**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221. | ) ) ) ) ) ) ) | Case No. 08-777-EL-ORD |

# APPLICATION FOR REHEARING BY THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES


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October 17, 2008

**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
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| In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221. | ) | Case No. 08-777-EL-ORD |

# APPLICATION FOR REHEARING BY THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

The Ohio Consumer and Environmental Advocates (collectively "OCEA")[1] jointly submit this Application for Rehearing pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A) regarding the Order in the above-captioned case issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on September 17, 2008. The OCEA members submit that the Commission's Order is unreasonable and unlawful in the following particulars:

> The Commission's order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding an electric utility standard service offer (Chapter 4901:1-35) that serve the public policy embodied in recent legislation.

[1]OCEA includes the Office of the Ohio Consumers' Counsel, NOPEC, City of Toledo, Ohio Partners for Affordable Energy, Ohio Interfaith Power and Light, Appalachian People's Action Coalition, Communities United for Action, Citizens for Fair Utility Rates, Neighborhood Environmental Coalition, Cleveland Housing Network, Empowerment Center for Greater Cleveland, Counsel for Citizens Coalition, Citizen Power, Natural Resources Defense Council, Edgemont Neighborhood Coalition of Dayton, Ohio Farmers Union, and as to the Energy Efficiency comments only, Sierra Club Ohio Chapter, Ohio Environmental Council, Greater Ohio.

The Commission's order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding transmission cost recovery (Chapter 4901:1-36) that serve the public policy embodied in recent legislation.

The Commission's order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding an electric utility's corporate separation plan (Chapter 4901:1-37) that serve the public policy embodied in recent legislation.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING**
**BY THE**
**OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

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## I. INTRODUCTION

The Ohio Consumer and Environmental Advocates (collectively "OCEA") jointly submitted comments and reply comments regarding rules proposed in an Entry dated July 2, 2008. OCEA requested that the Public Utilities Commission of Ohio ("PUCO" or "Commission") adopt the revisions to the proposed rules as set forth in those filings. OCEA's filings emphasized the need for full and complete data to inform the PUCO's important decisions and the burden placed on utilities to prove that their requests are justified. Rules are instrumental in setting forth the minimal requirements to inform decision-makers regarding rates and other terms of providing electric service. The OCEA members urge the Commission to reconsider its Order to keep in the forefront the public interest and the utilities' duty to serve that interest in a fair and reasonable manner.

## II. THE COMMISSION'S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING AN ELECTRIC UTILITY STANDARD SERVICE OFFER (CHAPTER 4901:1-35) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION. *AMOCO v. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

### A. The Commission's Order Failed to Set Reasonable Definitions (4901:1-35-01) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The final rules adopt a number of definitions that supplement those originally proposed as set out on July 2, 2008. OCEA supports the below-stated definition be added as definition (H) in Ohio Adm. Code 4901:1-35-01 (along with appropriate new designations for the other definitions) that relates to the provisions of Ohio Adm. Code 4901:1-35-08 on the competitive bidding process.

PROPOSED CHANGE (i.e. ADDITION):

> (H) "INDEPENDENT THIRD PARTY" MEANS A PARTY THAT IS NOT AN AFFILIATE OF THE ELECTRIC UTILITY AND THAT DOES NOT PROVIDE ONGOING REGULAR SERVICE OR RESOURCES TO THE ELECTRIC UTILITY OR ANY OF ITS AFFILIATES.

The term "independent third party" is used regarding the competitive bidding process, and should explicitly exclude entities that cannot reasonably be considered independent of the electric utility.

OCEA also recommends adopting a new section (B) (along with appropriate new designations for the other definitions) a definition defining at-risk populations:

PROPOSED CHANGE (i.e. ADDITION):

> (B) AT-RISK POPULATIONS, FOR THE PURPOSE OF IMPLEMENTING THE STATE POLICY TO PROTECT AT-RISK POPULATIONS, IN SECTION 4928.02(L) OF THE REVISED CODE, INCLUDE, BUT ARE NOT LIMITED TO, LOW-INCOME RESIDENTIAL

CONSUMERS, CONSUMERS WHO REQUIRE LIFE SUPPORT OR WHO ARE CHRONICALLY ILL, AND HOUSEHOLDS WHERE A MEMBER IS AGED 65 OR OLDER.

The OCEA members consider the indicated sets of customers to be less than the totality of the population that is "at-risk," but sets of customers that might not be considered in utility applications in the absence of the added definition.

**B. The Commission's Order Failed to Set Out Reasonable Requirements for the Contents of Applications (4901:1-35-03) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

The Commission should direct the electric utility to file testimony that is necessary to address the requirements of the market rate offer or the electric security plan as identified by rule 4901:1-35-03 (i.e. for both the MRO and the ESP). The approved rules allow the electric utility to file testimony on issues that the electric utility itself identifies. The Commission should provide more direction on the subject matter of the testimony to prevent the submission of testimony that the Commission may or may not find sufficient or necessary.

PROPOSED CHANGE:

(A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). Twenty copies plus an original of the application shall be filed. The application must include a complete set of testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues REQUIRED TO BE ADDRESSED IN AN SSO APPLICATION ACCORDING TO DIVISION (B) AND (C) OF THIS RULE AND ANY ADDITIONAL ISSUES SPECIFIC ~~identified by~~ TO the electric utility.

The Commission should adopt the above-stated change that will expedite MRO and ESP proceedings.

R.C. 4928.143(E) and (F) require that the Commission review all electric security plans that are longer than three years to determine if the electric distribution utility is earning excess profits through its rate plan. However, the new law also provides:

> In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.[2]

Because the Commission will not be permitted to include the earnings of affiliates or parent companies in its determination of earnings by an electric utility, the electric utilities may seek to pass earnings through to its affiliates to evade Commission review. Likewise, a parent of the electric utility may seek to have the electric utility assume costs of its affiliates. The Commission should require electric utilities to include in their filings new corporate separation plans that address this concern as part of their post-S.B. 221 SSO filings. The suggested adjustments to rule 4901:1-35-03(B)(3) and (C)(4) (addressing corporate separation for MRO and ESP applications, respectively) are as follows:

PROPOSED CHANGE:

> The electric utility shall include a discussion of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of waivers previously issued by the Commission to the electric utility regarding is corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on filed with the Commission pursuant to Chapter 4901:1-37 of the Administrative Code. THE DISCUSSION SHALL CLEARLY DEMONSTRATE THAT NEITHER THE ELECTRIC UTILITY,

[2] R.C. 4928.143(F).

ITS AFFILIATES, THE EMPLOYEES OF THE ELECTRIC UTILITY, NOR THE EMPLOYEES OF ITS AFFILIATES CAN OR WILL IMPOSE COSTS ON THE ELECTRIC UTILITY THAT SHOULD BE ATTRIBUTED TO THE AFFILIATES; THAT NEITHER THE ELECTRIC UTILITY, ITS AFFILIATES, EMPLOYEES OF THE ELECTRIC UTILITY, NOR THE EMPLOYEES OF ITS AFFILIATES CAN OR WILL ATTRIBUTE REVENUES IMPROPERLY TO EITHER THE ELECTRIC UTILITY OR ITS AFFILIATES; AND THAT NEITHER THE ELECTRIC UTILITY NOR THE AFFILIATES PROVIDE INCENTIVES TO EMPLOYEES TO IMPROPERLY ATTRIBUTE COSTS OR REVENUES TO EITHER THE ELECTRIC UTILITY OR THE AFFILIATES OF THE ELECTRIC UTILITY.

Further, requirements should be restored in 4901:1-35(B) and (C) that address operational support plans (located in Appendix A and B of the proposed rules, but not adopted in the September 17, 2008 Order).

PROPOSED CHANGE (i.e. ADDITION):

DIVISION (A)(2) OF SECTION 4928.31 OF THE REVISED CODE REQUIRED EACH ELECTRIC UTILITY TO FILE AN OPERATIONAL SUPPORT PLAN AS A PART OF ITS ELECTRIC TRANSITION PLAN. THE ELECTRIC UTILITY SHALL DEMONSTRATE THAT ITS OPERATIONAL SUPPORT PLAN DOES NOT IMPOSE ANY BARRIER, UNDUE BURDEN, OR COST UPON SUPPLIERS OF COMPETITIVE RETAIL SERVICE PROVIDERS OR CUSTOMERS SERVED EITHER THROUGH THE ELECTRIC SECURITY PLAN OR THROUGH COMPETITIVE RETAIL SERVICE PROVIDERS.

The additional language will help assure the effectiveness of its corporate separation plan and procedures.

