BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code, Regarding Electric Companies and Competitive Retail Electric Service, to Implement 2014 Sub.S.B. No. 310.	))))))	Case No. 14-1411-EL-ORD

FINDING AND ORDER

The Commission finds:

(1) In May 2014, the General Assembly passed 2014 Sub.S.B. No. 310 (S.B. 310), which became effective on September 12, 2014. S.B. 310, inter alia, amended provisions in R.C. Chapter 4928, which governs the alternative energy portfolio standard rules and regulations. Additionally, newly-enacted R.C. 4928.65 directs the Commission to adopt rules by January 1, 2015, governing the disclosure to customers of the costs of the renewable energy resource, energy efficiency savings, and peak demand reduction requirements of R.C. 4928.64 and 4928.66. This proceeding has been opened specifically to review Ohio Adm.Code Chapters 4901:1-10 and 4901:1-21 in light of newly-enacted R.C. 4928.65.

(2) On January 10, 2011, the Governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and 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.

(3) In addition, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis regarding the rules. If there will be

an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Further, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis.

(4) On August 26, 2014, the Commission held a workshop at the offices of the Commission to elicit feedback on any proposed revisions to the rules, which Staff may have, and to permit stakeholders to propose their own revisions to the rules for Staff's consideration. Many stakeholders were present at the workshop and eight stakeholders offered comments primarily concerning bill formatting, calculation of the amounts to be disclosed, and the time frame for implementation of the requirements.

(5) Thereafter, on October 15, 2014, the Commission issued proposed rules and the accompanying BIA for comment. Staff's proposals included incorporation of the required cost disclosures regarding electric distribution utilities (EDUs) into a new rule, Ohio Adm.Code 4901:1-10-35; incorporation of the required cost disclosures regarding competitive retail electric service (CRES) providers into a new rule, Ohio Adm.Code 4901:1-21-19; defining "renewable energy resource" in proposed Ohio Adm.Code 4901:1-10-35 and 4901:1-21-19; defining "energy efficiency" in Ohio Adm.Code 4901:1-10-35; and calculating EDUs' and CRES providers' costs of compliance with the renewable energy resources requirements by using the formulas set forth in proposed Ohio Adm.Code 4901:1-10-35 and 4901:1-21-19.

(6) Timely comments on the proposed rules were filed by Industrial Energy Users-Ohio (IEU-Ohio); Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC (collectively, Direct Energy); Ohio Consumers' Counsel (OCC); Ohio Power Company (AEP Ohio); Toledo Edison Company, The Cleveland Electric Illuminating Company, and Ohio Edison Company (collectively, FirstEnergy); Environmental Law and Policy Center, Sierra Club, Natural Resources Defense Council, and Ohio Environmental Council (collectively, Environmental Groups); The Dayton Power and Light

Company (DP&L), and Ohio Manufacturers' Association Energy Group (OMAEG). Timely reply comments were filed by Direct Energy, OMAEG, IEU-Ohio, OCC, AEP Ohio, FirstEnergy, the Environmental Groups, and Noble Americas Energy Solutions, LLC (Noble).

General Comments

(7) IEU-Ohio supports the rules as drafted and urges the Commission to adopt them. Specifically, IEU-Ohio states that because R.C. 4928.65 is clear and unambiguous, the Commission lacks discretion to adopt rules that do not disclose an individual customer's cost to comply with the renewable energy resource, energy efficiency (EE), and peak-demand reduction (PDR) mandates. IEU-Ohio believes the proposed rules reflect the requirements in this section as enacted by S.B. 310. (IEU-Ohio at 7-8.) Similarly, FirstEnergy urges the Commission to adopt Staff's proposed rules without change. Specifically, FirstEnergy comments that Staff's proposed rules abide by the statutory formulas set forth in R.C. 4928.65(B)(1) and (2). (FirstEnergy at 2.)

Additional Bill Disclosures

(8) OCC contends that, if, pursuant to the proposed rules, companies begin listing costs associated with renewable energy, EE, and PDR on customer bills in 2015, without any further explanation, customers mistakenly may believe these are new charges. OCC requests the Commission require a message on bills to notify customers that these costs are not new charges and were previously consolidated with other charges on the bill. OCC also contends that the Commission should require information on customer bills to disclose that EE and PDR programs can yield savings, rather than only providing cost disclosures, in order to promote the accuracy and understandability of bills. OCC asserts that, if customers are unaware of the benefits associated with EE and PDR programs, there may be customer confusion. (OCC at 3-8.)

OMAEG also believes the Commission should provide appropriate, supplemental educational materials for consumers on the benefits and costs of EE and PDR

resources as compared to other electric generation resources so that consumers may clearly understand the benefits and costs for each particular resource. OMAEG states the Commission could accomplish this with an "apples-to-apples" page on the Commission website, along with bill inserts to direct consumers to that page. Absent this supplemental information, OMAEG asserts that the proposed rules do not comport with the spirit of R.C. 4928.65, which involves fully disclosing actual costs of the EE and PDR requirements under R.C. 4928.66. (OMAEG at 8-10; OMAEG Reply at 4-5.)

The Environmental Groups argue that, to ensure customers understand the significance of the new line item disclosures in the proposed rules, each bill should provide contextual information. The Environmental Groups stress that it is important for the Commission to require full disclosure of the benefits that accompany the EE and PDR requirements, rather than solely the costs. The Environmental Groups specifically request that the Commission require each bill contain background information, a list of EE and PDR programs, a phone number and website to obtain program information, and a disclosure of the amount of electricity the customer's provider obtains from renewable sources. The Environmental Groups argue that the inclusion of this information will prevent customer confusion about the costs and benefits of the EE and PDR requirements. Further, the Environmental Groups add that inclusion of this information is consistent with existing company practices and Commission precedent. (Environmental Groups at 4-7.)

