

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating)
Company and The Toledo Edison Company for) Case Nos. 12-1230-EL-SSO
Authority to Provide for a Standard Service)
Offer Pursuant to R.C. § 4928.143 in the Form)
of an Electric Security Plan.)

In the Matter of the Commission’s Review of)
Chapter 4901:1-10, Ohio Administrative Code,) Case No. 12-2050-EL-ORD
Regarding Electric Companies.)

**INITIAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

The Retail Energy Supply Association¹ (“RESA”) believes that one of the most significant barriers to the development of a healthy and robust retail residential and small commercial electric market in Ohio is the lack of a purchase of receivables program similar to what has been universally available for a decade for Ohio’s natural gas market. Today, only Duke Energy Ohio (“Duke”) has a functioning purchase of receivables program with its participating competitive retail electric service (“CRES”) providers. Since the Duke purchase of receivables program was established as part of an Electric Security Plan (“ESP”) renewal, RESA

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

likewise has proposed purchase of receivables programs based on the Duke model in the ESP proceedings of the FirstEnergy companies (“FirstEnergy”) and Ohio Power Company.²

In the FirstEnergy ESP III case, the Commission approved a stipulation that did not include a purchase of receivables plan, but then granted rehearing based on RESA’s arguments and set up a workshop to explore the flaws with the current method of addressing utility consolidated billing. Specifically, the Commission ordered the following action to be taken:

At the conclusion of the workshop, Staff shall identify whether, in order to protect consumers, protect the financial integrity of the [FirstEnergy] Companies, and promote competition in the Companies' service territories, amendments to Chapter 4901:1-10, O.A.C, are necessary, additional waivers of Chapter 4901:1-10, O.A.C, are necessary, modifications to FirstEnergy's tariffs or practices are necessary, or additional measures should be undertaken as recommended by Staff.

FirstEnergy ESPIII, Case No. 12-1230-EL-SSO, Opinion and Order at 42 (July 18, 2012).

Similarly, in the Ohio Power ESP II case, the Commission did not impose a purchase of receivables program, but in the Opinion and Order stated:

We encourage interested stakeholders to attend a workshop in conjunction with the five year rule review of Chapter 4901:1-10, O.A.C., as established in Case No. 12-2050 ELORD et al, to be held on August 31, 2012. In our recent order on FirstEnergy's electric security plan (See Case No. 12-1230-EL-SSO), we noted that this workshop would be an appropriate place of stakeholders in the FirstEnergy proceedings to review issues related to POR programs. Similarly, we believe this workshop would also provide stakeholders in this proceeding an opportunity to further discuss the merits of establishing POR programs for other Ohio EDUs that are not currently using them.”

AEP Ohio ESPII, Case No. 11-0345-EL-SSO, Opinion and Order at 41-42 (August 8, 2012).

² Ohio Power Company, at the time of the last ESP, consisted of both the Ohio Power Company and Columbus Southern Power Company. The proposal in Case No. 11-346-EL-SSO applied to both companies, which was referred to in the pleadings as AEP Ohio and which, post-merger, is called the Ohio Power Company (“Ohio Power”).

In accordance with the FirstEnergy and Ohio Power Opinions and Orders cited above, the Commission Staff conducted a workshop on August 31, 2012, that was devoted solely to the topic of the purchase of receivables/consolidated billing. RESA and other CRES providers, as well as most of the electric utilities, attended the workshop. The RESA representative at the workshop agreed that the current payment priorities were intended to be better than purchase of receivables; however, the reality of implementation continues to create barriers to collection. Moreover at the workshop, RESA articulated the problems with the current utility consolidated billing rules as it articulates them in these comments and offers a similar solution. As of this writing, the Staff has not determined whether retail electric competition will be promoted and consumers better protected, if there was a change to the current program for utility consolidated billing. In the interim, on November 7, 2012, the Commission in an Entry in Case No. 12-2050-EL-ORD called for comments on Chapter 10 of the Commission's rules.³ The existing rules governing the operation of electric distribution utilities include Rule 4901:1-10-29 and -33, O.A.C., which govern the current utility consolidated billing program are part of Chapter 10. Thus, RESA respectfully submits its initial comments in Case No. 12-2050-EL-ORD. Since rehearing was granted for RESA's claims concerning utility consolidated billing for the three northern electric utilities, RESA also submits these comments in the FirstEnergy ESP III proceeding.