OCEA supports a new section regarding portfolio management that addresses requirements to implement portfolio management planning for both market-rate offers and electric security plans. The requirement can be achieved by insertion of a new division (B) in rule 4901:1-35-03 (along with appropriate new designations for the other

divisions) to require that the electric utility develop and submit a minimum 10-year procurement plan for standard service offer that reflects the following minimum contents:

PROPOSED CHANGE (i.e. ADDITION):

(B) AN ELECTRIC UTILITY SHALL FILE A COMPREHENSIVE, LONG-TERM PORTFOLIO MANAGEMENT AND RESOURCE PROCUREMENT PLAN ALONG WITH ITS SSO APPLICATION THAT DESCRIBES A PROCUREMENT PLAN FOR A MINIMUM OF TEN YEARS. THE CONTENTS OF THE PROPOSED PROCUREMENT PLAN SHALL INCLUDE:

(1) ANALYSES OF CUSTOMER LOADS INCLUDING BASE LOAD, INTERMEDIATE LOAD, PEAK LOAD AND ANCILLARY SERVICE REQUIREMENTS, SEASONAL AND DAILY LOAD SHAPES AND VARIABILITY, THE NUMBER AND TYPE OF SSO CUSTOMERS FOR EACH CUSTOMER CLASS, LOAD GROWTH, TRENDS IN CUSTOMER CHOICE AND RETAIL MARKETS, TECHNOLOGICAL ADVANCES IN GRID MANAGEMENT, IMPACTS OF CURRENT AND PROPOSED ENERGY EFFICIENCY AND DEMAND RESPONSE SERVICES, AND THE PRICE ELASTICITY OF DEMAND.

(2) AN ASSESSMENT OF THE TYPES OF RESOURCES THAT ARE AVAILABLE AND THAT CONTRIBUTE TO MEETING PORTFOLIO NEEDS, INCLUDING ENERGY EFFICIENCY, DEMAND RESPONSE RESOURCES, SUPPLY-SIDE RESOURCES, DISTRIBUTED RESOURCES, AS WELL AS ANY RATE DESIGN PROPOSALS OR IMPROVEMENTS THAT HAVE BEEN EVALUATED;

(3) AN ASSESSMENT OF THE TYPES OF ELECTRICITY PRODUCTS THAT COULD EFFECTIVELY AND EFFICIENTLY CONTRIBUTE TO MEETING PORTFOLIO NEEDS, INCLUDING BASE LOAD, HEAVY

LOAD, PEAK, DISPATCHABLE, CURTAILABLE, ASSIGNABLE, FIRM, FULL REQUIREMENTS, LOAD FOLLOWING, UNIT CONTINGENT, SLICE OF THE SYSTEM, AND OTHERS;

(4) AN ASSESSMENT OF THE RESOURCE DIVERSITY OF THE EXISTING PORTFOLIO WITH RESPECT TO GENERATION FUEL AND GENERATION TECHNOLOGY, IN THE CONTEXT OF THE GOALS AND OBJECTIVES OF THE PROCUREMENT PLANNING REQUIREMENTS OF THESE RULES; AND

(5) AN ASSESSMENT OF THE FLEXIBILITY OF THE EXISTING PORTFOLIO WITH RESPECT TO GENERATION RESOURCES, SUPPLIERS, ENERGY EFFICIENCY AND DEMAND SIDE RESOURCES, ELECTRICITY PRODUCTS, CONTRACT LENGTHS, CONTRACT TERMS AND CONDITIONS, AND MARKET CONDITIONS.

A new Division (B)(2)(o) (i.e. using the designations in the new rules) of the rule should be included regarding reports on obstacles to providing a MRO.

PROPOSED CHANGE (i.e. ADDITION):

(B) (2) (o) AN EXPLANATION OF KNOWN AND ANTICIPATED OBSTACLES THAT WOULD PROVIDE DIFFICULTIES OR CREATE BARRIERS FOR THE ADOPTION OF THE PROPOSED BIDDING PROCESS SO THAT PARTICIPATION BY ELECTRIC SUPPLIERS WILL BE ENCOURAGED.

Division (B)(4) should be changed to properly reflect the requirements of S.B. 221. R.C. 4928.20(J) addresses procedures related to electric utilities that operate under an approved ESP, and are *not* applicable to SSOs consisting of MROs, and should not be included in Division (B)(4). Rather, R.C. 4928.20(J) provides the necessary conditions

for governmental aggregations to opt out of standby service if the electric utility operates under an approved ESP. However, R.C. 4928.20(K) does require the Commission to adopt rules "to encourage and promote large-scale government aggregation in this state", preferably with a reference to a more comprehensive set of rules designed to meet the policy objectives of the General Assembly. Because utilities will have to address these issues within their CBP, it should be included in the filing requirements. The necessary adjustments are shown below:

PROPOSED CHANGE:

(B) (4) A description of how the electric utility proposes to address governmental aggregation programs and implementation of division~~s~~ (I) and ~~(J)~~ (K) of section 4928.20 of the Revised Code.

The reference to R.C. 4928.20(J) is appropriate, however, as included in Division (C)(6) of the rules regarding ESPs.

While the Commission cannot anticipate all the evidentiary needs in connection with an ESP application, the rules regarding projections should provide more substantive direction than is present. To meet those purposes, the rules should be revised as follows:

PROPOSED CHANGE:

(C) A~~n~~ SSO application that contains a proposal for an ESP shall comply with the requirements set forth below.

(3) Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any. THE ELECTRIC UTILITY SHALL PROVIDE A COMPLETE EXPLANATION OF ALL ASSUMPTIONS RELIED UPON TO FORMULATE THE PROJECTIONS. PROJECTED RATE IMPACTS SHALL INCLUDE PLANS OF THE ELECTRIC UTILITY FOR IMPLEMENTING SPECIAL

ARRANGEMENTS AND THE DOLLAR PROJECTIONS WITH RESPECT TO HOW THESE SPECIAL ARRANGEMENTS ARE LIKELY TO AFFECT OTHER CUSTOMER CLASSES, INCLUDING THE RATE IMPACTS ON OTHER CUSTOMERS.

The policy goals stated in R.C. Chapter 4928 should be supported. The role of governmental aggregation is heightened in S.B. 221,[3] and that emphasis should be found in 4901:1-35(C)(6):

PROPOSED CHANGE:

(C) (6) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code. THE ELECTRIC UTILITY SHALL DEMONSTRATE THAT ITS GOVERNMENTAL AGGREGATION PROGRAMS AND THEIR IMPLEMENTATION DO NOT IMPOSE ANY BARRIERS OR UNDUE BURDEN OR COST UPON GOVERNMENTAL AGGREGATION PROGRAMS OR THEIR CUSTOMERS OR POTENTIAL CUSTOMERS.

Division (C)(9), entitled "Specific Information," should be adjusted to recognize the quarterly adjustment process for the recovery of fuel costs supported in OCEA's Initial Comments.

PROPOSED CHANGE:

(a)(iv) The specific means by which these costs will be recovered by the electric utility IN COMPLIANCE WITH THE QUARTERLY ADJUSTMENT MECHANISM SPECIFIED IN THESE RULES. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.

[3] See, e.g., R.C. 4928.20(K) ("encourage and promote large-scale aggregation").

Section (b) under "Specific Information" deals with potential surcharges based upon construction of major facilities. Such facilities can be extremely expensive, and careful consideration should be given to alternatives both in terms of new generation and demand-side resources. An integrated resource approach should be undertaken before resorting to surcharges. Added process is needed to perform this carefully. OCEA supports a PUCO "approval" only under circumstances where adequate information is publicly provided and an evidentiary hearing is conducted.

PROPOSED CHANGE:

(b) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction expenditures or environmental expenditures of generation resources. Any plan which seeks to impose A surcharge under these provisions shall include the following sections, as appropriate:

(i) The application must include a description of the projected costs of the proposed facility. The need for the proposed facility must have already been reviewed and ~~determined~~APPROVED by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code AND SUBJECT TO A HEARING AT WHICH THE ELECTRIC UTILITY DEMONSTRATED THE FACILITY IS THE BEST ALTERNATIVE TO MEET CUSTOMER NEEDS, INCLUDING CONSIDERATION OF THE PROBABLE ENVIRONMENTAL IMPACT OF THE FACILITY AND THE COSTS OF COMPLYING WITH FUTURE ENVIRONMENTAL STANDARDS.

(ii) The application must also include a proposed process, subject to modification and approval by the Commission, for the

competitive bidding of the construction of the facility unless the Commission has previously approved the process for competitive bidding of that specific facility. THE TERMS OF ANY REQUEST FOR CONSTRUCTION WORK IN PROGRESS SHALL BE SET FORTH IN THE REQUEST FOR PROPOSAL FOR THE CONSTRUCTION OF THE FACILITY ALONG WITH ANY INTENT TO IMPOSE A NONBYPASSABLE CHARGE AND DEDICATE THE FACILITY TO THE CUSTOMERS FOR THE LIFE OF THE PLANT.

(iii) An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with The applicable limitations of division (A) of section 4909.15 of the Revised Code. IN ANY REQUEST FOR CONSTRUCTION WORK IN PROGRESS, THE UTILITY SHALL BE REQUIRED TO DEMONSTRATE THAT THE PAYMENT MADE BY CUSTOMERS IS IN THE CUSTOMERS' INTERESTS AND THAT THE ELECTRIC UTILITY IS UNABLE TO COVER THE COST OF THE CONSTRUCTION WITHOUT SIGNIFICANT DETRIMENT.

(iv) An application which provides recovery of a surcharge for an electric generation facility shall include the proposed terms for the capacity, energy, and associated rates for the life of the facility. ANY FACILITY FOR WHICH THE UTILITY SEEKS RECOVERY FROM A CUSTOMER IN EXCHANGE FOR THE FACILITY BEING DEDICATED TO THE CUSTOMER

SHALL ALSO INCLUDE A PLAN SETTING FORTH THE PERCENTAGE OF TOTAL NEED THAT THE PLANT WILL MEET AND ALLOW CUSTOMERS TO SHOP FOR THE REMAINDER OF THEIR NEEDS. THE PLAN SHALL ALSO INCLUDE A FORMULA FOR CALCULATING A BLENDED RATE FOR CUSTOMERS THAT RECEIVE POWER FROM AN ALTERNATIVE SUPPLIER AND THE PROPOSED FACILITY.

Section (c) under "Specific Information" deals with potential terms, conditions, and charges that could affect the competitive marketplace. Such a marketplace should not be an afterthought, but is the final stage of limitation on electric utility pricing as electric utilities move from ESPs to MROs. Additional information and demonstrations should be required of Ohio's electric utilities. Those additions are shown in the following recommendations.

PROPOSED CHANGE:

(c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

* * *

(ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges. THE DESCRIPTION SHALL PROVIDE A

DETAILED QUANTIFICATION OF THE AMOUNTS THE ELECTRIC UTILITY PROPOSES TO DEFER, INCLUDING CARRYING COSTS AND THE TOTAL COST TO CUSTOMERS FOR EACH YEAR THAT THE DEFERRAL IS PROPOSED TO BE RECOVERED AND PROVIDE THE RATE IMPACT OF THESE COSTS ON EACH CUSTOMER CLASS AND TARIFF. THE UTILITY SHALL ALSO INCLUDE ALL WORKPAPERS ASSOCIATED WITH THESE CALCULATIONS.

Section (d) under "specific information" deals with potential automatic adjustment of standard service offer prices. Automatic rate adjustments relieve utilities of some of the regulatory pressures related to the component adjusted, a treatment that has previously only been afforded to increases in fuel costs and costs related to expenditures on fuel. Therefore, added information should be required of electric utilities that seek automatic adjustment for additional components of their standard service offer prices. OCEA makes the following recommendations.

PROPOSED CHANGE:

(d) Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change. IN THE EVENT THAT THE CHARGE PROVIDES A BENEFIT TO THE UTILITY, THEN THE UTILITY MUST

PROVIDE IN ITS APPLICATION A DETAILED PLAN AS TO HOW IT INTENDS TO EITHER PRO-RATE THE CHARGE OR SHARE WITH CUSTOMERS THE BENEFITS THAT ACCRUE FROM THE CHARGE.

Securitization of phase-in costs is controversial in Ohio. The justification for securitization, the method for such financing, and the tracking of actual costs over any implementation period should all be carefully evaluated by the Commission. Additional filing and processing demands should be placed on an electric utility that submits a plan for securitization.

PROPOSED CHANGE:

(e) Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is PROPOSED TO BE~~being~~ securitized, the electric utility shall provide a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility ~~will~~ MUST also describe a~~ny~~LL efforts to minimize the incremental cost of the securitization. The electric utility shall provide all documentation associated with THE PROPOSED securitization, including but not limited to, a summary sheet of terms and conditions. The electric utility shall also provide a comparison of costs associated with securitization with the costs associated with other forms of financing to demonstrate that securitization is the least cost strategy. THE ELECTRIC UTILITY SHALL PROVIDE A SCHEDULE FOR ANNUAL REVIEW OF THE SECURITIZATION PAYMENTS FOR THE COMPARISON OF ACTUAL RECOVERY OF SECURITIZED COSTS WITH THE PROJECTED RECOVERY OF THOSE SECURITIZED COSTS AND FOR

ADJUSTMENTS TO REFLECT ACTUAL COSTS.

Section (g) under "specific information" deals with alternative regulation that is untested with respect to electric utilities in Ohio. This fact cautions against sudden changes that might relieve one or more electric utilities from careful oversight of their regulated functions. OCEA recommends additional requirements.

PROPOSED CHANGE:

(g) Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. THE ELECTRIC UTILITY MUST INCLUDE PROJECTIONS OF SAVINGS AND BENEFITS THAT THE DISTRIBUTION PROJECT WILL PROVIDE TO CUSTOMERS, AS WELL AS AN ANALYSIS OF IMPACTS ON AT RISK POPULATIONS. ANY PROPOSAL FOR INFRASTRUCTURE MODERNIZATION THAT INCLUDES POTENTIAL BENEFITS IN THE FORM OF GENERATION SUPPLY PRICES SHOULD PROVIDE A SEPARATE ANALYSIS FOR BOTH DISTRIBUTION AND GENERATION SUPPLY SERVICE COSTS AND BENEFITS. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility must provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses a~~ny~~LL cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

(i) A description of the infrastructure modernization plan, including but not limited to, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), THE ESTIMATED LIFE OF EQUIPMENT AND DEVICES PUT INTO SERVICE, THE REASON THE NEW INFRASTRUCTURE IS NEEDED, THE IMPACT OF THE PROPOSAL WITH REGARD TO BOTH COSTS AND BENEFITS ON EACH CUSTOMER CLASS AND AT RISK POPULATIONS and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure . . . .

* * *

(iii) A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure modernization plan shall also include a description of efforts made to mitigate such stranded investment, INCLUDING EFFORTS TO MAXIMIZE SALVAGE VALUE FOR EQUIPMENT MADE OBSOLETE.

Section (h) addresses economic development provisions that, as demonstrated in comments by OCEA and other parties, could prove contentious regarding the potential interclass subsidies. Such subsidies should be kept in check both as a matter of economic efficiency (i.e. sending proper price signals) and as a matter of equity (i.e. fair pricing

that recognizes the need of small customers as well as large customers). Economic development provisions could easily be transformed into anti-competitive devices. OCEA recommends additional informational requirements as one approach to eliminate the improper application of economic development provisions.

PROPOSED CHANGE:

> (h) Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates. THE PROPOSAL SHALL INCLUDE A DESCRIPTION OF THE MEANS BY WHICH THE PUBLIC WILL BE ABLE TO OBTAIN SPECIFIC INFORMATION, UPDATED ANNUALLY, REGARDING ALL EMPLOYMENT BENEFITS AND ENERGY EFFICIENCY GAINS OBTAINED THROUGH THE ELECTRIC UTILITY'S PROGRAM.

Division (C)(10), entitled "Additional required information," deals with information intended to place checks on electric price increases by prohibiting the collection of excess earnings by electric utilities under an ESP. Without such a check, electric rates and utility earnings could increase to levels that would damage customers and Ohio's economy. OCEA recommends that the sentences contained in (C)(10)(a)(i) and (ii) regarding protection of confidential information be *deleted* since a utility may seek such protection for any of its information that is submitted to the Commission, such protection being limited to information that meets the appropriate tests for confidentiality. If the information requires protection, a utility would not be precluded from requesting

such treatment; however, such treatment should not be automatic and should be the exception, not the rule.

### C. The Commission's Order Failed to Set Reasonable Provisions for Hearings (4901:1-35-06) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

While the Commission adjusted the proposed rule to expand the period in which interventions may occur, the rule adopted for the timing of interventions in hearings departs from standard practice regarding the timing of interventions, as stated in Ohio Adm. Code 4901-1-11(E). OCEA proposes the following:

PROPOSED CHANGE:

> (B) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than ~~forty-five days after the issuance of the entry scheduling~~ FIVE DAYS PRIOR TO THE SCHEDULED DATE OF the hearing, unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner. This rule does not prohibit the filing of a motion to intervene and conducting discovery prior to the issuance of an entry scheduling a hearing.

The above-stated revision would reinstate standard practice regarding the timing of interventions, and would also prevent a conflict in the Commission's rules regarding intervention timing that could be confusing to the public.

### D. The Commission's Order Failed to Set Reasonable Provisions for the Discovery of Agreements (4901:1-35-07) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

This rule reflects the discovery requirements established by the General Assembly under R.C. 4928.145. The rule should be more explicit about the circumstances under which an agreement is relevant to the proceeding. Such a revision could prevent discovery disputes, and possibly the motions to compel as well as the associated delay that could develop over such disputes. Delay should be avoided, especially in a major case that must be decided during a time period that falls well short of the time provided for standard rate cases.

The Commission should state in its rules that any agreement or contract is relevant to a proceeding regarding standard service offer rates if the agreement or contract involves the sale or purchase of electric service. Further, agreements or contracts that involve fuel or emission allowances used in the generation of electric service are relevant to the proceeding and this too should be explicitly stated in the Commission's rules. Any agreement or contract between the utility or its affiliates and a buyer or seller of electric service, energy efficiency credits (also known as 'white tags') , renewable energy credits, fuel or emission allowances could result in an inappropriate subsidy to the electric utility's affiliate or to another customer.

