

# 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  
APPROVAL OF A WAIVER OF SPECIFIC  
SECTIONS OF THE OHIO ADM.CODE.

CASE NO. 21-1125-EL-WVR

## FINDING AND ORDER

Entered in the Journal on May 18, 2022

### I. SUMMARY

{¶ 1} The Commission approves, in part, and denies, in part, the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for waiver of certain specified rules, consistent with this Finding and Order.

### II. DISCUSSION

#### A. *Procedural Background*

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are electric distribution utilities (EDU), as defined in R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} Ohio Adm.Code Chapter 4901:1-10 is intended to promote safe and reliable service to consumers and the public and to provide minimum standards for uniform and reasonable practices. Ohio Adm.Code 4901:1-10-02(A)(2).

{¶ 4} On February 26, 2020, in *In re the Commission's Review of its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD (*Rules Case*), Finding and Order (Feb. 26, 2020), the Commission issued a Finding and Order addressing the written comments filed by parties and revising certain rules within Ohio Adm.Code Chapter 4901:1-10 based on the comments.

{¶ 5} On November 1, 2021, the revisions adopted by the Commission in the *Rules Case* became effective.

{¶ 6} On the same date, FirstEnergy filed an application for waiver of Ohio Adm.Code 4901:1-10-22(C), 4901:1-10-24(E)(3) and 4901:1-10-33(A).

{¶ 7} On November 18, 2021, November 23, 2021, and December 7, 2021, Retail Energy Supply Association (RESA), Ohio Consumers' Counsel (OCC), and Interstate Gas Supply, Inc. (IGS) filed motions to intervene in this proceeding, respectively. No motions in opposition of these intervention requests were filed. The Commission finds that the motions to intervene filed by RESA, OCC, and IGS are reasonable and should be granted.

{¶ 8} By Entry issued January 4, 2022, the attorney examiner requested that motions to intervene and comments be filed no later than January 25, 2022.

{¶ 9} On January 13, 2022, Commission Staff (Staff) filed comments regarding the application. On January 25, 2022, RESA and OCC filed their respective comments. IGS did not file comments.

**B. Summary of the Application**

{¶ 10} In connection with the rule changes implemented by the *Rules Case*, FirstEnergy seeks temporary waiver of Ohio Adm.Code 4901:1-10-22(C), 4901:1-10-24(E)(3), and Ohio Adm.Code 4901:1-10-33(A). Regarding Ohio Adm.Code 4901:1-10-22(C), FirstEnergy notes that this rule amendment requires EDUs to publish and maintain an online bill calculator that shows each and every rate or charge. FirstEnergy asserts that it needs additional time to build a customer-friendly model that complies with this directive and requests a six-month waiver to develop and implement the calculator. FirstEnergy commits to work with Staff on the project to ensure alignment with Staff's expectations.

{¶ 11} Regarding the waiver request for Ohio Adm.Code 4901:1-10-24(E)(3), FirstEnergy notes that the amendment to this rule permits EDUs to disclose residential

customer energy usage data (CEUD) that is more granular than monthly historical data to competitive retail electric service (CRES) providers if the data were required for the CRES provider to bill the customer for a time of use rate product. While FirstEnergy intends to comply with this rule, it notes that it will need to develop a method for CRES providers to notify the Companies about which of their customers are participating in a time of use product, will require internal information technology changes by the Companies, and may require broader coordination with the EDI Working Group. FirstEnergy also notes that, in relation to implementation of its grid modernization plan in Case No. 16-481-EL-UNC, et al., it is in discussions with Staff and interested stakeholders about access to residential customer hourly interval data and that it expects those discussions to impact the implementation of this rule, allowing release of hourly interval data solely “as required for billing purposes.” Accordingly, FirstEnergy requests a limited waiver of the new provision added to Ohio Adm.Code 4901:1-10-24(E)(3) until an outcome of the discussions outlined above is reached.

