

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Adoption of Electric )  
Service and Safety Standards, Chapter )  
4901:1-10 of the Ohio Administrative Code )

PUCO  
Case No. 02-564-EL-ORD

**MEMORANDUM CONTRA  
APPLICATIONS FOR REHEARING**

**I. INTRODUCTION**

Now comes Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel ("OCC") on behalf of the residential utility consumers of the State of Ohio and, pursuant to Ohio Adm. Code 4901-1-35(B), responds to the Applications for Rehearing filed herein from the Public Utilities Commission of Ohio's ("the Commission's") September 26, 2002 Finding and Order ("F&O"). Dayton Power & Light ("DP&L"), Columbus Southern Power Company and Ohio Power (together "AEP"), Ohio Edison Company, The Cleveland Illuminating Company and the Toledo Edison Company (collectively, "FirstEnergy"), Cincinnati Gas & Electric Company ("CG&E"), Constellation NewEnergy, Inc., Industrial Energy Users-Ohio and the OCC filed Applications for Rehearing on October 25, 2002. The OCC responds to the applications filed by AEP, DP&L, FirstEnergy, and CG&E.

In this Memorandum Contra, the OCC supports the Commission's adoption of:

- requirements that electric distribution utilities ("EDUs") provide actual meter reads and notify customers that they have the right to an actual meter read;
- more rigorous minimum service standards and reporting and notification requirements regarding compliance with those standards;

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- increased performance standards regarding distribution system reliability and reporting requirements regarding compliance with those standards;
- the requirement that EDUs not charge a switching fee to customers who have been slammed;
- the requirement that consolidated bills include sufficient detail; and
- the consolidated bill payment priority when the customer submits only a partial payment.

## **II. ARGUMENT**

- A. The Commission's adoption of the meter reading requirements under Ohio Adm. Code 4901:1-10-05(I)(3), Ohio Adm. Code 4901:1-10-05(I)(2), and Ohio Adm. Code 4901:1-10-29(F), is lawful and reasonable.**

### **Ohio Adm. Code 4901:1-10-05(I)(2)**

Ohio Adm. Code 4901:1-10-05(I)(2) requires the EDU to provide, at the customer's request, two actual meter reads per year at no charge in addition to the one actual meter read required without the customer's request. The Commission adopted the provision as a means of providing a customer the opportunity for an actual meter read when the customer perceives that it is necessary. For example, the provision gives the customer the opportunity to request an actual meter read when the customer switches to another supplier at a new rate. F&O at 7.

FirstEnergy and DP&L complained that this requirement is unduly burdensome. FirstEnergy suggested that customer-requested meter reads should be limited only to times when the customer's usage has been estimated for more than two consecutive months. FirstEnergy Application for Rehearing at 2. DP&L requested that EDUs be required to provide a maximum of only two meter reads per year. DP&L Application for Rehearing at 3.

The limitations suggested by FirstEnergy and DP&L may not allow customers to use the two meter reads when they would benefit most from an actual meter read—at the time of a switch. The Customer's monthly usage can deviate a great deal from their historical usage. For that reason usage estimates can be inaccurate. When a customer switches from one supplier to another, the customer is changing electric rates. It is important that all the kWhs the customer used under each supplier is allocated to the appropriate rate. Without an actual meter read, it is not possible to identify when kWhs were used. Therefore, without an actual meter read kWhs used will not likely be allocated to the appropriate rate.

Under FirstEnergy's proposed limitation, customers who switch during the two months after an actual meter read would not be permitted to obtain an actual meter read when they switch. DP&L's proposal would not allow customers to have an actual meter read when they switch if the EDU has already actually read their meter more than once that year.

Moreover, because EDUs are only required to provide one actual meter read per year under Ohio Adm. Code 4901:1-10-05(I)(1), the additional requirement that EDUs provide customers two free actual meter reads per year is not burdensome. Although EDUs are required to make reasonable attempts to obtain an actual meter reading each billing cycle, they may abandon those attempts if the customer and the EDU have agreed to other arrangements. Under the rules EDUs have ample opportunity to reduce actual meter reading requirements. For those reasons, Ohio Adm. Code 4901:1-10-05(I)(2) should remain in effect, without limitation.