PROPOSED CHANGE:

> Upon submission of an appropriate discovery request during a proceeding establishing a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential

> information as is determined appropriate by the commission. A CONTRACT OR AGREEMENT FOR THE PURCHASE OR SALE OF ELECTRIC SERVICE (GENERATION OR TRANSMISSION), ENERGY EFFICIENCY CREDITS, RENEWABLE ENERGY CREDITS, FUEL OR EMISSION ALLOWANCES USED IN THE GENERATION OF ELECTRICITY IS RELEVANT TO THE PROCEEDING AS IS A CONTRACT OR AGREEMENT BETWEEN THE ELECTRIC UTILITY OR ANY OF ITS AFFILIATES AND A PARTY TO THE PROCEEDING, CONSUMER, ELECTRIC SERVICE COMPANY, OR POLITICAL SUBDIVISION.

For the above-stated reason, the rule should be expanded to clarify that some agreements or contracts are explicitly considered relevant to the proceeding. This clarification will avoid significant delays and contribute to the goals of transparency.

### E. The Commission's Order Failed to Set Reasonable Competitive Bidding Requirements (4901:1-35-08) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

R.C. 4928.142(A)(2) directed the Commission to modify or adopt new rules concerning the conduct of the competitive biding process. R.C. 4928.142(A)(1)(d) directs the Commission to require electric utilities to use an "independent third party" to design, administer and ensure that the criteria under R.C. 4928.142(A)(1) are met. As stated above regarding definitions, the Commission should define the term "independent third party" as follows:

> "INDEPENDENT THIRD PARTY" MEANS A PARTY THAT IS NOT AN AFFILIATE OF THE ELECTRIC UTILITY AND THAT DOES NOT PROVIDE ONGOING REGULAR SERVICE OR RESOURCES TO THE ELECTRIC UTILITY OR ANY OF ITS AFFILIATES.

The definition may avoid controversy that could cause considerable delay regarding the selection of a consultant for the bidding process.

The Commission's procedure for developing a competitive bidding process should not be a process that is open only to the electric utility, the PUCO Staff, and Commission. Many other parties will be affected by the outcome of the competitive bid process such as the potential bidders in the competitive bid, the utilities' competitors and the customers that may have to pay the price achieved through a competitive bid. For this reason, the procedure for establishing the competitive bid process should be open and transparent with all interested parties having an opportunity to submit comments and contest the process if necessary. In order to facilitate those objectives, the rules should state:

> (A) An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). The CBP plan shall comply with the requirements set forth in appendix A to rule 4901:1-35-03 of this chapter, AND SHALL BE SUBJECT TO A HEARING REGARDING THE REASONABLENESS OF THE CBP PLAN UPON THE REQUEST OF AN INTERESTED PERSON. The electric utility shall use an independent third party to design an open, fair, and transparent bid solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. The independent third party shall incorporate into the solicitation such measures as the commission may prescribe BY ENTRY OR ORDER, and shall incorporate into the bidding process any direction the commission may provide. Any modifications or additions to the CBP made by the independent third party shall be submitted to the commission for review prior to implementation.

### F. The Commission's Order Failed to Set Reasonable Electric Security Plan Fuel and Purchased Power Adjustments (4901:1-35-09) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

R.C. 4928.143(B)(2) permits automatic cost recovery procedures under some circumstances, and mentions the automatic cost recovery of fuel costs as an example. The rule proposed by the PUCO Staff should be broadened to deal with the statutory authority, which can be accomplished by removing from the title to Ohio Adm. Code 4901:1-35-09 the words "fuel and purchased power." More detailed rules regarding fuel and purchased power adjustments should be provided for in the rules regarding automatic cost recovery. R.C. 4928.143(B)(2)(a) requires the electric utility to show that fuel costs, purchased power costs, and emission allowance costs are prudently incurred. Due to the experience and years of practice the Commission has with the fuel components rules, the Commission should model its automatic recovery mechanism for fuel on the PUCO's previous rules on the same subject.

In the past, purchased fuel, purchased power and environmental costs such as emission allowances were all reviewed and recovered through the electric fuel component rules. Moreover, the rule that the Staff proposes is similar to the electric component procedure previously established through rules. The Commission should adopt, in principal part, the electric fuel component rule the PUCO previously formulated through years of experience. OCEA proposed a rule in its Initial Comments based upon the Commission's earlier work in this area. The adjustments include a change from semi-annual adjustments to the quarterly adjustments stated in Staff's proposed rules that were adopted by the Commission in September.

### G. The Commission's Order Failed to Set Reasonable Competitive Bidding Process Ongoing Review and Reporting Requirements (4901:1-35-11) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

As part of the annual status report required by R.C. 4928.143(E), the electric utilities are required to analyze the return on equity "likely to be earned by publicly traded companies, including utilities that will face comparable business and financial risk." Paragraph (C)(4) has been modified to include the comparison of electric utilities as required by the statute.

PROPOSED CHANGE:

(B) (4) The staff shall review the quarterly filing for completeness, computational accuracy, and consistency with prior commission determinations regarding the adjustments. If the staff OR ANY INTERESTED PERSON raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date.

(5) ON AN ANNUAL BASIS, THE ELECTRIC UTILITY SHALL BE REQUIRED TO FILE A REPORT THAT INCLUDES A SEPARATE LISTING OF EACH COST OR COST COMPONENT INCLUDING COSTS FOR FUEL, PURCHASED POWER, PORTFOLIO REQUIREMENTS, AND ENVIRONMENTAL COMPLIANCE, OF ITS MRO IN COMPARISON WITH THE COSTS OR COST COMPONENTS INCLUDED IN THE CBP AND THE PREVIOUSLY EXISTING LEVEL OF EACH COST.

(6) On an annual basis, or other basis as determined by the commission, the prudence of the costs incurred and recovered through quarterly adjustments to the electric utility's SSO portion of the blended rates shall be reviewed BY THE COMMISSION. THE PRUDENCE REVIEW SHALL BE CONDUCTED IN A COMMISSION PROCEEDING, INCLUDING A HEARING WITH PROVISIONS FOR PUBLIC COMMENT. The commission shall determine the

frequency of the review and shall establish a schedule for the review process. The commission may order that consultants be hired, with the cost to be billed to the company, to conduct THESE prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments. The cost to the electric utility of the commission's use of such consultants may be included by the electric utility in its quarterly rate adjustment filing.

(C) (1) The annual status report shall provide a general statement about the operation of the CBP to date. The annual status report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP service and the resulting blended rates on the electric utility's customers. THE REPORT SHALL ALSO VERIFY THE ELECTRIC UTILITY'S USE OF THE LEAST-COST PLANNING PRINCIPLES AND ITS INTEGRATED PORTFOLIO PLAN.

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(4) The annual status report shall ~~describe~~ PROVIDE A THOROUGH ACCOUNTING OF the financial condition of the electric utility, its current return on common equity, and the return on common equity of publicly traded companies that face comparable business and financial risk. * * * Additionally, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned by publicly traded companies, INCLUDING OTHER ELECTRIC UTILITIES that face comparable business and financial risks as the electric utility.

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(10) The commission, legal director, deputy legal director, or attorney examiner shall ~~determine the level of~~ review ~~required for~~ any information, plans, or requests set forth in the annual status report, and set ~~any necessary schedules~~ THE MATTER FOR HEARING through an entry, TO DETERMINE, AMONG OTHER THINGS, THE EXTENT OF THE EXCESS EARNINGS, AND THE MECHANISM TO RETURN THE EXCESS EARNING TO THE UTILITY'S CUSTOMERS, IN ACCORDANCE WITH R.C. 4928.143(F).

## III. THE COMMISSION'S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING TRANSMISSION COST RECOVERY (CHAPTER 4901:1-36) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION. *AMOCO v. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

### A. The Commission's Order Failed to Set a Reasonable Rule for Purpose and Scope (4901:1-36-02) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The adjustment that should be made to Ohio Adm. Code 4901:1-36-02(A) clarifies that only FERC-authorized costs, which are directly related to the cost of transmission to serve end-use customers, are recoverable through the transmission cost recovery rider. The deleted language concerning RTOs or similar organizations is not necessary because the electric utility can only be charged rates for charges FERC approves. The word "net" is inserted because the approved rule could be construed to mean that revenues and credits could be charged to customers (i.e. again).

PROPOSED CHANGE:

> (A) This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's rates, all NET transmission and transmission-related costs, WHICH ARE DIRECTLY INCURRED TO PROVIDE TRANSMISSION SERVICES TO END-USE CUSTOMERS, including ancillary and congestion costs and revenues, AUTHORIZED ~~charged or credited to the utility~~ by the federal energy regulatory commission ~~or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission~~ and such costs and revenues are no included in any other schedule or rider in the electric utility's tariff on file with the commission.

Transmission costs comprise a significant portion of a retail customers' electric utility bill. Any waiver of the requirements of this chapter must result from an open,

transparent, process where parties' objection to the waiver can be heard. Therefore, OCEA proposes the following change in section (B):

PROPOSED CHANGE:

> (B) The commission may waive any requirement of Chapter 4901:1-36 of the Administrative Code for good cause shown AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD IS PROVIDED TO PERSONS WHO SATISFY THE INTERVENTION STANDARDS OF SECTION 4903.221 OF THE REVISED CODE.