II. The Need for Consolidated Billing

The vast majority of residential and small commercial customers want a single invoice for electric service. To achieve a single invoice, the cost of the power, the cost of transmission, the cost of regional transmission organization fees, the cost of distribution, and the cost of metering, billing and collection (including bad debt risks) have to be "consolidated" in a single

³ Chapter 4901:1-10, Ohio Administrative Code ("O.A.C.")

invoice. For some residential customers, the desire for a consolidated bill is for the simplicity and convenience of a single monthly invoice. For others, in addition to the convenience of a single statement, they also desire the cash flow control of a budget bill. Small commercial customers have similar interests in having a consolidated bill, but they also may have auditing and accounting concerns, particularly if the small commercial customer is a partnership or joint venture and its costs have to be allocated for corporate balance sheets. For this reason, the Commission requires all electric utilities to offer utility consolidated billing.⁴

III. Consolidated Bill Issues

Problems with utility consolidated billing first emerged at the beginning of customer electric Choice in Ohio. Since a consolidated bill is in essence the services of two companies for which only one company is doing the billing, collection and revenue disbursement, it is foreseeable that disputes between the two companies are bound to arise. In 2002, a dispute over how to treat partial payments by retail customers using utility consolidated billing made its way to the Commission. *WPS Energy Services, Inc. and Green Energy Mountain Company v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS, Opinion and Order (August 6, 2003). The WPS complaint was settled by a stipulation, which provided that, when a partial payment was made by a retail customer, a four-step allocation process would be implemented. The four-step process called for allocation first towards the CRES provider's past due balance, then the utility's past due balance, then the utility's current invoiced amount, and finally the CRES current invoiced amount. The partial payment allocation scheme was subsequently codified in Rule 4901:1-10-33(H), O.A.C., for all electric utilities in Ohio.

In both the FirstEnergy ESP III and the Ohio Power ESP II cases, the shortcomings of the current utility consolidated billing program were identified in the testimony of RESA, Direct

⁴ Rule 4901:1-10-29(G)(1), O.A.C.

Energy Services, LLC, Direct Energy Business, LLC and Interstate Gas Supply. The problem with the WPS stipulation as now embodied in Rule 4901:1-10-33, O.A.C., is that it only covers how partial payments are allocated. The Rule does not address: (1) what to do when a customer completely stops paying; (2) the information that the billing electric utility needs to provide to the non-billing CRES provider; (3) how workouts (or payment arrangements) are to be conducted when such are needed to avoid residential shutoff; and (4) whether the CRES provider, who is not being paid timely, should share in the late fee. From the CRES provider's prospective, the given rule on utility consolidated billing is defective because the CRES provider lacks essential information, including when the customer stopped paying, how much the customer owes to both the CRES provider and the electric utility, and how much of what is owed is or should be allocated to the CRES provider. Further, because all the billing and collection is done by the utility, there is the practical problem that, when the CRES or its collection agent calls upon the defaulted retail customer, there is often confusion as to how and why a company other than the utility company should be collecting an unpaid part of a utility invoice. Finally, though the CRES provider may be paid months after payment is due and the utility bill is subject to a late payment fee, the Rule makes no provision for sharing the late payment fee with the CRES provider.

RESA is not disputing the need for a workout process to avoid shut-off for humanitarian reasons. The point is that, if most residential and small commercial customers want consolidated billing, and consolidated bill is going to be administered by the utility in a fashion which favors continued service when possible, the CRES providers with utility consolidated billing face significant credit and payment risks for which there are not adequate controls currently. Utilities, for decades, have addressed the problem with customer payments well after delivery of the

service, and at the same time had no possible opportunity for repossession and were subject to a policy against residential shut-off. However, the utilities were able to build bad debt components into their service rates, bad debt trackers, and late fees. Those approaches are simply not open to CRES providers. The dilemma of the CRES provider was clearly portrayed by RESA witness Teresa Ringenbach in the FirstEnergy ESP III case, wherein she testified:

Q20. Will the operation of the payment priority or a customer's entering a payment plan mean the CRES charges will eventually be paid?

