BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24	**Case No. 12-1924-EL-ORD**

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

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I. INTRODUCTION

Pursuant to the Commission's Entry of November 7, 2012, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), respectfully file their comments to Staff's recommended amendments to rules contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code ("O.A.C."). In addition to comments to those rules, the Companies also propose some additions to the afore-mentioned Chapters that will assist in the administrative and regulatory process at the Commission. The Companies appreciate the opportunity to comment and acknowledge the hard work of the Staff reflected in the proposed rules. The Companies respectfully request the Commission consider their responses and comments and appropriately modify the proposed rules.

II. FACTORS TO CONSIDER

Pursuant to Section 119.032, Ohio Revised Code, the Commission must consider the following factors when it reviews the rules and determines whether the rules should be amended, rescinded or continued without change:

(a) Whether the rules should be continued, without amendment, be amended or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted;

(b) Whether the rule needs amendment or rescission to give more flexibility at the local level;

(c) Whether the rule needs amendment to eliminate unnecessary paperwork; and

(d) Whether the rule duplicates, overlaps with, or conflicts with other rules.

Additionally, pursuant to the Governor's Executive Order 2011-01K, the Commission must:

(a) Determine the impact that a rule has on small businesses;

(b) Attempt to balance the critical objections of regulation and the cost of compliance by the regulated parties; and

(c) Amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

In presenting their comments to the proposed rules, the Companies will attempt to address those factors when appropriate.

III. COMMENTS AND MODIFICATIONS TO CHAPTER 4901:1-21: COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDERS

A. Rule 4901:1-21-01: Definitions

The Companies suggest adding the definition of "postmark" in Rule 4901:1-21-01, as defined in Rule 4901:1-10-01(W) including the amendments that the Companies propose to that rule contained in Case No. 12-2050-EL-ORD. Specifically, the Companies recommend changing the definition of "postmark" contained in Rule 4901:1-10-01(W), so that it conforms to modern bulk U.S. mail service and the manner in which businesses including electric utilities, mail or electronically mail large amounts of bills, documents and required notices. Rule 4901:1-10-01(W), O.A.C. currently defines "postmark" as:

> a mark, including a date, stamped or imprinted on a piece of mail which services to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail. For electronic mail, postmark means the date the electronic mail was transmitted.

However, due to the volume of the documents sent, the Companies can save literally hundreds of thousands of dollars in postage by taking advantage of sending such documents in a bulk manner. But in employing this cost saving measure, an actual postmark is generally not made on the envelope itself in which the document or piece of

mail is inserted and sent through the postal system. The Companies proposed in Case No. 12-2050-EL-ORD amending the definition of "postmark" to more clearly conform to the existing cost-saving practice used when sending mail in bulk. Although imprinting the document or piece of mail with the date of mailing conforms to Commission rules, the Companies recommend amending Rule 4901:1-10-01(W) as follows, and including the same definition in Rule 4901:1-21-01:

> "Postmark" means a mark, including a date, stamped or imprinted on <u>a document, bill, notice or piece of mail</u> which services to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail. For electronic mail, postmark means the date the electronic mail was transmitted.

Under Section 119.032, Ohio Revised Code, a rule may be amended taking into consideration the purpose, scope and intent of the statute under which it was adopted. Moreover, under Governor's Executive Order 2011-01K, a rule should be amended if it is contradictory, redundant, or inefficient. The Companies believe that the original intent of the definition of "postmark" and dates that flow from the date of postmark such as bill due dates, rescission deadlines, etc. was to provide a firm date by which a customer must act. Changing the definition as suggested above neither changes this intent nor changes any of the deadlines contained in the rules; rather, the Companies propose clarifying the rule to be consistent with current practice and to clearly permit the cost savings associated with bulk mailing to continue. For all of those reasons, the Companies recommend adding the definition of "postmark" in Chapter 4901:1-21-01 in a manner consistent with the foregoing discussion.

B. Rule 4901:1-21-06: Customer Enrollment

1. New subparts

The new subparts proposed to be added to Rule 4901:1-21-06 contain numerous uses of terminology that are not otherwise used or defined relating to competitive retail electric service in Ohio. The terminology as hereinafter specified should be modified to use the terms as defined in the Commission rules for Ohio.

First, the term "electric distribution company" as used in proposed Subparts (F), (G), (H), and (J) should be changed to the defined term "electric distribution utility." *See* 4901:1-21-01(P). The term "electric distribution company" is not defined in the Commission rules or in Chapter 4928, Ohio Revised Code.

Second, the term "marketer" as used in proposed Subpart (J) should be changed to the term "CRES provider," as used elsewhere in this rule. Marketer is undefined and not otherwise used in Ohio to refer to a supplier of competitive retail electric service that has been certified by the Commission to provide service to retail customers. To be consistent with the terminology throughout the Commission's rules, the Companies recommend this change be made.