Interested persons should be heard if they have a concern regarding a waiver regarding transmission charges.

**B. The Commission's Order Failed to Set Reasonable Application Requirements (4901:1-36-03) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

The Commission review should be broadened. First, both prudence and financial reviews should be conducted, not one or the other. Second, the review should encompass whether the electric utility has reasonably attempted to control its transmission costs in the RTO stakeholder process or thorough proceedings at FERC. This concept may not be captured in a prudence review. Therefore, OCEA proposes additions to provision (C):

PROPOSED CHANGE:

> (C) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and financial reviews of the costs incurred and recovered through the transmission cost recovery rider. SUCH REVIEWS SHALL CONSIDER WHETHER THE ELECTRIC UTILITY ACTED PRUDENTLY TO CONTROL ITS TRANSMISSION COSTS.

The relevant comparison regarding whether transmission costs are properly recognized should be to costs *authorized* by the Commission, not costs claimed in the

electric utility's application. The adjustment required to implement this change is as follows:

PROPOSED CHANGE:

(E) If at anytime during the period between annual update filings, the electric utility or staff determines that costs are or will be substantially different than the ~~projected~~ amounts AUTHORIZED AS THE RESULT OF ~~included in~~ the~~ir~~ ELECTRIC UTILITY'S previous application, the electric utility shall file an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.

Paragraph (F) of the proposed rule provides parties less ability to participate in transmission cost recovery rider proceedings than presently exists. OCEA supports the following adjustments:

PROPOSED CHANGE:

(F) ~~Affected parties may file detailed comments on any issue concerning any application filed under this rule within thirty days of the date of the filing of the application.~~ PARTIES TO THESE PROCEEDINGS ARE ENTITLED TO ALL RIGHTS AND PROTECTIONS AFFORDED IN CONTESTED CASE, INCLUDING DISCOVERY AND THE ABILITY TO PRESENT TESTIMONY. MOTIONS TO INTERVENE SHALL BE MADE NO LATER THAN FIVE DAYS BEFORE THE HEARING UNLESS THE COMMISSION GRANTS AN EXTENSION OR FOR GOOD CAUSE SHOWN.

(G) THE FEDERAL ADVOCATE AUTHORIZED BY SECTION 4928. 68 OF THE REVISED CODE SHALL MONITOR AND FILE WITH THE COMMISSION ON A REGULAR BASIS BUT NO LESS THAN EVERY SIX MONTHS, OR SOONER AS CHANGES APPROVED BY THE FERC FOR THE RTO WARRANT, REPORTS WHICH DEFINE THE RTO COSTS THAT ARE TRANSMISSION-RELATED AND THE RTO COSTS THAT ARE ENERGY-RELATED, OR RELATED TO THE DEVELOPMENT OF MARKETS. THE REPORT

SHALL BE USED BY STAFF IN REVIEWING PROPOSED TRANSMISSION COST RECOVERY RIDERS.

The change in language and additional division would help resolve and correct the problems with the proposed transmission cost recovery procedure. The procedures currently utilized to establish transmission riders have been streamlined over the years as the result of hearings. Absent a change in the structure of the filing by the electric utility or changes in FERC-approved RTO charges, these proceedings will likely become streamlined as well.

The potential for significant changes (which have been observed in several transmission rider filings) justifies a clarification that a hearing will be held when there are significant changes in the application compared to a previous application. Given the significant increase in RTO costs related to market issues, it is imperative that customers pay those charges only when they are incorporated into generation charges. Transmission riders should be limited to RTO transmission charges. Any problem the Commission may have with the timing of the implementation of the rider can be easily solved by allowing the rider to go into effect "subject to" the final outcome of the proceeding that would include refunds with interest. An open, transparent process is the best way to evaluate transmission costs.

The Appendix to the Staff's proposed Rule 4901:1-36-03 should be revised as follows to be consistent with the other OCEA positions:

PROPOSED CHANGE:

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B-1 Summary of Total Projected Transmission Costs

Provide the total forecasted cost/revenue for each cost component.

Include all costs and related revenues, network integration transmission service, ancillary service ~~, regional transmission organization, and reconciliation adjustment~~ DIRECTLY RELATED TO TRANSMISSION SERVICE, REGIONAL TRANSMISSION ORGANIZATION COSTS DIRECTLY RELATED TO TRANSMISSION SERVICE, AND RECONCILIATION ADJUSTMENTS.
Indicate whether each component is energy or demand related. PROVIDE THE TOTAL FORECASTED CREDITS FOR EACH COST COMPONENT. FORECASTED COSTS IN THE APPLICATION SHALL NOT BE GREATER THAN THE TRANSMISSION-RELATED COSTS IN THE FEDERAL ENERGY ADVOCATES MOST RECENT REPORT.

**C. The Commission's Order Failed to Set Reasonable Transmission Limitations (4901:1-36-04) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

OCEA's proposed adjustment to this section clarifies that only FERC-authorized costs are recoverable through the transmission cost recovery rider.

PROPOSED CHANGE:

(C) The transmission cost recovery rider shall include NET COSTS AUTHORIZED BY THE FEDERAL ENERGY REGULATORY COMMISSION ~~transmission and transmission-related costs and off-setting revenues, including ancillary service and congestion-related costs and revenues, charged or credited to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission and such costs and revenues are not included in~~ THAT ARE TRANSMISSION-RELATED AND THAT ARE NOT RECOVERED BY any other schedule or rider included in the electric utility's tariffS on file with the commission.

The deleted language concerning RTOs or similar organizations is not necessary because the electric utility can only be charged rates for costs that FERC approves. Insertion of

the word "net" eliminates any interpretation of the rule that would charge customers for "off-setting revenues" or "revenues."

### D. The Commission's Order Failed to Set Reasonable Hearing Requirements (4901:1-36-05) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The Commission, not an employee of the Commission, must determine whether the application for recovery of transmission expenses is in the public interest and whether the costs are just and reasonable. Only the Commission has the authority to make such a determination. Others working for the Commission, however, may determine the particulars regarding a required hearing. The change supported by OCEA is reflected in the following revisions.

PROPOSED CHANGE:

> Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission shall ~~approve the application or~~ SET THE MATTER for hearing ~~within seventy-five days~~ after the filing of a complete application under this chapter.

Transmission costs represent a significant portion of a customers' bill, and the determination of the costs electric utilities should be permitted to recover must be made by the Commission. Transmission costs should be litigated whenever a party claims there is a substantial change in the contents of the rider or when circumstances change causing a substantial affect on the contents of the rider.

## IV. THE COMMISSION'S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING AN ELECTRIC UTILITY'S CORPORATE SEPARTION PLAN (CHAPTER 4901:1-37) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION. *AMOCO v. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

### A. The Commission's Order Failed to Set Reasonable General Provisions (4901:1-37-04) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

Division (A)(1) and (A)(2) under "structural safeguards" focuses on intra-holding company relationships relating to sales within the operating company service territory that could provide a competitive advantage. This provision should be broadened to include employees when the distribution utility sells competitive power to other utilities, in other service territories, or that simply enters into transactions with affiliates. Harm can result from affiliate transactions. The location of the affiliate entering into transactions with the electric utility is irrelevant. The following revisions are proposed to be consistent with the intent of, and other provisions in, the rules.

PROPOSED CHANGE:

> (A)(1) Each electric utility, INCLUDING EMPLOYEES OF AN ELECTRIC DISTRIBUTION UTILITY SELLING POWER OUTSIDE ITS SERVICE TERRITORY and its affiliates that provide services to customers within the electric utility's service territory OR TO OTHER ELECTRIC UTILITY SERVICE TERRITORIES shall function independently of each other.
>
> (A)(2) ~~Each~~ Electric utilities and their affiliates ~~that provide services to customers within the electric utility's service territory~~ SHALL FUNCTION INDEPENDENTLY OF EACH OTHER AND shall not share facilities and services if such sharing in any way violates paragraph (D) of this rule.

OCEA proposes changes to provision (A)(5) to prevent an advantage for an affiliate (because of its relationship with the electric utility) as compared with any other electric services company. The proposed revision permits the Commission to use a method other than cost allocation when cost allocation is not representative of the benefit received by the affiliate of shared employees.

PROPOSED CHANGE:

(A)(5) An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs. THE COMMISSION MAY CONSIDER ALTERNATIVE COST ALLOCATION METHODS IF FULLY ALLOCATED COSTS ARE NOT REPRESENTATIVE OF THE BENEFIT RECEIVED BY THE AFFILIATE FROM SHARED EMPLOYEES.

OCEA proposes revisions to the language of paragraph (A)(6) to accomplish two purposes. First, the electric utility must initially demonstrate that its transactions comply with state and federal regulatory rules. The electric utility knows what rules govern its behavior and whether it has complied with them. For this reason the electric utility should be required to demonstrate its compliance in the first instance. Until a determination is made of what regulatory compliance information constitutes compliance with the rules and costing principles of this chapter, the electric utility is not entitled to a rebuttable presumption. Second, in order to provide a transparent and open process, the cost allocation manual ("CAM") must be made available to parties for the purposes of complaints and discovery. Without this information, it is impossible to evaluate the company's behavior and compliance with the rules. This is also the only source of information regarding complaints filed within the company by the utility's employees.