{¶ 12} Next, FirstEnergy discusses its waiver request for the rule amendment to Ohio Adm.Code 4901:1-10-33(A). In the *Rules Case*, according to the Companies, the Commission amended Ohio Adm.Code 4901:1-10-33(A) to include the following requirement: “[a]n electric utility cannot discriminate or unduly restrict a customer[']s CRES provider from including non-jurisdictional charges on a consolidated electric bill.” FirstEnergy states that, to comply with this provision, it will not include any CRES provider’s non-jurisdictional charges on the consolidated bill, including FirstEnergy’s own non-jurisdictional charges. FirstEnergy requests a six-month waiver to transition the approximately 165,000 customers with on-bill payments for non-jurisdictional charges to other payment means in a manner that mitigates customer confusion and harm. According to FirstEnergy, this time is needed to accommodate customers who have contracts with the Companies to pay for their non-jurisdictional products and service charges through their utility bill, or who may not have a convenient or available alternative means to payment, such as a credit card. FirstEnergy asserts that it will complete this transition no later than

May 1, 2022. Further, FirstEnergy asserts that it has ceased marketing efforts for on-bill payment of non-jurisdictional charges, though it anticipates some residual marketing materials, such as older advertisements customers have held onto, that will not reflect the discontinuance of this payment option. FirstEnergy states that it will work to educate customers who request on-bill payment as a result of residual marketing materials about the new process.

*C. Summary of the Comments*

{¶ 13} According to Staff, Ohio Adm.Code 4901:1-10-24(E)(3) provides a specific prohibition to disclose residential granular CEUD without a customer's consent and that, prior to the rule change, this section consisted of two exceptions to needing consent, namely when electronic authorization is provided and when a court or Commission directive orders disclosure. Staff argues that the rule change added a third exception to requiring customer consent to disclose granular CEUD, which is for billing purposes. Staff contends that the rule change did not create an obligation to provide residential granular CEUD to CRES providers, rather it only added an exception for customer consent when a customer has a time of use rate product. According to Staff, the rationale for this exception is that a customer with a time of use rate product understands that the energy provider needs access to the granular data to bill. Further, the customer understands that, by consenting to the time of use rate, the customer is also consenting to the release of granular data. Since all six Ohio EDUs are at differing stages of installing its advanced meter infrastructure, most customers cannot participate in time of use rates, as of yet, so it stands to reason that the rule change only applies to the requirement for consent from customers on a time of use rate product. Staff argues that FirstEnergy's description of the rule amendment within its waiver request is a mistaken interpretation of the rule. According to Staff, FirstEnergy seeks waiver of the implementation to release residential CEUD to energy providers. Staff argues that a proper waiver of this rule would be one requesting waiver of the requirement for customer consent to release granular data, not a waiver, as FirstEnergy describes, of the ability to provide this granular data to energy providers. Staff also notes that FirstEnergy currently

does not have the ability to provide residential CEUD to energy providers anyway. Accordingly, Staff believes FirstEnergy's waiver is unnecessary and opposes the waiver request since the application provided no reasons for a waiver of customer consent. Regarding FirstEnergy's waiver request of Ohio Adm.Code 4901:1-10-33(A), Staff believes a six-month waiver to transition customers is reasonable and, therefore, the waiver should be granted.

{¶ 14} RESA argues that FirstEnergy's waiver request of Ohio Adm.Code 4901:1-10-33(A) and the reasoning provided for the request misinterpret the new rule on its face and neglects the reasoning offered by the Commission within the February 26, 2020 Finding and Order and January 27, 2021 Second Entry on Rehearing in the *Rules Case*. According to RESA, the amendment to Ohio Adm.Code 4901:1-10-33(A) contains two prohibitions: (1) an EDU cannot discriminate in favor of itself or its affiliate; (2) an EDU must allow a competitive supplier access to the consolidated bill for non-jurisdictional charges unless it can demonstrate a reasonable justification for excluding access to the competitive supplier. Under the second prohibition identified above, RESA contends that the rule expressly contemplates that a CRES provider may place non-jurisdictional charges on the bill even if the EDU chooses not to. RESA argues that the rule does not permit an EDU to prevent placement of such charges on a consolidated bill unless the EDU can show reasonable grounds for not doing so in a particular case. According to RESA, the Commission already rejected Staff's and OCC's proposals that sought to ban placement of supplier charges for non-jurisdictional services on customers' bills, concluding that "[t]he EDU must allow the customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list non-jurisdictional service charges." *Rules Case*, Finding and Order (Feb. 26, 2022) at ¶ 213. RESA believes the Commission directed EDUs to accommodate the charges on bills unless there was a good reason to exclude them in a particular case. Further, RESA contends that FirstEnergy has failed to provide good cause for justifying its waiver. RESA argues that a delay to move customers to alternative billings cannot serve as a predicate for either continued discrimination against other vendors' placement of charges

on consolidated bills or a permanent ban on the placement of such non-jurisdictional charges on consolidated bills. Furthermore, according to RESA, FirstEnergy has provided no economic justification or technical reason as to why it cannot comply with the above rule amendment.