Third, the term "regulated sales service" should be changed to "standard service offer" in Subpart (J). Regulated sales service is an undefined term, but appears in context to be referring to what is typically referred to as an electric distribution utility's standard service offer. To be consistent with the terminology in the Ohio Revised Code and the Commission's rules, the Companies recommend this change be made.

2. Rule 4901:1-21-06(G)(3)

As part of the proposed new Rule 4901:1-21-06(G)(3), it states that "customers" must be given "seven business days" to rescind an enrollment. This new proposed language appears to be inconsistent with existing Rule 4901:1-10-29(F)(1)(c) covering precisely the same part of the switching process. Rule 4901:1-10-29(F)(1)(c) states: "That residential and small commercial customers have seven days from the postmark date on the notice to contact the electric utility to rescind . . . ." The new proposed language in Rule 4901:1-21-06(G)(3) does not limit customers receiving the notice to only residential and small commercial customers, and uses the term "seven business days" instead of "seven days". Therefore the proposed changes potentially expand the number and type of customers required to get the notice and significantly changes the period during which customers may rescind a switch.

The Companies recommend that the proposed language of Rule 4901:1-21-06(G)(3), if adopted at all, be conformed to the existing language of Rule 4901:1-10-29(F)(1)(c) to avoid both confusion for electric utilities and CRES providers, but also the cost for both to alter their existing systems to accommodate the changes.

Frankly, the addition of these types of requirements upon the electric distribution utility as part of the rules in Rule 4901:1-21-06, when such requirements are already imposed on electric distribution utilities in Rule 4901:1-10-29, appears to be redundant and may needlessly cause confusion. The Companies are unaware of any concerns being expressed about the current operation of the rescission notice or the scope of customers or time period associated therewith.

3. Rule 4901:1-21-06(I)

In Rule 4901:1-21-06, Staff added Subpart (I) which would allow a customer to request an actual meter reading prior to the transfer of the service to a new CRES provider. The Companies do not understand the intent for this rule change. First, customers may only switch suppliers on a scheduled meter read date. The Companies perform actual reads of meter in the majority of circumstances, and often times, when a meter is estimated, it is due to lack of access to the meter, major storms, or other instances that prevent the electric distribution utility from accessing the meter. If the electric distribution utility is unable to read the meter under such circumstances, then this proposed rule change would put the electric distribution utility in the position of violating the rule due to circumstances beyond its control. Such an outcome is both bad public policy and unfair.

Without defined cost recovery, the Companies believe that this rule has the potential to impose significant new additional costs and burdens on the electric distribution utility. If a customer were to request an actual meter reading, the Companies would need to issue a specific order to have that particular customer's meter read, which may be outside the timing of that particular customer's meter reading route or scheduled meter read date. Depending on staffing and other issues such as collective bargaining requirements, this task would be very costly and difficult. For example, if a customer were to request an actual meter read, and the Companies were required to read the meter that day or the next business day, they would have to alter schedules to make sure the customer's meter is read in accordance with the rule. In order to accomplish this, the

Companies may have to pay overtime or other fees depending on collective bargaining agreements. Last, the Companies are not aware of complaints related to the meter reads of switching customers. Therefore, the Companies do not believe this addition is necessary. In light of the ambiguous language and purpose of this proposed rule addition, in addition to the burden this new rule would place on the electric utilities and increased costs that would eventually be passed onto customers, the Companies recommend that the Commission not adopt this proposed rule without a clearer definition of when it would apply and cost recovery.

C. Rule 4901:1-21-11: Contract Administration

In Subpart (F), Staff removed the reference to "electronic mail" in Section (F)(3), which allowed a CRES Supplier to send contract renewal notices and changes to a customer. However, in Section (F)(3)(c) below, Staff changed "electronic mail" to "e-mail." The Companies believe that Staff meant to change the reference to "electronic mail" in Section (F)(3) to "e-mail as it had done in Section (F)(3)(c). As the Companies discuss in their comments to Chapter 4901:1-10 in Case No. 12-2050-EL-ORD, the Companies believe that e-mail is an effective way to communicate notices and changes to customers, and often preferred by customers, and therefore requests that the Commission change "electronic mail" to "e-mail" in Section (F)(3) and not simply remove "electronic mail" from the rule.

IV. CONCLUSION

The Companies applaud the Commission Staff's diligent efforts to improve the Commission's rules. The Companies urge the Commission to adopt the recommendations of the Companies set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On January 7, 2013, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System and is available for viewing by any interested party.

/s/ *Carrie M. Dunn*
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

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Summary: Comments electronically filed by Ms. Carrie M Dunn on behalf of Ohio Edison Company and The Toledo Edison Company and The Cleveland Electric Illuminating Company