AEP Ohio states that the Environmental Groups' request may have limited benefit to customers, while potentially increasing customer costs through additional printing and mailing costs. Further, AEP Ohio proposes to modify OCC's suggested bill message about savings to indicate that "participation in" these programs may lead to savings on customer electric bills, but otherwise agrees with OCC's recommended language. AEP Ohio requests that the Commission, in considering these recommendations, take into account the value added by the messages against the cost to customers. (AEP Ohio Reply at 2.)

FirstEnergy argues that the proposed bill messages of OCC and the Environmental Groups regarding savings and benefits of EE and PDR are premature and misguided, but agrees with OCC's recommendation to include a disclosure that the charges are not new. FirstEnergy states that while EE and PDR programs may, under certain circumstances, save money on a participating customer's electric bill, given the costs associated with EE and PDR mandates, only the small fraction of customers who take advantage of EE and PDR programs may actually save money on their bills. Second, the proposed bill messages would significantly increase printing costs and the size of the bills requiring new costs, in addition to impacting operations in other states and leading to additional inefficiencies. FirstEnergy also states that the information proposed to be included on the bills is already located on the Commission's or the EDUs' websites. Additionally, while FirstEnergy agrees with OCC that the Commission should permit a bill message for the first few months of posting the new line items to inform customers that the charges are not new, it argues that it should be entitled to propose its own language in its bill format application, rather than be required to use OCC's proposed language. (FirstEnergy Reply at 6-8.)

(9) Initially, the Commission notes that multiple stakeholders expressed concern that customers viewing the cost disclosures required by the proposed rules will be confused as to whether the line items represent new charges. The Commission agrees that this information could cause confusion; consequently, the Commission finds that, although no changes to the proposed rules are necessary, a temporary, short, informational statement on bills that the charges are not new would alleviate confusion. The Commission notes that OCC has proposed a line item be added to the first three consecutive bills beginning with the change in bill format providing: "New information on your bill shows specific charges for the costs of energy efficiency, peak demand reduction, and renewable energy. These charges are not new, but previously were consolidated with other charges on your bill." The Commission finds that this language is neutral and informative. Consequently, EDUs may either use this language as proposed by OCC, or may propose their own language alerting customers that the

charges are not new, to be reviewed by the Commission in the EDU's bill format case. The approved language shall be added to the first three consecutive bills reflecting the change in bill format. Similarly, CRES providers shall provide a line item in the first three consecutive CRES provider bills reflecting the change in bill format providing: "New information on your bill shows specific charges for the costs of renewable energy. This charge is not new, but previously was consolidated with other charges on your bill." CRES providers wishing to use alternate language should seek approval from the Commission's Staff.

Next, the Commission will address the recommendations set forth by OMAEG, OCC, and the Environmental Groups that additional bill disclosures should be required that discuss benefits associated with the EE and PDR requirements, including that they can yield customer savings, in order to provide further education and transparency to customers. The Commission finds that these recommendations should not be adopted. Disclosure of any information beyond the three line items for EDUs and single line item for CRES providers required by R.C. 4928.65 is not required or discussed by the statute or S.B. 310. Consequently, the Commission declines to adopt any recommendations for additional disclosures beyond the brief, temporary explanation that the charges are not new as discussed above.

Bill Formatting

(10) The Environmental Groups request the Commission require both EDUs and CRES providers to file a sample bill, and an accompanying sample calculation, for review and approval by the Commission each year before these bills are actually issued to customers. The Environmental Groups state that these filings should include the following: a description of the costs included in the EE/PDR rider; the costs that have been designated as EE/PDR compliance costs for purposes of R.C. 4928.65; and the costs the company has excluded from its calculation of individual customer cost of compliance. The Environmental Groups argue that this review process is similar to that of the EDU bill format application process. Further, the Environmental Groups propose the Commission implement a retrospective review

process for these cost disclosures as part of each EDU's cost reconciliation process, in order to verify those costs have been accurately calculated. (Environmental Groups at 10-11.) OCC agrees with the Environmental Groups' recommendation for the additional review process, stating this review process will ensure the information to customers is accurate and does not lead to additional customer confusion (OCC Reply at 3-4).

OMAEG agrees with the Environmental Groups' recommendation. However, OMAEG believes EDUs should follow this procedure each time the rider rate varies, to ensure the most accurate information in the cost of compliance. (OMAEG Reply at 5.)

AEP Ohio and FirstEnergy oppose the Environmental Groups' recommendation, contending that the existing rules requiring bill format approval are sufficient, and adding that the Commission has authority to address situations where bills produced by EDUs are not in compliance with those rules (AEP Ohio Reply at 2-3; FirstEnergy Reply at 9-10).

Direct Energy also disagrees with the Environmental Groups' suggestion on the basis that the Commission rules do not require CRES providers to submit their bill formats for approval and there is no need to introduce this step into the process. Further, Direct Energy contends that the proposal would burden Staff with review of each EDU's and CRES provider's bill format every year, even where no complaints exist. Direct Energy points out that the Commission already has authority to review any CRES provider materials upon submittal of a complaint. (Direct Energy Reply at 4-5.) Similarly, Noble contends the Environmental Groups' suggestion should be rejected as to CRES provider bills, reasoning that the Commission does not review and approve the bill format of CRES providers and does not have the statutory authority to do so (Noble Reply at 4.)

(11) The Commission finds that the Environmental Groups' recommendation that EDUs file a sample bill and calculation for review and approval each year prior to issuance to customers should not be adopted. The Commission agrees

with AEP Ohio and FirstEnergy that, as to EDUs, the existing rules regarding bill format approval are sufficient and need not be duplicated. Additionally, regarding CRES providers subject to the proposed disclosure rules, the Commission finds that a sample bill is unnecessary at this time due to lack of significant dual billing of residential customers.

(12) AEP Ohio requests that the line item disclosures required by the proposed rules be displayed in a kilowatt-hour (kWh) format, as a megawatt-hour (MWh) cost on a residential customer's bill would not display an apples-to-apples cost comparison. OCC agrees with AEP-Ohio's suggestion to use a kWh format on the basis that this recommendation provides information to customers that is accurate and understandable. (AEP Ohio at 3; OCC Reply at 3.)