{¶ 15} OCC believes FirstEnergy's waiver requests, as well as the length of time requested for the waivers, amounts to an improper rulemaking, as the requests intend to weaken the consumer protections offered by the rules. Generally, OCC asserts that FirstEnergy failed to show actual hardship for needing the waivers or good cause under Ohio Adm.Code 4901:1-10-02(C). Regarding FirstEnergy's waiver request of Ohio Adm.Code 4901:1-10-22(C), OCC argues that Ohio law requires consumers be provided the ability to recalculate and verify their bill for accuracy and, until the online bill calculator is implemented and available, consumers will continue to lack a basic understanding of the charges FirstEnergy imposes on them and will be limited in their ability to recalculate and verify their bill for accuracy. OCC also argues that FirstEnergy does not offer any support for its claim that additional time is needed to implement the calculator and that the request is unreasonable considering other EDUs have had some version of online bill calculators available for some time. OCC asserts that FirstEnergy should be required to implement their bill calculator by March 1, 2022.

{¶ 16} Regarding Ohio Adm.Code 4901:1-10-24(E), OCC asserts that interpreting this exception as a narrow one is important since customer information can be used by marketer for unintended purposes, such as to market additional unregulated products, goods, and services to consumers. OCC contends that these additional services can cost consumers money for items they do not necessarily need or want and that, at a minimum, consumers should be provided full and frequent disclosure of all information that is shared with marketers and should be given an online tool to block the release of this information at all stages. OCC also states that consumers should be informed as to when and for how long their information will be shared to marketers and informed of the explicit purpose that the consumer information will be used by marketers. OCC recommends that the

Commission should deny FirstEnergy's waiver request and clarify that consumers must consent to the release of all granular energy usage data available from advanced meter infrastructure meters. OCC asserts that the clarification should include consumers who consent under a contract with a marketer for a time of use product that requires the detailed granular CEUD, as required for billing purposes by the marketer.

{¶ 17} Regarding the waiver pertaining to Ohio Adm.Code 4901:1-10-33(A), OCC states that it fully supports the removal of non-jurisdictional charges from FirstEnergy's consolidated bill and states that these charges should be removed by May 1, 2022. However, OCC recommends that the Commission also require that consumers will not be disconnected from utility service for non-payment of non-jurisdictional charges during the waiver period.

#### ***D. Commission Conclusion***

{¶ 18} Ohio Adm.Code 4901:1-10-02(C) permits the Commission, upon an application or motion by any party, to waive any requirement of Ohio Adm.Code Chapter 4901:1-10 not mandated by statute for good cause shown.

{¶ 19} Regarding FirstEnergy's request for a temporary waiver of Ohio Adm.Code 4901:1-10-22(C), the Commission notes that no parties oppose a temporary waiver of this rule to allow FirstEnergy more time implement online bill calculators. OCC contests the length of time requested by FirstEnergy for its waiver, which is six months. Despite OCC's argument otherwise, we do not find FirstEnergy's request unreasonable. Therefore, we approve FirstEnergy's request for waiver of Ohio Adm.Code 4901:1-10-22(C), with the waiver period to begin as of the date of this Order.

{¶ 20} Regarding FirstEnergy's request for waiver of Ohio Adm.Code 4901:1-10-24(E)(3), we initially note that we agree with Staff's interpretation of this rule change in that the amendment only created a third exception to the customer consent requirement to disclose granular CEUD, specifically for billing purposes. The rule amendment did not

