers only pay the budgeted amount and do not pay CRES charges. Id. This notice would be helpful to customers.

In addition, the rule should require that the bill show both the current balance of the EDU account and the current balance of the CRES account if both charges are in budgeted amounts. The current balances are important in allowing customers to know how far ahead or behind they may be on their actual balances. Having only a current balance of the EDU account may mislead the customers into believing that it is for both accounts. Accordingly, Rule 33(C)(5) should read:

> (5) If the customer is on a budget plan the monthly budget amount and the current balance of EACH account THAT IS CHARGED UNDER A BUDGET PLAN. IF ONLY ONE ACCOUNT IS UNDER A BUDGET PLAN THE BILL WILL NOTE UNDER OR NEAR THE BUDGET AMOUNT THAT ADDITIONAL PAYMENT MUST BE MADE ON THE OTHER ACCOUNT.

DP&L recommended that the consolidated billers not have to list separately late payment fees. DP&L Comments at 17. While they may not have late payment fees for CRES provider charges because it purchases receivables, CRES providers and other EDUs that are consolidated billers may have late payment fees listed on the bill. Therefore, DP&L's recommended change should not be adopted.

DP&L pointed out that Rule 33(D)(5) requires a separate listing of the provider(s) of each generation service appearing on the bill, even though only one supplier can provide generation service. Id. However, it is possible that two different CRES providers could provide competitive services. DP&L's suggested changes should not be incorporated.

DP&L and FirstEnergy opposed the requirement under Rule 33(D)(6) that changes in the providers, rates, terms or conditions appearing on the first two consecutive bills should be highlighted. DP&L Comments at 18; FirstEnergy Comments at 16. They stated that they do not have the ability to track changes in CRES programs or to highlight or underline them on its bills, and insisted that it would be costly to do so. However, the highlighting of these changes are required under Ohio Revised Code Section 4928.10(C)(5). The EDUs' suggested changes should not be adopted.

AEP and CG&E requested that the Commission delete Rule 33(F)(3), which states that the entity that is responsible for giving notices to customers, remain responsible, regardless of whether that entity is billing. AEP Comments at 66, CG&E Comments at 31. AEP suggested that the Commission impose some of the notice responsibility upon the CRES providers when the CRES providers perform consolidated billing. The deletion should not be made because notices are not necessarily associated with billing. The EDUs should remain responsible for most of the notices, as the EDUs already recover such costs through rate cases.

MidAmerican and WPS agreed with the proposed partial payment priority schemes under Rule 33(G)(1) and (2). MidAmerican Comments at 4; WPS Comments at 17. However, DP&L, Mon Power, FirstEnergy, CG&E and AEP correctly noted that the customer's partial payments should be credited under Rule 33(G) so that the allocation of a partial payment to CRES charges will not lead to the customer's disconnection from regulated services. DP&L Comments at 19; Mon Power Comments at 21; FirstEnergy Comments at 17; CG&E Comments at 31; AEP Comments at 67. As mentioned previously, this approach is consistent with the Commission's past procedure and policy,

whereas the Staff's proposed priority is not[8]. Additionally, disconnection of electric service has serious health and safety implications, leading to the disintegration of households and families.

Again Mon Power asked that EDUs be permitted to allocate payments to charges being disputed, arguing that failure to allocate them to disputed charges would require special handling under Rule 33(G)(2)(a). Mon Power Comments at 21. As already addressed under Rule 22, this change should not be made.

II. CONCLUSION

For the reasons stated above, the other parties' suggested changes to the proposed rules should be rejected. OCC respectfully urges the Commission to adopt rules consistent with OCC's initial comments.

Respectfully submitted,

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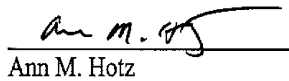

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[8] See notes 4 and 5, supra.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Comments of the Ohio Consumers' Counsel have been served upon the following parties by first class mail this 13th day of May 2002.

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