In reply to AEP Ohio's comment, Direct Energy states that it does not read the proposed rules to require an EDU or CRES provider to actually show the calculation on the bill, but rather to show the cost. Direct Energy states that it does not oppose EDUs or CRES providers having the option to display the calculation, but requests that the Commission clarify that the actual calculation is not required, as all that is required is display of the cost, or information that would allow the customer to calculate the cost. (Direct Energy Reply at 3-4.)

(13) The Commission agrees with AEP Ohio that display of the calculations in a kWh format is an acceptable option; however, the Commission emphasizes that the proposed rule does not require the display of the calculations, but only the calculated costs of the line items in that month's bill. The Commission finds that, should an EDU or CRES provider wish to display the calculations of the compliance cost line items, it shall have the option of displaying the usage components in a kWh format, rather than a MWh format. However, the Commission emphasizes that, even if an EDU or CRES provider displays the calculations, it must still display the calculated costs, which should appear as the cost for each line item for that month's bill, not as a cost per kWh or MWh.

(14) Direct Energy suggests the Commission clarify that "distinct line item" does not mean the cost must be listed in the same section as the customer's actual charges. Direct Energy contends that, because CRES providers ordinarily bill customers a single total rate that includes the renewable energy mandate costs, providing a separate line item for renewable energy mandate costs in the same section as the total rate may appear to be a double charge. Therefore, Direct Energy proposes the Commission clarify that the "distinct line item" may be included on a portion of the bill separate from a listing of the individual charges so long as it is listed by itself as a single line item where the customer can clearly see the average renewable energy mandate cost for that billing period. AEP Ohio agrees with this suggestion, noting that this clarification will satisfy the statute as well as minimize customer confusion (Direct Energy at 4-5; AEP Ohio Reply at 1.)

FirstEnergy agrees with the recommendation of Direct Energy, as customers may be confused if their bills do not actually add up to the individual amounts listed in the charges section of their bills. FirstEnergy requests the Commission permit flexibility as to the location of the line item. (FirstEnergy Reply at 8.)

(15) The Commission agrees that the language of S.B. 310 regarding "line items" is intended to require that all three cost disclosures, for EDUs, or the single cost disclosure, for CRES providers, be set forth separately; not to require that the costs be set forth as line items adding to the bill total, as they will not add up to the bill's total. Consequently, although the Commission finds no modifications to the proposed rules are necessary, the Commission clarifies that the line item disclosures should be placed on the bill in a bill message or similar area. For the disclosures on EDU bills, the Commission notes that the exact position will be addressed in the individual bill format proceedings. The Commission stresses that the formats proposed in bill format proceedings should be constructed in such a manner so that the line items do not appear as additional or double charges. Additionally, the Commission encourages companies to propose formats and wording that indicate in what charges

on their bills the three costs disclosed are currently consolidated.

(16) Direct Energy requests the Commission clarify that the language "for the applicable billing period" in proposed Ohio Adm.Code 4901:1-21-19(B) does not mean the CRES provider must perform a calculation of the customer's usage for that billing period multiplied by the average CRES provider compliance cost for every billing cycle. Instead, Direct Energy proposes that the Commission explain that CRES providers may provide an average cost on the bill each month so the total cost provided monthly would only change once per year when the Commission announces the average CRES provider compliance cost in its report. Direct Energy states that this approach would satisfy the statute, as well as provide a less burdensome alternative for compliance. (Direct Energy at 6-7; Direct Energy Reply at 3-4.)

(17) The Commission emphasizes that newly-enacted R.C. 4928.65(A)(2) provides that the Commission's rules shall require "[t]hat every electric services company list, on all customer bills sent by the company, the individual customer cost * * * of the company's compliance with the renewable energy resource requirements under section 4928.64 of the Revised Code for the applicable billing period." Further, R.C. 4928.65(B)(2) elaborates that "[f]or purposes of division (A)(2) of this section, the cost of compliance with the renewable energy resource requirements shall be calculated by multiplying the individual customer's monthly usage by the combined weighted average of renewable-energy-credit costs * * * [.]" As R.C. 4928.65(B)(2) specifies use of the customer's monthly usage and does not mention as an option use of a customer's average monthly usage for the year, the Commission finds that Direct Energy's recommendations should not be adopted, as the Commission finds this option would not comply with the statutory requirement.

Consolidated and Dual Billing

(18) AEP Ohio states that proposed 4901:1-10-35(B) is unclear as to who is responsible for providing the data for CRES

provider information on consolidated bills for CRES customers. AEP Ohio believes that the information for renewable energy requirements for shopping customers should be provided by the CRES provider and placed on the bill under the CRES provider's section of the bill. AEP Ohio asserts that to do otherwise might lead to confusion when calculating customer bills. (AEP Ohio at 2.) AEP Ohio also states that it does not want to be responsible for the costs shown under the CRES portion of the bill, as it cannot ensure the accuracy of this information. Thus, AEP Ohio requests that the Commission adopt its proposed language regarding the CRES provider's responsibility for providing the cost of its renewable energy costs under its portion of the bill. (AEP Ohio at 2-3.)

Direct Energy argues that AEP Ohio's suggestion is not allowed under R.C. 4928.65, noting that the appropriate measure would be to include the utility's costs of compliance to meet the cost disclosure requirements for utility consolidated billed customers. Direct Energy further argues that adopting AEP Ohio's suggestion would require CRES providers to allow commercially sensitive information to enter the public domain, as well as create an administrative burden for CRES providers. Therefore, Direct Energy requests the Commission deny AEP Ohio's recommendation. (Direct Energy Reply at 2-3.)

FirstEnergy states that using the EDU's costs of compliance would alleviate the concerns raised by AEP Ohio in their comments, specifically that the CRES provider supply the individual customer cost of compliance to the EDU for placement on the consolidated bill. (FirstEnergy Reply at 8-9.)