**Ohio Adm. Code 4901:1-10-05(I)(3)**

Ohio Adm. Code 4901:1-10-05(I)(3) requires the EDU to inform the customer at the time the customer initiates or terminates service, that the customer has a right to an actual meter

reading. AEP insisted that this would involve an enormous cost because most customers would request an actual reading. AEP Application for Rehearing at 9. AEP supports its conclusion by describing the results of a survey it conducted. *Id.* However, AEP did not give a full description of the procedure it used to conduct the survey, nor did it give a specific description of the questions that were asked. Accordingly the results can not be evaluated nor can they reasonably be relied upon here. Nonetheless, AEP urges the Commission to accept the results of the survey as a basis for not allowing customers to request meter readings when they terminate or initiate service. AEP perceives that precision must be compromised to avoid unnecessary costs. *Id.*

Contrary to AEP's claims, precision is not the only factor that would be compromised if the Commission deletes the requirement. Fairness is also at risk. One month's kWh usage can deviate a great deal from historical usage. Simply replacing an air conditioner or furnace or installing other weatherization technology can cause usage to differ tremendously from one month to another. An estimate based on the customer's prior usage could be faulty. Customers should not be required to pay for kWhs they did not use due to a faulty estimate. Only the customer knows when changes such as those have been made. For that reason, customers should be given an opportunity to have an actual meter read upon termination or initiation of service.

**Ohio Adm. Code 4901:1-10-29(F)**

Ohio Adm. Code 4901:1-10-29(F)(1)(d) requires the EDU to give notice to customers in enrollment confirmations that customers may request an actual meter read before the transfer of the service to a new provider. AEP requested that this provision be deleted because the Commission indicated that "the requirement to obtain an actual meter reading when the service provider is changed . . . is unnecessary." AEP Application for Rehearing at 26, F&O at 7. In the

provider is changed . . . is unnecessary.” AEP Application for Rehearing at 26, F&O at 7. In the current rules, the Commission does not require EDUs to complete an actual meter read if the customer does not request one at the time of the switch. Without an actual meter read at the time of the switch, some kWhs may be allocated to the wrong rate.

Ohio Adm. Code 4901:1-10-05(I)(2) gives customers the right to request an actual meter read two times a year in order to avoid being charged on the basis of an inaccurate estimate. Additionally, the rules require the EDUs to inform customers that they may request one of those actual reads at the time of the switch. For those reasons, the confirmation notice should remind customers of that opportunity and the rule should not be removed.

**B. S.B. No. 3 mandates increased reporting and notification requirements under Ohio Adm. Code 4901:1-10-09.**

R.C. 4928.11 directs the Commission to enact rules that specify the necessary minimum service quality, safety and reliability requirements for noncompetitive retail electric services. For that reason the Commission should sustain the service standards and reporting and notification requirements it has established under Ohio Adm. Code 4901:1-10-09.

**Ohio Adm. Code 4901:1-10-9(A)(2)**

FirstEnergy argued that EDUs should not be required to count each time a date is missed on one job as an additional missed service installation or upgrade under Ohio Adm. Code 4901:1-10-9(A)(2). FirstEnergy Application for Rehearing at 3. FirstEnergy complained that it would have to reprogram its existing system to count each miss accordingly. FirstEnergy complained that to count each miss for the same job would place excessive weight on jobs with

“severe problems” in calculating whether a standard has been missed. FirstEnergy did not provide sufficient support that this requirement is unduly burdensome.

If each missed date is not counted, EDUs could neglect those customers whose installation date was already missed and attend to only new orders in order to improve their performance statistics. OCC Reply Comments at 9. This approach could lead to degradation in service quality and is unacceptable. OCC Reply Comments at 9. Moreover, the rules should provide EDUs with incentives to improve installation time even on jobs with “severe problems.” For those reasons the Commission should retain the rule as adopted.

**Ohio Adm. Code 4901:1-10-09(A)(3)**

FirstEnergy also claimed that Ohio Adm. Code 4901:1-10-09(A)(3) would be too burdensome because it requires EDUs to provide a written explanation rather than telephone call to the customer when a completion date for installation or upgrades will be delayed by more than two days. FirstEnergy Application for Rehearing at 3. Originally the Staff proposed that EDUs *be required to provide a written explanation any time EDUs do not meet a completion date.* In response, AEP and CG&E claimed that the written explanation is not necessary because most delays are for only one day. AEP Comments at 14, CG&E Comments at 7. The adopted rule is a reasonable compromise to the Staff’s proposed rule that addresses AEP’s and CG&E’s concerns. Accordingly, the Commission should retain the current rule.