A20. Not necessarily. As I have tried to explain, since a customer can avoid shut off by paying just the utility portion of the bill, it is the CRES provider who ultimately is at risk if the customer does not meet the payment plan. Further, if there is a disconnect the CRES supplier since they have not been doing the billing is at great disadvantage in trying to collect the remaining CRES past due amounts as the customer would not have to pay the CRES only the utility arrearage to be reconnected.

FirstEnergy ESP III, Case No. 12-1230-EL-SSO, RESA Exhibit 3 at 10.

The problem is not just a CRES provider problem. Retail customers also do not fare well under the current system. Customers, who make arrangements to avoid shut-off with the utility, often do not fully realize that they still are subject to collection actions by their CRES provider. More importantly, the offers being made to residential and small commercial customers now include the significant financial risks that are placed on CRES providers who utilize utility consolidated billing. Further, the current dilemma keeps new CRES providers from entering the Ohio market, and keeps existing CRES providers from expanding their efforts to sign up non-aggregated residential and commercial customers.

IV. Lack of a Purchase of Receivables Program is a Barrier to Choice Marketing for Residential and Small Commercial Customers

Section 4928.02(B), Revised Code, makes it state policy “to ensure the availability of the unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions and quality options they elect to meet their perspective needs.” Further,

the Ohio General Assembly required that the Commission enforce subsection B and that it take action to ensure customers have a diverse set of supplies and suppliers. Today, in the FirstEnergy service area, where there has been a decade of residential and small commercial Choice, there are few choices for residential customers. First, as presented without refutation in the FirstEnergy ESP III case, ninety-six percent (96%) of all residential shopping in the FirstEnergy service area is done *via* governmental aggregation groups. Further, there is virtually only one product and, with the exception of the Village of Swanton (population 3,627⁵), there is only one supplier for all governmental aggregated residential customers. Finally, the one product is a small discount off the standard service price. Simply put, for virtually all FirstEnergy residential customers today, competitive electric service products actually provided to customers consist of the standard service offer, or, if they are lucky enough to live in an aggregated community, the standard service offer minus a few percent.⁶ Second, there are only five CRES providers posting offers on the Apples-to-Apples chart for The Cleveland Electric Illuminating Company, Toledo Edison Company and Ohio Edison Company. The key reason for this lack of Choice suppliers in the FirstEnergy territory is the absence of a purchase of receivable program.

With a purchase of receivables program in place, the utility buys the amounts the customer owes on the consolidated bill for the competitive service (the power component). That makes the power component a “utility debt” and eligible for inclusion in a workout arrangement to avoid shut-off. Next, a purchase of receivables plan eliminates any confusion the customer would have as to what it owes and to whom. The workout would address all the money owed on the consolidated electric bill – same as in a workout for non-payment of natural gas service.

⁵ US Census Bureau 2009 – As presented on Google.

⁶ *FirstEnergy ESP III*, Case No. 12-1230-EL-SSO, NOPEC/NOAC Exhibit 1 at 10.

With purchase of receivables, there is not only one billing cost and one collection cost, but only one party is required to track payments. Finally, for customers with credit problems, only one service deposit would be required.

This brings us to the greatest benefit to retail consumers from having a purchase of receivable plan – more offers and more products to choose from. As Ms. Ringenbach testified in the FirstEnergy ESP III case:

A single comparison of public websites including the Ohio Apples to Apples chart, Pluginillinois.org, and Papowerswitch.com on May 18 showed the following. In Ohio according to the Apples to Apples chart, there were five suppliers making residential offers in AEP and FirstEnergy and six in DP&L. None of these utilities have purchase of receivables. However, in Duke where a purchase of receivables program is in place the number of suppliers more than doubles to eleven.

Id. at 5.