impose a new obligation requiring EDUs to provide residential customers' additional hourly interval data to CRES providers based on whether a CRES provider bills its customer for a time of use product, as FirstEnergy seems to suggest, rather it only added an exception to the customer consent requirement in instances where a customer has a time of use rate product. We note that, in the *Rules Case*, we agreed with Ohio Power Company d/b/a AEP Ohio's (AEP Ohio) suggested amendment to the rule and that we supported Interstate Gas Supply, Inc.'s suggestion, which emphasized that the amendment was a new exception to the rule. *Rules Case*, Finding and Order (Feb. 26, 2020) at ¶¶ 183-184. We made this same clarification in a decision issued simultaneously with this case in AEP Ohio's recent waiver request application. *In re the Application of Ohio Power Company*, Case No. 21-1209-EL-WVR, Finding and Order (May 18, 2022) at ¶ 20. It appears that FirstEnergy seeks waiver of the implementation to release residential CEUD to energy providers; however, as explained above, the rule did not impose an obligation on an EDU to provide granular residential CEUD to CRES providers; it provided an exception to the requirement of needing customer consent before releasing such customer data. Therefore, we find that waiver of Ohio Adm.Code 4901:1-10-24(E)(3), as FirstEnergy requested it, is unnecessary and should be denied. Further, in addition to the above clarification, OCC believes that consumers should be informed as to when and for how long their residential CEUD will be shared to marketers and informed of the explicit purpose that the consumer information will be used by marketers. However, we note that, since granular CEUD would only be exchanged for billing purposes, it would necessarily be limited to the period of time the customer is on the CRES provider's time of use rate, as well as used for implementing the customer's time of use rate product. Therefore, OCC's recommendations are unnecessary.

{¶ 21} Regarding FirstEnergy's request for waiver of Ohio Adm.Code 4901:1-10-33(A), the Commission finds FirstEnergy's request reasonable and, therefore, finds that the request should be granted. We believe that the context and reach of Ohio Adm.Code 4901:1-10-33(A) provided by us in the *Rules Case* was clear and sufficient. When making this rule change, we noted that the rule was being amended to address, "\* \* \* the situation where an



EDU consistently enters into a contract only with the EDU's affiliate regarding placement of only that affiliate's non-jurisdictional service charges on the EDU's bill at the exclusion of all potential providers." *Rules Case*, Finding and Order (Feb. 26, 2020) at ¶ 213. We directed that an EDU must allow a customer's CRES provider, on an open and nondiscriminatory basis, access to the consolidated bill to list non-jurisdictional service charges; however, we stated that this provision "\*\*\*does not force the EDU to place the customer's CRES provider's non-jurisdictional service on the consolidated bill" and was intended to strike a middle ground between fairness to the CRES provider and respect to an EDU's freedom to contract. (Emphasis added); *Rules Case* at ¶ 242. On rehearing, the Commission reiterated the focused impact of this provision, "[t]he rule does nothing more than prohibit undue or unreasonable prejudice or disadvantage, as already required in R.C. 4905.35.(A), in a specific context. Therefore, we reiterate the need for this specified requirement to address circumstances similar to those described in Paragraph 213 of the Finding and Order." *Rules Case*, Second Entry on Rehearing (Jan. 27, 2021) at ¶ 57. In contrast to RESA's argument otherwise, as articulated above, this provision should be read in context of the intent behind it, which is to prohibit EDUs from exclusively placing their affiliate's non-jurisdictional service charges on an EDU's bill. FirstEnergy's proposed approach, not allowing any non-jurisdictional charges on the consolidated bill, including those of an affiliate, is viable under the rule amendment, as it prevents the scenario described above which was the impetus of the amendment. Further, although FirstEnergy has chosen to take this approach, we note that the rule allows for an EDU to include a CRES provider's non-jurisdictional charges on a consolidated bill; therefore, RESA's argument that this interpretation of the rule would be the equivalent of the Commission back peddling on its rejection in the *Rules Case* of an outright prohibition on the placement of non-jurisdictional charges on consolidated bills, is not well-taken. Also, we do not believe it is necessary, as OCC suggests, to require FirstEnergy to pause all disconnections for customers who fail to pay non-jurisdictional charges that appear on their bills during this waiver period. We believe this request is redundant of Ohio Adm.Code 4901:1-18-03, which does not list failure to pay non-jurisdictional service charges as a reason an EDU can disconnect a customer's utility service.

Also, we note that FirstEnergy requested a six-month waiver of Ohio Adm.Code 4901:1-10-33(A), the provision described above regarding placement of a CRES provider's non-jurisdictional charges on consolidated bills, in order to complete its transition to comply with the new rule, which it indicated would be finished no later than May 1, 2022. Since this date has passed, we find the waiver request moot; therefore, we deny the request for waiver.

### III. ORDER

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the motions for intervention filed by RESA, OCC, and IGS be granted. It is, further,

{¶ 24} ORDERED, That FirstEnergy's application for waiver be approved, in part, and denied, in part, consistent with this Finding and Order. It is, further,

{¶ 25} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record in this matter.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJS/hac

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Summary: Finding & Order approving, in part, and denying, in part, the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for waiver of certain specified rules, consistent with this Finding and Order electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio