

73 Ohio Jur. 3d Payment and Tender § 43

Ohio Jurisprudence, Third Edition August 2022 Update

Payment and Tender
Thomas Muskus, J.D.

VII. Application of Payments

A. In General

§ 43. Application of payments, generally

Topic Summary Correlation Table References Divisional References

West's Key Number Digest

West's Key Number Digest, **Payment** 36 to 47(3)

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Excess of **payment** for one period as applicable to subsequent period under contract or mortgage providing for periodic **payments**, 89 A.L.R.3d 947

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Ohio Forms: Legal and Business §§ 25:191 to 25:193 (Payment or application of trust income)

The common-law rules regarding the **application of payments** apply in Ohio.¹ Hence, a debtor owing a creditor more than one debt or a debt composed of several items has the right to direct to which debt or debts or to which item of a single debt and in what amounts a **payment made should be applied**.² Where the debtor fails so to direct, the creditor may make the **application** as the creditor sees fit.³ Where both the debtor and creditor have failed to direct the **application of a payment**, the duty devolves on the court to be exercised according to the justice and equity of the case.⁴

Rule 4901:1-10-02 | Purpose and scope.

Ohio Administrative Code / 4901:1 / Chapter 4901:1-10 | Electric Companies

Effective: June 29, 2009 **Promulgated Under:** 111.15

(D)(2)

(A) The rules in this chapter:

(1) Apply to investor-owned electric utilities, as defined in this chapter, and transmission owners.

(2) Are intended to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices.

(B) The commission may, in addition to the rules in this chapter, require electric utilities and/or transmission owners to furnish other or additional service, equipment, and facilities upon:

(1) The commission's own motion.

(2) Formal or informal commission resolution of a complaint.

(3) The application of any electric utility.

(C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

(D) The rules in this chapter shall not relieve the electric utilities and/or transmission owners from:

(1) Providing adequate service and facilities as prescribed by the commission.

(2) Complying with ^{the} laws of this state

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(2) Complying with the laws of this state.

(E) Except as set forth below, the rules of this chapter supersede any inconsistent provisions, terms, and conditions of the electric utility's tariffs. An electric utility may adopt or maintain tariffs providing superior standards of service, reliability or safety, or greater protection for customers or consumers. Further, an electric utility may adopt or maintain tariffs which are not inconsistent with the rules of this chapter.

(F) When an electric utility and/or transmission owner in a complaint proceeding under section [4905.26](#) of the Revised Code demonstrates compliance with the relevant service or performance standard of this chapter, excluding rule [4901:1-10-27](#) of the Administrative Code, a rebuttable presumption is created that the electric utility is providing adequate service regarding that standard. Such presumption applies solely to the specific standard addressed by the commission for the time period at issue in the complaint proceeding. No such presumption is created merely by compliance with any reporting requirement of this chapter. In addition, to the extent the service and performance standards in this chapter are based on system-wide data, no such rebuttable presumption is applicable to complaints regarding the adequacy of service provided either to individual customers or consumers or to any segment of the system of an electric utility and/or transmission owner.

(G) No tariff of an electric utility shall incorporate exculpatory clauses that purport to limit or eliminate liability on the part of the electric utility to its customers or others as a result of its own negligence when providing a regulated service. No electric utility tariff shall incorporate provisions which purport to establish liability on the part of the electric utility's customers for acts or failures to act involving an electric utility's facilities, which are beyond the control of the customer. Any contrary provisions in an electric utility's tariff now on file with the commission shall be eliminated.

Last updated September 30, 2021 at 2:17 PM

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Supplemental Information

Authorized By: [4905.22](#), [4905.04](#), [4928.06](#), [4928.11](#)

Amplifies: [4933.121](#), [4905.06](#), [4905.22](#), [4928.11](#)

Five Year Review Date: 9/30/2026

Prior Effective Dates: 7/1/1999, 9/18/2000, 1/1/2004

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Rule 4901:1-10-30 | Failures to comply with the rules or commission orders.

Ohio Administrative Code / 4901:1 / Chapter 4901:1-10 | Electric Companies

Effective: June 29, 2009 **Promulgated Under:** 111.15

(A) Any electric utility or CRES provider that fails to comply with the rules and standards in this chapter, or with any commission order, direction, or requirement promulgated thereunder, may be subject to any and all remedies available under the law, including but not limited to the following:

- (1) Forfeiture to the state of not more than ten thousand dollars for each such failure, with each day's continuance of the violation being a separate offense.
- (2) Corrective action to effectuate compliance.
- (3) Restitution or damages to the customer/consumer.

(B) Enforcement of any rule in this chapter or commission order, direction or requirement promulgated thereunder, will be conducted in accordance with Chapter 4901:1-23 of the Administrative Code.

Last updated September 30, 2021 at 2:17 PM

Supplemental Information

Authorized By: [4905.04](#), [4928.06](#), [4928.08](#), [4928.16](#)

Amplifies: [4928.11](#), [4928.16](#)

Five Year Review Date: 9/30/2026

Prior Effective Dates: 9/18/2000, 1/1/2004

Rule 4901:1-10-19 | Delinquent residential bills.

Ohio Administrative Code / 4901:1 / Chapter 4901:1-10 | Electric Companies

Effective: November 1, 2021 **Promulgated Under:** 111.15



In addition to the requirements of Chapter 4901:1-18 of the Administrative Code, **no electric utility may disconnect service to a residential customer** when:

(A) That customer fails to pay any charge for a non-tariffed service, including competitive retail electric service (CRES).

(B) Any authorized agent or CRES provider providing billing and collection services for the electric utility fails to submit payment for the customer's tariffed distribution and/or transmission service(s) rendered by that electric utility.

(C) The customer fails to pay any amount in bona fide dispute. Where the customer has registered a complaint with the commission's call center or filed a formal complaint with the commission which reasonably asserts a bona fide dispute, the electric utility cannot disconnect service when the customer pays either the undisputed portion of the bill or the amount paid for the same billing period in the previous year.

(D) The electric utility issues a disconnection notice which fails to separate regulated from non-tariffed charges, including CRES charges.

(E) The electric utility fails to include on the disconnection notice a statement that:

(1) Failure to pay charges for non-tariffed products or services may result in loss of those products or services.

(2) Failure to pay charges for CRES may result in cancellation of the customer's CRES contract by the CRES provider, and return to the electric utility's standard-offer

generation service. This provision is applicable only on accounts issued a consolidated bill for electric services.

Last updated November 1, 2021 at 1:36 AM

Supplemental Information

Authorized By: R.C. [4905.22](#), [4905.04](#), [4928.06](#), [4928.11](#)

Amplifies: R.C. [4905.06](#), [4905.22](#), [4928.11](#), [4933.122](#)

Five Year Review Date: 9/30/2026

Prior Effective Dates: 7/1/1999, 9/18/2000, 1/1/2004, 6/29/2009, 12/20/2014

Rule 4901:1-10-22 | Electric utility customer billing and payments.

Ohio Administrative Code / 4901:1 / Chapter 4901:1-10 | Electric Companies

Effective: November 1, 2021 **Promulgated Under:** 111.15

(H)(1), (H)(2), and (H)(3)

(A) This rule applies to electric utility bills that do not include any competitive retail electric service (CRES) provider charges. Requirements for consolidated billing appear in rule [4901:1-10-33](#) of the Administrative Code.

(B) Customer bills issued by or for the electric utility shall be accurate, shall be rendered at monthly intervals, and shall contain clear and understandable form and language. Each bill shall state at least the following information:

(1) The customer's name, billing address, service address, and account number.

(2) The electric utility's name and its payment address.

(3) The electric utility's twenty-four hour local and toll-free telephone numbers for reporting service emergencies.

(4) A statement that customers with billing questions or complaints should call or write the electric utility first. The bill shall list the electric utility's local and toll-free telephone numbers and the address where a question or complaint may be sent.

(5) The following text:

"If your complaint is not resolved after you have called your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service)."

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The Ohio consumers' counsel (OCC) represents utility customers in matters before the PUCO. The OCC can be contacted at 1-877-742-5622 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.pickocc.org>."

(6) The rate schedule, if applicable.

(7) Dates of the service period covered by the bill.

(8) The billing determinants applicable:

(a) Beginning meter reading(s)

(b) Ending meter reading(s).

(c) Demand meter reading(s).

(d) Multiplier(s).

(e) Consumption(s) for each pricing period.

(f) Demand(s).

(9) An identification of estimated bills.

(10) The due date for payment. The due date for residential bills shall not be less than fourteen days from the date of postmark. For residential bills being issued from outside the state of Ohio the due date shall not be less than twenty-one days.

(11) The current billing that reflects the net-metered usage for customer generators, if applicable.