**Ohio Adm. Code 4901:1-10-9(C)**

Ohio Adm. Code 4901:1-10-9(C) requires each EDU to submit a report each month that it is unable to meet the standards with regard to service turn ons and upgrades and telephone

they fail to meet the standards two months in a row. AEP Application for Rehearing at 13, DP&L Application for Rehearing at 4, FirstEnergy Application for Rehearing at 4. DP&L and FirstEnergy argued that the reporting requirement itself was unduly burdensome. Although neither explained how preparing the report would be burdensome.

On the other hand, AEP did not complain that the reporting requirement itself is burdensome. Rather AEP complained that having to report each month they failed to meet the standard would require the EDUs to meet the standards each and every month. AEP Application for Rehearing at 13. AEP notes that if EDUs have to report each month they fail to meet the standard then EDUs will have to add additional staff to meet the standards during peak months. *Id.* AEP appears to assume that the standards have been designed to not apply to “peak” months.

The revisions advanced by AEP, DP&L and FirstEnergy would dilute service standards, and thus lower service quality. The standards established under Ohio Adm. Code 4901:1-10-9(A) and (B) have been designed to provide a certain level of service quality on a monthly basis. If EDUs only have to report when they fail to meet the standard two months in a row, EDUs would only have to meet the standards every other month. *Id.* This runs counter to the purpose of the standards.

In addition, the reporting requirements associated with the standards should not be used to lessen service quality, even during peak periods. The reporting requirements should be consistent with and should support, rather than undermine the standards. For that reason, the reporting requirements under Ohio Adm. Code 4901:1-10-9(D) should require EDUs to report each month they fail to meet the standards in order to be consistent with the monthly standards. If the reporting requirement is consistent with the standard it will better support the service quality the rule is designed to ensure.

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**C. The increased reporting requirements under Ohio Adm. Code 4901:1-10-10 and 4901:1-10-11 are mandated by S.B. No. 3**

R.C. 4928.11 directs the Commission to adopt rules establishing minimum requirements for noncompetitive services. Specifically it commands:

The rules shall include prescriptive standards for inspection, maintenance, repair, and replacement of the transmission and distribution systems of electric utilities; shall apply to each substantial type of transmission or distribution equipment or facility; shall establish uniform interconnection standards to ensure transmission and distribution system safety and reliability and shall otherwise provide for high quality, safe, and reliable electric service.

For that reason the Commission is compelled to maintain the reporting requirements it has established under Ohio Adm. Code 4901:1-10-10 and 4901:1-10-11.

The EDUs objected to many of these requirements, mostly on the basis of the cost involved.<sup>1</sup> However, the Commission should insist upon compliance with those requirements. All of the EDUs are subject to the distribution rate freeze order under S.B. No. 3. Because the EDUs' revenues are limited under that rate freeze, the EDUs have a strong incentive to reduce costs in order to increase their profits. The EDUs can reduce costs by decreasing the resources they commit to the transmission and distribution systems and their related services. If the Commission does not insist upon "*prescriptive* standards for inspection maintenance, repair and replacement of the transmission and distribution systems" (emphasis added) it is likely that service degradation will occur.

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<sup>1</sup> CG&E Application for Rehearing at 5; AEP Application for Rehearing at 14; DP&L Application for Rehearing at 5; and FirstEnergy Application for Rehearing at 5.



**D. The requirement that EDUs not charge customers who have been slammed a switching fee under Ohio Adm. Code 4901:1-10-12(H) 4901:1-10-12(J)(3)(a) and 4901:1-10-21(H)(4)(5)(6) is lawful and reasonable.**

AEP argues that requirements under Ohio Adm. Code 4901:1-10-12(H), 4901:1-10-12(J)(3)(a) and 4901:1-10-21(H)(4)(5)(6) that do not permit EDUs to charge slammed customers a switching fee is too costly for EDUs to implement. AEP Application for Rehearing at 23.

AEP complained that it must manually intervene in order to prevent charging a slammed customer a switching fee. *Id.* In the alternative, AEP suggested that EDUs be permitted to charge customers the fee and require customers to recover the switching fee themselves from the slamming competitive retail electric service ("CRES") provider. *Id.* at 24. AEP perceives that to require EDUs to correct the actions of other parties is unfair.