In other states with Choice programs, the same correlation is found between a purchase of receivables program and the number of competitive suppliers. In Illinois behind ComEd, which is also a PJM utility with a purchase of receivables program, the number of CRES providers making residential offers is 18, triple the number of active providers making residential offers in the FirstEnergy territory in Ohio. Similarly, in Pennsylvania, behind the two largest utilities with purchase of receivables programs, there are many more suppliers making offers to residential customers than in the FirstEnergy territory. In particular, there are 34 suppliers making residential offers in the PPL territory and 38 suppliers making offers in the PECO territory.⁷

The need for a purchase of receivables program in order to have robust residential retail and small commercial shopping has been observed in other competitive states. Distribution companies in Pennsylvania, New York, Illinois, Maryland and New Jersey, among others, now

⁷ *FirstEnergy ESP III*, Case No. 12-1230-EL-SSO, RESA Exhibit 3, at 5-7

offer purchase of receivables programs. This includes the electric distribution companies in Pennsylvania that are owned by FirstEnergy.

For more than a decade in Ohio all the major natural gas utilities have operated purchase of receivable programs, including The East Ohio Gas Company, Columbia Gas of Ohio, Vectren Energy Delivery Ohio, and Duke Energy Ohio. These purchase of receivable programs have operated without major problem or controversy.

Duke Energy Ohio's purchase of receivables plan is found in its Supplier Tariff Sheet -- PUCO Electric Tariff No. 20, Sheet 40.4, Section 11.6. That program is an example of a viable and robust electric choice program. The current Apples-to-Apples chart on the Commission's website reflects 17 CRES providers are offering services to residential customers. There is no reason that FirstEnergy, Ohio Power, and Dayton Power and Light cannot adopt something similar for the other Choice programs in Ohio.

In sum, there is more robust competition for the residential and small commercial load in the Ohio natural gas market or the residential and small commercial markets in other competitive states when a purchase of receivables program exists. Moreover, there is more robust competition for the residential and small commercial load in Duke's Ohio territory, where it has implemented a purchase of receivables program. Further, such a program can and is structured so as not to put the utility at financial risk, while bringing benefits to the retail customers. Purchase of receivables programs should be incorporated into all of the electric Choice in Ohio.

V. Amendments to Chapter 10, O.A.C. -- Rules to Cure the Problems with Consolidated Billing

A. Rule 4901:1-10-29

How to address the billing and collection of a single invoice which contains services provided by two different service providers has been solved by Ohio in its mature natural gas

Choice program, and in other states that offer electric Choice. The answer is a purchase of receivables plan. A properly designed purchase of receivables plan would vest in the utility the sole authority of compromising or arranging repayment terms for customers who have fallen behind in their payments. It removes the accounting issues (how to track late payments and non-payments) that CRES providers face. It streamlines the repayment workout programs and it makes entry into the Ohio residential and small commercial market more attractive for CRES suppliers.

RESA believes that only two rule changes would be necessary in Chapter 10 to create a viable purchase of receivable program throughout Ohio. The two rules changes would permit the FirstEnergy, Ohio Power, and Dayton Power and Light companies to provide the specifics of the purchase of receivable program via their tariffs, like Duke. Thus, for example, FirstEnergy could use, as its tariff model, an Ohio purchase of receivable program that mirrors what it is already offering its Pennsylvania customers, as opposed to crafting by rule a single comprehensive purchase of receivables rule.

RESA's first suggested amendment to Chapter 10 begins with Rule 4901:1-10-29(B), O.A.C. That rule should be modified to include a purchase of receivable program as well as an obligation to provide consolidated billing.⁸ At this time, RESA only advocates offering a purchase of receivables program for residential and small commercial customers. Thus, Rule 4901:1-10-29(B), O.A.C., would then read as follows:

(B) Each electric utility shall adopt a supplier tariff containing standardized requirements to the extent such standardization is feasible. At a minimum, such tariff shall include requirements for imbalances, load profiles, scheduling, billing (between the electric utility and CRES provider), a purchase of receivables program made available to CRES providers who utilize utility consolidated billing for all their residential and small commercial customers,

⁸ Rule 4901:1-10-29(G)(1), O.A.C.

customer billing (options, collection, and application of customer payments), metering, retail settlements, scheduling coordinators, losses, customer information (procedures for disclosing load profile, account information, and payment history), dispute resolution processes (between the electric utility and CRES provider), standard operating rules, performance incentives and standards, creditworthiness and default security, supplier agreement, electronic data interchange protocols, CRES provider enrollment with the electric utility, service termination and disconnection (of end-user customer), certified CRES provider lists, return to standard offer, customer enrollment and switching, supplier training, and supplier proof of certification. [Suggested amendments to the existing rules are shown in redline.]