(12) Any late payment charge or gross and net charges, if applicable.

(13) Any unpaid amounts due from previous bills, any customer credits, and ^{Top}

amount due and payable.

(14) The current balance of the account, if the residential customer is billed according to a budget plan.

(15) The current gas and electric charges separately, if the customer is billed for gas and electric service on the same bill.

(16) If applicable, each charge for non-jurisdictional services, and the name and toll-free telephone number of each provider of each service.

(17) Any nonrecurring charge.

(18) Any payment(s) or credit(s) applied to the account during the current billing period.

(19) Any applicable percentage of income payment program (PIPP) billing information:

(a) Current PIPP payment.

(b) PIPP payments defaulted (i.e., past due).

(c) Total PIPP amount due.

(d) Total account arrearage.

(20) An explanation of codes and abbreviations used.

(21) At a minimum, definitions for the following terms, or like terms used by the company, if applicable: customer charge, delivery charge, estimated reading, generation charge, kilowatt hour, and late payment charge.

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(22) If applicable, the name of the CRES provider and a statement that such provider is responsible for billing the supplier charges.

(23) A numerical representation of the customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period.

(24) The price-to-compare notice on residential customer bills and a notice that such customers can obtain a written explanation of the price-to-compare from their electric utility.

(25) Other information required by Ohio law or commission rule or order.

(C) Each electric utility shall publish and maintain an online active bill calculator that shows each and every rate or charge and permits customers to enter their billing determinates to determine the accuracy of their bill.

(D) Any new bill format proposed by an electric utility shall be filed with the commission for approval. If an application for sample bill approval is not acted upon within forty-five calendar days, said sample shall be deemed approved on the forty-sixth day after the filing.

(E) Each electric utility shall, upon request, provide customers with an updated list of the name and street address/location of the nearest payment center and/or local authorized agent, and alternative methods available for payment of customer bills. If an electric utility accepts payments from customers via authorized agents, the electric utility shall provide signage to the authorized agent with its logo, or other appropriate indicators, that affirm the payment location as an authorized agent of the electric utility. Customers shall not be charged more than two dollars for processing their payments by cash, check, or money order at authorized agent locations.

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(F) When a customer pays a bill at the electric utility's business office or to an authorized agent of the company, that payment, including any partial payment, shall be immediately credited to the customer's account where feasible, and in any event be credited to the customer's account as of the date received at the business office or by the agent. No electric utility shall disconnect service to a customer who pays, to the electric utility or an authorized agent of the electric utility, the total amount due on the account (or an amount agreed upon between the electric utility and the customer to prevent disconnection), by the close of business on the disconnection date listed on the disconnection notice. Payment received by an authorized agent of the electric utility shall constitute receipt of payment by the electric utility.

(G) Each electric utility shall establish a policy for its own personnel and for its authorized agents to handle billing disputes, requests for payment arrangements, and payments to prevent disconnection of service. If such matters cannot be handled by an agent authorized to accept payments, the electric utility shall provide customers with its local and toll-free numbers to use at a nearby telephone.

(H) Each electric utility shall credit any customer's partial payments in the following order:

(1) Past due distribution, standard offer generation, and transmission charges.

(2) Current distribution, standard offer generation, and transmission charges.

(3) Other past due and current charges for non-jurisdictional services.

Budget billing payments and payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.

(I) Any electric utility wishing to issue billing statements online shall comply wi ^{Top}

following requirements:

- (1) A customer shall not be required to use online billing.
- (2) No enrollment or usage fees shall be assessed to a customer who chooses to receive bills and/or customer information online.
- (3) The online billing statement shall include all requirements listed in paragraph (B) of this rule.
- (4) The electric utility shall maintain a secure and encrypted site that is to be accessed only by the customer of record after completing a secure registration process.
- (5) Any fees to accept online payments shall be clearly disclosed in payment window(s).
- (6) Any payment made online shall be treated as a payment made at the electric utility's business office and shall be posted to the account in accordance with paragraph (E) of this rule. The time needed to post the payment to the account shall be clearly stated.
- (7) If a customer chooses to use online billing, the electric utility shall continue to make all payment methods available to the customer.
- (J) The utility may transfer the unpaid balances of a customer's previously rendered final bills to a subsequent bill for a like service account in the name of that same customer. The transfer of bills is limited to like service, for example, residential to residential, commercial to commercial, gas to gas, and electric to electric. Such transferred final bills, if unpaid will be part of the past due balance of the transferee account and subject to the company's collection and disconnection procedures which are governed by Chapters 4901:1-10 and 4901:1-18 of the Administrative Code. Any transfer of accounts s

affect the residential customer's right to elect and maintain an extended payment plan for service under rule [4901:1-18-10](#) of the Administrative Code.