PROPOSED CHANGE:

(A)(6) THE ELECTRIC UTILITY SHALL DEMONSTATE THAT transactions ARE made in accordance with rules or regulations approved by the federal energy regulatory commission, securities and exchange commission, and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission.~~, shall provide a rebuttable presumption of compliance with and costing principles contained in this chapter.~~ THE CAM SHALL BE MADE AVAILABLE TO PARTIES TO ANY COMMISSION PROCEEDING INVOLVING THE ELECTRIC UTILITY.

Division (C) regarding "financial arrangements" should consider that under S.B. 221, electric distribution utilities are permitted to build or purchase power plants that may be dedicated wholly or partially to sales in competitive markets, including in other Ohio electric distribution territories. Customers of electric distribution utilities should not be responsible for excessive costs associated with these investments and sales, the same thing the proposed rules seek to prevent when a corporate affiliate undertakes these activities. OCEA recommends the following new subdivision:

(C) (7) AN ELECTRIC UTILITY SHALL NOT FINANCE OR COLLECT FROM CUSTOMERS COSTS ASSOCIATED WITH COMPETITIVE ENERGY SALES WITHIN IN ITS OWN OR OTHER UTILITY SERVICE TERRITORIES WHETHER PURCHASED FROM OTHER SELLERS OR PRODUCED THROUGH CONSTRUCTION OF NEW OR EXISTING GENERATION FACILITIES.

Division (D)(2) and (D)(3) within the "code of conduct" section of Rule 37 should recognize that customer use and load information is sometimes necessary for electric service providers to meaningfully compete in the marketplace. A standard approach to provide such information should be developed for all utilities, and therefore

should be reflected in the Commission's rules. Any such policy that applies to residential customers must ensure that only those customers that opt-in to the use of their private utility information -- including usage, telephone number, or other indicia of personal information -- be included in the distributed lists. The OCEA members do not object to the provision of a mass customer list that contains customer names and addresses to licensed suppliers.

PROPOSED CHANGE:

(D) (2) On or after the effective date of the chapter, the electric utility, FOR RESIDENTIAL CUSTOMERS, shall NOT, WITHOUT THE CUSTOMERS' PERMISSION, make customer lists AVAILABLE CONTAINING INFORMATION OTHER THAN ~~which include~~ name AND address~~, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric service providers transacting business in its service territory~~. FOR NON-RESIDENTIAL CUSTOMERS, THE ELECTRIC UTILITY SHALL MAKE CUSTOMER LISTS (WHICH INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, AND LOAD INFORMATION) AVAILABLE~~,~~ unless otherwise directed by the customer DIRECTLY OR BY THE CUSTOMER PLACING ITS NAME ON THE NATIONAL DO NOT CALL LIST. FOR BOTH RESIDENTIAL AND NON-RESIDENTIAL CUSTOMERS, SUCH INFORMATION SHALL BE MADE AVAILABLE ON A NONDISCRIMINATORY BASIS TO ALL NONAFFILIATED AND AFFILIATED CERTIFIED RETAIL ELECTRIC SERVICE PROVIDERS TRANSACTING BUSINESS IN ITS SERVICE TERRITORY. This provision does not apply to customer-specific information obtained with proper authorization, obtained with proper authorization necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services. THIS

INFORMATION SHALL BE CONSIDERED CONFIDENTIAL AND CANNOT BE USED FOR ANY OTHER PURPOSE THAN ATTEMPTING TO SELL ELECTRIC SERVICES TO THE CUSTOMER.

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

**B. The Commission's Order Failed to Set Reasonable Application Requirements (4901:1-37-05) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

Affiliates receive valuable advantages by marketing and advertising jointly with the electric utilities. Such joint activities appear to be an endorsement of the affiliate by the electric utility. The advantage of joint marketing and advertising should be available to all electric service companies -- or to none, including to the affiliate. The added language attempts to capture this concept and neutralize the benefit to affiliates.

PROPOSED CHANGE:

(B) (6) ~~A description of any joint advertising and/or joint marketing activities between the electric utility and an affiliate that the electric utility intends to utilize, including when and where the name and logo of the electric utility will be utilized, and explain how such activities will comply with this chapter.~~ PROVISIONS THAT PREVENT THE ELECTRIC UTILITY FROM ENGAGING IN ADVERTISING OR MARKETING ACTIVITIES ON ANYTHING OTHER THAN ON A NON-DISCRIMINATORY BASIS AS AMONG ITS AFFILIATE AND OTHER ELECTRIC SERVICES COMPANIES.

In litigated proceedings, all parties should have access to the compliance officer. The added language accomplishes this. Also, it is important to know whether the job description or the status (promotion/demotion) of the compliance officer has changed.

PROPOSED CHANGE:

> (B) (11) A designation of the electric utility's compliance officer who will be the contact for the commission and staff, AND ANY PARTIES TO A PROCEEDING, RELATED TO ~~on~~ corporate separation matters. The compliance officer shall certify that the approved corporation separation plan is up to date and in compliance with the commission's rules and orders. The electric utility shall notify the commission and the director of the utilities department (or their designee) of changes in the compliance officer, THE JOB DESCRIPTION, OR THE STATUS OF THE COMPLIANCE OFFICER. THIS INFORMATION SHALL BE PUBLICLY AVAILABLE.

### C. The Commission's Order Failed to Set Reasonable Requirements for Access to Books and Records (4901:1-37-07) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

Books and records should be available to parties to a proceeding where the information is likely to lead to the discovery of admissible evidence.

PROPOSED CHANGE:

> (A) The electric utility shall maintain records sufficient to demonstrate compliance with this chapter, and shall produce, upon the request of staff, AND PARTIES TO A PROCEEDING, all books, accounts, and/or other pertinent records kept by an electric utility or its affiliates as they may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code, including those required under section 4928.145 of the Revised Code.

**D. The Commission's Order Failed to Make Reasonable Provisions for Cost Allocation Manuals (4901:1-37-08) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

The document retention language is revised to reflect that the Board of Directors minutes are maintained for the life of the corporation, and the minimum period -- here three years -- should apply at the point where the minutes would not be kept (i.e. upon corporate cessation). In addition, the costs of transferred assets should be valued appropriately.

PROPOSED CHANGE:

(D)(9) A copy of the minutes of each board of directors meeting~~,~~ ~~where it~~ shall be maintained for a minimum of three years FOLLOWING THE CESSATION OF THE CORPORATION.

(G) The electric utility and affiliates shall maintain all underlying affiliate transaction information for a minimum of ~~three~~ FIVE years.

The Staff audit of the CAM provided for in this rule must also include the affiliate books and records. It is impossible to determine whether costs are properly allocated as between the affiliate and the electric utility unless the Staff audits all the allocations in all the affiliates that share employees and other resources with the electric utility. The Staff audit provided in the proposed rule should be filed so that it can be examined and parties who can be better assured that the electric utility has fully complied with the Commissions' requirements. The following revisions accomplish both these purposes.

(J) The staff ~~may~~ SHALL perform an ANNUAL audit of the CAM in order to ensure compliance with this rule. THE RECORDS OF ANY AFFILIATE SHARING RESOURCES, EMPLOYEES OR TRANSACTIONS WITH THE ELECTRIC UTILITY SHALL BE AVAILABLE FOR AUDIT ALONG WITH THE

RECORDS OF THE ELECTRIC UTILITY. ALL AUDITS SHALL BE COMMITTED TO WRITING AND BE FILED WITH THE COMMISSION IN THE ELECTRIC UTILITY'S CORPORATE SEPARATION DOCKET.

### E. The Commission's Order Failed to Set Reasonable Provisions for the Sale or Transfer of Generating Assets (4901:1-37-09) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

This section has been added because the electric utility must show that it has been appropriately compensated for property when an affiliate receives the property. Book value may not be the appropriate measure of compensation. The fair market value of the property must also be established, and the electric utility should clearly show the basis for determining fair market value. This information is essential to protect the public interest.

PROPOSED CHANGE:

(C) (4) STATE THE FAIR MARKET VALUE AND BOOK VALUE OF ALL PROPERTY TRANSFERRED FROM THE ELECTRIC UTILITY, AND STATE HOW THE FAIR MARKET VALUE WAS DETERMINED.

The general rule regarding hearings on the sale or transfer of generating assets should be that a hearing take place. This position was stated in OCEA's earlier comments. The September 17, 2008 Order commented upon this recommendation, stating:

> Under OCEA's proposal, a slight change in the percentage of ownership of a small generating asset amount two electric utilities would trigger a hearing, regardless of whether there is participation, or even interest, by other parties in the proceeding. Such a result is unnecessary and burdensome on the parties involved, Staff, and the Commission.[4]

[4] Order at 6 (September 17, 2008).