DP&L recommends changing the language of proposed Ohio Adm.Code 4901:1-10-35(B) to clarify that the customer bills on which the EDU must disclose the cost of compliance with Ohio's renewable energy resource benchmarks are only those bills containing charges for generation. Otherwise, DP&L believes that dual-billed shopping customers may become confused with the new compliance information and falsely believe they are being charged twice for renewable energy if they see the cost of compliance with renewable

energy on two bills each month. Further, DP&L states that it does not want to be perceived as providing renewable energy when, for shopping customers, it is actually the CRES provider who is required to comply with the renewable energy benchmarks. Additionally, DP&L recommends elimination of the language "or, for CRES customers, the cost as calculated in paragraph (B)(1) of rule 4901:1-21-19 of the Administration Code" from proposed Ohio Adm.Code 4901:1-10-35(B)(1)(d), arguing that R.C. 4928.65(A)(1) does not allow this option, but requires disclosure of the average EDU renewable energy costs. (DP&L at 1-3.)

Direct Energy and FirstEnergy agree with DP&L's recommendation. Direct Energy asserts that the legislature did not include the second option for the cost of compliance in the new Revised Code section and the proposed language extends beyond the Commission's statutory authority. Further, FirstEnergy states that the statute contemplates the EDU's cost of compliance and applying this cost would make implementation easier. (Direct Energy at 3-4; Direct Energy Reply at 3; FirstEnergy Reply at 8-9.)

(19) The Commission agrees with the edited language recommended by AEP Ohio, in order to provide clarity to proposed Ohio Adm.Code 4901:1-10-35(B). Specifically, the Commission finds it appropriate to specify that the requirements set forth in proposed Ohio Adm.Code 4901:1-10-35(B) apply to consolidated bills sent by an EDU that include supplier charges. The Commission notes that a very limited number of residential customers currently receive dual bills, or bills from both an EDU and a CRES provider that are not consolidated. The modification of this language should also address the clarity issue raised by DP&L. Further, the Commission agrees with AEP Ohio that it is appropriate to specify that suppliers are responsible for providing the EDU with the individual customer's cost of compliance, and that this charge should appear under the supplier section of charges on the bill. Additionally, despite Direct Energy's arguments, the Commission finds that it is consistent with the statute to provide the statewide average of CRES provider compliance costs as calculated in proposed Ohio Adm.Code 4901:1-21-19(B)(1) on EDU consolidated bills. Further, because the calculation set forth in the

proposed rule relies on the average cost of all CRES providers, no disclosure of company-specific cost information would occur. The Commission also notes that the amendment proposed by AEP Ohio eliminates proposed Ohio Adm.Code 4901:1-10-35(B)(1)(d); thus, the Commission need not address the language change suggestions to this section of the rule proposed by DP&L. Consequently, the Commission has modified proposed Ohio Adm.Code 4901:1-10-35(B) as shown in Attachment A to this Finding and Order.

Cost Disclosure Calculations

Non-metered Customers

(20) AEP Ohio and Direct Energy request clarification of how cost disclosures should be calculated when a customer's charges are based on per unit charges, rather than on usage. AEP Ohio maintains the proposed rules do not address special circumstances for instances where non-metered service exists, such as streetlights. (AEP Ohio at 4; Direct Energy Reply at 4.)

(21) The Commission notes that EDUs' tariffs for non-metered, or per-unit customers, already include assumed monthly kWh consumption. Where these circumstances exist, companies are directed to use in the calculation the assumed kWh consumption. Further, if no such compliance costs are assessed to such a customer, the compliance cost disclosure for those customers would be $0.

EE and PDR Benefits

(22) OMAEG asserts that basing the compliance costs on the EE/PDR rider, as set forth in Staff's proposed rule, is not an accurate or stable depiction of the actual costs of compliance. More specifically, OMAEG argues that the EE/PDR rider gives no indication of the savings benefits from these resources and customers need this information in order to ensure they understand both the costs and benefits associated with the EE and PDR requirements. OMAEG requests that the Commission require companies to present the benefits associated with the incurred costs on the customers' bills, in order to promote a more informed

energy management decision on the part of the customer. (OMAEG at 5-7; OMAEG Reply at 4-5.)

FirstEnergy asserts that OMAEG's recommendation is both inconsistent with the statute as well as premature, noting that the Energy Mandates Study Committee is currently investigating any potential benefits from the EE and PDR requirements. Moreover, FirstEnergy argues that disclosing costs based on the EE/PDR rider provides a known, specific, and quantifiable calculation while a calculation based on potential benefits is highly-variable, speculative, and not contemplated by the statute. Further, FirstEnergy states a customer only realizes benefits through program participation, while non-participants do not receive energy savings but are still paying for the costs. FirstEnergy also contends that any potential benefits involve projections of energy benefits that would be realized, if at all, at some time in the future, and not during the billing period. FirstEnergy maintains that providing these speculative benefits on utility bills would lead to greater customer confusion. Additionally, FirstEnergy emphasizes that OMAEG provides no suggestion as to how to calculate benefits, and that there is no accurate way to quantify such benefits at this time. (FirstEnergy Reply at 3-6.)

IEU-Ohio also requests the Commission reject OMAEG's suggestion to adopt rules that require that a price benefit be included with an EDU's cost of compliance. IEU-Ohio contends that several parties contested such price benefits during the legislative process associated with S.B. 310, and if such benefits exist, they would flow to all participants in the wholesale market. Further, IEU-Ohio states that OMAEG has provided no recommendation on how price benefits should be determined. Moreover, IEU-Ohio argues the Commission recently found that such price benefits were too speculative to be afforded any weight.[1] (IEU-Ohio Reply at 6-7.)

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1 *In re Rev. of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 11-5201-EL-RDR, Opinion and Order (Aug. 7, 2013) at 33.

Noble argues that a plain reading of R.C. 4928.65 clearly shows that the statute does not address the benefits of EE and PDR. Thus, Noble believes the recommendations to include information regarding benefits are beyond what the General Assembly directed the Commission to accomplish and should be rejected. (Noble Reply at 3-4.)

(23) The Commission finds that OMAEG's recommendation that calculation of compliance costs take into consideration the benefits of the EE and PDR requirements should not be adopted. As pointed out by IEU-Ohio, OMAEG has provided no alternate method of calculation, other than recommending that companies be required to present such benefits on customer bills. At this time, the Commission finds that use of the EE/PDR rider is the best method available for calculating a customer's compliance costs, as it is a concrete and readily-available dollar amount.

Inclusion/Exclusion of Particular Costs

(24) AEP Ohio proposes that it should be permitted to recover all costs incurred to comply with the proposed cost disclosure rules through its existing alternative energy rider (AER) and EE/PDR rider. (AEP Ohio at 1-2.) AEP Ohio proposes to add the final costs of the project into these existing riders, subject to review and approval by the Commission. FirstEnergy agrees with AEP Ohio's recommendation to recover implementation costs associated with the proposed disclosure rules through existing AER and EE/PDR riders. (AEP Ohio at 1-2; FirstEnergy Reply at 9.)

FirstEnergy specifically requests the Commission adopt Staff's proposed rule, reasoning that the EE/PDR rider is the simplest and most efficient way to calculate EE and PDR costs, as the rider directly identifies the specific portion of the customer's bill that is attributable to these costs. (FirstEnergy at 2.)

OCC claims that any costs of implementing the proposed rule incurred by AEP Ohio do not relate to alternative energy or EE and PDR programs, and including these costs in the AER and EE/PDR riders would artificially increase the costs disclosed on customers' bills. As such, OCC argues

those costs should not be included in those riders, and, further, that approving new charges in a rulemaking docket is beyond the authority of the Commission. IEU-Ohio agrees with OCC's statement that this rulemaking proceeding is not appropriate to address AEP Ohio's request. Thus, OCC and IEU-Ohio urge the Commission to refrain from acting upon or addressing cost recovery issues in this proceeding. (OCC Reply at 2; IEU-Ohio Reply at 6.)

The Environmental Groups assert that AEP Ohio's "final costs" will most likely consist primarily of the costs of reformatting the utility's bills to include the new line items and any accompanying disclosures required by the Commission's final rules. The Environmental Groups contend that, if the Commission adopts AEP Ohio's proposal without altering the calculation of individual customer costs for EE and PDR, then the disclosed individual customer cost will be inflated by the cost of complying with R.C. 4928.65, which directly violates the statute. Additionally, the Environmental Groups request the Commission reserve the issues of scope and timing for auditing these costs for a separate proceeding where AEP Ohio offers a formal application to amend its rider in order to provide all interested parties and the Commission an adequate opportunity to review the application. (Environmental Groups Reply at 2-3.)

(25) The Commission finds that AEP Ohio's proposal that it should be permitted to recover all costs incurred to comply with the proposed cost disclosure rules through its existing alternative energy rider (AER) and EE/PDR rider should not be adopted. The Commission agrees with various stakeholders that this rulemaking proceeding is not an appropriate proceeding in which to address cost recovery issues. The Commission finds that EDUs should prepare proposals to recover the costs incurred to comply with the proposed rules through appropriate means, or proposals to defer the expenses.

(26) OMAEG argues that the use of the EE/PDR rider to calculate the costs of compliance with the EE and PDR requirements does not comply with the requirements of R.C. 4928.65. OMAEG asserts that the EE/PDR rider includes

costs associated with items that are not required for EE and PDR compliance, such as shared savings, interruptible tariff credits, rider true-up, and lost distribution revenue. OMAEG emphasizes that the costs associated with shared savings and lost distribution revenues for the EDUs, for most EDUs, are negotiated profits. OMAEG also suggests that interruptible tariff credits and the costs of other demand response programs be allocated as a PDR resource standard cost. However, OMAEG agrees that it would be acceptable to divide EE program costs between the two standards, since they contribute to both EE and PDR standards. (OMAEG at 7-8; OMAEG Reply at 2-3.)

OCC agrees with OMAEG that it would be inappropriate for EDUs to include the cost of interruptible credits as part of the disclosure of charges ascribed to EE and PDR requirements on customers' bills. Further, OCC argues that if the Commission wants information conveyed to customers on the cost of the interruptible credits, then it should be identified as a separate line item, apart from the EE and PDR requirements charges. (OCC Reply at 4-5.)

OMAEG continues that utilizing the EE/PDR rider as the basis for the calculations dramatically inflates compliance costs presented to the consumer, as well as intermingles utility shareholder profit with the cost of the customer-sited resources of EE and PDR. Additionally, OMAEG asserts that the utility's costs of compliance that are passed on to customers through the EE/PDR rider do not reflect the utility's actual compliance costs for each customer, but rather reflect the recovery of compliance costs. OMAEG claims that this recovery rate has historically been extremely volatile and generally represents an imperfect metric of an individual customer's costs for the EE and PDR requirements. OMAEG explains that this volatility could create undue confusion for manufacturers, since the cost of compliance could potentially appear as a credit on the customer's bill if the rider is a negative cost per kWh. OMAEG argues, given the volatility and lack of predictability, calculating the cost of compliance based upon rider charges would be extremely confusing for these types of customers. Moreover, OMAEG states the pronounced swing in costs associated with an EE/PDR rider is not a

unique concept, noting there are 26 EE/PDR riders across all EDUs and all rate classes and ten of these riders have produced a credit to consumers at some point. Given these circumstances, OMAEG asserts that the cost of compliance with EE/PDR benchmarks for customers should not be reflected as the costs of an EE/PDR rider. (OMAEG at 2-4.)

The Environmental Groups agree with OMAEG that the plain language of R.C. 4928.65 requires that the cost disclosures under this provision only include EE and PDR program costs directly related to meeting the statutory benchmarks. The Environmental Groups raise concerns that the EE/PDR rider may include various other costs, leading to an inaccurate calculation. The Environmental Groups specifically appeal the Commission to exclude costs associated with shared savings and lost distribution revenues. Additionally, the Environmental Groups request the Commission exclude any program costs not used for compliance with R.C. 4928.65, including: costs of experimental or pilot programs, if not counted toward statutory compliance; costs that do not relate to the approved set of programs offered to eligible utility customers; and costs relating to any EE and PDR savings that represent over-compliance. As EDUs' EE/PDR riders are not designed strictly to reflect the costs of compliance, the Environmental Groups request the Commission adjust the proposed rules to screen out rider costs that EDUs do not incur for purposes of statutory compliance. (Environmental Groups at 7-9; Environmental Groups Reply at 4.)