Last updated November 1, 2021 at 1:36 AM

Supplemental Information

Authorized By: R.C. [4905.22](#), [4905.04](#), [4928.06](#), [4928.11](#)

Amplifies: R.C. [4905.06](#), [4905.22](#), [4928.11](#), [4905.30](#), [4905.261](#), [4928.67](#), [4911.021](#)

Five Year Review Date: 9/30/2026

Prior Effective Dates: 7/1/1999, 9/18/2000, 1/1/2004, 4/6/2006, 2/11/2008, 6/29/2009, 2/16/2012, 12/20/2014

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Rule 4901:1-37-04 | General provisions.

Ohio Administrative Code / 4901:1 / Chapter 4901:1-37 | Electric Utility and Affiliates

Effective: July 25, 2021 **Promulgated Under:** 111.15

(10)(b) and (10)(d)

(A) Structural safeguards.

(1) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall function independently of each other.

(2) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall not share facilities and services if such sharing in any way violates paragraph (D) of this rule.

(3) Cross-subsidies between an electric utility and its affiliates are prohibited. An electric utility's operating employees and those of its affiliates shall function independently of each other.

(4) An electric utility may not share employees and/or facilities with any affiliate, if the sharing, in any way, violates paragraph (D) of this rule.

(5) An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs.

(6) Transactions made in accordance with rules, regulations, or service agreements approved by the federal energy regulatory commission, securities and exchange commission, and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission, shall provide a rebuttable presumption of compliance with the costing principles contained in this chapter.

(B) Separate accounting.

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Each electric utility and its affiliates shall maintain, in accordance with generally accepted accounting principles and an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records, and accounts of its affiliates.

(C) Financial arrangements.

Unless otherwise approved by the commission, the financial arrangements of an electric utility are subject to the following restrictions:

- (1) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.
- (2) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.
- (3) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.
- (4) An electric utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.
- (5) An electric utility shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any security of an affiliate.
- (6) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.

(D) Code of conduct.

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(1) The electric utility shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.

(2) On or after the effective date of this chapter, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric service providers transacting business in its service territory, unless otherwise directed by the customer. This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services. This information shall not be used by the certified retail electric service providers for any other purpose than the marketing of electric service to the customer.

(3) Employees of the electric utility's affiliates shall not have access to any information about the electric utility's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services) that is not contemporaneously available, readily accessible, and in the same form and manner available to a nonaffiliated competitor providing retail electric service.

(4) An electric utility shall treat as confidential all information obtained from a competitive retail electric service provider, both affiliated and nonaffiliated, and shall not release such information, unless a competitive retail electric service provider provides authorization to do so or unless the information was or thereafter becomes available to the public other than as a result of disclosure by the electric utility.

(5) The electric utility shall not tie (or allow an affiliate to tie), as defined by [state and Top](#)

federal antitrust laws, or otherwise condition the provision of the electric utility's regulated services, discounts, rebates, fee waivers, or any other waivers of the electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.

(6) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.

(7) The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.

(8) The electric utility shall use reasonable efforts to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power and the electric utility's compliance officer shall promptly report any such unreasonable sales practices, market deficiencies, and market power to the director of the rates and analysis department (or their designee).

(9) Employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated electric services company.

(10) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following:

(a) An electric utility shall be prohibited from unduly discriminating in t¹ -
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offering of its products and/or services.

(b) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation.

(c) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates or customers of affiliates preferential treatment or advantages over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service.

(d) The electric utility shall strictly follow all tariff provisions.

(e) Except to the extent allowed by any applicable law, regulation, or commission order, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any retail electric service.

(11) Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made when such representations concern the entity's provision of electric services.

(E) Emergency.

(1) Notwithstanding the foregoing, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability.

(2) The electric utility shall maintain a log of all such actions that do not comply with this chapter, and such log shall be subject to review by the commission and its staff.

Last updated July 26, 2021 at 9:20 AM

Authorized By: 4928.17, 4928.06

Amplifies: 4928.17

Five Year Review Date: 7/15/2026

Prior Effective Dates: 3/10/2000, 10/23/2004, 4/2/2009

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