Even if one accepts AEP's proposition, requiring the customer to pay the switching fee and then recover it from the CRES provider is even more inequitable than requiring the EDUs to forgo the switching fee. As the OCC mentioned in its Reply Comments, EDUs are in a much better position to recover the switching fee from the CRES supplier than are individual customers. OCC Reply Comments at 18. Experience with other utility industries shows that if a CRES supplier slams one customer, it is likely that it will slam more than one customer. In such a case the EDU will be able to bill the CRES supplier for all the switching fees at one time. Additionally, the EDU will hold a financial security from the CRES provider and it will be able to collect for the costs of the switch without difficulty on the basis of that security.

**E. The requirement under Ohio Adm. Code 4901:1-10-33(C) that EDUs provide billing detail is lawful and reasonable.**

CG&E requested that the Commission not require billers to provide additional billing detail on consolidated bills as required under Ohio Adm. Code 4901:1-10-33(C). CG&E

Application for Rehearing at 24. CG&E's criticizes this requirement because of the cost associated with implementing it and the lack of evidence that customers want that much detail.

However, S.B. No. 3 compels the detail currently required by the rules. R.C. 4928.10(C)(2) requires that bills containing CRES charges include "to the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy." And as the Commission noted in its decision, the separation of EDU from CRES charges is particularly important for customers. Since customers can be disconnected for nonpayment of EDU charges, they must have a clear indication on the bill as to which charges are EDU charges. F&O at 41.

**F. The payment allocation priority for partial payments established under Ohio Adm. Code 4901:1-10-33(G) is a lawful and a reasonable compromise.**

The Commission revised the partial payment allocation priority under Ohio Adm. Code 4901:1-10-33(G). Under the new scheme, EDU current charges have been subordinated to CRES past due charges and CRES current charges. Three of the four EDUs who filed applications for rehearing objected to this revision.<sup>2</sup> The OCC has previously objected to this Staff proposed revision. OCC Reply Comments at 38.

However, since the Reply Comments were filed, two Commission proceedings have provided additional information to support the Staff's proposal. The complaint docket, *In the Matter of the Complaint of WPS Energy Services, Inc. and Green Mountain Energy Company v. FirstEnergy Corp.*,<sup>3</sup> brought to light information regarding the degree to which payment priority

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<sup>2</sup> CG&E Application for Rehearing at 15, AEP Application for Rehearing at 28, DP&L Application for Rehearing at 10.

<sup>3</sup> Case No. 02-1944-EL-CSS

may affect the value of receivables and the amount of the purchase of accounts receivable discount. Additionally, concerns have been raised regarding how the value of receivables will affect the bidding prices that would be obtained under the competitive bidding process that is being considered in another docket, *In the Matter of the Commission's Promulgation of Rules for the Conduct of a Competitive Bidding Process for Electric Distribution Utilities Pursuant to Section 4928.14, Revised Code*.<sup>4</sup> A payment priority that subordinates all CRES charges to current EDU charges may increase the bidding price substantially.<sup>5</sup> Accordingly, given the above-cited information, this provision is a reasonable approach from the perspective of Ohio's residential consumers.

### III. CONCLUSION

The Commission's rules established in this docket could greatly facilitate participation in the retail electric market in Ohio. Accordingly, for the reasons stated above, the Commission should not grant rehearing on:

- requirements that EDUs provide actual meter reads and notify customers that they have the right to an actual meter reads;
- more rigorous minimum service standards and reporting and notification requirements regarding compliance with those standards;
- increased performance standards regarding distribution system reliability and reporting requirements regarding compliance with those standards;

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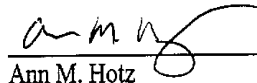
<sup>4</sup> Case No. 01-2164-EL-ORD

<sup>5</sup> However, R.C. 4928.10(D)(3) requires that consolidated billers apply partial payments to EDU past due charges first. That requirement is incorporated in the rule.

- the requirement that EDUs not charge a switching fee to customers who have been slammed;
- the requirement that consolidated bills include sufficient detail; and
- the consolidated bill payment priority when the customer submits only a partial payment.

Respectfully submitted,

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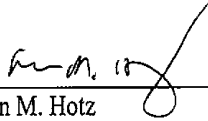


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Ohio Consumers' Counsel Memorandum Contra Applications for Rehearing have been served upon the following parties by first class mail this 4th day of November 2002.

  
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