IEU-Ohio requests the Commission reject OMAEG's and the Environmental Groups' proposed changes on the basis that they violate the plain language of R.C. 4928.65. IEU-Ohio argues that the individual customer cost is a readily identifiable and easily calculable number through the EE/PDR rider rate. IEU-Ohio further asserts EDUs currently use this process each month when calculating the amount to charge each customer on electric bills. Further, IEU-Ohio contends that Ohio Adm.Code 4901:1-39-07 specifically identifies lost distribution revenue and shared savings as costs eligible to be charged to individual customers through an EDU's EE/PDR rider, and the Commission may not ignore these amounts when

considering each individual customer's cost. Additionally, IEU-Ohio suggests that any objection to the inclusion of shared savings and lost distribution revenue as a recoverable cost through an EE/PDR rider should be filed within 30 days in the proceeding where the EDU's application is filed, pursuant to Ohio Adm.Code 4901:1-39-07(B). (IEU-Ohio Reply at 2-5.)

FirstEnergy argues shared savings and lost distribution revenues are costs directly arising from the EE and PDR requirements, as the Commission has authorized the recovery of these costs in the tariff riders. Thus, FirstEnergy argues, these are appropriate costs to include in the cost disclosure calculations. FirstEnergy also disagrees with the comments of OMAEG and the Environmental Groups and contends that, even though there has been historic volatility in the rider amounts, those costs do represent the individual customer costs for those respective periods. Moreover, FirstEnergy argues the statute does not provide for adjustments in the bill amount due to cost volatility over time. (FirstEnergy Reply at 3-4.)

(27) Initially, the Commission emphasizes that the costs of compliance to be disclosed must be an accurate reflection of the costs actually being borne by customers related to the EE and PDR requirements. To that end, the Commission finds that the costs of shared savings, when included in the EE/PDR rider, are actual costs being paid by customers that are directly related to EDUs' compliance with the EE and PDR requirements. The Commission finds that, if an EDU over complies with the statutory EE and PDR requirements as a result of budgeted and approved EE and PDR programs, causing a shared savings expense, it is reasonable to count that shared savings expense as part of the cost of compliance in the year it is incurred. Additionally, the Commission emphasizes that EDUs are permitted to use banked savings from overcompliance toward future years' compliance, as it causes no additional cost to ratepayers during the year it is used. Therefore, the Commission finds that shared savings are, in fact, related to compliance with the EE and PDR requirements. Additionally, although OMAEG has argued that the EE/PDR riders can be volatile and reflect recovery costs rather than compliance costs, the

Commission notes that the costs of compliance do not vary from the costs of recovery in any meaningful measure. Further, variance in the rider rates that is not directly related to compliance costs is generally the result of estimation error, which can exist under any cost compilation method.

The Commission agrees, however, that certain other costs, including lost distribution revenue and interruptible tariff credits, although included in some EDUs' EE/PDR riders, are not related to EDUs' compliance with the EE and PDR requirements and should not be included in the calculations for the EE and PDR cost disclosure line items. The Commission believes that lost distribution revenue is a rate design issue related to how an EDU recovers its distribution costs, rather than EE and PDR costs. *See In re Aligning Elec. Distrib. Util. Rate Structure with Ohio's Pub. Policies to Promote Competition, Energy Efficiency, and Distrib. Generation,* Case No. 10-3126-EL-UNC, Finding and Order (Aug. 21, 2013). Further, as parties have previously represented to the Commission, the Commission believes that interruptible tariff credits are primarily economic development costs that have EE and PDR impacts, rather than being primarily EE and PDR programs. *See In re Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and the Toledo Edison Co. for Auth. to Establish a Std. Serv. Offer,* Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 30. Consequently, while the Commission finds that it is appropriate to use EDUs' EE/PDR riders to calculate the costs of compliance with the EE and PDR requirements, the Commission finds that EDUs, in calculating these amounts, shall subtract any costs related to lost distribution revenue and interruptible tariff credits from the currently effective EE/PDR rider. The Commission has amended proposed Ohio Adm.Code 4901:1-10-35(B)(2)(a) and 4901:1-10-35(B)(3)(a) accordingly.

Further, in upcoming electric security plan cases for the EDUs, the Commission will work to remove any costs currently collected under EE/PDR riders that are more appropriately collected under another rider in order that the EE/PDR rider rate will accurately reflect the actual cost of the EDUs' compliance with the statutory requirements.

80/20 Percent Allocation

(28) OMAEG argues that Staff's proposed option for 80/20 cost allocation to EE and PDR compliance in proposed Ohio Adm.Code 4901:1-10-35(B)(2)(b) does not accurately itemize compliance costs for either resource, as some programs are dedicated exclusively to PDR, and information that would more accurately reflect the actual allocation of costs between EE and PDR is available. OMAEG requests the Commission require EDUs to determine the exact allocation and submit any supporting evidence for Commission approval, rather than being permitted to use the 80/20 percent allocation option. (OMAEG at 7-8; OMAEG Reply at 2-3.)

DP&L and IEU-Ohio state that the proposed 80/20 percent cost allocation option is an appropriate and lawful application of the requirements set forth in R.C. 4928.65 in calculating an individual customer's cost of compliance with the EE and PDR requirements (DP&L at 3; IEU-Ohio at 2).

(29) The Commission finds that OMAEG's recommendation that EDUs be required to itemize items separately and allocate them to EE or PDR, and not be given the option to allocate the costs 80/20, should be rejected. The Commission acknowledges the wording of the statute; however, notes that the General Assembly did not provide a specific calculation for the Commission to use as to this line item, unlike the specific calculation provided for the cost of renewable energy resources. As such, the General Assembly gave the Commission discretion on how to implement this requirement. At this time, the Commission finds that the most practical way of implementing this requirement is to provide EDUs with the option to allocate costs 80/20, where the EDU does not already disaggregate the costs of EE and PDR.