Burdens exist in all circumstances where a change in ownership is proposed by an electric utility. The *general rule* should not place a burden on parties who may want to participate in a proceeding to strenuously (and perhaps repetitiously, with other parties) seek a hearing on the proposed change. Under the circumstances postulated by the Commission -- a small adjustment with no interest in a proceeding -- the electric utility can propose and receive a waiver of the *general rule*. The general rule should apply to the expected course of interest in plant transfers, and the OCEA members believe they and other parties will be keenly interested in future generating plant transfers.

PROPOSED CHANGE:

(D) Upon the filing of such application, the commission ~~may~~ SHALL fix a time and place for a hearing TO DETERMINE WHETHER ~~if~~ the application is ~~un~~just, ~~un~~reasonable, ~~or not~~ AND in the public interest.

Parties to proceedings regarding the sale or transfer of generating assets require access to the information pertaining to the justness and reasonableness of the corporate separation and whether it is in the public interest. Access to the information specified in paragraph (F) is necessary to make this evaluation.

PROPOSED CHANGE:

(F) Staff AND ANY PARTY TO A PROCEEDING THAT INCLUDES CONSIDERATION OF THE TRANSFER OF GENERATING ASSETS shall have access to all books, accounts, and/or other pertinent records maintained by the transferor and transferee as related to the application to sell or transfer generating assets and in accordance with rule 4901:1-37-07 of this chapter.

The addition of the language clarifies that parties will have access to this information so that they can meaningfully evaluate the electric utility's application for a transfer.

## V. THE COMMISSION'S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING AN ELECTRIC UTILITY'S SPECIAL CONTRACT ARRANGEMENTS (CHAPTER 4901:1-38) THAT SERVE THE PUBLIC POLICY EMBODIED IN RECENT LEGISLATION. *AMOCO v. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

### A. The Commission's Order Failed to Set Reasonable Definitions (4901:1-38-01) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The definition of "Delta Revenues" provided by OCEA uses the PUCO's earlier definition from a *Policy Precedent Manual*, dated June 28, 1983. The 1983 version focuses more clearly on "revenues" than the definition drafted by the Staff in the instant proceeding.

PROPOSED CHANGE:

> (C) "Delta revenue" means the ~~deviation~~ REVENUE DIFFERENCE resulting from the ~~difference~~ amount collected by applying ~~in rate levels between the otherwise applicable rate schedule and the result of~~ any economic development schedule, energy efficiency schedule, or unique arrangement, AND THE AMOUNT COLLECTED UNDER THE OTHERWISE APPLICABLE RATE SCHEDULE.

The definition of "energy efficiency production facilities" could be broadly interpreted to cover many facilities that the General Assembly never conceived would be covered by the definition. OCEA supports the following:

PROPOSED CHANGE:

> (F) "Energy efficiency production facilities" means any customer that manufactures or assembles products THAT EXCEED STATE AND FEDERAL ENERGY CODES AND STANDARDS, WHERE SUCH CODES AND STANDARDS EXIST, AND that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light and drive power) derived from a device or process to energy inputs necessary to derive

such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.

### B. The Commission's Order Failed to Set Reasonable Rules for Economic Development Arrangements (4901:1-38-03) and Unique Arrangements (4901:1-38-05) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The distinction between "economic development arrangements" (Rule 38-03) and "reasonable arrangements" (Rule 38-05) has been blurred by the Commission's changes to Rule 38-03. Both rules deal with agreements between the electric utility and a customer or customer group. The remaining distinctions are that there are fewer restrictions listed in Rule 38-05 than in Rule 38-03, and there are fewer restrictions on utility applications under Rule 38-03 than applications by customers. The likely result will not be effective regulation under all provisions in both rules, but a preference favoring agreements submitted under Rule 38-05, and for any remaining submissions under Rule 38-03 to be submitted by the utility and not by the customer. The result is likely to be a process that is dominated by the utility, and one prone to discrimination by utilities in favor of large customers with whom the utilities can form alliances.

The Commission should ensure that the beneficiaries of programs are held accountable for their responsibilities pursuant to the economic development subsidies they receive. The Commission rules should ensure that the goals of special arrangements are being met throughout the term of the special arrangement. Recipients of economic development subsidies should be required to demonstrate that they meet their responsibilities to contribute to economic development and to maintain the employment

and payroll level that the special arrangement was based upon. In particular, those receiving economic development incentives should be held accountable to the customers and the utilities who may be asked to subsidize them. Any subsidies provided through favorable electric rates require public accountability for compliance with the terms of the subsidy. OCEA supports the following changes to 4901:1-38-03(A) and (B):

PROPOSED CHANGE:

(A) (2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility and the commission verifiable information detailing how the criteria are met, and provided an affidavit from a company official as to the veracity of the information provided. IF THE ELECTRIC UTILITY FILES AN APPLICATION REGARDING A CUSTOMER'S ECONOMIC DEVELOPMENT ARRANGEMENT, THE CUSTOMER MUST PROVIDE SAID INFORMATION TO THE ELECTRIC UTILITY FOR SUBMISSION TO THE COMMISSION:

* * *

(h) THE CUSTOMER SHALL PROVIDE THE CONTRACT TERMS AND CONDITIONS, THE ASSOCIATED INCENTIVE(S), THE TERM OF THE INCENTIVE(S) IF DIFFERENT THAN THE CONTRACT TERM, ESTIMATED ANNUAL ELECTRIC ON-PEAK/OFF-PEAK DEMAND AND USAGE OVER THE TERM OF THE INCENTIVE(S), ESTIMATED ANNUAL ELECTRIC BILLINGS WITHOUT INCENTIVE(S) OVER THE TERM OF THE INCENTIVE(S), AND THE ESTIMATED ANNUAL DELTA REVENUES OVER THE TERM OF THE INCENTIVE(S).

(B) (2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the

following criteria, submit to the electric utility and the commission verifiable information detailing how the criteria are met, and provided an affidavit from a company official as to the veracity of the information provided. IF THE ELECTRIC UTILITY FILES AN APPLICATION REGARDING A CUSTOMER'S ECONOMIC DEVELOPMENT ARRANGEMENT, THE CUSTOMER MUST PROVIDE SAID INFORMATION TO THE ELECTRIC UTILITY FOR SUBMISSION TO THE COMMISSION:

* * *

(g) THE CUSTOMER SHALL PROVIDE THE CONTRACT TERMS AND CONDITIONS, THE ASSOCIATED INCENTIVE(S), THE TERM OF THE INCENTIVE(S) IF DIFFERENT THAN THE CONTRACT TERM, ESTIMATED ANNUAL ELECTRIC ON-PEAK/OFF-PEAK DEMAND AND USAGE OVER THE TERM OF THE INCENTIVE(S), ESTIMATED ANNUAL ELECTRIC BILLINGS WITHOUT INCENTIVE(S) OVER THE TERM OF THE INCENTIVE(S), AND THE ESTIMATED ANNUAL DELTA REVENUES OVER THE TERM OF THE INCENTIVE(S).

Division (C)(2) provides the PUCO staff, and no other person, access to information related to "service provided pursuant to the economic development arrangements." The information should be available to additional persons.

PROPOSED CHANGE:

(C) (2) The staff AND INTERESTED PERSONS shall have access to all customer and electric utility information related to service provided pursuant to the economic development arrangements.

As with any case pending before the PUCO, confidentiality regarding information provided in regulatory proceedings should be requested by the party seeking the designation pursuant to Ohio Administrative Code 4901-1-24. These requests should be

evaluated by the Commission on a case-by-case basis, using the criteria set out under Ohio law. If the information is deemed trade secret, that information should be available to parties under suitable conditions to protect the information. The availability of the name and address of customers having special arrangements should not be considered confidential (as provided for in the Staff-proposed rules).

PROPOSED CHANGE:

> (D) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall be treated by the electric utility as confidential. THE ELECTRIC UTILITY SHALL REQUEST CONFIDENTIAL TREATMENT OF CUSTOMER-SPECIFIC INFORMATION THAT IS SUBMITTED TO THE COMMISSION OR ITS STAFF, WITH THE EXCEPTION OF CUSTOMER NAMES AND ADDRESSES. NOTHING IN THIS RULE PROHIBITS RELEASE OF INFORMATION TO A PARTY TO A PROCEEDING BEFORE THE COMMISSION UNDER SUITABLE PROTECTIVE ARRANGEMENTS OR AS OTHERWISE ORDERED BY THE COMMISSION.

### C. The Commission's Order Failed to Set Energy Efficiency Schedule Rules (4901:1-38-04) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

Under Ohio Adm. Code 4901:1-38-04, an electric utility may file an application seeking Commission approval of an energy efficiency schedule. The opportunity to participate in the Commission's review of such an application under Ohio Adm. Code 4901:1-38-04 should be open to all interested parties. The Commission should assure that its consideration of an energy efficiency schedule that will create delta revenues takes place according to a fair and transparent process to verify claims, and is based on full information. Therefore, OCEA supports the following adjustments (including appropriate renumbering of (3) as (4)).