The above proposal avoids the risk of large volume bad debt associated with a major industrial end user going bankrupt because the proposal is limited to offering utility consolidated billing to only residential and small commercial customers.

With regard to how the price of the purchase of receivables should be established, RESA suggests we once again follow the Ohio natural gas program and the Duke electric purchase program. The remaining electric utilities would buy from the CRES provider the portion of the consolidated bill that constitutes the CRES provider's supplied competitive services which would otherwise have been provided by the utility in order to assure bundled service. The utility in turn would be reimbursed either through an uncollectible expense rider (a/k/a bad debt tracker) or by building the bad debt component into the utility non-competitive service rates.⁹ This framework will insure that all necessary components of basic electric service are covered, and that extra services not needed for basic service, such as energy audits or conservation work, are not purchased by the utility. RESA proposes the following second amendment to Rule 4901:1-10-29, O.A.C.:

4901:1-10-29(G) Customer billing and purchase of receivables.

⁹ Competitive services are established for electric service in Section 4928.03, Revised Code.

(1) Electric utilities shall make consolidated billing available to CRES providers and shall not take any actions to inhibit or prohibit dual billing by CRES providers.

(2) Consolidated billing shall include budget billing as a customer-elected option.

(3) Electric utilities shall make available to CRES providers a non-recourse purchase of receivables program for amounts charged for competitive electric services which would otherwise be required for default bundled electric service. Purchase of receivables shall be conducted at the full amount of the consolidated billed competitive services required for bundled service if the electric utility has an uncollectible expense rider through which the electric utility can collect amounts paid to CRES for required competitive services. If the electric utility does not have an uncollectible expense rider, than it shall purchase the amounts charged as part of the consolidated bill for competitive electric services which would otherwise be required for default bundled service at the amount billed minus the electric utility's historic uncollectible percentage for the class of service to which the retail customer belongs.
[Suggested amendments to the existing rules are shown in redline.]

While a purchase of receivables program is the long-term solution to the current difficulties with utility consolidated billing, the fact that RESA is not requesting that utility consolidated billing be made universal, and the fact that implementation of the purchase of receivables program will not be immediately implemented requires that the current rule on consolidated billing be addressed. As more fully described above, the key problem with the current allocation program is that the CRES is not notified: (1) of the specific date that customer has paid; (2) if the customer has paid the full amount or made just a partial payment; (3) if only a partial payment is made, how it has been allocated to non-CRES accounts; and (4) whether the customer has entered a workout and, if so, how that affects the allocation of payments to the CRES provider.

B. Rule 4901:1-10-33

Rule 4901:1-10-33(H), O.A.C., addresses the allocation of partial payments. Thus, RESA suggests that this Rule be amended to require an electric utility that conducts consolidated billing but does not purchase of receivables to supply the information necessary for the CRES provider to track the account and to conduct collection efforts. RESA proposes a new provision as follows:

(K) Within one business days of the receipt of any payment from a CRES customer account for whom the electric utility is conducting consolidated billing, an EDI data response shall be transmitted detailing the amount billed for the CRES-supplied competitive services, the amount billed for non-competitive electric utility supplied services, the amount paid, and if an allocation of the customer payment has taken place pursuant to Rule 4901:1-10-33(H), O.A.C., how much of the payment allocated to past due CRES payments, past due electric utility payments, current electric utility payments and current CRES payments. The electric utility shall also notify the CRES provider within three business days if a customer to whom it is supplying service has entered into an arrangement for the payment of past due amounts, and, if so, the terms and conditions of such an arrangement.

VI. CONCLUSION

RESA appreciates this opportunity to present its views on the problems with the current administration of consolidated billing and to propose the above solutions to those concerns.

Respectfully submitted,

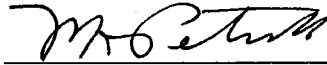


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 7th day of January 2013, by electronic mail upon the persons listed below.



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Case No(s). 12-1230-EL-SSO, 12-2050-EL-ORD

Summary: Comments Initial Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association