Cost Reconciliation

(30) The Environmental Groups propose that, in order to ensure accurate cost calculations, the Commission include a mechanism under these rules to reflect the results of the cost reconciliation process for each utility. The Environmental Groups believe utilities can achieve this simply by adding or

subtracting any difference between the forecasted and actual costs from the rider amount used for cost calculations under these rules over the following corresponding period. Without this mechanism, the Environmental Groups state current practices of utilities may lead to inaccurate cost disclosures. (Environmental Groups at 9-10.)

(31) The Commission finds that the Environmental Groups' recommendation should not be adopted. As stated above, the Commission emphasizes that the General Assembly has given the Commission discretion on how to implement the requirement that EE and PDR costs be calculated and disclosed on customer bills. At this time, the Commission believes that the method set forth in Staff's proposed rules using the EE/PDR rider rates is the most appropriate method available to calculate the costs of the EE and PDR requirements.

Time Frame for Implementation

(32) AEP Ohio comments that the Commission should ensure that EDUs are notified when the Commission provides its renewable energy compliance report to the General Assembly, as well as allow for up to 30 days after that notification to update the data on customers' bills (AEP Ohio at 3-4.) FirstEnergy agrees with AEP Ohio's recommendation in order to allow changes to be made to the renewable energy cost of compliance. Direct Energy supports AEP Ohio's comments, noting the Commission already has a similar process in place for providing environmental disclosure data. (FirstEnergy Reply at 9; Direct Energy Reply at 4.) DP&L suggests that the Commission issue its renewable energy compliance report on a timely basis (DP&L at 3).

(33) The Commission agrees that it is reasonable for EDUs and CRES providers to receive notification from the Commission when a new report is provided to the General Assembly, and to allow 30 days for EDUs and CRES providers to update this data on customer bills. The Commission finds it is unnecessary to modify the proposed rules to reflect this, but emphasizes that the reports are made available on the Commission's website. Companies wishing to receive

notification when a new report is issued can sign up for notification via e-mail through the Commission's Electric-Energy industry list-serve. From the date the new report is issued, EDUs and CRES providers shall have 30 days before being required to update the data on customer bills.

(34) DP&L requests the Commission provide the EDUs at least six months from the effective date of the new rules to implement the required changes on customer bills, as the EDUs will need to make various changes to billing systems and additional programming adjustments to provide the required information. FirstEnergy agrees with DP&L's recommendation. (DP&L at 3; FirstEnergy Reply at 9.)

Direct Energy also requests a grace period prior to implementation of the changes being required in order to allow time for requisite programming and other administrative changes, but recommends a 90-day time frame. Noble agrees that 90 days would be an appropriate timeframe for implementation. (Direct Energy at 7; Noble Reply at 4.)

AEP Ohio agrees with Direct Energy and DP&L's proposal to provide sufficient time to comply with the rules after their effective date. AEP Ohio represents that it must not only implement the changes required, but must also test the new bill functionality for several of its operating companies to ensure it does not impact any of their existing billing systems. Therefore, AEP Ohio asks for additional time to implement the program after the rule effective date as well. (AEP Ohio Reply at 3.)

IEU-Ohio agrees the Commission should provide a reasonable amount of time to the EDUs and CRES providers to comply with the final rules adopted by the Commission. However, given the notice provided to the EDUs and CRES providers of impending change, IEU-Ohio recommends the Commission adopt Direct Energy's proposed 90-day timeframe to comply with the final rules. Further, IEU-Ohio suggests that the Commission direct the EDUs and CRES providers to include a bill insert disclosing the individual customer cost of the mandates beginning January 1, 2015, and continuing until the bill changes required by the

Commission's rules are implemented. (IEU-Ohio Reply at 5-6.)

Direct Energy reiterates its support for its proposed 90-day time frame, or DP&L's recommendation for a six-month time frame. However, Direct Energy requests the Commission grant the same amount of time to CRES providers as provided to EDUs. Direct Energy also requests the Commission clarify that the time for implementation begins to run upon the effective date of the rules, specifically ten days after a final filing of the rules is made at the Joint Committee on Agency Rule Review. (Direct Energy Reply at 5.)

(35) The Commission finds that, although unnecessary to incorporate into the rule, EDUs and CRES providers shall have 90 days to implement the rule requirements following the effective date of the rules. Additionally, as the Commission recognizes that some EDUs potentially may require additional time due to variances in billing systems, the Commission finds that EDUs may request temporary waiver of the rule if additional time is needed. The Commission notes that such waivers commonly are requested and granted during transition periods following rule implementation. Finally, the Commission finds that IEU-Ohio's recommendation that companies be required to include bill inserts with the disclosures beginning January 1, 2015, should not be adopted due to impracticality and unnecessary administrative burdens given the time frame of this rules proceeding.

(36) In order to avoid needless production of paper copies, the Commission will serve a paper copy of just this Finding and Order and will make the attached rules proposed in Ohio Adm.Code 4901:1-10-35 and 4901:1-21-19 available online at www.puco.ohio.gov/puco/rules. All interested persons may download the proposed rules from the above website or contact the Commission's Docketing Division for a paper copy.

It is, therefore,

ORDERED, That EDUs and CRES providers comply with the directives set forth herein. It is, further,

ORDERED, That attached proposed Ohio Adm.Code 4901:1-21-19 and 4901:1-10-35 be approved and filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 111.15. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code 4901:1-21-19 and 4901:1-10-35 shall be in compliance with R.C. 106.03. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

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Entered in the Journal

DEC 17 2014

Barcy F. McNeal

Barcy F. McNeal
Secretary

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"NEW"

4901:1-10-35 Disclosures of Renewable Energy Resource, Energy Efficiency, and Peak Demand Reduction Compliance Costs.

(A) For purposes of this rule, the following definitions shall apply:

(1) "Energy efficiency" has the meaning set forth in paragraph (N) of rule 4901:1-39-01 of the Administrative Code.