PROPOSED CHANGE:

> (2) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided THAT SHALL BE SUBMITTED TO THE COMMISSION IN ALL APPLICATIONS:
>
> * * *
>
> (3) EVERY APPLICATION SHALL INCLUDE CONTRACT TERMS AND CONDITIONS, THE ASSOCIATED INCENTIVE(S), THE TERM OF THE INCENTIVE(S) IF DIFFERENT THAN THE CONTRACT TERM, THE ESTIMATED ANNUAL ELECTRIC ON-PEAK/OFF-PEAK DEMAND AND USAGE OVER THE TERM OF THE INCENTIVE(S), THE ESTIMATED ANNUAL ELECTRIC BILLINGS WITHOUT THE INCENTIVE(S) OVER THE TERM OF THE INCENTIVE(S), AND THE ESTIMATED ANNUAL DELTA REVENUES OVER THE TERM OF THE INCENTIVE.

Division (B)(2) provides the PUCO staff, and no other person, access to information related to "service provided pursuant to the energy efficiency arrangements." The information should be accessible to additional persons.

PROPOSED CHANGE:

> (B) (2) The staff AND INTERESTED PERSONS shall have access to all customer and electric utility information related to service provided pursuant to the energy efficiency arrangements.

The confidentiality requirements stated in division (C) protect information that is initially presented to the electric utility, but leaves a gap regarding the treatment of that same information as it is presented to the Commission for the PUCO's deliberations. As

with any case pending before the PUCO, confidentiality regarding information provided in regulatory proceedings should be requested by the party seeking the designation pursuant to Ohio Administrative Code 4901-1-24. These requests should be evaluated by the Commission on a case-by-case basis, using the criteria set out under Ohio law. If the information is deemed trade secret, that information should be available to parties under suitable conditions to protect the information. The availability of the name and address of customers having special arrangements should not be considered confidential (as provided for in the Staff-proposed rules).

PROPOSED CHANGE:

> (C) Customer information provided to demonstrate eligibility under paragraphs (A) of this rule shall be treated by the electric utility as confidential. THE ELECTRIC UTILITY SHALL REQUEST CONFIDENTIAL TREATMENT OF CUSTOMER-SPECIFIC INFORMATION THAT IS SUBMITTED TO THE COMMISSION OR ITS STAFF, WITH THE EXCEPTION OF CUSTOMER NAMES AND ADDRESSES. NOTHING IN THIS RULE PROHIBITS RELEASE OF INFORMATION TO A PARTY TO A PROCEEDING BEFORE THE COMMISSION UNDER SUITABLE PROTECTIVE ARRANGEMENTS OR AS OTHERWISE ORDERED BY THE COMMISSION.

### D. The Commission's Order Failed to Set Reasonable Reporting, Monitoring, and Evaluation Requirements (4901:1-38-06) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The reporting requirements fail to establish a practical procedural path by which reporting on reasonable arrangements will take place since the electric utility, not the customer, is regulated by the PUCO. The electric utility, under Ohio's regulatory framework, must be directed under the rules to collect information on reasonable arrangements for the purpose of reporting to the PUCO. The following changes are

supported by OCEA to resolve the procedural problems. Dates have been changed to meet the timeframe for a final report that was adopted by the Commission on September 17, 2008.

PROPOSED CHANGE:

(A) Each ELECTRIC UTILITY THAT IS SERVING customers ~~served~~ under any reasonable arrangement established pursuant to this chapter must submit an annual report to the COMMISSION ~~electric utility~~ no later than ~~April thirtieth~~ JUNE FIFTEENTH of each year. The ELECTRIC UTILITY SHALL PROVIDE THE format FOR CUSTOMER REPORTING -- AS ~~of that report shall be~~ determined by the staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives receive by the customers(s) ids identified, and the potential impact on other customers can be calculated -- TO CUSTOMERS SERVED UNDER A REASONABLE ARRANGEMENT. THE FAILURE OF ANY SUCH CUSTOMER TO COMPLY WITH THE REPORTING REQUIREMENTS SET FORTH IN THE STAFF FORM BY APRIL THIRTIETH OF EACH YEAR SHALL RESULT IN TERMINATION OF THE ARRANGEMENT.

Corresponding to the above analysis regarding reporting, an obligation must be placed on the electric utility to show ongoing compliance with the requirements placed in agreements that involve customers. Information from Staff should be available to the public, and proceedings should result regarding compliance with requirements upon good cause shown.

(B) The burden of proof to demonstrate on-going compliance with the schedule or unique arrangement lies with the ~~customer(s)~~ ELECTRIC UTILITY. The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and ~~submit~~ FILE such summary ~~to staff~~ WITH THE COMMISSION for review and audit no later than June 15th of each year. AFTER THE REVIEW AND ANY AUDIT OF THE SUMMARY IS COMPLETED, SUCH INFORMATION SHALL BE

FILED AND MADE AVAILABLE TO INTERESTED PARTIES. AFTER THE INFORMATION IS FILED, INTERESTED PARTIES SHALL HAVE THE OPPORTUNITY TO FILE COMMENTS WITH THE COMMISSION AND REQUEST A HEARING. THE COMMISSION SHALL ISSUE A FINDING AND ORDER WITHIN TWO MONTHS OF THE FILING OF ANY COMMENTS AND SHALL ORDER A HEARING ON THE ECONOMIC DEVELOPMENT PROGRAM FOR GOOD CAUSE SHOWN.

**E. The Commission's Order Failed to Set Reasonable Requirements for the Level of Incentives (4901:1-38-07) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

The adjustments supported by OCEA to provide for the addition of division (E) to the rule, which reflects consistency with other changes supported by OCEA.

PROPOSED CHANGE:

(D) THE COMMISSION SHALL CAP THE LEVEL OF ANY OF THE INCENTIVES REFERENCED IN PARAGRAPH (B). CUSTOMER CLASSES THAT ARE NOT ELIGIBLE FOR THE INCENTIVES SHALL NOT PAY FOR INCENTIVES ABOVE THE CAPPED AMOUNTS.

Support for the cap is provided above.

**F. The Commission's Order Failed to Set Reasonable Revenue Recovery Requirements (4901:1-38-08) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.**

The revenue recovery provisions in the rules adopted by the Commission should be adjusted as a matter of clarity, fairness, and adherence to the principle of transparency. Regarding division (A)(2) of the rule, the audit of an electric utility's treatment of "direct incremental administrative costs" should involve the utility's implementation of any rider approved by the Commission, not the audit of the utility's "request" for such a rider. Regarding division (A)(4) of the rule, the Commission should either recognize prior

practice regarding the treatment of delta revenue or remain silent on cost recovery until facts and opinions are offered in specific cases. The proposed change shown below supports a rule where the PUCO recognizes its own, prior practice.

PROPOSED CHANGE:

(A) (2) The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such ~~request~~ COST RECOVERY shall be subject to audit, review, and approval by the commission.

* * *

(4) The amount of the revenue recovery rider shall be spread to ~~all~~ customers ~~in proportion to the current revenue distribution between and among classes, subject to change alteration, or modification~~ AS DETERMINED by the commission, BUT IN NO CASE SHALL THE RECOVERY FROM CUSTOMERS BE MORE THAN FIFTY PERCENT OF THE DELTA REVENUES. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

Any proposal to charge other customers for discounts to one or more customers involves the interest of those customers who would be asked to pay for those discounts. Such circumstances should be accompanied by the availability of information to customers and their representatives to determine whether a hearing is advisable regarding an application (i.e. not only to the PUCO Staff). The OCEA members, therefore, support the following changes in order to encourage transparency in matters handled by the PUCO:

PROPOSED CHANGE:

(B) (3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the reasonable arrangements that created the delta revenue triggering the electric utility's application to recovery the costs associated

with said delta revenue. SUCH INFORMATION SHALL ALSO BE MADE PROMPTLY AVAILABLE TO INTERVENORS TO THE CASE IN WHICH THE ELECTRIC UTILITY APPLIES FOR A RIDER ON AN EXPEDITED, TEN CALENDAR DAY RESPONSE TIME FOR DISCOVERY.

### G. The Commission's Order Failed to Set Reasonable Requirements for the Failure to Comply (4901:1-38-09) That Meet the Requirements and Policy Goals Set Forth in the Revision of R.C. Chapter 4928 by S.B. 221.

The failure of customers who receive discounted rates to comply with reporting requirements should also result in termination of those arrangements. The following changes should be made to 4901:1-38-09:

> (A) If the customer being provided with service pursuant to a reasonable arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility OR FAILURE TO SUBTANTIALLY COMPLY WITH REPORTING REQUIREMENTS, the electric utility, after reasonable notice to the customer, shall terminate the arrangement unless otherwise ordered by the commission.

## VI. CONCLUSION

OCEA requests that the Commission carefully consider this Application for Rehearing along with the Initial Comments and Reply Comments previously submitted by the OCEA members. The Commission should make changes to the rules stated in the September 17, 2008 Order as set out in this Application for Rehearing.

Respectfully submitted,

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I hereby certify that the foregoing Application for Rehearing has been served via First Class U.S. Mail, postage prepaid, to the following persons this 17th day of October, 2008.

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Summary: App for Rehearing Application for Rehearing by the Ohio Consumer and Environmental Advocates electronically filed by Patti Mallarnee on behalf of Mrs. Jacqueline Lake Roberts