(2) "Renewable energy resource" has the meaning set forth in division (A)(37) of section 4928.01 of the Revised Code.

(B) Each electric distribution utility (EDU) shall list on all customer bills sent by the EDU, the individual customer cost of compliance for paragraphs (B)(1), (B)(2), and (B)(3) of this rule for the applicable billing period. Consolidated bills set by the EDU, which include supplier charges, shall include the EDU's individual customer cost of compliance for paragraphs (B)(2) and (B)(3) of this rule for the applicable billing period and will be included under the EDU's section of charges. Suppliers are responsible for providing the EDU with the individual customer cost of compliance pursuant to paragraph (B)(1) of rule 4901:1-21-19 of the Administrative Code for the applicable billing period which will be included under the supplier section of charges.

(1) The renewable energy resource requirement under section 4928.64 of the Revised Code. This cost shall be calculated as the sum of the following:

(a) The customer's usage in megawatt-hours for the applicable billing period, multiplied by the statutory solar percentage requirement pursuant to division (B)(2) of section 4928.64 of the Revised Code for the year in which the bill is issued, multiplied by the average of the Ohio solar and other solar renewable energy credit (REC) costs for EDUs as reported in the commission's most recent compliance report provided to the general assembly; and

(b) The customer's usage in megawatt-hours for the applicable billing period, multiplied by the statutory non-solar percentage requirement pursuant to

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division (B)(2) of section 4928.64 of the Revised Code for the year in which the bill is issued, multiplied by the average of the Ohio non-solar and other non-solar REC costs for EDUs as reported by the commission's most recent compliance report provided to the general assembly. The statutory non-solar requirement shall equal the total statutory renewable requirement net of the solar requirement.

(c) In the event that the commission's compliance report provided to the general assembly does not include separate REC costs for Ohio and other resources, the EDU solar and EDU non-solar REC costs as presented in the report should be inserted into the calculation where applicable.

(2) The energy efficiency savings requirements under section 4928.66 of the Revised Code. This cost shall be calculated as follows:

(a) The customer's usage in kilowatt-hours for the applicable billing period multiplied by the currently effective energy efficiency/peak demand reduction rider that is applicable to the customer, exclusive of any amounts related to collection of lost distribution revenue or interruptible tariff credits.

(b) The amount from paragraph (2)(a) of this rule shall be multiplied by the proportion of the energy efficiency/peak demand reduction rider that is associated with energy efficiency savings requirement compliance costs. For purposes of calculating this proportion, all costs represented in the energy efficiency/peak demand reduction rider shall be allocated either to energy efficiency requirements compliance or peak demand reduction requirements compliance. Alternatively, the EDU may multiply the amount from paragraph (2)(a) of this rule by eighty per cent.

(3) The peak demand reduction requirements under section 4928.66 of the Revised Code. This cost shall be calculated as follows:

(a) The customer's usage in kilowatt-hours for the applicable billing period shall be multiplied by the currently effective energy efficiency/peak demand reduction rider that is applicable to the customer, exclusive of any amounts related to collection of lost distribution revenue or interruptible tariff credits.

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(b) The amount from paragraph (3)(a) of this rule shall be multiplied by the proportion of the energy efficiency/peak demand reduction requirement rider that is associated with peak demand reduction requirements compliance costs. For the purpose of calculating this proportion, all costs represented in the energy efficiency-peak demand reduction rider shall be allocated either to the energy efficiency requirements compliance or peak demand reduction requirements compliance. Alternatively, the EDU may multiply the amount from paragraph (3)(a) of this rule by twenty per cent.

(4) Each of these costs shall be listed on each customer's monthly bill as a distinct line item.

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"NEW"

4901:1-21-19 Disclosures of Renewable Energy Resource Compliance Costs.

(A) As used in this rule, "renewable energy resource" has the meaning set forth in division (A)(37) of section 4928.01 of the Revised Code.

(B) Each competitive retail electric service (CRES) provider shall list on all customer bills sent by the CRES provider that do not include electric distribution utility (EDU) charges the individual customer cost of compliance with the renewable energy resource requirements for the applicable billing period.

(1) The cost of compliance with the renewable energy resource requirements shall be calculated as the sum of the following:

(a) The customer's usage in megawatt-hours for the applicable billing period, multiplied by the statutory solar percentage requirement pursuant to division (B)(2) of section 4928.64 of the Revised Code for the year in which the bill is issued, multiplied by the average of the Ohio solar and other solar renewable energy credit (REC) costs for CRES providers as reported in the commission's most recent compliance report provided to the general assembly; and

(b) The customer's usage in megawatt-hours for the applicable billing period, multiplied by the statutory non-solar percentage requirement pursuant to division (B)(2) of section 4928.64 of the Revised Code for the year in which the bill is issued, multiplied by the average of the Ohio non-solar and other non-solar REC costs for CRES providers as reported in the commission's most recent compliance report provided to the general assembly. The statutory non-solar requirement shall equal the total renewable requirement net of the solar requirement.

(2) In the event that the commission's compliance report provided to the general assembly does not include separate REC costs for Ohio and other resources, the CRES solar and CRES non-solar REC costs as presented in the report should be inserted into the calculation where applicable.

(C) Each CRES provider shall list on all customer bills sent by the CRES provider that include both EDU and CRES provider charges (consolidated bills) all of the following for the applicable billing period:

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(1) The cost of compliance with the renewable energy resource requirements, calculated as set forth in paragraph (B)(1) of this rule.

(2) The EDU's cost of compliance with the energy efficiency savings requirements under section 4928.66 of the Revised Code, calculated as set forth in paragraph (B)(2) of rule 4901:1-10-35 of the Administrative Code.

(3) The EDU's cost of compliance with the peak demand reduction requirements under section 4928.66 of the Revised Code, calculated as set forth in paragraph (B)(3) of rule 4901:1-10-35 of the Administrative Code.

(D) Each of these costs shall be listed on each customer's monthly bill as a distinct line item.